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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–3 IFR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2003 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the production cap for the 2003 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2003 RDP is expected to bring the figure in line with anticipated 2003 crop yields.

DATES: Effective March 20, 2003. Comments received by April 3, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the production cap for the 2003 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2003 RDP is expected to bring the figure in line with anticipated 2003 crop yields. This action was recommended by the RAC at a meeting on January 29, 2003. An interim final rule modifying provisions of the raisin diversion program was published in the **Federal Register** on January 28, 2003 (68 FR 4079).

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short

crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate from the RAC that represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 ton per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on January 29, 2003, and recommended allocating 35,000 tons of 2002 NS reserve raisins to a 2003 RDP. The program will be limited to vine removal for complete production units, with a 5-year moratorium on replanting raisin-variety grapes. Damages of $700 per ton of creditable fruit weight represented on the RDP certificate will be imposed on producers who replant prior to July 31, 2008. Harvest costs were established at $340 per ton. The RAC also recommended reducing the production cap from 2.75 to 2.0 tons per acre. With this year's large crop of about 373,000 tons, the RAC believes that the grape vines will produce a smaller crop next year. Thus, the RAC recommended reducing the cap from 2.75 to 2.0 tons per acre to reflect anticipated 2003 crop yields.

The RAC's RDP recommendation passed with 24 members in favor and 21 opposed. Those opposed expressed concern with the RDP as a whole, not the production cap. They believe that many producers have already pulled out their vines, and that attrition should occur naturally in the industry. Concern also was expressed that the tonnage allocated to the diversion program would be added to next year's crop estimate, thereby reducing next year's free tonnage percentage and producer returns. Those in favor of the program contend that, with a 2002 NS crop estimated at about 373,000 tons, and a computed trade demand (comparable to market needs) of 196,185 tons, there would be 176,815 tons of reserve raisins. A diversion program is one avenue authorized under the order to utilize these reserve raisins.

On February 7, 2003, USDA approved the requirements of the RDP recommended by the RAC, with the exception of the production cap, which requires informal rulemaking. This rule implements the RAC's recommendation to reduce the 2003 RDP production cap from 2.75 to 2.0 tons per acre. Paragraph (t) in § 989.156 of the order's rules and regulations is revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(t) of the order's rules and regulations regarding the RDP. Authority for this action is provided in § 989.56(a) of the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP.

This rule reduces the cap from 2.75 to 2.0 tons per acre to reflect next year's estimated yield. Regarding the impact of

this action on affected entities, producers who participate in the 2003 RDP will nonetheless have the opportunity to earn income for not harvesting a 2003–04 crop. Producers who sell the certificates to handlers next fall are paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2003 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2002–03 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2003 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre will more accurately reflect anticipated 2003 crop yields.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on January 29, 2003, and the RAC's Administrative Issues Subcommittee meeting on January 24, 2003, when this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The submission deadline for producer applications for the 2003 RDP was March 3, 2003; (2) producers are aware of this action which was recommended by the RAC at a public meeting; (3) the program is voluntary, and any producer can choose to produce a raisin crop for delivery in 2003; and (4) this interim final rule provides a 15-day period for written comments and all comments timely received will be considered prior to finalization of this rule. A 15-day comment period is deemed appropriate for these same reasons.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (t) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(t) Pursuant to § 989.56(a), the production cap for the 2003 raisin diversion program for the Natural (sun-dried) Seedless varietal type is 2.0 tons of raisins per acre.

Dated: March 14, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6663 Filed 3–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–09–AD; Amendment 39–13088; AD 2003–06–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–300, AT–301, AT–302, AT–400, and AT–400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–13–02, which applies to all Air Tractor, Inc. (Air Tractor) Models AT–300, AT–301, AT–302, and AT–400A airplanes that have aluminum spar caps; certain Air Tractor Models AT–400 airplanes that have aluminum spar caps; and all Models AT–300 and AT–301 airplanes that have aluminum spar caps and are or have been converted to turbine power. AD 2002–13–02 currently requires you to inspect (one-time) the wing centerline splice joint for cracks and, if any crack is found, replace the affected wing spar lower cap; requires you to report the results of the inspection to the Federal Aviation Administration (FAA); and requires you to replace the wing spar lower caps after a certain amount of usage. Based upon the inspection results from AD 2002–13–02, FAA has determined that the mandatory wing spar lower cap replacement times should be reduced. This AD maintains the wing spar lower cap replacement and reporting requirements from AD 2002–13–02 and reduces the compliance time of these replacements. The actions specified by this AD are intended to detect and correct cracks in the wing centerline splice joint. If not detected and corrected, these cracks could eventually result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on April 4, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 4, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before April 25, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–09–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 also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–09–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? An incident on an Air Tractor Model AT–400A where the wing separated from the airplane caused FAA to issue AD 2002–13–02, Amendment 39–12789 (67 FR 44024, July 1, 2002). Investigation reveals that the right-hand lower spar cap failed due to fatigue at the 3/8-inch outboard bolt, which is located 6.5 inches outboard of the fuselage centerline.

The following airplanes have a similar type design to that of the accident airplane:

—All Models AT–300, AT–301, AT–302, and AT–400A airplanes that have aluminum spar caps;

—Air Tractor Models AT–400 airplanes, serial numbers 400–0244 through 400–0415, that have aluminum spar caps; and

—All Models AT–300 and AT–301 airplanes that have aluminum spar caps and are or have been converted to turbine power.

AD 2002–13–02 currently requires you to inspect (one-time) the wing centerline splice joint for cracks and, if any crack is found, replace the affected wing spar lower cap; report the results of the inspection to FAA; and replace the wing spar lower caps after a certain amount of usage.

Accomplishment of these actions is required in accordance with Snow Engineering Co. Process Specification 197, dated February 23, 2001, Revised May 1, 2002, and Revised May 3, 2002; and Snow Engineering Co. Service Letter #220, dated May 3, 2002.

What has happened since AD 2002–13–02 to initiate this action? AD 2002–13–02 required you to report to FAA the results of the one-time inspection of wing spar lower caps. Through these AD inspections, a Model AT–400A airplane had a cracked spar cap where the damage was sufficient to require spar cap replacement. Based upon this damage and the AD 2002–13–02 inspection results, we have determined that the mandatory wing spar lower cap replacement time for the affected turbine engine powered airplanes should be reduced.

The manufacturer has revised or issued the following service information to address this situation:

—Snow Engineering Co. Service Letter #55, Revised October 23, 2002, which includes revised procedures and information for accomplishing a wing lower spar cap splice rework on all AT–300 and AT–301 series airplanes;

—Snow Engineering Co. Service Letter #70, Revised October 23, 2002, which addresses questions about all serial number airplanes beginning with 0041 as they pertain to the wing lower spar cap splice rework specified in Snow Engineering Co. Service Letter #55;

—Snow Engineering Co. Service Letter #226, dated December 17, 2002, which specifies the lower replacement time for the turbine engine powered airplanes;

—Snow Engineering Process Specification Number 197, Revised June 4, 2002, which provides procedures for accomplishing eddy current inspections of the wing lower spar caps; and

—Snow Engineering Co. Service Letter #220, dated December 17, 2002, which specifies the eddy current inspection in Snow Engineering Process Specification Number 197 and includes procedures for completing this inspection.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on type design Air Tractor Models AT–300, AT–301, AT–302, AT–400, and AT–400A;

—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 does this AD require? This AD supersedes AD 2002–13–02 with a new AD that:

—requires you to replace the wing spar lower caps after a certain amount of usage;

—allows you to extend the time for replacement on certain airplanes if a wing lower spar cap splice rework is accomplished;

—allows you to repetitively inspect your airplane until the wing lower spar caps can be replaced provided no cracks are found and only a certain number of inspections are accomplished; and

—requires you to report any cracks found during the inspections to FAA.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the wing separating from the airplane during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the 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 specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the 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 FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–09–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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.

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–13–02, Amendment 39–12789 (67 FR 44024, July 1, 2002), and by adding a new AD to read as follows:

2003–06–01—Air Tractor, Inc.: Amendment 39 13088; Docket No. 2003–CE–09–AD; Supersedes AD 2002–13–02; Amendment 39–12789.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplanes that are certificated in any category:

(1) Models AT–300, AT–301, AT–302, and AT–400A airplanes, all serial numbers, that have aluminum spar caps;

(2) Models AT–400 airplanes, serial numbers 400–0244 through 400–0415, that have aluminum spar caps; and

(3) Models AT–300 and AT–301 airplanes, all serial numbers that have aluminum spar caps and are or have been converted to turbine power.

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane identified in paragraph (a)(1), (a)(2), or (a)(3) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the wing centerline splice joint. If not detected and corrected, these cracks could eventually result in the wing separating from the airplane during flight.

(d) *What must I do to address this problem?* To address this problem, you must replace each wing lower spar cap in accordance with the applicable maintenance manual, as follows:

Affected airplanes	Compliance time
.....	Upon the accumulation of 7,000 hours time-in-service (TIS) on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of this AD), whichever occurs later.
(1) For all affected Models AT–300 and AT–301 airplanes that incorporate reciprocating engines and incorporate the wing spar center splice joint modification in accordance with the following: (i) Snow Engineering Co. Service Letter #55, Revised October 23, 2002; and (ii) Snow Engineering Co. Service Letter #70, Revised October 23, 2002.	
(2) For all affected Models AT–300 and AT–301 airplanes that incorporate reciprocating engines and do not incorporate the wing spar center splice joint modification. (i) The wing spar center splice joint modification may be incorporated on these airplanes to allow continued operation to 7,000 hours TIS as specified in paragraph (d)(1) of this AD (ii) Use the service information specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD to accomplish this modification.	Upon the accumulation of 5,000 hours TIS on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of this AD), whichever occurs later.
(3) For all affected AT–302, AT–400, and AT–400A airplanes with aluminum spar caps; and all affected Models AT–300 and AT–301 airplanes that incorporate aluminum spar caps and are or have been converted to turbine power. Snow Engineering Co. Service Letter #226, dated December 17, 2002, includes information on these airplanes.	Upon the accumulation of 4,450 hours TIS on either wing spar lower cap or within the next 25 hours TIS after April 4, 2003 (the effective date of this AD), whichever occurs later.

(e) *May I repetitively inspect the wing lower spar caps instead of replacing them?* You may use the procedures in Snow Engineering Process Specification Number 197, Revised June 4, 2002; and Snow Engineering Co. Service Letter #220, dated December 17,

2002, to repetitively inspect the wing spar lower caps. In order to utilize this option, you must order parts from the factory and schedule the replacement through Air Tractor and inspect as follows:

(1) *For any affected reciprocating engine powered airplane:* initially inspect at the applicable compliance time in paragraph (d)(1) or (d)(2) of this AD and repetitively inspect thereafter at intervals not to exceed 300 hours TIS. If the airplane was previously inspected in accordance with Snow Engineering Co. Process Specification Number 197, then you can take credit for that inspection and inspect at 300-hour TIS intervals thereafter. You must apply any previous inspections toward the 900-hour TIS requirement in paragraph (e)(1)(iii) of this AD. Replace the wing spar lower caps prior to further flight after whichever of the following occurs first:

(i) The date of the scheduled replacement;

(ii) Cracks are found during any inspection allowed by paragraph (e) of this AD; or

(iii) Upon accumulating 900 hours TIS after the initial inspection accomplished in accordance with paragraph (e)(1) of this AD.

(2) *For any affected turbine engine powered airplane:* initially inspect at the compliance time in paragraph (d)(3) of this AD and repetitively inspect thereafter at intervals not to exceed 300 hours TIS. If the airplane was previously inspected in accordance with Snow Engineering Co. Process Specification Number 197, then you can take credit for that inspection and inspect at 300-hour TIS intervals thereafter. You must apply any previous inspections toward the 600-hour TIS requirement in paragraph (e)(2)(iii) of this AD. Replace the wing spar lower caps prior to further flight after whichever of the following occurs first:

(i) The date of the scheduled replacement;

(ii) Cracks are found during any inspection allowed by paragraph (e) of this AD; or

(iii) Upon accumulating 600 hours TIS after the initial inspection required by paragraph (e)(2) of this AD.

(f) *Are there other requirements of this AD that I need to accomplish?* In addition to the replacement and optional inspection requirements of this AD, you must report the results to FAA of any inspection required by this AD where a crack is found.

(1) Submit this report within 10 days after the inspection or within 10 days after April 4, 2003 (the effective date of this AD), whichever occurs later.

(2) Use the form (Figure 1 of this AD) and submit it to FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(3) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.

AD2003–06–01 INSPECTION REPORT

1. Inspection Performed By:	*2. Phone:*
3. Aircraft Model:	*4. Aircraft Serial Number:*
5. Engine Model Number:	*6. Aircraft Total TIS:*
7. Wing Total TIS:	*8. Lower Spar Cap TIS:*
9. Has the lower spar cap been inspected before? (Eddy-Current, Dye Penetrant, Magnetic Particle, ☐ *Yes* ☐ *No*	*9a. If yes,* *Date:* _____ *Inspection Method:* _____ *Lower Spar Cap TIS:* _____ *Cracks found?* ☐ *Yes* ☐ *No*
10. Has there been any major repaair or alteration performed to the spar cap? ☐ *Yes* ☐ *No*	*10a. If yes, specify (Description and TIS)*
11. Date of AD inspection: _____	
12. Inspection Results: *Were any cracks found?* ☐ *Yes* ☐ *No*	*12a. If yes,* *Crack #1* ☐ *Left Hand* ☐ *Right Hand* *Crack #2* ☐ *Left Hand* ☐ *Right Hand*
12b. Reference Location(s) by Crack Number: *4-Bolt Joint* ☐ *Outermost Hole* ☐ *2nd Outermost Hole* *5-Bolt Joint* ☐ *Outermost Hole*	*12c. Crack Size* *Crack # 1 Length/Depth* _____ *Crack # 2 Length/Depth* _____

Additional Description/Comments:

_____

_____

Return to: Manager, Fort Worth ACO, ASW–150, 2601 Meacham Blvd., Fort Worth, TX 76193–0150; or fax to (817) 222–5960

Figure 1 of this AD

(g) *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, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth ACO.

(3) Alternative methods of compliance approved in accordance with AD 2002–13–02, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note: This AD applies to each airplane identified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes 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 (g) 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.

(h) *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 §§ 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 provided that the following is adhered to:

(1) Operate in day visual flight rules (VFR) only.

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Co. Service Letter #55, Revised October 23, 2002; Snow Engineering Co. Service Letter #70, Revised October 23, 2002; Snow Engineering Co. Service Letter #226, dated December 17, 2002; Snow Engineering Process Specification Number 197, Revised June 4, 2002; and Snow Engineering Co. Service Letter #220, dated December 17, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–13–02, Amendment 39–12789.

(k) *When does this amendment become effective?* This amendment becomes effective on April 4, 2003.

Issued in Kansas City, Missouri, on March 11, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6262 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14457; Airspace Docket No. 03–ACE–10]

Modification of Class E Airspace; Herington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, February 25, 2003, (68 FR 8704). It corrects an error in the location of the Herington Regional Airport, KS in the legal description of the Herington, KS Class E airspace.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–4322 published on Tuesday, February 25, 2003, (68 FR 8704) modified Class E airspace at Herington, KS. The modification was to correct the Herington Regional Airport, KS airport reference point used in the legal description of the Herington, KS Class E airspace area. The latitude of the Herington Regional Airport, KS airport reference point was published incorrectly.

Accordingly, pursuant to the authority delegated to me, the Herington, KS Class E airspace, as published in the Federal Register on Tuesday, February 25, 2003, (68 FR 8704), (FR Doc. 03–4322), is corrected as follows:

§ 71.1 [Corrected]

On page 8705, Column 1, second paragraph from the bottom, change ''Herington Regional Airport, KS (lat. 39°41′41″N., long. 96°48′29″W.)'' to read ''Herington Regional Airport, KS (lat. 38°41′41″N., long 96°48′29″W.)''

Issued in Kansas City, MO, on March 7, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–6623 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Vetrepharm Research, Inc., to Bioniche Animal Health USA, Inc.

DATES: This rule is effective March 19, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Vetrepharm Research, Inc., 119 Rowe Rd., Athens, GA 30601, has informed FDA of a change of name to Bioniche Animal Health USA, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect this change.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A), because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510–NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Vetrepharm Research, Inc.'' and by alphabetically adding an entry for ''Bioniche Animal Health USA, Inc.''; and in the table in paragraph (c)(2) by revising the entry for ''064847'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601.	064847
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
064847	Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601
* * * * *	

Dated: February 10, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–6492 Filed 3–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8168]

Income Taxes; Limitation on Deduction for Nonbusiness Interest: Personal Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Treasury Decision 8168, which was published in the **Federal Register** on Tuesday, December 22, 1987 (52 FR 48407) relating to the treatment of personal interest and the treatment and determination of qualified residence interest.

DATES: This correction is effective on December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Zweibel at (202) 622–5020 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 163(h) of the Internal Revenue Code.

Need for Correction

As published, TD 8168 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.163–9T [Corrected]

2. Section 1.163–9T(b)(2)(i)(A) is amended by removing the reference to ''§ 1.168–8T'' and adding the reference ''§ 1.163–8T'' in its place.

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–6596 Filed 3–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–011]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, HS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts. This deviation from the regulations allows the bridge to remain in the closed position from 9 p.m. on March 14, 2003 through 4 p.m. on March 28, 2003. This deviation is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effected from March 14, 2003 through March 28, 2003.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The vertical clearance under the bridge in the closed position is 27 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.619(b).

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operation regulations to facilitate necessary structural repairs at the bridge, replacement of the stringers on both bascule spans, at the bridge.

Under this deviation the bridge may remain in the closed position from 9 p.m. on March 14, 2003 through 4 p.m. on March 28, 2003.

There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 3, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–6629 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–031]

Drawbridge Operation Regulations; Palm Beach County Bridges, Atlantic Intracoastal Waterway, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation most of the Palm Beach County bridges across the Atlantic Intracoastal Waterway, Palm Beach County, Florida. This temporary deviation allows the Coast Guard to test an operating schedule with the bridges opening twice an hour with a one hour closure period in the morning and afternoon. It will allow the Coast Guard to gather data to determine if this schedule meets the reasonable needs of navigation while accommodating an increase in vehicle traffic throughout the county and whether it should be proposed as a permanent change.

DATES: This deviation is effective from 6 a.m. on March 17, 2003, until 8 p.m. on June 15, 2003. Comments must reach the Coast Guard on or before June 30, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131.

Comments and material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket (CGD07–03–031) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to comment on this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice (CGD07–03–031), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Discussion of the Test Schedule

This test schedule has been requested by various public officials within the County of Palm Beach to ease vehicular traffic which has overburdened roadways, and to standardize bridge openings for vessel traffic. This test will allow most of the bridges in Palm Beach County to operate on a standardized schedule, which will meet the reasonable needs of navigation and improve the vehicular traffic. The schedules will be staggered in order to facilitate the movement of vessels from bridge to bridge along the Atlantic Intracoastal Waterway.

The existing regulations governing the operation of the Palm Beach County bridges are published in 33 CFR 117.5 and 117.261. This temporary deviation includes all bridges across Atlantic Intracoastal Waterway in Palm Beach County except Jupiter Lighthouse bridge, mile 1004.1, and the Jupiter Federal bridge, mile 1004.8, which will continue to operate on demand. The following bridges need not open between 8 a.m. and 9 a.m. and from 5 p.m. to 6 p.m. Monday through Friday, except Federal holidays. And will operate at all other times on the schedules as follows:

During the deviation period, from 6 a.m. on March 17, 2003, until 8 p.m. on June 15, 2003, the bridges will operate as follows:

Open on Signal

Lake Avenue, mile 1028.8
Woolbridge Road, mile 1038.8

Open on the hour and half hour

Indiantown Road, mile 1006.2
Donald Ross, mile 1009.3
PGA Boulevard, mile 1012.6
Royal Park (SR 704), mile 1022.6
Southern Boulevard (SR 700/80), mile 1024.7
Ocean Avenue (Lantana), mile 1031.1
Ocean Avenue (Boynton Beach), mile 1035.0
NE. 8th Street (George Bush), mile 1038.7
Spanish River, mile 1044.9
Palmetto Park, mile 1047.5

Open on the quarter hour and three-quarter hour

Parker (US 1), mile 1013.7
Flagler Memorial (SR A1A), mile 1021.9
Atlantic Avenue (SR 806), mile 1039.6
Linton Boulevard, mile 1041.1
Boca Club, Camino Real, mile 1048.2

This test deviation does not affect the Jupiter Lighthouse bridge, mile 1004.1, and the Jupiter Federal bridge, mile 1004.8, which will continue to open on signal, as these areas have been determined to be unsafe for vessels to hold while waiting for a bridge opening.

If at any time during this test deviation it is determined that the test schedule poses any safety concerns at any location, this test deviation may be withdrawn.

The District Commander has granted a test deviation from the operating regulations listed in 33 CFR 117.261 and 117.5 to evaluate the effectiveness of these new schedules on vehicular and vessel traffic.

Dated: February 26, 2003.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–6634 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–009]

RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Routes 1 & 9 (Lincoln Highway) Bridge, at mile 1.8, across the Passaic River at Newark, New Jersey. This temporary deviation will allow the bridge to remain in the closed position from March 12, 2003 through April 2, 2003 and from April 12, 2003 through May 10, 2003. This action is necessary to facilitate maintenance at the bridge.

DATES: This deviation is effective from March 12, 2003 through May 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Route 1 & 9 (Lincoln Highway) Bridge has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The existing regulations listed at 33 CFR § 117.739(b), require the draw to open on signal after at least a four-hour advance notice is given.

The bridge owner, the New Jersey Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled maintenance, the replacement of the counterweight cables and the machining of the trunions and journals, at the bridge.

Under this temporary deviation the bridge may remain in the closed position from 7 a.m. on March 12, 2003 through midnight on April 2, 2003, and from 7 a.m. on April 12, 2003 through midnight on May 10, 2003.

The bridge normally has few requests to open. The Coast Guard coordinated the deviation closure schedule with the only known waterway user. No objections were received.

This deviation from the drawbridge operating regulations is authorized under 33 CFR § 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: February 21, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–6635 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–019]

Drawbridge Operation Regulations: Chelsea River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the P.J. McArdle Bridge, mile 0.3, across Chelsea River between East Boston and Chelsea, Massachusetts. Under this temporary deviation a four-hour advance notice will be required for openings at night from March 9, 2003 through April 7, 2003. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from March 9, 2003 through April 7, 2003.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The P.J. McArdle Bridge has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.593.

The bridge owner, the City of Boston, requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of the segmental girders, floor beams, and bascule span balancing, at the bridge. The bridge must remain in the closed position to perform these repairs.

The waterway users who normally navigate the Chelsea River at night are commercial tugs and fuel barges. The Coast Guard coordinated this closure with the mariners and the oil facilities who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the P.J. McArdle Bridge will open on signal provided a four-hour advance notice is given for openings during the following time periods: March 9, through March 15, from 6 p.m. through 7 a.m., March 16, through March 22, from 8 p.m. through 6 a.m., March 23, through March 29, from 8 p.m. through 6 a.m., March 30, through April 5, from 8 p.m. through 6 a.m., April 6, through April 7, from 8 p.m. through 8 a.m.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary repairs that must be performed without delay in order to assure the continued safe reliable operation of the bridge and prevent an unscheduled closure due to component failure.

This deviation from the operating regulations is authorized under 33 CFR 117.35(b), and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 7, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–6640 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–003]

RIN 1625–AA00

Security Zones; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless doing so is necessary for safe navigation, to conduct official business such as scheduled maintenance or retrofit operations, or unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This regulation is effective from 11 a.m. PST on February 13, 2003 to 11:59 p.m. PDT on September 30, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–003] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

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), for the reasons set forth below, the Coast Guard finds that good cause exists for not publishing an NPRM. Also, 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** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of

Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Moreover, the Secretary of the Department of Homeland Security and the Attorney General recently elevated the Threat Level to Orange—High Condition. A High Condition is declared when there is a high risk of terrorist attacks. As a result, many agencies, like the Coast Guard, that will be a part of the new Department of Homeland Security on March 1, are taking additional steps to increase their protective measures. Under High Condition, among other things, federal agencies are to consider the following protective measures: Coordinate necessary security efforts with federal, state, and local law enforcement agencies, National Guard or other security and armed forces; and Restrict access to a threatened facility to essential personnel only. As a result, a heightened level of security has been established around the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals on or near the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent to U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge would have on the public interest, the Coast Guard is establishing security zones around the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on these bridges would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these structures.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing fixed security zones extending from the surface to the sea floor, 25 yards in the waters around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California. Entry into these security zones is prohibited, unless doing so is necessary for safe navigation, or to conduct official business such as scheduled maintenance or retrofit operations. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

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 Homeland Security (DHS).

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, their crews and passengers, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing.

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.

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. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the security zones and vessels engaged in recreational

activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

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)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. 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), 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, and 160.5; 49 CFR 1.46.

2. Add § 165.T11–078 to read as follows:

§ 165.T11–078 Security Zones; Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California.

(a) *Location.* All waters extending from the surface to the sea floor, 25 yards around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into these security zones is prohibited, unless doing so is necessary for safe navigation, to conduct official business such as scheduled maintenance or retrofit operations, or unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by

siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(f) *Effective Dates.* This section becomes effective at 11 a.m. PST on February 13, 2003, and will terminate at 11:59 p.m. PDT on September 30, 2003.

Dated: February 13, 2003.

Steven J. Boyle,

Commander, Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–6630 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–005]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

Security Zone; Liquefied Hazardous Gas Tank Vessels San Pedro Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising current safety zone regulations by establishing security zones around and under all liquefied hazardous gas (LHG) tank vessels located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This rule is effective March 21, 2003.

ADDRESSES: 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 [COTP Los Angeles-Long Beach 02–005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group 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, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Liquefied Hazardous Gas Tank Vessels San Pedro Bay, CA'' in the **Federal Register** (67 FR 79014). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Current regulations issued under 33 CFR 165.1151 provide for safety zones around LHG tank vessels that are anchored, moored, or underway near the Los Angeles-Long Beach port areas. However, these safety zones are inadequate to address increased security requirements for LHG tank vessels. On January 28, 2002, we published a temporary final rule (TFR) entitled ''Security Zones; San Pedro Bay, California'' in the **Federal Register** (67 FR 3814) that expired on June 15, 2002. On June 19, 2002, we published a similar TFR entitled ''Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, CA'' in the **Federal Register** (67 FR 41625) that expired on December 21, 2002.

On December 31, 2002, we published a similar TFR entitled ''Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, CA'' in the **Federal Register** (67 FR 79856) that is set to expire on March 21, 2003. The Captain of the Port has determined the need for continued security regulations exists. Accordingly, this rulemaking makes permanent the temporary security zones published in the **Federal Register** on December 31, 2002.

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**. The Maritime Administration recently issued a MARAD Advisory (03–01 (071900Z FEB 03)) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The current TFR is set to expire March 21, 2003 and any delay in the effective date of this final rule is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Section 104 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295, 116 Stat. 2064) extended the geographical reach of the Magnuson Act to twelve nautical miles seaward of the baseline of the United States and added civil penalty liability for violation. However, this rulemaking does not exercise the full extent of the geographical limit allowed by the PWSA and the recently amended Magnuson Act. The Coast Guard retains discretion to extend the geographical reach of this rule via notice and comment procedures to the twelve nautical mile limit should circumstances warrant such action.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a LHG tank vessel would have on the public interest, the Coast Guard is revising current LHG safety zone regulations by establishing security zones around and under LHG tank vessels entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against LHG tank vessels. The Coast Guard has determined the establishment of security zones is prudent for LHG tank vessels because they carry LHG cargoes in bulk.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Therefore, we have made no changes and will implement the provision of the proposed rule as written.

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 Homeland Security (DHS).

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

We received no letters commenting on this section and have made no changes to the proposed 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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

We received no letters commenting on this section and have made no changes to the proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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 is revised 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, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Revise § 165.1151 to read as follows:

§ 165.1151 Security Zones; Liquefied Hazardous Gas Tank Vessels, San Pedro Bay, California.

(a) *Definition.* ''Liquefied Hazardous Gas'' as used in this section means a liquid containing one or more of the products listed in Table 127.005 of this part that is carried in bulk on board a tank vessel as liquefied petroleum gas, liquefied natural gas, or similar liquefied gas products.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 500 yard radius around any liquefied hazardous gas (LHG) tank vessel that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the breakwater;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 500 yard radius around any LHG tank vessel that is moored, or in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay;

(3) All waters, extending from the surface to the sea floor, within 1000 yards ahead and 500 yards on each side and astern of any LHG tank vessel that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (800) 221–USCG (8724) or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When any LHG tank vessels approach within 500 yards of a vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the LHG tank vessel's security zone unless it is either ordered by or given permission from the Captain of the Port Los Angeles-Long Beach to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by the Los Angeles Port Police and the Long Beach Police Department.

Dated: February 18, 2003.

John M. Holmes,

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

[FR Doc. 03–6632 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 03–001]

RIN 1625–AA00

Safety Zone; Red Baron Squadron Aerobatic Flight Demonstration, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Long Beach, California for the Red Baron Squadron aerobatic flight demonstration on April 12 and 13, 2003. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage beneath the aerobatic flight demonstration. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port, Los Angeles-Long Beach.

DATES: This rule is effective from 10 a.m. to 12 p.m. (p.d.t.) on April 12 and 13, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Los Angeles-Long Beach 03–001) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group 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, Assistant Chief of Waterways Management Division, 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. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

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** due to additional administrative review within the Coast Guard's Department of Homeland Security following the Coast Guard's recent shift to DHS. Withholding the implementation of the safety zone is impractical and contrary to the public interest as the dates of the flight demonstration will have past.

Background and Purpose

At the request of the Federal Aviation Administration (FAA) Flight Standards District Office in Long Beach, California, the Coast Guard is establishing a temporary safety zone in the navigable waters of Long Beach, California for the Red Baron Squadron aerobatic flight demonstration on April 12 and 13, 2003. One these dates, Red Baron Squadron is scheduled to perform a 15-minute aerobatic flight demonstration. This flight demonstration team consists of a three ship formation, performing aerobatic flight maneuvers in close proximity to each other, over Long Beach harbor between the hours of 10 a.m. and 12 p.m. (P.d.t.) both days in conjunction with the Grand Prix of Long Beach.

At the request of the FAA, the Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the aerobatic flight demonstration and will reopen the waterway approximately 30 minutes after the conclusion of the aerobatic flight demonstration if the Patrol Commander determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Discussion of Rule

The following described area constitutes a temporary safety zone: All waters of Long Beach harbor, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°45′45″ N, longitude 118°10′28″ W; then to 33°45′17″ N, 118°09′53″ W; then to 33°44′41″ N, 118°10′37″ W; then to 33°45′09″ N, 118°11′09″ W, and then returning to the point of origin. (Datum: NAD 1983). This area is approximately 1,400 yards wide and 1,800 yards long and is geographically centered between the Queen Mary, Island Grissom, Island White, and Island Freeman near Long Beach, California.

Persons and vessels are prohibited from entering into or transiting through this temporary safety zone during the aerobatic flight demonstration. By prohibiting persons and vessels from entering the waters beneath the aerobatic flight demonstration, the risk of loss of life and damage to property will be significantly reduced. Without this safety zone, the aerobatic flight demonstration would be cancelled.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Long Beach Lifeguards, and Long Beach Police Department.

Section 165.23 of title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in this Safety Zone.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

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 Homeland Security (DHS). Due to the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DHS is unnecessary.

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.

This rule will possibly affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the 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 your small business or organization is affected by this rule 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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.lD, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. 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, 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, and 160.5; 49 CFR 1.46.

2. Add a new § 165.T11–070 to read as follows:

§ 165.T11–070 Safety Zone; Red Baron Squadron aerobatic flight demonstration, Long Beach, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of Long Beach harbor, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°45′45″N, longitude 118°10′28″W; then to 33°45′17″N, 118°09′53″W; then to 33°44′41″ N, 118°10′37″W; then to 33°45′09″N, 118°11′09″W, and then returning to the point of origin (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 10 a.m. to 12 p.m. (PDT) on April 12 and 13, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: March 10, 2003.

John M. Holmes,

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

[FR Doc. 03–6639 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AK71

Board of Veterans' Appeals: Rules of Practice—Appeal Withdrawal

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends a Board of Veterans' Appeals Rule of Practice to remove an unnecessary restriction on who may withdraw an appeal to the Board of Veterans' Appeals and to clarify appeal withdrawal procedures.

DATES: *Effective Date:* April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: Initial decisions on claims for Federal veterans' benefits are made at Department of Veterans Affairs (VA) field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals (Board).

On February 1, 2002, VA published in the **Federal Register** a proposed rule to amend the Board of Veterans' Appeals Rule of Practice 204(c) (38 CFR 20.204(c)) by removing the current restriction on a representative's authority to withdraw an appeal without having written consent from the appellant. 67 FR 4939. VA also proposed to amend Rule of Practice 204 to fill in currently missing details about appeal withdrawal procedures and to remove as superfluous the current provision in that rule stating that the agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal because that restriction would be covered under revised 38 CFR 20.204(a). The amendment is intended to remove an unnecessary restriction on who may withdraw an appeal to the Board of Veterans' Appeals and to clarify appeal withdrawal procedures.

We received comments from two County veterans service officers. Both commenters opposed the proposed rule with respect to removing the restriction on a representative's authority to withdraw an appeal. The commenters maintained that the duty of a representative with the power of attorney is to assist, inform, and advise the appellant on the best course of action to take in his or her claim, but that the ultimate decision to pursue the claim should be left only to the appellant. Both commenters argued that the proposed rule would circumvent this process and potentially deprive the appellant of the opportunity to make a critical decision in his or her appeal.

We agree that the appellant is the one making the decisions. This amendment will not change that basic tenet of representation. All the rule will do is to make it possible for a representative to execute the appellant's desire to withdraw an appeal. The amendment will not result in any fundamental change in the nature of representation. Moreover, as we observed in the proposed-rule notice, an appellant could contractually limit the authority of his or her representative if such a limitation was deemed warranted by the parties. Accordingly, we make no change based on these comments. Based on the rationale set forth above and in the proposed rule, we adopt the amendments as proposed, with a nonsubstantive change to reflect the current title of the official with whom the withdrawal may be filed.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no measurable monetary effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Any economic impact on service organizations or law firms would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

List of Subjects in 38 CFR Part 20

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: March 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.204 is revised to read as follows:

§ 20.204 Rule 204. Withdrawal of Appeal.

(a) *When and by whom filed.* Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.

(b) *Filing.* (1) *Form and content.* Except for appeals withdrawn on the record at a hearing, appeal withdrawals must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.

(2) *Where to file.* Appeal withdrawals should be filed with the agency of original jurisdiction until the appellant or representative filing the withdrawal receives notice that the appeal has been transferred to the Board. Thereafter, file the withdrawal at the following address: Director, Management and Administration (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) *When effective.* Until the appeal is transferred to the Board, an appeal withdrawal is effective when received by the agency of original jurisdiction. Thereafter, it is not effective until received by the Board. A withdrawal received by the Board after the Board issues a final decision under Rule 1100(a) (§ 20.1100(a) of this part) will not be effective.

(c) *Effect of filing.* Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement and, if filed, the Substantive Appeal, as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement and, after a Statement of the Case is issued, a new Substantive Appeal, as to any issue withdrawn, provided such filings would be timely under these rules if the appeal withdrawn had never been filed.

(Authority: 38 U.S.C. 7105(b) and (d))

[FR Doc. 03–6611 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMIISSION

47 CFR Part 76

[MM Docket No. 98–35; FCC 03–21]

Cable/Broadcast Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the cable/broadcast cross ownership rule in response to a court decision vacating the rule and directing the Commission to repeal the rule. The action is taken in compliance with the court's directive.

DATES: This document became effective on January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Erin Dozier, Attorney, Media Bureau, 202–418–7040.

SUPPLEMENTARY INFORMATION: 1. As part of the 1998 Biennial Regulatory Review mandated by section 202(h) of the Telecommunications Act of 1996 (47 U.S.C. 161), the Commission reexamined the cable/broadcast cross-ownership rule and determined that the rule should be retained. (*In the Matter of 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MM Docket No. 98–35, Biennial Review Report, 65 FR 4333, July 13, 2000. In *Fox Television Stations, Inc.* v. *FCC,* 280 F.3d 1027 (DC Cir. Feb. 19, 2002), the United States Court of Appeals for the District of Columbia Circuit found that the Commission's decision to retain the cable/broadcast cross-ownership rule was arbitrary and capricious and contrary to section 202(h). (*Fox,* 280 F.3d at 1033, 1049) The court vacated the cable/broadcast cross-ownership rule, and directed the Commission to repeal the rule.

2. Accordingly, the Commission hereby repeals section 76.501(a) of our rules. The Commission also repeals as no longer applicable section 76.501(c) of our rules, which established the effective date of the rule.

Ordering Clauses

3. Accordingly, paragraphs (a) and (c) of section 76.501 of the Commission's rules, 47 CFR 76.501(a), and 76.501(c) are repealed, effective upon the adoption of this Order.

4. The Commission's rules are further amended as set forth in the rule amendments section of this decision.

5. This action is taken pursuant to sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, and section 202(h) of the Telecommunications Act of 1996, 47 U.S.C. 161. The Commission finds that notice and comment are unnecessary under 5 U.S.C. 553(b) because this is a ministerial order issued at the direction of the United States Court of Appeals for the District of Columbia Circuit.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

§ 76.501 [Amended]

2. Section 76.501 is amended by removing and reserving paragraphs (a) and (c).

[FR Doc. 03–6484 Filed 3–18–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 53
Wednesday, March 19, 2003

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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 915

[No. 2003–06]

RIN 3069–AB25

Federal Home Loan Bank Appointed Directors

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its rules to provide that at least one of the appointed directors serving on the board of directors of each Federal Home Loan Bank (Bank) has a background or experience that reasonably demonstrates that the director would have a strong understanding of the risks arising from the activities of a particular Bank. The proposed rule is intended to enhance the corporate governance practices of the Banks.

DATES: The Finance Board will consider written comments on the proposed rulemaking that are received on or before June 17, 2003.

ADDRESSES: Send comments by electronic mail to *comments@fhfb.gov,* by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, ATTN: Public Comments. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Neil R. Crowley, Deputy General Counsel, 202/408–2990, *crowleyn@fhfb.gov;* or Thomas E. Joseph, Senior Attorney-Advisor, 202/408–2512, *josepht@fhfb.gov,* Office of General Counsel; or Patricia L. Sweeney, Program Analyst, Community Investment and Affordable Housing Division, Office of Supervision, 202/408–2872, *sweeneyp@fhfb.gov,* Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background on Proposed Rule Amendment

The Finance Board long has believed that an active and informed board of directors is one of the cornerstones of safe and sound Bank operations. *See, e.g.*, 65 FR 25267 (May 1, 2002) (adopting revisions to part 917 of the Finance Board regulations). To this end, the Finance Board previously has adopted rules that are intended in part to describe the responsibilities of a Bank's board of directors and create standards against which a board's fulfillment of these duties may be judged. *Id.* Over the last few years, the Finance Board also has adopted rules that provide the Banks with authority to engage in a wider range of asset activities than had been the case in the past, and, as required by the Gramm-Leach-Bliley Act (GLB Act), Public Law 106–102, 133 Stat. 1338 (Nov. 12, 1999), to have more discretion in designing their capital structures. *See* 65 FR 43969 (July 17, 2000) (revising the Bank's investment authority) and 66 FR 8262 (Jan. 20, 2001) (adopting final capital rule). While these changes provide the Banks with greater flexibility to address members' needs and to fulfill their housing finance mission, they also mean that the Banks may need to manage new risks as their activities evolve. To help assure that a Bank's board of directors continues to possess the required aggregate skills needed to provide strong oversight in light of changing Bank activities, the Finance Board is proposing to appoint at least one director at each Bank who will have the background to address the risks that arise from a Bank's activities.

II. Explanation of the Proposed Rule Amendment

Section 7(a) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427(a), provides the Finance Board with broad discretion to appoint a requisite number of directors to the board of directors of each Bank, although such directors must meet certain minimum statutory requirements. For example, appointed directors must be citizens of the United States, must be a resident of the district of the Bank on whose board the director serves, and at least two of the appointed directors on each Bank's board must be representatives chosen from organizations with more than a two-year history representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. *See id.* Appointed directors also must be independent of the Bank and its members, and thus are prohibited from having certain financial interests in either entity. *Id.* Consistent with this statutory authority, the Finance Board rules provide that the Finance Board shall in its sole discretion select the appointed directors for each Bank in accordance with the Bank Act. 12 CFR 915.10(a).

Given the broad discretion afforded the Finance Board by section 7(a) of the Bank Act, the Finance Board also has authority to establish eligibility standards in addition to the minimum requirements set forth in the Bank Act that must be met by potential appointed directors before it will appoint such persons. *See* 12 U.S.C. 1422b(a)(1) (authority to promulgate regulations and orders necessary to carry out purposes of the Act). Based on this authority, the Finance Board is proposing to amend § 915.10(a) to provide for the appointment to the board of directors of each Bank at least one director who can demonstrate an understanding of the risks faced by a particular Bank because of its investment and financing activities. Having at least one appointed director who has this expertise should help improve a board of directors' oversight and management of its Bank.

The proposed rule does not require the Finance Board to appoint a person with the required expertise to a specific Bank's board of directors each year, but provides that there will be at all times, an appointed director serving on the board of a Bank with the required understanding. Thus, if there is an existing appointed director on a Bank's board who, in the Finance Board's opinion, reasonably demonstrates the skills required under the proposed rule, and who will continue to serve on the board for the coming year, another person with these skills would not need to be identified and appointed to that Bank's board.

To fulfill the criteria of the proposed rule, a person would be expected to bring knowledge and perspective to a Bank's board that would strengthen the board's ability to analyze and manage the risks faced by the Banks, including interest rate risk, market risk, and the risks arising from options associated

with a particular Bank's financing and investment activities. In particular, the Finance Board would expect the candidate who meets the requirements of the proposed rule to demonstrate a strong understanding of the risks faced by the Banks in supplying financing to members in fulfillment of the Banks' housing finance mission. The Finance Board also expects to apply any rule flexibly, taking account of the expertise of a Bank's existing directors, the activities and risk profile of the particular Bank, the pool of available candidates and other similar factors in identifying a qualified appointed director so that the level of skills and experience that could qualify a person for an appointed directorship under the proposed criteria could vary somewhat from Bank to Bank.

Generally, the Finance Board believes that a potential appointed director could be considered to have the required skills if, based on work experience, publications or other relevant information, the Finance Board reasonably believed that an individual would have a strong understanding of the market, interest rate and other risks faced by a particular Bank. The Finance Board also believes that the proposed rule should not limit narrowly the professional pool from which a qualified appointed director could be chosen but that the pool of potential candidates should encompass a wide variety of professions including academia, the legal profession and government service. The Finance Board specifically requests comment on the criteria discussed above.

The Finance Board expects this new requirement to be mandatory and to apply to public interest director appointments for each of the 12 Banks for the terms beginning on January 1, 2004. The Finance Board requests comments on whether one such director at each Bank is sufficient, or whether the requirement should be expanded to two or more directors with the requisite expertise who would serve terms that are not co-terminus. In addition, the Finance Board is interested in receiving comments on whether the rule should specify other specific areas of expertise, in addition to the ones specified in this proposal, that should apply to the appointment of public interest directors.

The Finance Board also is proposing to delete from § 915.10(b) language that was needed to implement the ''staggering'' required by the GLB Act for replacement of a Bank's directors. *See* 65 FR 41560 (July 6, 2000). Because the language, by its terms, only applies to Finance Board appointments made in 2001 and 2002 and is, therefore, no longer applicable, the Finance Board proposes to delete the second sentence of § 915.10(b). The Finance Board also proposes to delete Appendix A to part 915, which includes matrices relating to the directorships of the Banks that were created in conjunction with the earlier elections and appointments. As part of its annual designation of elective directorships in the past two years, the Finance Board has included updated versions of the matrices to reflect the revised board structure for each Bank for that year, and expects to continue to do so in the future. Because the matrices in Appendix A relate to prior years, and have been superseded by more current versions, it no longer is necessary to include them in the regulations.

III. Regulatory Flexibility Act

The final rule would apply only to the Finance Board and the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

IV. Paperwork Reduction Act

The Finance Board does not propose to amend current forms that potential appointed directors must complete. Thus, the proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Accordingly, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Lists of Subjects in 12 CFR Part 915

Banks, Banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial Disclosure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board proposes to amend title 12 CFR part 915 as follows:

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT AND ELECTIONS

1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, 1432.

2. Revise § 915.10 by adding a new sentence to the end of paragraph (a) and by deleting the second sentence of paragraph (b) to read as follows:

§ 915.10 Selection of appointed directors.

(a) * * * In making its selections, the Finance Board will provide that at least one appointed director serving on the board of directors of each Bank for the coming year, either appointed in past selections or appointed in current selections, has a background or experience that reasonably demonstrates that the director possesses a strong understanding of the risks, including the interest rate risk, market risk and options risk, arising from a Bank's activities.

* * * * *

Appendix A to Part 915—[Removed]

3. Appendix A to part 915 is removed.

Dated: March 12, 2003.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–6595 Filed 3–18–03; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that would have required replacing certain existing potentiometers with recently manufactured potentiometers, modifying the flexible couplers that attach the shafts of the potentiometers to the shafts of the primary flight controls, performing repetitive calibration tests of the potentiometers and obtaining repetitive readouts of the flight data recorder (FDR), and reporting the results to the FAA. This new action proposes initial and repetitive testing of the potentiometers to detect noisy signals and replacement of only those with noisy signals. The actions specified by this new proposed AD are intended to prevent the potentiometers that provide

information on the positions of the primary flight controls to the FDR from transmitting noisy signals or becoming improperly calibrated, resulting in the transmission of incomplete or inaccurate data to the FDR. This lack of reliable data could hamper discovery of the unsafe condition which caused an accident or an incident and prevent the FAA from developing and mandating actions to prevent additional incidents or accidents caused by that same unsafe condition.

DATES: Comments must be received by April 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–120–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–120–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR 39) to add an airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 27, 2001 (66 FR 21107). That NPRM would have required replacing certain existing potentiometers with recently manufactured potentiometers, modifying the flexible couplers that attach the shafts of the potentiometers to the shafts of the primary flight controls, performing repetitive calibration tests of the potentiometers and obtaining repetitive readouts of the flight data recorder (FDR), and reporting the results to the FAA. Those actions were intended to prevent the potentiometers that provide information on the positions of the primary flight controls to the FDR from transmitting noisy signals or becoming improperly calibrated, resulting in the transmission of incomplete or inaccurate data to the FDR. This lack of reliable data could hamper discovery of the unsafe condition which caused an accident or an incident and prevent the FAA from developing and mandating actions to prevent additional incidents or accidents caused by that same unsafe condition.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request to Change Applicability

One commenter requests that the applicability of the NPRM be changed from ''all Model EMB–120 series airplanes'' to ''All Model EMB–120 series airplanes with a Flight Data Recorder installed or required by the Federal Aviation Regulations, certificated in any category.'' The commenter points out that some Model EMB–120 series airplanes have been converted from passenger operation to freighter operation and, therefore, are no longer required to operate with FDRs. The FAA agrees and has changed this AD so that it applies to ''Model EMB–120 series airplanes which are required by 14 CFR 135 to operate with a flight data recorder (FDR), certificated in any category.''

Request To Change Requirement to Replace All In-service Potentiometers

Three commenters request that the proposed replacement of all in-service potentiometers with potentiometers manufactured less than 12 months ago be changed. The commenters suggest instead that a download of the FDR testing data be performed to identify potentiometers with noisy signals and that only those potentiometers should be replaced.

The FAA agrees. EMBRAER has developed a procedure for determining whether or not a potentiometer has a noisy signal. That procedure has been incorporated into Section 31–30–00 of the EMBRAER Model EMB–120 Airplane Maintenance Manual (AMM), dated April 10, 2002. Accordingly, we have revised paragraphs (a), (b), and (c) of this supplemental NPRM to require testing of the potentiometers and replacement of those with noisy signals.

Request To Change the Interval for Repetitive Calibration and Readout

The same three commenters request that the interval for the repetitive testing of potentiometers be extended from 6

months to 12 months. The commenters state that the current EMBRAER EMB–120 Maintenance Review Board (MRB) requirements are for a yearly calibration and download test.

The FAA agrees. We find that the new procedure specified in the AMM will detect potentiometers with noisy signals and, thus, agree that the current MRB requirements for a yearly download are sufficient. We have changed the language of this proposed AD accordingly.

Request To Delete Requirement for Modification of the Flexible Couplers

One commenter requests that the FAA drop the proposed requirement to add locktite to the flexible coupler attachment screws to prevent loosening of the attachment screws. The commenter states that a screw which is properly installed and torqued should never come loose.

The FAA does not agree. We have had multiple reports of couplers coming loose and shifting the calibration; such a shift in calibration would not be discovered until the next readout of the FDR. Accordingly, no such change has been made to this proposed AD.

Request To Delete Reporting Requirement

One commenter requests that the proposed requirement to report results of the calibration test and readout be deleted. The commenter states that the requirement is unnecessary and imposes a hardship on operators.

The FAA agrees in part. We have dropped the reporting requirement in this AD, because we find that EMBRAER's procedure for detecting potentiometers with noisy signals will detect them and, therefore, reporting the results to the FAA, as proposed in the NPRM, is not necessary. Therefore, we have deleted the reporting requirement.

Request To Allow Use of Revised Issue of Service Bulletin

One commenter asks that use of EMBRAER Service Bulletin 120–31–0038, Change 02, dated June 25, 1998, be allowed in addition to the original issue, dated February 22, 1997. The commenter indicates that there is no difference in technical content between the original issue and Change 02 of the service bulletin. The FAA concurs and has revised the language of this proposed AD accordingly.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours to perform the noise check of the potentiometers and obtain a readout of the FDR, that it would take approximately 1 work hour to apply adhesive to the flexible couplers, and that the average labor rate is $60 per work hour. The cost impact of the proposed AD on U.S. operators for the initial or repetitive testing of an airplane is as shown on the following table:

TABLE.—ESTIMATED COST IMPACT OF AD

Action	Work hours/ airplane	Cost/airplane	Cost for U.S. fleet
Adjust potentiometers, perform noise check of potentiometer, and obtain readout of FDR	3	$180	$45,000
Apply adhesive to flexible couplers	1	60	15,000
Totals	4	240	60,000

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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 is contained in 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2000–NM–120–AD.

Applicability: Model EMB–120 series airplanes which are required by 14 CFR 135 to operate with a flight data recorder (FDR), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potentiometers that provide information on the positions of the primary flight controls to the FDR from transmitting noisy signals or becoming improperly calibrated, resulting in the transmission of incomplete or inaccurate data to the FDR, accomplish the following:

Initial Testing of Potentiometers

(a) Within 6 months after the effective date of this AD: Adjust the potentiometers to the ailerons, elevators, and rudder; perform a noise check of the potentiometers; and obtain a readout of the FDR, in accordance with Section 31–30–00 of the EMBRAER EMB–120 Airplane Maintenance Manual, dated April 10, 2002.

Repetitive Testing of Potentiometers

(b) Repeat the noise check of the potentiometers and obtain a readout of the FDR, as required by paragraph (a) of this AD, at intervals not to exceed 12 months.

Replacement of Potentiometers

(c) If any readout of the FDR, conducted in accordance with paragraphs (a) or (b) of this AD, indicates a potentiometer with a noisy signal: Within 20 days after obtaining the readout, replace the potentiometer in accordance with Section 31–30–05 of EMBRAER EMB–120 Airplane Maintenance Manual, dated July 17, 1998, with one that has a date of manufacture no greater than 12 months from the date of installation.

Modification of Flexible Coupler

(d) Prior to further flight, after the accomplishment of paragraph (a) of this AD: Apply locktite adhesive over the threads of the screws of the flexible couplers that attach the shafts of the potentiometers to the shafts of the primary flight controls, in accordance with EMBRAER Service Bulletin 120–31–0038, original issue, dated February 22, 1997; or Change 02, dated June 25, 1998.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–08–01, dated August 29, 1997.

Issued in Renton, Washington, on March 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6506 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02]

RIN 1545–BB60

Information Reporting Relating to Taxable Stock Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations by cross-reference to temporary regulations relating to information reporting to taxable stock under section 6043(c) of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Tuesday, March 25, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Procedure and Administration) (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–143321–02), was published originally in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496). Subsequently, a notice changing the date of the hearing was published on Wednesday, November 27, 2002 (67 FR 70891). This notice announced that a public hearing on proposed regulations relating to information reporting to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Service Code would be held on Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The public comment period for these proposed regulations expired on Tuesday, February 18, 2003. Outlines of oral comments were due on Tuesday, March 4, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, March 11, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, March 25, 2003, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–6598 Filed 3–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–141]

RIN 1625–AA09 (Formerly 2115–AE47)

Drawbridge Operation Regulations; Caloosahatchee River Bridge (SR 29), Okeechobee Waterway, LaBelle, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Caloosahatchee River bridge (SR 29), Okeechobee Waterway, mile 103, LaBelle, Florida. This proposed rule would require the bridge to open on signal, except during the morning and evening rush hours when the bridge need not open. Tugs with tows, public vessels of the United States, and vessels in distress would be passed at any time. This proposed rule is intended to improve the movement of vehicular traffic during rush hour periods while not unreasonably interfering with the needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before May 19, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131. 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 (CGD07–02–141) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE. 1st Ave, Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–02–141), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, Florida 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Caloosahatchee River bridge (SR 29) is a two-lane, narrow, undivided arterial roadway. The waterway has safe waiting areas on each side of the bridge for all vessels, however the waterway is predominately used by small to mid-sized recreational vessels. The roadway is severely congested due to insufficient vehicular capacity. The existing operating schedule is published in 33 CFR 117.5 and requires the bridge to open on signal. The Mayor of Labelle requested that the bridge be allowed to remain in the closed position during the morning and evening rush hours to facilitate vehicular traffic movement. This proposed rule would continue to require the drawbridge to open on signal, except that from 7 a.m. until 9 a.m. and from 4 p.m. until 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Tugs with tows, public vessels of the United States and vessels in distress would be passed at any time.

Discussion of Proposed Rule

In order to facilitate vehicular traffic flow while not unreasonably impacting navigation, the Coast Guard proposes to require the Caloosahatchee River bridge (SR 29) to open on signal, except that from 7 a.m. until 9 a.m. and from 4 p.m. until 6 p.m., Monday through Friday, except Federal holidays, the bridge need not open. Tugs with tows, public vessels of the United States and vessels in distress would be passed at any time. This proposed rule would facilitate the movement of vehicle traffic across the bridge while not unreasonably interfering with or decreasing vessel safety while awaiting passage through the draw.

Regulatory Evaluation

This proposed 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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because this proposed rule would only slightly modify the existing bridge operation schedule during weekday vehicle traffic rush hours.

Small Entities

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

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the Caloosahatchee River bridge (SR 29) during the hours of 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only slightly modifies the existing bridge operation schedule during weekday vehicle traffic rush hours.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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 proposed rule would call 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 proposed 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. Although this proposed 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 proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32) (e) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This proposed 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 proposed 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.

List of Subjects in 33 CFR Part 117:

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.317(k) is added to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(k) *Caloosahatchee River Bridge (SR 29), mile 103, Labelle, Florida.* The Caloosahatchee River bridge (SR 29), mile 103, shall open on signal, except that from 7 a.m. until 9 a.m. and from 4 p.m. until 6 p.m., Monday through Friday, except Federal holidays, the bridge need not open. Tugs with tows, public vessels of the United States and vessels in distress shall be passed at any time.

Dated: February 24, 2003.

James S. Carmichael,

Rear Admiral, Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–6637 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–004]

RIN 1625–AA00

Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities. The safety zone will temporarily prohibit usage of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 7, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause

for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The San Francisco Department of Public Works is requesting a waterway closure on Mission Creek for the purpose of performing significant work to the Fourth Street Bridge. The Fourth Street Bridge was erected across the Mission Creek Waterway at the China Basin in 1917, and was determined eligible for listing in the National Register of Historic Places in 1985 as part of the California Department of Transportation (Caltrans) Historic Bridge Inventory. Caltrans, Division of Structures, evaluated the Fourth Street Bridge and recommended that the bridge be brought up to current seismic safety standards. In view of extensive corrosion to the steel components and concrete approaches of the bridge, Caltrans has also placed traffic load limitations over this bridge. Three primary objectives are to be met in rehabilitating the Fourth Street Bridge: (i) Seismically retrofit the structure while not significantly altering the historical appearance of the bridge; (ii) repair the damage to the concrete approaches and several steel and concrete members of the movable span, and (iii) reinitiate light rail service across the bridge.

The first phase of this project will entail the removal of the lift span, which will take approximately 6 weeks, scheduled to begin April 15, 2003. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic. The second phase of this project will entail the construction of the north and south approaches, the new counterweight and its enclosing pit; but for the most part, boating traffic will not be affected during this phase. The last phase of this project will entail the replacement of the lift span and aligning the bridge to accept the light rail track system, which will take approximately five months, scheduled to begin April 1, 2004. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic.

The Fourth Street Bridge Project is funded by Federal Highway Administration and State of California. The state funding restricts the construction to a start date before August 2003 and completion by September 2005. Any additional delays or deferrals in start of construction will impact the secured funding for the project.

There are two major environmental issues that restrict the construction in the channel, namely the annual pacific hearing-spawning season that runs from December 1st to March 31st and noise constraint in the water for steelhead from December 1st to June 1st. Any demolition, pile driving and excavation in the water during those time periods will be monitored and restricted for possible impact on the fish.

The Fourth Street Bridge Project is part of the larger Third Street Light Rail Project and many public presentations on the project's components, channel closure schedules, impacts to surrounding uses and project duration have been made by the City and Port of San Francisco. The Third Street Light Rail Advisory Group was created as a forum to keep the public informed on the progress being made on the Third Street Light rail project. Also, this project has been presented at several Mission Bay Citizen Advisory Committee meetings. At these meetings, the public was notified of the project components, impacts and the need to temporarily close the waterway. Specific to the Fourth Street Bridge project, an Environmental Assessment, required by the Federal Highway Administration and Caltrans, (under the National Environmental Protection Act) was conducted by the City of San Francisco. A public hearing regarding the Environmental Assessment was held on January 17, 2002, at San Francisco Arts College, Timken Lecture Hall, 1111 8th Street in San Francisco, California, and was well attended.

In January 2003, the City of San Francisco advised the Coast Guard Captain of the Port that two channel closures would be necessary in order to accomplish the Fourth Street Bridge project. The Coast Guard met with various City and Port officials to ensure that there would be minimal impacts on involved and potentially involved entities.

This proposed temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge would be in effect during the course of a 6-week period, starting April 15, 2003, and again for a 5-month period, starting April 1, 2004. Both periods would be effective 24 hours a day.

Discussion of Rule

The Coast Guard proposes to establish a safety zone that consists of a portion of the navigable waters located at the Fourth Street Bridge in the Mission Creek Waterway in China Basin, San Francisco, California. The proposed safety zone is to affect a waterway closure during periods of demolition and reconstruction of the Fourth Street Bridge and would be effective 24 hours a day between April 15, 2003, and May 27, 2003, and again between April 1, 2004, and September 1, 2004.

The proposed safety zone is necessary to protect persons and vessels from hazards, injury and damage associated with bridge construction activities. No vessel or person may come within 100 yards of either side of the bridge, or pass beneath the bridge during construction.

The proposed safety zone would encompass the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards west of the bridge, and the other line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards east of the bridge.

Vessels and people may be allowed to enter an established safety zone on a case-by-case basis with authorization from the Captain of the Port or a designated representative thereof. Section 165.23 of title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in this Safety Zone.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation.

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). Due to the limited scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

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 set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

The Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor at the head of the channel. The channel closure will not impact land access to the houseboats during the bridge closures, however during the two channel closures, a small number of sail boats that moor in the harbor may be impacted. The Department of Public Works and the Port of San Francisco are in consultation with the Mission Creek Harbor Association to assess the temporary impacts to the boaters on closing the channel for this needed work.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 regulation contains no collection of information requirements 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)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. 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), Reports and record keeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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, and 160.5; 49 CFR 1.46.

2. Add § 165.T11–079 to read as follows:

§ 165.T11–079 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.

(a) *Location.* One hundred yards to either water-side of the Fourth Street Bridge, encompassing the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek [37°46′29″ N, 122°23′36″ W] extending southeast to a point on the opposite shore [37°46′28″ N, 122°23′34″ W], and the other line drawn from a point on the north shore of Mission Creek [37°46′34″ N, 122°23′30″ W] extending southeast to a point on the opposite shore [37°46′33″ N, 122°23′28″ W]. [Datum: NAD 83].

(b) *Effective dates.* The safety zone will be in effect from 11:59 p.m. (PDT) on April 14, 2003 to 11:59 p.m. (PDT) on May 27, 2003 and from 11:59 p.m. (PST) on March 31, 2004 to 11:59 p.m. (PDT) on September 1, 2004. If the need for either of the safety zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone(s) and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 28, 2003.

S.J. Boyle,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–6641 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–143–200315; FRL–7469–1]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to Maintenance Plan for Northern Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the state implementation plan (SIP) of the Commonwealth of Kentucky to revise the motor vehicle emissions budgets (MVEBs) for the Northern Kentucky maintenance area for the year 2010. The Northern Kentucky maintenance area, a subset of the Cincinnati-Hamilton maintenance area, includes the three Kentucky counties of Boone, Campbell and Kenton. The revision to the MVEBs is allowable because of an available safety margin for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the Northern Kentucky portion of the maintenance area. The Commonwealth's submittal also requests to clearly identify that the Ohio portion and the Kentucky portion of the Cincinnati-Hamilton maintenance area will have subarea MVEBs for the purposes of implementing transportation conformity. Ohio will make a similar request for subarea MVEBs for this area in an upcoming revision to the Cincinnati-Hamilton county maintenance plan. Kentucky has requested that EPA parallel process this revision because the revision is not yet state-effective.

DATES: Written comments must be received on or before April 18, 2003.

ADDRESSES: All comments should be addressed to: Michele Notarianni; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail))

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov)*

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

Persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY143. (Telephone number: 404/562–9031)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail))

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. What is the background for this action?
II. Who is affected by this action?
III. What is transportation conformity?
IV. What is an MVEB?
V. What is a safety margin?
VI. How does this action change implementation of transportation conformity for the Kentucky portion of the Cincinnati-Hamilton maintenance area?
VII. What is parallel processing?
VIII. Proposed action
IX. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

The Commonwealth of Kentucky submitted a request on February 6, 2003, to revise the MVEBs for the Northern Kentucky maintenance area for the year 2010. The Northern Kentucky area (*i.e.*, Boone, Campbell and Kenton counties), in conjunction with the Cincinnati-Hamilton County area in Ohio, was designated as a nonattainment area for the 1-hour ozone national ambient air quality standard (NAAQS) per the Clean Air Act as amended in 1990. In October 1999, after the area had three consecutive years of ''clean'' air quality data, the Commonwealth of Kentucky, through the Kentucky Department of Air Quality (KDAQ), submitted a redesignation request and a maintenance plan for the Northern Kentucky area to EPA. On June 19, 2000, EPA redesignated the Northern Kentucky area to attainment for the 1-hour ozone NAAQS and approved the maintenance plan for the Northern Kentucky area (65 FR 37879).

This maintenance plan established the MVEBs which are currently being used by the Ohio, Kentucky, Indiana Regional Council of Governments (OKI) to demonstrate transportation conformity. OKI is the metropolitan planning organization (MPO) for the Cincinnati-Hamilton County area, including the three counties identified in this action as the Northern Kentucky area.

II. Who Is Affected by This Action?

Primarily, the transportation sector represented by OKI will benefit from this revision. Through the Interagency Consultation Group, which includes the Kentucky transportation and air quality partners, OKI identified a need for revised MVEBs for the Northern Kentucky area to allow for growth in the transportation sector. KDAQ, a partner of the Interagency Consultation Group, evaluated the potential to revise the MVEBs for the Northern Kentucky area and prepared this SIP revision to accommodate OKI's request.

III. What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (*i.e.*, cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the NAAQS. The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to a SIP's purpose of attaining and maintaining the NAAQS. On November 24, 1993, EPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area to compare the actual projected emissions from cars, trucks and buses on the highway network, to the MVEB established by the maintenance plan. The Northern Kentucky area has an approved maintenance plan. EPA's approval of the maintenance plan on June 19, 2000, established the MVEBs for transportation conformity purposes.

IV. What Is an MVEB?

An MVEB is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB. The transportation conformity rule allows the MVEB to be changed as long as the total level of emissions from all sources remains below the attainment level of emissions.

V. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the Northern Kentucky area attained the 1-hour ozone NAAQS during the 1996–1998 time period. Kentucky uses 1996 as the attainment level of emissions for the area. The emissions from point, area and mobile sources in 1996 equaled 39.71 tons per day (tpd) of VOC for the Northern Kentucky area. KDAQ projected emissions out to the year 2010 and projected a total of 32.55 tpd of VOC. The safety margin for VOCs is calculated to be the difference between these amounts or, in this case, 7.16 tpd of VOC for 2010. By this same method, 4.78 tpd (*i.e.*, 66.55 tpd less 61.77 tpd) is the safety margin for NO_X for 2010.

The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin credit can be allocated to the transportation sector. The total emission level must stay below the attainment level to be acceptable. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained.

VI. How Does This Action Change Implementation of Transportation Conformity for the Kentucky Portion of the Cincinnati-Hamilton Maintenance Area?

In today's action, EPA is proposing to approve a revision to the 2010 MVEBs for the Northern Kentucky maintenance area. The revised MVEBs are 17.13 tpd for NO_X and 7.33 tpd for VOC, and include an allocation of 2.0 tpd and 1.5 tpd from the available safety margin for NO_X and VOC, respectively, for the Northern Kentucky maintenance area. The MVEB is being changed from 15.13 tpd for NO_X and 5.83 tpd for VOC. Additionally, this action proposes to approve the establishment of subarea MVEBs for the Northern Kentucky maintenance area. Presently, OKI demonstrates conformity for the Kentucky and Ohio portions of the Cincinnati-Hamilton maintenance area together, although Ohio and Kentucky have separate MVEBs for their areas in the individual SIPs. OKI is the MPO for both areas so it was convenient to demonstrate conformity for both areas together. However, because of a recent mismatch for the budget years for the Ohio and Kentucky portions of this maintenance area, it will be more convenient for the MPO to demonstrate conformity for each area separately. The subarea budget for the Northern Kentucky area is identical to the MVEBs identified above for the Northern Kentucky area. This action merely provides formal recognition that the MPO will demonstrate conformity for the Ohio and Kentucky portions of the Cincinnati-Hamilton County maintenance area separately. The establishment of subarea MVEBs for this area will minimize the administrative burden for the MPO to demonstrate conformity for the Northern Kentucky maintenance area. Without the subarea MVEBs, the MPO would have to analyze an extra year for each conformity analysis because of a current mismatch for the budget years for the Ohio and Kentucky portions of this maintenance area.

VII. What Is Parallel Processing?

Kentucky has requested that EPA parallel process this proposed SIP revision. Under this procedure, the Regional Office works closely with the Commonwealth of Kentucky while the Commonwealth is developing new or revised regulations. The state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the Commonwealth is holding its public hearing. The Commonwealth and EPA then provide for concurrent public comment periods on both the state action and the Federal action. After the Commonwealth submits the formal SIP revision request (including a response to all public comments raised during the state's public participation process, and the approved, amended Maintenance Plan for Northern Kentucky), EPA will prepare a final rulemaking notice. If the Commonwealth's formal SIP submittal contains changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If the Commonwealth's changes are significant, then EPA must decide whether it is appropriate to re-propose the state's action.

VIII. Proposed Action

EPA is proposing to approve the Commonwealth's SIP revision because it meets all of the requirements of section 110 of the Clean Air Act.

Additionally, this SIP revision request meets the applicable requirements of the Transportation Conformity Rule. The Commonwealth has identified a VOC and NO_X safety margin for 2010, and has chosen to allocate a portion of this safety margin to the MVEBs. The 1.5 tpd for VOC and the 2.0 tpd for NO_X allocated to mobile sources still allow sufficient growth margin for stationary sources and maintain the total emissions for the area at the attainment year inventory level as required by the transportation conformity regulations. EPA is soliciting public comments on the issues discussed in this document.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: March 10, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–6584 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 5]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: This notice extends the period for comment on the notice of proposed rulemaking published in the **Federal Register** on January 28, 2003 (68 FR 4278), from March 31, 2003, to April 30, 2003. The proposed rule requires operators to develop integrity management programs for gas transmission pipelines that, in the event of a failure, could impact high consequence areas (HCAs).

DATES: The comment period for interested persons to submit written comments on the proposed gas pipeline integrity management rule ends April 30, 2003.

ADDRESSES:

Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, access the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically.

Privacy Act Information

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov/search.* Once you access this address, type in the last four digits of the docket number shown at the beginning of this notice (in this case 7666), and click on search. You will then be connected to all relevant information.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov,* regarding the subject matter of this proposed rule. General information about the RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://RSPA.dot.gov.*

SUPPLEMENTARY INFORMATION: RSPA/OPS published a proposed rule on pipeline integrity management in high consequence areas for gas transmission pipelines on January 28, 2003 (68 FR 4278). That notice provided a 60-day comment period ending on March 31, 2003. By petition dated March 6, 2003, the American Gas Association (AGA), the American Public Gas Association (APGA), and the Interstate Natural Gas Association of America (INGAA) requested that the comment period be extended by 60 days, from March 31, 2003, to May 30, 2003.

In the petition, the associations argue that because the proposed rule is lengthy and complex, additional time is necessary to analyze the proposal and prepare comments. The petition also refers to the public meeting on March 14, 2003, where OPS will discuss the proposed rule. The associations maintain it will take time for them to inform their member companies about the discussions at the meeting so that the companies can use the information in developing their comments.

RSPA/OPS has decided to extend the comment period in light of the request and the complexity of this proposed rule. RSPA/OPS does not consider that a 60-day extension is necessary. A statutory requirement (Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60109(c)) requires us to publish the final rule by December 17, 2003. A 60-day extension of the comment period would not allow us to meet this statutory deadline. A 30-day extension provides 45 days after the public meeting for interested parties to submit comments.

RSPA/OPS believes that an extension of the comment period by 30 days from the existing closing date (March 31, 2003) is reasonable; the comment period is hereby extended to April 30, 2003.

Issued in Washington, DC on March 13, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–6626 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA–02–11650 (HM–232A)]

RIN 2137–AD70

Security Requirements for Motor Carriers Transporting Hazardous Materials

ACTION: Notice.

SUMMARY: This notice advises the public that the Research and Special Programs Administration (RSPA) has assumed the lead role from the Federal Motor Carrier Safety Administration (FMCSA) for rulemaking addressing the security of motor carrier shipments of hazardous materials. On July 16, 2002, the two agencies published a joint advance notice of proposed rulemaking (ANPRM), requesting comments on technological and operational measures to enhance hazardous materials transportation security. Because the Homeland Security Act of 2002 provides RSPA with enhanced authority to regulate hazardous materials transportation security, RSPA will lead further rulemaking development on this subject.

DATES: This notice is effective March 19, 2003.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include in your comment the docket number that appears in the heading of this document. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., EDT, Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* by typing the last five digits of the document number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines at the ''Help'' section of the Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, 202–366–8553.

SUPPLEMENTARY INFORMATION: On July 16, 2002, FMCSA and RSPA published a joint ANPRM entitled ''Security Requirements for Motor Carriers Transporting Hazardous Materials'' (67 FR 46622). In the ANPRM, RSPA and FMCSA sought information on the feasibility of imposing specific security requirements on motor carriers that transport hazardous materials in commerce. The ANPRM noted that certain government agencies, including the Department of Defense, the Department of Energy, and the Nuclear Regulatory Commission, as well as some private companies, employ rigorous security measures to protect sensitive shipments and suggested that some of these security measures could also be appropriate for broader application to commercial motor carrier shipments of hazardous materials. In addition, the ANPRM described technological solutions for tracking shipments, communicating with drivers, or securing shipments within trailers that can protect shipments from hijacking or provide an early indication of a potential security problem. The ANPRM asked for comments on the feasibility of mandating technological or operational measures such as escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and advance notification of shipments to state and local authorities. After an extension, the comment period for the ANPRM closed November 15, 2002. Comments received in response to the ANPRM are accessible through DOT's Dockets Management System under Docket No. FMCSA–01–11650 (HM–232A).

RSPA's lead role in addressing hazardous materials transportation security was clarified with an amendment to the Federal hazardous materials transportation law (Federal hazmat law; 49 CFR 5101 *et seq.*) in the Homeland Security Act of 2002 (Pub. Law. 107–296). Under section 1711 of the Homeland Security Act, the Secretary of Transportation's authority to regulate hazardous materials, which is delegated to RSPA, was expanded to include hazardous materials transportation security. Section 1711 amended section 5103 of Federal hazmat law to require the Secretary to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce'' and to provide that the regulations ''shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.'' Accordingly, RSPA and FMCSA determined that RSPA should take the lead in future rulemaking to address the security of hazardous materials shipments transported by motor carriers. The Spring 2003 edition of the Semi-Annual Regulatory Agenda will reflect that RSPA has assumed leadership of this rulemaking project.

Once RPSA develops its next regulatory action on this subject, it will establish its own docket number. RSPA plans to provide public access to that regulatory action, through a hyperlink connecting the current FMCSA docket number to the new RSPA docket number. Thus, parties searching for updated information on this rulemaking through the former docket number will be apprised of RSPA's rulemaking.

Issued on: March 14, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy, Plans, and Regulation.

[FR Doc. 03–6628 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 68, No. 53
Wednesday, March 19, 2003

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

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet on March 24–26, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: On March 24 and 25, 2003, the meeting will take place at the Phoenix Park Hotel, 20 North Capitol Street, NW., Washington, DC 20001. On March 26, 2003, the meeting will occur at the United States Department of Agriculture, National Agricultural Statistics Service (NASS), located at the South Building, 5th Floor, 4th Wing, 1400 Independence Avenue, SW., Washington, DC 20250.

Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *dhanfman@reeusda.gov.*

SUPPLEMENTARY INFORMATION: On Monday, March 24, 2003, the National Agricultural Research, Extension, Education, and Economics Advisory Board will hold a general meeting at The Phoenix Park Hotel (Phoenix Park Ballroom). In the morning, starting at 8:30 a.m., you will hear welcome remarks from the Advisory Board Chair and the USDA Under Secretary for Research, Education, & Economics (REE). Starting at 9 a.m., the Advisory Board will conduct its general business with a special Agricultural Research Service (ARS) Update on the Peer Review Process of National Intramural Research Programs by an ARS Official. A special focus session follows at 10 a.m. that recaps Board Recommendations to the Secretary during the current Administration. A Working Lunch follows with a panel of invited congressional staff who will discuss agricultural research issues. At 1:30 p.m., the Board will convene with a special focus session on REE Relevance and Adequacy of Funding. Invited speakers for this session include the REE Budget Coordinator, and the chair of the ''Committee on Opportunities in Agriculture'' that conducted the study of the REE mission area under the auspices of the National Academy of Sciences. At 4 p.m., the Board will begin breakout groups to address topics related to REE relevance and adequacy of funding. From 7 to 9 p.m. in The Phoenix Park Hotel, a working dinner will be held for the Board and meeting attendees and include a guest speaker. The public is responsible for its own meals.

On Tuesday, March 25, 2003, the Advisory Board will continue with the focus session breakout groups on the ''Relevance and Adequacy of Funding Review''. At 1:30 p.m., breakout groups will reconvene, report to the full Board on their respective findings and come to closure on recommendations.

On Wednesday, March 26, 2003, the Advisory Board meeting will be held at USDA's National Agricultural Statistics Service (NASS) facility, which is located at 1400 Independence Avenue SW., Washington, DC 20036 (South Building, 5th Floor, 4th Wing). NASS will conduct the program and highlight their key activities.

The Advisory Board Meeting will adjourn on Wednesday, March 26, 2003, at 11:30 a.m. Opportunities for public comment will be available on March 24 around 11:45 a.m., March 25 around 4:30 p.m., and March 26 prior to the 11:30 a.m. adjournment. Also, written comments for the public record will be welcomed before and up to two weeks following the Board meeting (by close of business Wednesday, April 9, 2003). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

The findings of this Advisory Board Meeting and two Focus Sessions will be based on input from speakers, other stakeholders, the general public, and Board discussions.

The consolidated meeting agenda is as follows:

Location: The Phoenix Park Hotel, Phoenix Park Ballroom.

March 24—8:30 a.m. to 9:40 a.m.—Welcome Remarks. 9:10 a.m. to 9:40 a.m.—ARS Update on National Peer Review Process of Intramural Research Programs.

March 24—10 a.m. to 6 p.m.—General Meeting and Focus Sessions I & II on Board's Previous Advice to the Secretary, and REE Relevance and Adequacy of Funding Review.

March 24—12 (noon) Working lunch w/ congressional staff (to be confirmed).

March 24—1:30 p.m. to 6 p.m.—Special Focus Session on REE Relevance and Adequacy of Funding.

March 24—7 p.m. to 9 p.m.—Working Reception w/Guest Speaker (Location: The Phoenix Park Hotel).

March 25—8:30 a.m. to 6 p.m.—Focus Session on the Relevance and Adequacy Funding Review (breakout groups in the morning).

March 26—8 a.m. to 11:30 a.m.—National Agricultural Statistics Service (NASS) Program (Location: NASS, USDA, 1400 Independence Avenue, NW., South Bldg., 5th Floor, 4th Wing, Washington, DC 20250.

Done at Washington, DC, this 13th day of March, 2003.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–6664 Filed 3–18–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Biscuit Fire Recovery Project, Rogue River and Siskiyou National Forests, Curry and Josephine Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on proposed activities in areas burned in the summer of 2002 by the Biscuit Fire. The Biscuit Fire affected almost 500,000 acres burning in the steep canyons of the Klamath/Siskiyou Mountains. It destroyed four homes, burned millions of trees, and altered habitat for various plant, wildlife, and fish species, including Threatened, Endangered, and Sensitive species. The fire damaged roads, trails, recreation signs and other structures. The implementation of this proposal is scheduled for fiscal years 2004 through 2009. The proposed action would be in compliance with the 1989 Siskiyou National Forest Land and Resource Management Plan, as amended by the Northwest Forest Plan, which provides the overall guidance for management of this area. The Rogue River and Siskiyou National Forests invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis must be received by April 18, 2003.

ADDRESSES: Send E-Mail comments to *R6_biscuit@fs.fed.us* or written comments to Rogue River and Siskiyou National Forests, PO Box 520, Medford Oregon, 97501, Attn: Biscuit Fire Recovery Project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS can be directed to: Tom Link, Biscuit Fire Recovery Project Leader, Rogue River and Siskiyou National Forests, phone: (541) 471–6500, E-Mail to: *R6_biscuit@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need to recover merchantable timber before it's value is lost to deterioration.

There is a need to restore vegetation that has been killed or altered by the Biscuit Fire. Approximately 225,000 acres have lost a significant conifer tree component, including almost 80,000 acres of Northern Spotted Owl habitat. Revegetation is needed to accelerate restoration of conditions that existed prior to fire exclusion. The objective is to restore lost habitat and provide for future timber production.

There is a need to protect the remaining late successional habitat, used by Threatened or Endangered (T&E) species, from further loss from fire and insects. The objective is to reduce the risk of future catastrophic fire that can destroy this habitat. There may also be a need to reduce the risk of insect infestation that can skill remaining healthy trees.

There is a need to protect forest users, adjacent private property values, and communities. The objective is to reduce the risk of catastrophic fire and insect infestations from developing on National Forest System lands and moving onto adjacent lands.

This project will also include a number of learning opportunities that can be integrated within the proposed action. Some post fire management actions are controversial and there is uncertainity about how well some activities will achieve objectives.

Proposed Action. The following proposed actions are designed to provide commercial wood products, restore and protect late successional forest and meadow habitat, restore and maintain water quality, and reforest conifer stands. Actions are also designed to reduce risk to communities and private lands, and learn more about the recovery of post fire environments and the effects of post fire activities (including salvage logging).

The salvage of commercial wood products from Matrix lands is planned on approximately 7,000 acres with an estimated potential recovery of 90 mmbf. These areas will be consistent with the standards and guidelines of the Siskiyou Land and Resource Management Plan (LRMP) as amended by the Northwest Forest Plan.

The protection of late successional habitat and communities is proposed by reducing fuels on about 16,000 acres (many of these acres are within Late Successional Reserves). Treatments could include cutting, yarding, piling, or burning existing hazardous fuels adjacent to remaining late successional habitat patches (about 4,000 acres). A portion of these treatments will result in shaded fuelbreaks (approximately 12,000 acres) as described by Agee *et al.* (1999; The Use of Shaded Fuel Breaks in Landscape Fire Management; Forest Ecology and Management; 127 (2000) 55–66).

Meadow habitat treatments are proposed on about 1,000 acres. This may include removing dead trees to better maintain the meadows over time. Some historic meadows that were overgrown by trees, had those trees killed by the fire. The removal of excessive amounts of dead wood can help maintain meadow grass and forb species over time.

Reforestation of conifer stands is proposed on approximately 30,000 acres. These areas are expected to need varying levels of site preparation. Site preparation will include reducing competing vegetation by manual methods or reducing dead fuels by cutting, moving, or burning.

This proposal will analyze the probability of bark beetle outbreaks and, if indicated, consider the salvage of bug-infested green trees.

Improvement or closing of roads may be proposed to reduce the risk to water quality. Treatments could include improved drainage, erosion control designs, or decommissioning of roads that are sediment risks and not needed for management purposes.

There is an opportunity to design recovery actions to learn about the effectiveness of various methods for recovering post fire environments. These proposals can include differing reforestation techniques, fuels treatments, or salvage harvesting methods, as well as, comparing natural recovery processes to more active methods. These proposals may be incorporated into project alternatives.

The proposed action considers treatments (not including salvage logging) of 2,000 acres in Inventoried Roadless Areas (IRA's). The goal of treatments is to reduce ladder fuels and concentrations of hazardous fuels around key areas of remaining habitat for T&E species and to improve fuelbreaks adjacent to communities. These treatments could reduce the likelihood of uncharacteristic wildfire effects (**Federal Register**/Vol. 66, No. 9, January 12, 2001). This activity will be consistent with the Interim Directive 1920–2001–1, which limits activities in IRA's. Implementation of this directive is under the authority of the Forest Supervisor.

A portion of the proposed action may analyze and recommend activities on federal lands under the administration

of the Bureau of Land Management in the Silver Creek and Deer Creek drainages. These areas were burned within the Biscuit Fire.

Scoping Process. Public participation will be sought at several points during the analysis, including listing of this project in the Spring 2003 and subsequent issues of the Siskiyou National Forest's quarterly publication ''Schedule of Proposed Activities,'' and letters to agencies, organizations, tribes, and individuals who have previously indicated their interest in such activities. Information about the project can be found at *http://www.biscuitfire.com.*

The scoping process will include: identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues or those previously covered by a relevant environmental analysis, considering additional alternatives which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of this proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

Comments. Some of the preliminary issues that have been identified include the effects of the proposed action on: landscape pattern and habitat diversity; fire hazard associated with the change in fuels; water quality; threatened, endangered or sensitive species; salvage logging; reforestation and activities in Inventoried Roadless Areas.

Public comments about this proposal are requested in order to assist in properly scoping issues, determining how to best manage the resources, and fully analyzing environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by July 2003. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register**. The final EIS is expected in November 2003.

The Forest Service believes, at this early stage, it is important to given reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

The final EIS is scheduled to be available November 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the Responsible Official is the Forest Supervisor, Rogue River and Siskiyou National Forests. The responsible official will decide whether or not, and where, to savage harvest timber, construct fuel-breaks, plant trees and other vegetation, prevent or mitigate pest outbreaks, repair facilities, stabilize soils, and mitigate safety hazards. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how much monitoring of effects will take place.

The Responsible Official will document the Biscuit Fire Recovery Project decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: March 12, 2003.

Scott D. Conroy,

Forest Supervisor.

[FR Doc. 03–6503 Filed 3–18–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Agenda and Notice of Public Meeting of the Montana Advisory Committee Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8:30 p.m. on Monday, March 31, 2003, at the Holiday Inn Express, 701 Washington Street, Helena, Montana 59601. The purpose of the briefing is a follow up activities to the Committee's report, Equal Educational Opportunity for Native American Students in Montana Public Schools.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 13, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–6512 Filed 3–18–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: BIS Program Evaluation.

Agency Form Number: N/A.

OMB Approval Number: 0694–0125.

Type of Request: Emergency clearance.

Burden: 650 hours.

Average Time Per Response: 10 minutes per response.

Number of Respondents: 3,900 respondents.

Needs and Uses: This survey capability is needed by BIS seminar instructors at seminar programs throughout the year. Seminar participants will be asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions will provide useful and practical information that BIS can use to determine that it is providing a quality program and gives BIS information useful to making recommended improvements.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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 20230.

Dated: March 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6572 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–2003]

Foreign-Trade Zone 92—Harrison County, Mississippi, Expansion of Manufacturing Authority—Subzone 92D, Chevron Products Company, Pascagoula, MS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Mississippi Coast Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting authority on behalf of Chevron Products Company (Chevron), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 92D at the Chevron oil refinery complex in Pascagoula, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 11, 2003.

Subzone 92D (3,100 acres, 1,200 employees) was approved by the Board in 1995 and is located on the Mississippi Sound, east of Pascagoula, some 35 miles east of Gulfport, in Jackson County, Mississippi. Authority was granted for the manufacture of fuel products and certain petrochemical feedstocks and refinery by-products (Board Order 747, 60 FR 32503, June 22, 1995, as amended by Board Order 1116, 65 FR 52696, August 30, 2000).

The refinery (310,000 barrels per day) is used to produce fuels and petrochemical feedstocks. The expansion request involves several modified and upgraded processing units. The reconfigured facilities will increase the overall capacity of the refinery to 360,000 BPD. The feedstocks used and product slate will remain unchanged. Some 95 percent of the crude oil will be sourced from abroad.

Zone procedures would exempt the new refinery facilities from Customs duty payments on the foreign products used in its exports. Some 15 percent of the plant's shipments are exports. On domestic sales, the company would be able to choose the Customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is May 19, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 2, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Bureau of Customs and Border Protection, 535 Delmas Avenue, Suite 2, Pascagoula, MS 39567.

Dated: March 11, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–6483 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–2003]

Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 10, 2003.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886,

10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); and, April 2002 (Board Order 1224, 67 FR 20087, 4/15/02). The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (128 acres)—the IX Center (formerly the ''Cleveland Tank Plant''), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula; *Temporary Site 11* (15 acres)—Snow Road Industrial Park, 18901 Snow Road, Brook Park; and, *Temporary Site 12* (32 acres)—Tow Path Valley Business Park, 3060 Eggers Avenue, Cleveland. Applications are pending with the FTZ Board to expand existing Site 3 (Docket 38–2002), and to expand existing Site 1 (Docket 6–2003).

The applicant is now requesting authority to expand existing Site 8 by adding an additional 91 acres within the Strongsville Industrial Park, near the intersection of Foltz Industrial Parkway and Lunn Road, Strongsville. This increases the total acreage at this site to 174 acres. The site is owned by Duke Realty Corp., Astro Instrumentation L.L.C. and Arthur Properties Ltd. The site will provide public warehousing and distribution services to area businesses. It will also offer sites suitable for manufacturing activity, though no specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is May 19, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 2, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: March 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–6482 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on April 8, 2003, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Discussion on list of chemicals proposed for the Australia Group control list:

Tri-isopropyl phosphite (CAS # 116–17–6)
Di-isopropopyl phosphite (CAS # 1809–20–7)
Methylphosphonic acid (CAS # 993–13–5)
Oxalyl chloride [ethanedioyl dichloride] (CAS # 79–37–8)
Diethyl methylphosphonate (CAS # 683–08–9)
N, N-Dimethylamido phosphoryldichloride [dimethylphosphoramidic dichloride] (CAS # 677–43–0)
Thiophosphoryl chloride (CAS # 3982–91–0)

Closed Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14 St. and Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: March 14, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–6513 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 751(b) of the Tariff Act of 1930, as amended (''the

Act'') and section 351.216(b) of the Department of Commerce's (''the Department'') regulations, Nippon Steel (''Nippon'') filed a request for a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat products as described below. Domestic producers of the like product have affirmatively expressed no interest in continuation of the order with respect to these particular products. In response to Nippon's request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207, and (202) 482–5811, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2003, Nippon requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: (1) flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as ''ASE Iron Flash'' and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

Scope of Review

The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-

rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: Carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10mm) to 0.030'' (0.762mm) and conforming to the following chemical specifications (%): C $\leq$ 0.08; Mn $\leq$ 0.45; P $\leq$ 0.02; S $\leq$ 0.02; Al $\leq$ 0.15; and Si $\leq$ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/ − 0.2; Lankford value = $\geq$ 1.2; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer $\geq$ 1.0 micrometers; tin layer only $\geq$ 0.05 micrometers, nickel-graphite layer only $>$ 0.2 micrometers, and bottom side: nickel layer $\geq$ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed

to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review) where the Department determines that ''producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order.'' *See* section 782(h)(2) of the Act. *See e.g., Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review,* 66 FR 57415, 57416 (November 15, 2001).

Furthermore, 19 CFR 351.222(g)(1) provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (''Domestic Producers''), no further interest exists in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as ''ASE Iron Flash'' and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer

of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length. *See* Domestic Producers' February 13, 2003, letter to the Department. Therefore, we are initiating this changed circumstances administrative review.

Furthermore, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to 19 CFR 351.309(d)(1), rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: March 11, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6477 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate (steel plate) from Mexico (A–201–809) manufactured by Altos Hornos de Mexico, S.A. de C.V. (AHMSA). The period of review (POR) is August 1, 2000, through July 31, 2001. We determine that AHMSA made no sales of steel plate below the normal value (NV). We will instruct the U.S. Customs Service to assess no antidumping duties on AHMSA's entries.

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230, telephone: (202) 482–5222, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2002, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order, and invited parties to comment. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Mexico*, 67 FR 58015 (September 13, 2002) (Preliminary Results). Subsequently, we published a *Notice of Extension of Time Limit for Final Results in Antidumping Duty Administrative Review*, 67 FR 68833 (November 13, 2002). We verified the sales information submitted by AHMSA. Our verification findings are outlined in the verification report in the case file: *see* Memorandum For: The File, ''Verification of the sales and cost data submitted by Alto Hornos de Mexico S.A. de C.V. (AHMSA) from Mexico,'' January 7, 2003. AHMSA submitted a case brief on January 22, 2003. The petitioners submitted a rebuttal brief on January 29, 2003.

Scope of the Review

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process products which have been ''worked after rolling''); for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

Analysis of Comments Received

The issues raised by the parties in the case brief and the rebuttal brief are listed in the Appendix to this notice and are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary, to Joseph A. Spetrini, Acting Assistant Secretary, dated March 12, 2003, which is hereby adopted by this notice, and on file in Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce Building. The Decision Memorandum can be accessed directly from the Internet at http://ia.ita.doc.gov. The paper and electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have revised the interest expense ratios for AHMSA. *See* the Decision Memorandum.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period August 1, 2000, through July 31, 2001:

CERTAIN CUT-TO-LENGTH CARBON STEEL PLATE FROM MEXICO

Producer/manufacturer/exporter	Weighted-average margin (percent)
AHMSA	0

Assessment Rates

The Department will determine, and the Customs Service shall assess, zero antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated a customer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting zero assessment rates against the entered, customs values for the subject merchandise on customer's entries during the review period.

Cash Deposit Rates

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of steel plate from Mexico entered or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) For the company reviewed, the cash deposit rate will be the rate listed above, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 49.25 percent, the ''all others'' rate established in the LTFV investigation (58 FR 44165, August 19, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act, and 19 CFR 351.214.

Dated: March 12, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Memorandum

1. Gain on Monetary Position in Financial Expense Ratio.
2. Debt Default.
3. Product Specifications Error in the Model Match.
4. Net Price Calculation Errors.
5. Billing Adjustments and Packing Costs in Selling Expenses Calculation.
6. Plate-cutting Fees Excluded from Selling Expenses.

[FR Doc. 03–6479 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and recision in part of antidumping duty administrative review.

SUMMARY: On September 9, 2002, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods From Argentina. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Oil Country Tubular Goods from Argentina*, 67 FR 57215 (September 9, 2002) (Preliminary Results). This review covers imports of subject merchandise from Siderca S.A.I.C. (Siderca) and Acindar Industria Argentina de Aceros S.A. (Acindar). The period of review is August 1, 2000, through July 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations for Acindar. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for Acindar is listed below in the section entitled ''Final Results of Review.'' In addition, we are rescinding the review with respect to Siderca.

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2002, the Department published the Preliminary Results. We invited parties to comment on those preliminary results. On October 9, 2002, we received case briefs from United States Steel Corporation (petitioner) and Acindar. On October 17, 2002, we received rebuttal briefs from petitioner, Acindar, and IPSCO Tubulars, Inc., Lone Star Steel Company, and Maverick Tube Corporation (domestic interested parties). On January 31, 2003, we issued a supplemental questionnaire to Acindar. We received Acindar's response on February 12, 2003. On February 19, 2003, petitioner submitted a case brief commenting on that submission. On February 21, 2003, Acindar submitted rebuttal comments.

On October 9, 2002, we received a request from Acindar for a public hearing on the issues raised in the case and rebuttal briefs. We held this hearing on December 5, 2002. A transcript of the hearing is on file in the central records unit (CRU) at room B–099 of the Department.

As indicated in our preliminary results, following publication of the preliminary results we continued to seek confirmation that Siderca had no shipments to the United States during the POR. *See Preliminary Results* at 57215. In response to requests for information, we received submissions from Siderca on September 16 and October 9, 2002. We received comments from petitioner on September 24 and November 12, 2002. In response to petitioner's November 12, 2002, comments we received a voluntary submission from Siderca on November 26, 2002. We subsequently received further comments from petitioner on December 23, 2002. From February 20 to 22, 2003, we verified Siderca's no-shipment claim, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the verification report, dated March 4, 2003, which are on file in the Central Records Unit of the Department.

Under section 751(a)(3)(A) of the Tariff Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review with in the statutory time limit. On December 12, 2002, the Department extended the time limit for the final results to March 10, 2003. *See Oil Country Tubular Goods From Argentina: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review*, 67 FR 76381 (December 12, 2002). We have now completed the administrative review in accordance with section 751 of the Tariff Act.

Period of Review

The POR is August 1, 2000, through July 31, 2001.

Scope of the Review

Oil country tubular goods (OCTG) are hollow steel products of circular cross-section, including oil well casing and tubing of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products).

This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2000. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001).

The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30,

7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Recision of Review

In the preliminary results we stated that Siderca reported that it had no shipments during the POR. We also stated we would continue seeking confirmation of this claim and that we would put our findings into a memorandum which we would place on the record of this review. Our on-site inspection of Siderca's sales facilities uncovered no evidence that Siderca had shipments to the United States during the POR. A memorandum describing the verification is on file in the central records unit of the Herbert C. Hoover building. Therefore, we are rescinding the review with respect to Siderca. Siderca's cash deposit rate will remain at 1.36 percent, which is the rate established for Siderca in the less-than-fair-value investigation. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539 (June 28, 1995) and Antidumping Duty Order: Oil Country Tubular Goods from Argentina, 60 FR 41055 (August 11, 1995).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 10, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the decision memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the decision memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Acindar. The changes are listed below:

1. We calculated depreciation on a per-unit basis based on production volume, rather than by applying a ratio to the cost of manufacture.
2. We added direct selling expenses into the calculation of constructed value (CV).
3. We removed packing from the setup string in the calculation of CVPROFIT and FUPDOL.
4. We removed the downward adjustment to CV for the Factor Convergence program. Additionally, we made the Reintegro reimbursement as a downward adjustment to CV, rather than a downward adjustment to selling expenses.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin for the period August 1, 2000, through July 31, 2001, to be as follows:

Manufacturer/exporter	Margin (percent)
Acindar	60.73

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period. For duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 1.36 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Oil Country Tubular Goods from Argentina*, 60 FR 41055 (August 11, 1995).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) or their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO

materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: March 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in the Decision Memorandum

Comment 1: Calculation of CV Profit.
Comment 2: Depreciation Expenses.
Comment 3: Bad Debt.
Comment 4: General and Administrative Expenses.
Comment 5: Rebates Received Under Argentine Government Rebate Programs.
Comment 6: Clerical Errors.
Comment 7: No Shipments.

[FR Doc. 03–6478 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 10, 2002, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (67 FR 57384). This review covers imports of subject merchandise from Dongguan Fay Candle Co., Ltd. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc., (Palm Beach) (collectively, ''respondents''). The review covers the period August 1, 2000 through July 31, 2001.

Based on our analysis of the comments received, we have made a change in the selection of an adverse facts available margin. As such, the final results differ from the preliminary results of review. The final antidumping duty margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–3148, or Jessica Burdick at (202) 482–0666, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Since the issuance of the preliminary results of review (*see Notice of Preliminary Results of Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 67 FR 57384 (September 10, 2002) (*Preliminary Results*)), the following events have occurred. On October 4, 2002, respondents requested an extension of the due date for the case and rebuttal briefs and any hearing requests. On October 17, 2002, the Department extended the case brief and hearing request due date to November 25, 2002, and the rebuttal brief due date to December 9, 2002. On November 20, 2002, the Department extended the due date for the final results of this review (67 FR 70055). On November 21, 2002, respondents requested a hearing. On November 25, 2002, the Department received timely written case briefs from respondents and petitioner. On December 4, 2002, we received a request from petitioner to extend the December 9, 2002 rebuttal brief deadline to December 16, 2002. On December 5, 2002, respondents in this review requested the same extension. On December 6, 2002, we notified all of the interested parties in this review that, pursuant to both petitioner's and respondents' extension requests, we would be extending the deadline for all interested parties for submission of rebuttal briefs until December 16, 2002. On December 16, 2002, we received a request from petitioner to extend this rebuttal brief deadline to December 18, 2002, which we granted for all interested parties. On December 18, 2002, the Department received timely rebuttal comments from respondents and petitioner. On February 3, 2003, a public hearing was held in this proceeding. We have now completed this administrative review in accordance with section 751 of the Act.

Scope of the Antidumping Duty Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Period of Review

The period of review (POR) is August 1, 2000 through July 31, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review of Petroleum Wax Candles from the People's Republic of China,'' to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, dated March 10, 2003 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made a change in the selection of adverse facts available margin. *See* the section on ''Application of Facts Available'' below for a full discussion. In the preliminary results, we determined that Fay Candle was eligible for a separate rate. *See Preliminary Results*, 67 FR at 57386. We have not changed that determination in these final results.

Application of Facts Available

The Department conducted verification at Fay Candle's factory in China from July 22 through 26, 2002. On July 22, 2002, respondents presented

corrections to their questionnaire responses. The corrections included a previously unreported production order, which amounted to a significant increase in the production for the POR. The verification team proceeded with verification of the questionnaire responses, but indicated that it would have to confer with Washington concerning whether the new information could be accepted. On July 26, 2002, after consulting with Washington, the team returned all documents relating to the new production data and halted the remainder of the verification in China. *See* ''Memorandum Regarding Administrative Review of Petroleum Wax Candles from the Peoples Republic of China (PRC) (A–570–504): PRC Verification,'' Memorandum to the File, through Sally C. Gannon, from Mark Hoadley, Brett Royce, and Jessica Burdick (August 30, 2002) (*PRC Verification Report*), which is on file in the Central Records Unit (CRU), room B–099 of the main Department building; ''Memorandum Regarding 2000/2001 Administrative Review on Candles from the People {sic} Republic of China (A–570–504): Telephone Call Regarding Verification,'' for The File from Sally C. Gannon (August 2, 2002).

The next week, the Department informed respondents that it would proceed with the U.S. portion of the verification, and the Department and respondents agreed on August 12 through 15, 2002 as the dates for this verification. *See* ''Memorandum Regarding 2000/2001 Administrative Review on Candles from the People {sic} Republic of China (A–570–504): Telephone Call Regarding Verification & Rejection of New Factual Information,'' for The File, through Sally C. Gannon, from Jessica Burdick (July 31, 2002). On August 9, 2002, respondents called and informed the Department that they had made a decision not to proceed with the U.S. portion of the verification. *See* ''Memorandum Regarding 2000/2001 Administrative Review on Candles from the People {sic} Republic of China (A–570–504): Telephone Call Regarding Verification,'' for The File, from Sally C. Gannon (August 9, 2002). On August 9, 2002, respondents also filed a letter informing the Department of their decision not to participate in the U.S. verification.

For these final results of review, we continue to find that, in accordance with section 776(a)(2)(D) of the Act, the use of facts available for respondents is appropriate. Respondents' decision not to allow the Department to conduct an on-site U.S. verification prevented necessary information from being verified as provided in section 782(i), a condition specifically listed in section 776(a)(2)(D) as mandating the use of facts available. Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to apply an adverse inference if it makes the additional finding that ''an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' As stated above, the Department set a date for the U.S. portion of the verification that respondents agreed was acceptable. Respondents decided not to proceed with verification. Respondents did not ask that the verification be rescheduled, but simply stated that they would not proceed with the verification. Since respondents cancelled the U.S. sales verification, the Department cannot rely on respondents' questionnaire responses to calculate a dumping margin for Fay Candle. The U.S. sales verification is integral to our calculation because, without performing the U.S. sales verification, we were unable to complete the sales reconciliation as well as verification of total quantity and value, which are principal elements of the overall verification of respondents' questionnaire responses.

Furthermore, while the Department was able to verify parts of the questionnaire responses in China, that information is inextricably linked with the information unverified in the United States. *See PRC Verification Report*. For example, the Department was able to verify several factors used in the production of candles. However, that information is not usable if the Department is unable to verify which products were actually sold in the United States. The Department would have been able to ascertain this if the U.S. verification had been allowed. Moreover, personnel at Fay Candle stated that some items in the factors of production portion of the response would have to be verified, at least in part, in the United States. For example, they stated that additional documents we requested to confirm the amounts of dyes, fragrances, packaging and hang tags used in production were kept in Florida. In addition, as noted above, by not performing the U.S. sales verification, we were unable to complete the sales reconciliation as well as verification of total quantity and value, which are principal elements of the overall verification of respondents' questionnaire responses. Thus, the use of facts available is mandated for the total response of Fay Candle and its importers. In other words, it is not possible to rely on respondents' questionnaire responses to calculate a margin for Fay Candle's exports, even using partial facts available ''plugs'' for U.S. sales data, which is the data for which respondents decided not to allow verification.

Therefore, we determine that respondents did not cooperate to the best of their ability for these final results of review and that the use of adverse facts available is appropriate under section 776(b). In the *Preliminary Results,* as adverse facts available, we applied the calculated margin of 95.22 percent as published in *Petroleum Wax Candles from the People's Republic of China: Notice of Final Results of New Shipper Review*, 67 FR 41395 (June 18, 2002) (*Candles NSR*). *See* ''Memorandum Regarding Petroleum Wax Candles from the People's Republic of China (PRC): Application of Facts Available for Exports from Dongguan Fay Candle Co., Ltd.—Preliminary Results of the Administrative Review (August 1, 2001 through July 31, 2001) to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, through Barbara E. Tillman and Sally C. Gannon, from Mark Hoadley and Brett Royce (September 3, 2002) for a complete discussion of the Department's decision in the *Preliminary Results* to apply adverse facts available and the choice of the rate from the new shipper review.

Since the *Preliminary Results*, the Department has carefully considered the arguments raised by interested parties regarding the application of adverse facts available and the choice of dumping margin. As detailed above, the Department continues to determine that the use of adverse facts available is appropriate under sections 776(a) and 776(b) of the Act. However, the Department has reconsidered the use of the *Candles NSR* margin in light of the arguments submitted by interested parties in this review. The 95.22 percent margin was calculated for a new shipper, a trading company, whose single sale, albeit of more than one product, during the new shipper POR was also its first sale ever to the United States. Because of the substantial difference between the two margins calculated in the new shipper review (and weight-averaged into the 95.22 percent margin) and the unusual facts surrounding the new shipper's one sale, the Department has determined that the application of the new shipper's weighted-average margin would be inappropriate. The wide range of the two margins weight averaged together in the new shipper review, given the nature of the new shipper as a start-up

with very low sales volumes, and given other unusual proprietary facts surrounding the sale, has led us to find that it is inappropriate to use the higher of these two margins. Moreover, while the rate we have chosen (65.02 percent) is higher than the single PRC-wide rate that has been applied for the past 16 years (54.21 percent) under this order, it is still more in line with the 54.21 percent PRC-wide rate which was also based on facts available. The higher rate we have excluded is more than double that previous rate, confirming our conclusion that it is the product of circumstances not germane to this analysis. Our analysis of why the high margin and the weighted-average margin are inappropriate relies, in part, on business-proprietary information. Therefore, *see* ''Memorandum Regarding Administrative Review of Petroleum Wax Candles from the People's Republic of China (PRC) (A–570–504): Proprietary Information Regarding Adverse Facts Available Rate,'' to Barbara E. Tillman, through Sally C. Gannon, from Mark Hoadley (March 10, 2003) (*AFA Memo*) for a full discussion of the issue.[1]

We emphasize that we are not establishing a *per se* rule against using rates established in new shipper reviews as adverse facts available (as should be apparent from the fact that we are still using a rate from the new shipper review). We are excluding the high rate from this new shipper review because of the substantial difference between that rate and the other individual rate determined and because the circumstances of this particular new shipper review lead us to conclude that that difference is the result of circumstances not germane to this analysis. *See AFA Memo* and *Decision Memorandum* (*Comment 4*).

In addition to examining the adverse facts available margin applied to determine whether it is appropriate, we have also in the past determined to choose margins that are sufficiently adverse to encourage full cooperation in future reviews. *See Japan Hot-Rolled LTFV*, 64 FR at 24369, and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*), 63 FR 40422, 40428 (July 29, 1998). We find the rate we have chosen, 65.02 percent, is sufficiently adverse to encourage compliance in the future. The new shipper review is the only segment of this proceeding which has resulted in a calculated rate based on information submitted by a respondent. Because the AFA rate we have chosen is a calculated rate from the new shipper review, we conclude that it is an appropriate reflection of the amount by which PRC exporters are dumping in the United States. Therefore, future respondents should not view the AFA rate as preferable to their actual dumping rates, *i.e.*, as an underestimate of their own magnitude of dumping, and should in general find it an inducement to cooperate with the Department in calculating their own rates.

Corroboration

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action (SAA)*, H.R. Doc. 103–316 (1994), states that ''corroborate'' means to determine that the information used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996).

Accordingly, we determine that the 65.02 percent rate is in accord with section 776(c)'s requirement that secondary information is reliable. The information used in the new shipper review to calculate the final margin of 95.22 percent, for which the 65.02 percent margin is an integral part of the underlying calculation, was fully verified and subject to the comments of both respondent and petitioner throughout the review. Thus, the 65.02 percent margin is ultimately based on the verified sales and production data of respondent in that review, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review as well as information gathered by the Department itself.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. In this case, as discussed above, the Department has chosen one of the margins weight-averaged in the new shipper review, the rate of 65.02 percent. We chose this margin after concluding that using the highest rate or the weighted-average margin from the new shipper review was inappropriate, due to the wide range of margins weight averaged therein. *See AFA Memo*.

Final Results of Review

We determine that the following percentage margin exists for the period August 1, 2000 through July 31, 2001:

Manufacturer/exporter	Percent margin
Dongguan Fay Candle Co. Ltd. ...	65.02
PRC-Wide Rate	54.21

The Department will disclose calculations performed in connection with these final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment

The Department will determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. For Fay Candle, the assessment rate will be based on the margin noted above. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rates against the entered Customs values for the subject merchandise on each of the exporter's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Fay Candle will be 65.02 percent; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established

[1] All relevant calculation documentation from the new shipper review has been placed on the record of this review. *See* ''Memorandum Regarding Final Results of Antidumping Duty Administrative Review of Petroleum Wax Candles from the People's Republic of China (PRC),'' to The File, through Sally C. Gannon, from Brett Royce (March 10, 2003).

for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, which is currently 54.21 percent; and, (4) for all other non-PRC exporters, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(I) of the Act.

Dated: March 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6481 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 10, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results and partial rescission of administrative review of the countervailing duty order on stainless steel sheet and strip from the Republic of Korea for the period January 1, 2000 through December 31, 2000 (67 FR 57395) (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Inchon Iron and Steel Co. (Inchon) The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Carrie Farley, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Inchon. This review covers the period January 1, 2000 through December 31, 2000 and eighteen (18) programs.

On August 6, 1999, the Department published in the **Federal Register** the countervailing duty order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea,* 64 FR 42923 (August 6, 1999). In addition, we published the *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 67 FR 8229 (February 22, 2002) and published the *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 67 FR 1964 (January 15, 2002) and the accompanying Issues and Decision Memorandum (January 8, 2002).

Rescission of Sammi Steel Co., Ltd. (Sammi)

As noted in the *Preliminary Results,* Sammi did not export subject merchandise to the U.S. during the POR, and the Department preliminary found that Sammi and Inchon were not cross-owned. *See* 67 FR 57398. Therefore, the Department intended to rescind the administrative review for Sammi. As discussed in the Decision Memorandum, we affirm our decision from the *Preliminary Results* and are rescinding the review for Sammi.

We published the *Preliminary Results* of the instant administrative review in the **Federal Register** on September 10, 2002 (67 FR 57395). We invited interested parties to comment on the results. On January 10, 2003, we received case briefs from petitioners and respondents. On January 17, 2003, we received rebuttal briefs from petitioners and respondents.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30,

7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI–C.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum: Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea'' (Decision Memorandum) dated March 10, 2003, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at http://ia.ita.doc.gov, under the heading ''Federal Registe Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for Inchon. For the period January 1, 2000 through December 31, 2000, we determine the net subsidy for Inchon to be 3.79 percent *ad valorem.*

We will instruct the Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. As of April 1, 2001, Inchon, changed its name to INI. Thus, for all of Inchon's shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after April 1, 2001, we will instruct customs to assign Inchon's cash deposit to INI.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. As of April 1, 2002, Sammi changed its name to BNG. Thus, for all of Sammi's shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after April 1, 2002, we will instruct customs to assign Sammi's cash deposit rate to BNG. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review,* 67 FR 8229 (February 22, 2002). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period January 1, 2000 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of duties prior to liquidation of the relevant entries during this review period.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act.

Dated: March 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Funding Availability.

SUMMARY: The International Trade Administration (ITA) of the U.S. Department of Commerce (the Department) requests that eligible organizations submit proposals (applications) for the fiscal year (FY) 2003 competition for Market Development Cooperator Program (MDCP) awards. ITA creates economic opportunity for U.S. workers and firms by promoting international trade, opening foreign markets, ensuring compliance with U.S. trade laws and agreements, and supporting U.S. commercial interests at home and abroad.

Through MDCP cooperative agreements the Department works with export multiplier organizations providing technical and financial assistance which these organizations match. Export multiplier organizations compete for a limited number of MDCP awards.

Eligible export multipliers include trade associations, state economic development/trade departments, small business development centers, World Trade Centers, chambers of commerce, and other non-profit industry organizations. These export multipliers are particularly effective in reaching small- and medium-size enterprises (SMEs). MDCP awards help to underwrite the start-up costs of new export ventures which export multipliers are often reluctant to undertake without Federal Government support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States and serves to:

• Challenge the private sector to think strategically about foreign markets;

• Spur private-sector innovation and investment in exporting; and

• Increase the number of U.S. companies, particularly SMEs, taking decisive export actions.

As an active partner, ITA will, as appropriate, guide and assist export multipliers in achieving project objectives. ITA encourages export multipliers to propose projects that (1) best meet their industry's market development needs; and (2) leverage the partnership between the export multiplier and ITA.

DATES: *Public Meeting:* The Department will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on Friday, April 4, 2003. The two-hour meeting will begin at 10 a.m. in Room 6059, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, NW., Washington, DC. The Department will not discuss specific proposals at this meeting. Attendance is not required.

Applications: The Department must receive completed applications by 5 p.m. Eastern Daylight Time, Tuesday, May 15, 2003. Late applications will not be accepted. They will be returned to the sender. Applicants must ensure that the service they use to deliver their application can do so by the deadline. Due to recent security concerns, packages and envelopes sent to the Department via U.S. mail have been delayed several days or even weeks. The delays have affected all forms of the U.S. mail, including first-class, priority, and express.

As set forth under *IV.B.2. Number of Copies,* ITA requests one original application, plus seven (7) copies. Applicants for whom this is a financial hardship should submit an original and two copies. Applications should be submitted to the contact below.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3215, Washington, DC 20230.

Email: *Brad_Hess@ita.doc.gov.*

Phone/Fax: (202) 482–2969/ –4462.

Internet: *http://www.export.gov/mdcp.*

Application Kit: A kit which includes required application forms is available at *http://www.export.gov/mdcp.* A ''hard-copy'' version is available upon request.

Pre-Application Counseling: Applicants with questions should contact the Department as soon as possible, while continuing to prepare their proposals. The Department will not extend the deadline for submitting applications.

From March 19, 2003 through May 15, 2003, the Department does not counsel potential applicants regarding the merits of projects they may propose in their applications. During this competition period, the Department may respond to potential applicants' questions regarding eligibility, technical issues, procedures, general information, and referral.[1] For example, during the competition period the Department may refer a potential applicant to sources for market research on a foreign market identified by the potential applicant. However, to continue the example, the Department may not comment on the merits of including that market in a proposal, or suggest an alternative market.

SUPPLEMENTARY INFORMATION: *Authority:* The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102

[1] Outside of the competition period, the Department is free to counsel potential applicants on the merits of their proposed projects.

Stat. 1342, 15 U.S.C. 4723 and Pub. L. No. 107–38.[2]

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

I. Definitions of Terms

Several definitions are provided below to assist readers in preparing MDCP applications. These definitions do not supplant or supercede definitions provided in the Department's Grants and Cooperative Agreements Interim Manual (February 2002).

A. Definition of Frequently Used Terms

Several terms used throughout this request for applications have specific meanings that may not be evident. These are defined below.

1. Award Period: The time-span established in the award document during which Federal sponsorship begins and ends. The term ''award period'' is also referred to as ''project period'' in 15 CFR part 14.2. Each applicant proposes an award period of up to three years in their application. The award period may be extended. Extensions usually do not exceed 12 months. All extensions must be approved in writing by the Grants Officer.

2. Commercial Service: Formally known as the U.S. and Foreign Commercial Service (US&FCS), the Commercial Service, one of ITA's major program areas, is statutorily mandated to promote exports of goods and services from the United States, particularly by SMEs, and to protect U.S. business interests abroad. It is composed of three main units. Two of these encompass entities whose staff work with or on practically every MDCP project team, namely, the domestic U.S. Export Assistance Centers (USEACs) and the overseas Commercial Service offices.

3. Cooperative Agreement: This legal instrument used for MDCP awards reflects a relationship between the Department and a recipient whenever: (1) The principal purpose of the relationship is to transfer money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute and (2) substantial involvement (*e.g.*, collaboration, participation, or intervention by the Department in the management of the project) is anticipated between the Department and the recipient during performance of the contemplated activity. Cooperative agreements are subject to the same OMB, Treasury, and other Federal laws and policies as grants. *See* 31 U.S.C. 6305. *See II.B. Administration of Award Activity* below for additional information about the Department's involvement.

4. Cooperator: An export multiplier (see definition below) that wins an MDCP financial assistance award in ITA's annual competition. A cooperator is a ''recipient'' (*see* definition below) of Federal financial assistance. Cooperator status is valid only for the term of the MDCP award period.

5. Cooperator Event: An export promotion or market development activity undertaken as part of an MDCP project such as a trade mission, a trade show, a technical seminar, or opening a foreign office. Other examples include, but are not limited to, those listed below in *II.A. Examples of Project Activity.*

6. Current or Past Cooperator: An organization that currently has or in the past has had an MDCP project.

7. Domestic Commercial Service Office: A U.S. Export Assistance Center.

8. Export Multiplier: A trade association, state department of trade, and other non-profit that does not export, but helps companies to export. (*See III. Eligibility* below.)

9. Fiscal Year: The fiscal year of the Federal Government. The twelve month period from October 1 through September 30.

10. Overseas Commercial Service office: A Commercial Service unit whose employees are based in U.S. embassies, consulates, or other locations abroad.

11. Industry: The U.S. potential exporters that an applicant's project is designed to benefit. The target group can be very broad or quite specific. One applicant, for example, may define the industry as all U.S. producers of tennis equipment and services. For another applicant, ''industry'' might refer only to California tennis equipment producers. Another applicant might define its industry as all California companies.

12. Market Access and Compliance (MAC): One of ITA's major program areas dealing with trade negotiations, compliance with trade agreements, and trade policy. MAC professionals often serve on project teams.

13. Office of Planning, Coordination and Management (OPCM): The Trade Development (TD) office that administers the MDCP.

14. Produced in the United States: Having substantial inputs of materials and labor originating in the United States, such inputs constituting over 50 percent of the value of the good or service to be exported.[3]

15. Product: A U.S. non-agricultural good or service.

16. Project: A series of activities proposed in an MDCP application—or, after an MDCP award is made, in an amendment request—and approved by the Department which occurs during the award period.

17. Project Team Leader: A Trade Development employee who coordinates MDCP project activity with a cooperator and serves as the cooperator's primary point of contact with ITA. (*See II. B.1. Project Team* below.)

18. Recipient: A cooperator. The organization that receives an MDCP award.

19. Request for Applications (RFA): **Federal Register** notice announcing the availability of MDCP financial assistance funds.

20. Trade Development (TD): One of ITA's major program areas that looks at all aspects of exporting from an industry perspective. Most project team leaders are TD industry specialists. TD's Assistant secretary makes the final selection of MDCP award winners.

21. U.S. Export Assistance Center (USEAC): A domestic Commercial Service office. USEACs are located across the United States.

22. U.S. Product: See Product and *Produced in the United States* above.

B. Other Definitions

Some terms are best understood in the context of a more detailed discussion. For terms that do not appear above, refer to the RFA section where the term is discussed.

II. Program Description

The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for non-agricultural goods and services produced in the United States. Non-agricultural goods and service means goods and services other than agricultural products as defined in 7 U.S.C. 451.[4]

A. Examples of Project Activity

Applicants should propose activities appropriate to the market development needs of the relevant U.S. industry.

[2] Unless otherwise noted, all legal authorities cited in this notice may be accessed via the Internet at *http://www.access.gpo.gov/* or at *http://www.secure.law.cornell.edu/federal/.*

[3] ''Trade Mission Application Form'' ITA Form 4008P–1 (Rev. 8/97), available from *http://www.ita.doc.gov/ooms/forms.htm.*

[4] This definition includes ''agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed manufactured products thereof * * *''

Examples from prior years are set forth below.[5] These are provided only for illustration. Applicants are not required to propose any of these activities:

1. Foreign trade show/trade mission participation;

2. Demonstration of U.S. products abroad;

3. Export seminars;

4. Establishment of technical servicing abroad;

5. Joint promotion of U.S. products with foreign partners;

6. Establishment of an overseas office[6];

7. Detail of a representative to a Commercial Service office in accordance with 15 U.S.C. 4723(c);

8. After-sale service training of foreign nationals;

9. Promotion of standards that ensure market access for U.S. products; and

10. Publication of product brochures or a company directory.

B. Administration of Award Activity

As noted above in *I.A.3. Cooperative Agreement,* the Department will have substantial involvement with the cooperator. This involvement results primarily from the activities of the project team.

1. Project Team: To administer each cooperative agreement, a project team is established including key personnel from the cooperator and ITA officials who can help the cooperator achieve MDCP project objectives.[7] Each project team acts as the project's ''board of directors'' establishing direction, recommending changes when necessary, and working on project activities.

2. Annual Operating Plan: Each year during the award period, the project team formulates an operating plan based on the work plan submitted in the application. The plan identifies project events, projected dates, team responsibilities, and a rough cost estimate for each event and ongoing activity scheduled during the fiscal year (October through September).[8] Applicants do *not* submit annual operating plans in their applications. They are developed only after receipt of an award and designation of the project team.[9]

3. Regular Team Meetings: Project teams normally meet in-person at least every three months. In between the quarterly meetings, project teams usually hold regular telephone or video conferences. Cooperators based in the Washington, DC area usually meet in-person more often than quarterly.[10]

4. Team Participation in Project Activities: Project team members, including the project team leader and other ITA team members, participate as appropriate in project activities. For example, in the past, ITA members of the project team have participated in trade missions, recruited for trade shows, delivered presentations at seminars, and assisted with numerous other aspects of project activity. As noted above in *II.B.2. Annual Operating Plan,* ITA members of the project team pay their own costs associated with their participation.

C. Funding

1. Funding Availability: For FY 2003, the total funds expected to be available for this program are $1.5 million. The Department expects to conclude a minimum of five (5) cooperative agreements. No award will exceed $400,000, regardless of the duration of the award period.

2. Match Requirement: A cooperator must contribute at least two dollars for each Federal dollar received.

a. Cash Contribution: A cash contribution is a new outlay of cooperator funds for project activity. The cooperator can only use its funds—not the funds of a partner or any other entity—as cash contribution.[11] An in-kind contribution is not part of the cash contribution.

(1) One Dollar of Match Must Be Cash: One dollar of a cooperator's minimum two-dollar match must be cash contribution. The other dollar of match may be either in-kind contribution or cash contribution.

(2) Program Income: Project fees generated under the award, like any other source of program income, must be used for project-related purposes during the award period. Applicants should explain any such fees.

(a) Project Benefits and Reasonable Fees: Benefits from the project must be made available to all companies in the industry whether or not a company is a member or constituent of the cooperator or its partner(s). In some situations, a cooperator may charge lower fees to one class of companies than to another. For example, a trade association could charge a lower participation fee to a member company than it does to a nonmember. This is permitted as long as the difference in fees is reasonable.

(b) Cash Match If Value Added: Program income expended on project activity may be counted as cash match, if it represents value added by the cooperator for project activity. This can be illustrated in the example of a company that attends a trade show as part of a cooperator's project. If the company negotiates amounts for its own arrangements with vendors, pays the total amount to the cooperator, then has the cooperator pay the amount to the vendors, the cooperator has added no value. The cooperator cannot claim the fees as cash match.

The same cooperator could claim fees paid by the company for trade show participation, if the cooperator adds value and the fees represent something of value that furthers project goals. For example, the cooperator could create its own trade-show participation package. This might include finding optimal hotel accommodations, securing group airfare, meeting with trade show organizers before the show, and organizing a reception to take place during the show. Such a cooperator package would help determine project success. When companies pay the fees for such a package, they are doing more than getting themselves to a trade show, they are agreeing that the project itself has value. Because the cooperator's package adds value and furthers project goals, the cooperator could charge fees, use the fees to pay project expenses, and claim them as cash match.

(3) Third Party Contributions: In order for a cooperator to outlay cash contributed by a third party, the third party must transfer the funds to the

[5] Visit *http://www.export.gov/mdcp* for a description of each of the MDCP projects funded to date.

[6] Such an office should not duplicate the programs or services of the Commercial Service Office(s) in the region, but could include co-location with a Commercial Center of the Commercial Service.

[7] If needed, representatives from other federal agencies may be invited to participate on the project team.

[8] Some of the planning by ITA team members is affected by the Federal fiscal year. Cooperators should anticipate finalizing their annual operating plans well before October 1.

[9] The annual operating plan is a blueprint for team activity worked out between the cooperator and the project team leader. For example, one activity listed could be a trade mission. In addition to dates and responsibility, the cooperator would list a rough estimate of costs based on the project budget submitted in the application, as amended. (The annual operating plan does not include detailed breakdowns of cost.) In a separate column, ITA's project team leader estimates the amount of ITA administrative funds needed to pay for ITA travel and certain other expenses incurred supporting the mission. (Funding of ITA team members' participation is subject to availability of funds.)

[10] Project team leaders usually request and receive sufficient ITA administrative funds to pay for travel to the cooperator's location for team meetings. Most cooperators make provision in their project budgets to travel to Washington, DC for some of the team meetings in order to familiarize themselves with all of the federal resources available to them.

[11] Recipient cash contributions are defined in 15 CFR part 14, § 14.2(g) as the award ''recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.''

cooperator. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions.

b. In-Kind Contribution: An in-kind contribution is a match other than a cash contribution. Examples include the value of staff time of a partner organization, airfare donated by a U.S. airline, and cash paid by partner organizations for project expenses.

Applicants can claim only the fair market value of the in-kind contribution.[12] In proposed budgets, applicants should list all in-kind contributions separately from cash contributions. Applicants must describe these in-kind contributions in sufficient detail to determine that the requirements of 15 CFR part 14.23(a), or 15 CFR part 24.24 (a) and (b) are met.

Applicants should structure their budgets carefully when expenditures by companies that benefit from project activity are involved. An expenditure by such a company that primarily benefits only that company cannot be claimed as in-kind match.

For example, a company may have made and paid for its own arrangements to attend a trade show that a cooperator has included in its project. The cooperator could not claim the amount paid by the company as in-kind match. The company incurs airfare and other expenses for its own benefit, but not necessarily to accomplish project objectives. Such expenditures are more self-serving than are true in-kind contributions to project success.

This policy should not deter applicants from proposing in-kind match. For example, a cooperator can claim the value of airfare donated by a U.S. airline. Although the airline benefits from goodwill associated with donating the service, it is the cooperator's project that benefits directly when the airfare is used to achieve project objectives. Unlike the company in the example above, the airline does not use the donated airfare itself and thereby benefit directly from it.

c. Minimum Match: An example of the minimum match is set forth below. An applicant requesting $200,000 of Federal funds must supply, at a minimum, $200,000 of cash contribution. As illustrated below, the remaining $200,000 of the required match can be made up of additional cash or in-kind contributions.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind	.....	200,000
Total	200,000	400,000

d. Cost Share Ratio: The example above establishes a cost-share ratio of two-to-one: two cooperator dollars for each Federal dollar. The cooperator assumes 2/3 of the total cost. In other words, 67 percent of the funding is provided by the cooperator and 33 percent by the Federal Government. This means that the cooperator will receive one dollar for every three dollars in project expenditures.

e. Additional Match: Cooperators may contribute more than two dollars for each Federal dollar; however, as set forth below, this will increase the cost-share ratio.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind	.....	400,000
Total	200,000	600,000

This example establishes a cost-share ratio of three-to-one: three cooperator dollars for each dollar of Federal funds. The cooperator assumes 3/4 of the total cost. In other words, 75 percent of the funding is provided by the recipient and 25 percent by the Federal Government. This means that the cooperator will receive one dollar for every four dollars in project expenditures.

f. Direct and Indirect Costs: Applicants may claim indirect costs in their project budgets.[13] Generally, direct costs result directly from project activity and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations. By contrast, indirect costs are generally those costs that are incurred regardless of whether there is an MDCP project. These are often referred to as ''overhead'' and usually include expenses such as rent, electricity, and gas.

The Department will determine allowable costs on the basis of the applicable cost principles and definitions in OMB Circulars A–21, A–87, and A–122; in 45 CFR part 74, appendix E; and in 48 CFR part 31.[14]

Federal funds may be used only to cover direct costs. The applicant must incur and pay direct costs that equal or exceed the amount of Federal funds. However, any portion of the balance of applicant's match that does not exceed the levels set forth below in *II.B.3. Indirect Cost Rate,* may be used to cover indirect costs.

3. Indirect Cost Rate: If a cooperator does not have a current approved indirect cost rate from another Federal agency, and the Department of Commerce will be the largest funding Federal agency, the Department will work with a cooperator to establish an indirect cost rate. This will not happen until after the applicant has been selected as an MDCP award winner.

Indirect costs are capped by the cooperator's total direct costs or the indirect cost rate, whichever is less.[15] Examples of the two caps are set forth below.

a. Capped by Indirect Cost Rate: In the example below, indirect expenses are limited by the indirect cost rate of 30 percent of direct costs ($461,538 \times 0.3 = 138,462$). This amount is lower than the other possible cap of $261,538, the total cooperator contribution to direct expenses. Accordingly, the cap is the lower amount, $138,462.

Cost	Federal share	Cooperator match
Direct	200,000	261,538
Indirect (30%)	.....	138,462
Total	200,000	400,000

b. Capped by Cooperator Direct Costs: In the example below, indirect expenses are limited by the cooperator's level of contribution to direct expenses instead of the amount calculated with the indirect cost rate. The indirect cost rate of 60 percent of total direct costs yields $240,000 of total indirect costs ($400,000 \times 0.6 = 240,000$). Because this amount exceeds the cooperator's contribution of direct costs of $200,000, indirect costs are capped at $200,000.

Cost	Federal share	Cooperator match
Direct	200,000	200,000
Indirect (60%) (capped)	.....	200,000

[12] For example, a consultant cannot claim $150 per hour for their donated services unless they can demonstrate that they are actually paid that rate by customers for similar work.

[13] A sample calculation of indirect costs is provided in the mock application available at *http://www.export.gov/mdcp.*

[14] Access OMB circulars and forms at *http://www.whitehouse.gov/omb/grants/index.html.* Appendix E referred to on this OMB site is not listed separately. It is found at the end of 45 CFR 74.91, which may be accessed directly at *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html.*

[15] Information on calculating an indirect cost rate is available at *http://www2.dol.gov/oasam/programs/guide.htm.*

Cost	Federal share	Cooperator match
Total	200,000	400,000

4. Approved Pre-Award-Period Expenditure: As a general matter, cooperators can request reimbursements only for project costs incurred during the award period. However, if proposed in the application, cooperators may expend project funds to attend a cooperator orientation meeting, even if it precedes the beginning of the award period.[16] *See Summary: Dates: Public Meeting* above.[17]

5. Fees for Some Government Services: The Commercial Service participates on each MDCP project team. Applicants should understand that the Commercial Service is required to charge fees to cover costs for many of the services it provides. The policy set forth below applies to Commercial Service resources that are provided as part of MDCP cooperative agreements.

The Commercial Service will provide, as part of the cooperative agreements, a limited amount of reasonable assistance to MDCP cooperators at no charge. The policy set forth below applies to Commercial Service resources that are provided as part of the cooperative agreements.

For assistance that goes beyond the ''limited amount of reasonable assistance'' as defined below, applicants should make provision in their budgets. To determine the cost for services provided by the Commercial Service, applicants should contact the USEACs or overseas Commercial Service offices. These may be identified at *http://www.export.gov/commercialservice.*

There may be situations that prevent the Commercial Service from providing no-charge services to cooperators. Perhaps the most common example is another event to which the Commercial Service office has already committed its resources.

The definitions below will guide the domestic or overseas Commercial Service offices in implementing this policy.

a. Overseas Commercial Service Offices:

(1) Limited Amount: Cost-free assistance will not exceed two days' Commercial Service effort per cooperator, per country, per year. Direct costs and specially-prepared market research are not included in the cost-free assistance.

(2) No Charge: No fees are collected. The term applies only to indirect costs such as time expended by Commercial Service employees. Cooperators should always expect to pay direct costs, such as hiring an interpreter or transportation.

(3) Reasonable Assistance: This includes appointment making, temporary use of Commercial Service office space, when available, making hotel arrangements, briefing on market conditions, help organizing seminars/conferences, and other similar services worked out between the project team leader and the Commercial Service office.

b. U.S. Export Assistance Centers (USEACs):

USEACs can generally implement the policy as a no-charge extension of normal client support. Most USEAC service to cooperators is provided as part of long-term relationships developed in local exporting communities throughout the United States.

III. Eligibility

A. Definition of Eligible Entity

U.S. trade associations, non-profit industry organizations, and state departments of trade and their regional associations are eligible to apply for an MDCP award. In cases where no entity described above represents the industry, private industry firms or groups of firms, may be eligible to apply for an MDCP award. Such private industry firms or groups of firms must provide in their application, documentation demonstrating that no entity in the first three categories listed below represents their industry.

1. Trade Association: A fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

2. Non-Profit Industry Organization:

a. A non-profit small business development center operating under agreement with the Small Business Administration; or

b. A non-profit World Trade Center chartered or recognized by the non-profit World Trade Centers Association [18]; or

c. An organization granted status as a non-profit organization under Title 26 U.S.C. Section 501(c) (3), (4), (5), or (6) which operates as one of the following:

(1) Chamber of commerce,

(2) Board of trade,

(3) Business, export or trade council/interest group,

(4) Visitors bureau or tourism promotion group,

(5) Economic development group,

(6) Small business development center, or

(7) Port authority.

3. *State Departments of Trade and Their Regional Associations:*

a. Department of a state government tasked with promoting trade, tourism, or other types of economic development; or

b. Associations of the departments of trade (as defined above) of two or more states; or

c. Entities within a state or within a region that are associated with a state department of trade, tourism, or other types of economic development including non-profit, non-private, non-commercial entities which are at least partially funded by, directed by, or tasked by a state government to promote trade, tourism, or other types of economic development.

4. *Special Note Regarding Educational Institutions:* Educational institutions, such as schools, colleges, and universities, are generally not eligible. However, organizations that are part of an educational institution for administrative, financial, legal, or logistical reasons may be eligible. Such organizations that are not independent legal entities—for example, an unincorporated organization—which otherwise may be classified above under *1. Trade Association, 2. Non-Profit Industry Association,* or *3. State Departments of Trade and Their Regional Associations,* above are eligible.

In such a case, the eligible entity will include in its application a signed letter stating that MDCP funds will be used only by the eligible entity for the purposes outlined in its application, and that no such funds will be used by or retained by the educational institution, even though the funds may need to go through the educational institution because of the eligible entity's lack of a separate accounting system or lack of status as a separate legal entity.

[16] For successful applicants that include travel to the orientation in their application budget, the signed financial assistance award that they receive from the Department serves as official approval to expend project funds for this purpose, even if the orientation precedes the beginning of the award period.

[17] This expenditure is limited to allowable expenses (*e.g.,* air fare, ground transportation, and lodging) associated with attending the orientation.

[18] A description of the World Trade Centers Association is available on the Internet at *http://www.wtca.org.*

B. Eligibility of Current or Past Cooperators

MDCP aims to increase export market development activities by using program funds to encourage new initiatives. MDCP funds are not intended to replace funds from other sources, nor are they intended to replace MDCP funding from a previous award. Current or past cooperators may propose a new project. *See V.A.4. Creativity and Capacity* below.

C. Determination of Eligibility

1. Request for Determination: Prospective applicants are encouraged to resolve questions regarding eligibility by requesting an eligibility determination in writing accompanied by the most current version of all of the following documents that apply:

a. Articles of incorporation,
b. Charter,
c. Bylaws,
d. Information on types of members and membership fees,
e. Internal Revenue Service acknowledgment of non-profit status,
f. Annual report,
g. Audited financial statements,
h. Documentation of ties to state trade departments or their regional associations, and
i. The letter described in *III.A.4. Special Note Regarding Educational Institutions* above.

Prospective applicants should submit eligibility determination requests as soon as possible, if they wish to have determinations prior to the application deadline. This deadline will not be extended, and applicants should continue to work on applications while awaiting the Department's eligibility determination.

2. Joint Ventures: Entities may join together to submit an application as a joint venture; however, only one eligible organization can be the designated cooperator. For example, two trade associations may pool their resources and submit one application, but only one of the two will be the cooperator. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share project costs. Applicants should pay special attention to *II.C.2.b. In-Kind Contribution* above, when formulating a partnership or joint venture.

IV. Applications

A. Format

The basic elements of the application are set forth below. Additional instructions and required forms are provided in the application kit available from *www.export.gov/mdcp.*

1. Executive Summary: In accordance with *V.B. Evaluation and Selection Procedures* below, the Department will distribute applicants' one-page summaries to its experts to solicit comments. This summary should communicate the essence of the application proposal including the following:

a. Applicant's name and location,
b. Name of partnership organizations joining applicant,
c. ITA entities and other Federal offices with which applicant envisions working,
d. Amount of Federal funds requested,
e. Total project budget,
f. Proposed award period,
g. Foreign markets targeted,
h. U.S. industry to be promoted, and
i. Brief description of the project activities and methods.

2. Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

a. Market potential of the U.S. products,
b. Competition from host-country and third-country suppliers,
c. Economic situation and the ability of a country to import the U.S. products,
d. Industry resources that can be brought to bear on developing a market,
e. Industry's ability to meet potential market demand, and
f. Industry's after-sales service capability in designated foreign market(s).

3. Project Description: After describing their completed basic research, applicants should develop marketing plans that set forth project objectives and the specific activities applicants will undertake.

a. Work Plan: The project description should include a list of specific activities planned, including: (1) The different phases of the project, identifying each milestone and activity in chronological order; (2) the location where activities will take place; and (3) the ways the applicant intends to involve ITA as a partner in project activities.

b. Performance Measures:

(1) Applicant-Designed Performance Measures: Applicants should develop and utilize performance measures which reasonably gauge project success.

(2) ITA Performance Measures: ITA reports results using the Government Performance and Results Act (GPRA) measures defined for its programs and activities.[19] All cooperators will report quarterly on the GPRA measures listed below. Because they are not defined by the cooperator, ITA recognizes that some GPRA measures may be more applicable to some projects than to others. However, cooperators should be prepared to record the effect of MDCP project activity on as many of the performance measures below as possible.

(a) How does MDCP project activity increase:

(i) Awareness and understanding of ITA products and services,
(ii) Satisfaction with the quality of ITA products and services,
(iii) Ease of use of ITA's Internet portal, and
(iv) Ease of access to ITA export and trade information and data,

(b) Number of deals[20] executed by U.S. businesses,

(c) Dollar value of exports of U.S. businesses resulting from participation in MDCP project activities,

(d) Number of U.S. businesses that are new to export,[21]

(e) Number of U.S. businesses that are new to market,[22]

(f) Brief description of each partnership[23] between ITA and a public or private entity that is established or enhanced, and

(g) Number of export activities undertaken by U.S. businesses. (*See* examples below in V.A.1. *Export Success Potential.*)

(3) Performance Measure Reporting Requirements: Each cooperator should report on both applicant-designed measures and ITA performance measures in its quarterly reports.

[19] GPRA was enacted August 3, 1993 (Pub. L. 103–62).

[20] A ''deal'' is an action facilitated by the cooperator or its partners, including ITA, for U.S. exporters. Deals include the following types of export transactions: shipping goods or delivering services, signing an agent/distributor, identifying an agent/distributor, signing a contract with sales expected in the future, helping a U.S. firm avoid harm or loss, and helping resolve a trade dispute.

[21] a ''new-to-export'' firm that transacts an actual, verfiable export shipment of goods or delivery of services for the first time in the last 24 months, and where any prior exports resulted from unsolicited orders or were received through a U.S.-based intermediary.

[22] A ''new-to-market'' firm is a U.S. firm that transacts an actual, verifiable export shipment of goods or delivery of services to a market for the first time in the last 24 months, and where any prior exports to the market resulted from unsolicited orders or were received through a U.S.-based intermediary.

[23] A ''partnership'' is a new or enhanced relationship codified in writing through a memorandum/letter of understanding/agreement, reimbursable agreement, grant, cooperative agreement, or contract. A partnership is created when an applicant is selected for an MDCP award and becomes a cooperator. However, some cooperators, in the course of pursuing their MDCP project, might create or enhance other partnerships between ITA and public or private entities. Any such created or enhanced partnerships should be described in a cooperator's quarterly reports.

(4) Performance Measure Recording and Reporting System: Each applicant should describe its recording and reporting system in its proposal. Ultimately, it is the success of individual companies that determines the project's export success. Therefore, applicants should demonstrate how they plan to ensure that participant companies, and any other sources of export success information, will report to it anecdotes and other performance measurement information.

c. Partnership: Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact. As noted under *II.B.1. Project Team* above, each cooperator will work with a project team leader and other ITA team members. Team members from other federal agencies also may be invited to participate. Applicants must describe in detail all assistance expected from ITA or other federal agencies.

d. Project Funding Priorities: Project proposals must be compatible with U.S. trade and commercial policy. In addition, applicants are encouraged to address the priorities set forth below. An application does not need to focus on a specific number of these priorities to qualify for an award. It is conceivable that an applicant could do a superb job focusing on only one of the priorities and receive an award.

The international trade priorities listed below are the priorities referred to in *V.A.3. Partnership and Priorities.* The Department is interested in receiving proposals that include projects that:

(1) Promote an industry particularly well suited to foreign market development including information technology, telecommunications, energy, environmental technology, tourism, services, and healthcare;

(2) Increase trade opportunities by opening markets through the development of new trade agreements, the support of World Trade Organization negotiations, the removal of non-tariff barriers, or the development of commercial infrastructure in emerging economies;

(3) Increase overall export awareness and awareness of ITA programs and services among U.S. companies, by making SMEs export-ready or by facilitating deal-making;

(4) Ensure compliance with trade agreements;

(5) Support the Administration's broader foreign policy objectives through trade-related initiatives;

(6) Promote the use of e-commerce as a low-cost, low-risk tool to help SMEs to export;

(7) Increase ''hands-on'' export education designed for SMEs through:

(a) Developing educational tools such as curricula and media, and/or

(b) Providing company-specific assistance; and

(8) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies.

4. Credentials: Each cooperator must ensure adequate development, supervision, and execution of project activities for itself and for each non-federal partner with significant involvement in the project. Therefore, for itself and each such partner, each applicant must:

a. Address its ability to provide a competent, experienced staff and other resources;

b. Describe its structure and composition;

c. Discuss the degree to which it represents the industry in question;

d. Describe the role, if any, foreign membership plays in its affairs;

e. Summarize the recent history of its industry's international competitiveness;

f. Provide a resume for the project director and professional personnel; and

g. Project the amount of time each professional will devote to the project.

5. Finance and Budget: Applicants must provide a detailed budget for the project including the elements listed below:

a. Form 424A ''Budget Information—Non-Construction Programs'';

b. Budget for Project Award Period;

c. Supporting worksheets and explanations;[24]

d. A discussion of financial systems and projections of how, when, and from what sources the matching funds will be or have been raised;

e. A summary of all financial assistance awards received in excess of $20,000 over the last five years. This should include the award reference number, contact name, title, organization, email (if available), fax, and mailing address;

f. The most recent audited financial statements. If the applicant is a sub-unit of an audited entity, in addition to the financial statements of the audited entity, the applicant should provide financial statements at the most specific level available, whether or not these are audited. If the applicant's most recent financial statements are not audited, it should submit the most recent unaudited financial statements and a statement indicating whether it currently has an auditor and when it plans to issue audited financial statements; and

g. Any additional evidence of financial responsibility.

6. Forms: In addition to the budget forms identified above, each application must include the following completed forms:

a. SF–424 Application for Federal Assistance;

b. SF–424B Assurances—Non-Construction Programs;

c. CD–346 Applicant for Funding Assistance; and

d. CD–511 Certifications Regarding Debarment, Suspension, and Other Responsibility Matters.

In addition, applicants may determine that they need to complete forms CD–512 ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and/or form SF–LLL ''Disclosure of Lobbying Activities''. These are available at *http://www.export.gov/mdcp* as part of the application kit, which includes explanations of the forms.

7. Appendices: Appendices should be tabbed or otherwise marked for easy reference. Applicants should include in their appendices, whatever material supports the main body of the application (*IV.A.1–4*), including the types of appendices listed below.

a. The portion of the application defined above in *IV.A.5. Finance and Budget.*

b. The forms noted above in *IV.A.6. Forms.*

c. The determination of eligibility that an applicant has received from the Department.[25] An applicant that has been found eligible in the past, but does not have a letter of eligibility, should request such a letter as soon as possible so it can receive one to include in its application.

d. Letters of support for the project are not required or expected.[26] Applicants

[24] An example of how to generate Form 424A, the Budget for Project Award Period, and supporting worksheets and explanations is included in the Mock Application at *www.export.gov/mdcp.* Applicants are welcome to copy the spreadsheet file used for the Mock Application budget and use it for their own applications.

[25] If the applicant has not received such a determination, it must include in the appendices the documents requested in *III.C.1. Determination of Eligibility* above.

[26] The fact that a public official does or does not submit a letter of support does not confer any inherent competitive advantage to an applicant. On the other hand, some letters of support can be critical to the success of an application. For example, if funds for the cash match are to be

that choose to submit letters of support should secure them soon enough to include them as application appendices.[27]

e. News media are informed by the Department when it announces awards. Applicants are invited to submit a list of news media the Department can contact when it issues its press release.[28] The most useful information is the fax number and e-mail address of the news media contacts. These would include local newspapers, trade publications, local broadcast stations, and Internet sites. Rather than including these as ''hard-copy'' in the application, the Department invites applicants to submit this on floppy diskette, CD, or via email. Using the lowest version of any of the following file formats will ensure transferability: database (.dbf), Excel (.xls), Lotus 123 (.wk4), Word Perfect (.wpd), or Microsoft Word (.doc).

f. Current or past cooperators must submit a comparison between the proposed project and current or past projects. *See V.A.4. Creativity and Capacity* below.

B. Submission of Applications

1. Number of Pages: The main body of the application is limited to 50 pages. There is no limit on the number of pages for appendices. The main body of the application should include the substance of the applicant's proposal as identified in *IV.A.1.* through *IV.A.4.* above. Each page of the main body should be numbered.

2. Number of Copies: Each applicant must submit a signed original application plus two copies. The Department encourages applicants to submit five additional copies as well for a total of seven (7) copies.[29] However, if submitting seven (7) copies creates a financial hardship, applicants may submit the minimum of two copies plus the original.

If an applicant submits an original and two copies or any other number of copies greater than two and less than seven (7), the Department will make additional copies to allow all reviewers to read each application. However, the Department cannot guarantee that the copies will include features that are not easily reproduced on standard photocopy machines. For example, tabs might not be inserted, color pages might be reproduced in black and white, fold-out pages might not fold out, unusually sized (not 8.5″ x 11″) pages might be broken up, and the copies might be bound with staples or clips instead of the binding used for applicant-submitted material.

3. Distinguish Between Copies and Original: The Department needs to distinguish between the original application and copies. In order to facilitate processing of submitted applications, the Department recommends that applicants write or stamp ''original'' on the cover page of the original.

C. Retention of Applications

1. Award Winners: Copies of winning applications are distributed to project team members for their use in managing projects.

2. Unsuccessful and Ineligible Applicants: For each eligible application which does not win an award, and for each ineligible application, the Department will retain the signed original of the application for seven years and will destroy the copies.

3. Late and Ineligible Applications Returned to Sender: Late applications are not accepted. Late applications and applications submitted by ineligible applicants are returned to the sender. However, the Department will retain a copy of the cover page or transmittal letter for seven years.

V. Evaluation and Selection

A. Evaluation Criteria

The Department is interested in projects that demonstrate the possibility of both significant results during the award period and lasting benefits extending beyond the award period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

1. Export Success Potential: Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. An export initiative is a significant expenditure of resources by the chief executive officer (CEO) of a company in the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

a. Participating in an overseas trade promotion event;

b. Hiring an export manager;

c. Establishing an export department;

d. Exploring a new market through an overseas trip by the CEO;

e. Developing an export marketing/business plan;

f. Translating product literature into a foreign language;

g. Making product modifications to comply with foreign market requirements;

h. Commissioning an in-depth market research study;

i. Entering into a strategic alliance[30] with a foreign firm;

j. Advertising in a foreign business publication;

k. Undertaking an overseas direct-mail campaign to create product awareness;

l. Signing an agent/distributor;

m. Getting introduced to a potential foreign buyer; and

n. Signing an export contract/filling an export order.

Applicants should provide detailed explanations of projected results of the project.

2. Performance Measures: Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will increase or enhance the U.S. industry's presence in the foreign market(s).

Applicants must provide quantifiable estimates of projected increases and explain how they are derived. See *IV.A.3.b. Performance Measures* above. Applicants must detail the methods they will use to gather and report performance information.

3. Partnership and Priorities: The degree to which the project initiates or enhances partnership with ITA and the degree to which the proposal furthers or is compatible with ITA's priorities stated under *IV.A.3.c. Partnership* above.

4. Creativity and Capacity: Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan.

a. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried to

provided by the state legislature, a letter of commitment from the state's governor or comptroller certifying the availability of the funds would help the selection panel greatly in its review.

[27] Including these as appendices may make it easier for all reviewers to find such letters in the same place in the application. The Department's standard practice for letters of support not included as application appendices is to make them available to reviewers until the time the Selection Panel identifies the top-ranked applications.

[28] Including news media contacts as an application appendix is not required, but doing so will help the Department publicize the success of the award winners.

[29] Several copies will be needed in order for the Department to complete its evaluation. (As noted below under *V.B. Evaluation and Selection Procedures,* four selection panel members and several Department staff will review each application.)

[30] A collaboration of one company with another company that can provide resources to achieve corporate, economic and strategic goals. One benefit of strategic alliances is reciprocal access to more than one market. For example, firms in two different markets can agree to market each other's non-competing products in their respective ''home'' markets.

promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

b. Current or past cooperators must submit a table comparing their current or past project(s) and their proposed project. The need for this table and the requested format are described below.

As noted in the *Summary* at the beginning of the RFA, MDCP awards are designed to help underwrite the start-up costs of new projects. Accordingly, current or past cooperators can be in a position to earn the maximum number of points under this criterion only if they propose projects that are entirely new.

In order to determine whether a project is entirely new, the current or past cooperator must provide, as a separate appendix, a comparison between the elements of the proposed project and the elements of its current or past MDCP-funded projects. Current or past cooperators that propose projects that are not entirely new will receive fewer points under this criterion than they would receive otherwise.

In determining the number of points under this criterion, the selection panel will consider the level to which a particular applicant has incorporated elements of its previously funded MDCP projects. To do this, current or past cooperators should submit a table wherein they approximate the amount of resources devoted to each project element as a percentage of the total. For example, if an applicant received an MDCP award in 1995 and spent approximately $400,000 of a total $1,000,000 project budget on opening an office in Beijing, it could report that 40 percent of the resources of its 1995 project went toward the project element of opening its Beijing office. The applicant would do the same for the other elements of its projects.

Previous project(s)		Proposed project	
Element	%	Element	%
1	.....	1	.....
2 etc	.....	2 etc	.....
Total	100	Total	100

c. Institutional capacity will be measured by what each applicant submits. A current or past cooperator should not assume that success with a prior MDCP project will automatically be taken into account by the Department when reviewing its application. Each applicant must document its institutional capacity in its application.

5. Budget and Sustainability: Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award. Current or past cooperators must show how the proposed project will achieve self-sustainability independent of any current or past MDCP projects.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

B. Evaluation and Selection Procedures

The applicant is responsible for submitting a complete application in a timely manner. Prior to selection, each complete application receives a thorough evaluation as set forth below.

1. Eligibility Determination: OPCM staff, in consultation with the Department's Office of General Counsel, review all applications to determine the eligibility of each applicant.

2. ITA Program Area Review: Relevant ITA program areas, including TD, MAC, and the Commercial Service, have the opportunity to review the submitted applications. This allows experts in the industry sector or geographical region to assess applicant claims. These reviewers provide insights into both the potential benefits and the potential difficulties associated with the applications.

3. MDCP Administrative Review: Representatives of OPCM review and comment on all applications using the evaluation criteria identified above. OPCM prepares for the selection panel a review packet including the applications and reviewer comments. The MDCP administrative staff and program area comments afford the selection panel the insights and breadth of experience of Department professionals. However, the selection panel is free to consider or disregard them as it sees fit.

4. Selection Panel Composition: The MDCP Manager forwards all of the eligible applications, along with all related materials, to the selection panel of senior ITA managers. This panel is chaired by the OPCM Director and typically includes three other members, one each from TD, MAC, and the Commercial Service. Panel members are office directors or higher.

5. Selection Panel Scoring: Each selection panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The scores of each selection panel Member for each application reviewed are maintained in the files for seven years. The individual criteria scores are averaged to determine the total score for each application.

6. Ranked Recommendation: Based on the scores assigned by selection panel members and deliberations by the selection panel, the selection panel forwards the applications with the ten highest total scores (''top-ranked applications'') to the Assistant Secretary for Trade Development and recommends which of the top applications should receive funding. If the amount of funds requested by the top ten applicants is less than the funding available, the selection panel recommends additional applications for funding in rank order.

The selection panel's recommendation will not deviate from the rank order. This means, for example, that the selection panel cannot recommend funding for the application ranked seventh without recommending funding for applicants ranked first through sixth. The selection panel recommendation includes the panel's written assessment of the strengths and weaknesses of the top-ranked applications.

7. Selection of Applications for Funding: From the top-ranked applications forwarded by the selection panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the criteria in *V.A. Evaluation Criteria* above, the Assistant Secretary for Trade Development may consider the following in making decisions:

a. Scores of individual selection panel members and the selection panel's written assessments,

b. Degree to which applications satisfy the ITA priorities established under *IV.A.3.d. Project Funding Priorities* above,

c. Geographic distribution of the proposed awards,

d. Diversity of industry sectors and overseas markets covered by the proposed awards,

e. Diversity of project activities represented by the proposed awards,

f. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies, and

g. Availability of funds.

C. Announcement of Award Decisions

Award winners will be notified by letter. Once award winners formally accept their awards, the Department will announce the award winners at *http://www.export.gov/mdcp.*

Within ten days of the Department's announcement of the awards, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officials.

VI. Other Requirements and Classification

A. Other Requirements

1. *Pre-Award Notification Requirements:* The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

2. Pre-Award Activities: There is no obligation on the part of the Department to cover pre-award costs. Except as noted above in *II.C.4. Approved Pre-Award-Period Expenditure,* if applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government.

3. Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

B. Classification

1. Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

2. Paperwork Reduction Act: This notice contains collection of information requirements subject to the Paperwork Reduction Act. The use of SF–424, SF–424A, SF–LLL, and CD–346 have been approved by the Office of Management and Budget (OMB) under respective OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: March 14, 2003.

Robert W. Pearson,

Director, Office of Planning, Coordination and Management, Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 03–6589 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403A]

Proposed Information Collection; Comment Request; Alaska Region Scale and Catch Weighing Requirements

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228, or at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The procedures in question are designed for Western Alaska Community Development Quota (CDQ) catcher/processors and American Fisheries Act (AFA) catcher/processors and AFA motherships and involve catch weighing, observer sampling stations, and observer coverage requirements. This existing information collection would be revised to incorporate catch-weighing requirements for AFA inshore processors (shoreside processors and stationary floating processors).

NMFS must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. This is accomplished through a catch-monitoring system that: allows for independent verification of catch weight, species composition and haul location data; ensures that all catch is weighed accurately; and provides a record of the weight of each delivery that may be audited by NMFS. Requirements include approval of scale types for use, inspection requests, scale tests, an inshore processor catch monitoring and control plan, and printed output from scales.

II. Method of Collection

Forms or may be e-mailed, FAXed or submitted in paper form. The daily scale test forms and scale printed output are paper forms that are not submitted to NMFS.

III. Data

OMB Number: 0648–0330.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 37.

Estimated Time Per Response: 20–190 hours for a scale type evaluation; 6 minutes for at-sea scale inspection request; 6 minutes for scale approval report/sticker; 2 minutes for application to inspect scales on behalf of NMFS; 6 minutes for records of daily at-sea or shoreside scale tests; 45 minutes for printed at-sea or shoreside scale output; 2 hours for request for observer station inspection; 5 minutes for inshore Catch Monitoring and Control Plan (CMCP) inspection request; 40 hours for CMCP; and 8 hours for CMCP addendum.

Estimated Total Annual Burden Hours: 4,727.

Estimated Total Annual Cost to Public: $6,048.

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: March 12, 2003

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6590 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 031403B]

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.

Title: Vessel Monitoring System for Atlantic Highly Migratory Species.

Form Number(s): None.

OMB Approval Number: 0648–0372.

Type of Request: Regular submission.

Burden Hours: 2,181.

Number of Respondents: 320.

Average Hours Per Response: 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.3 seconds per automated position report from the automated equipment; and 5 minutes to complete and return a one-time installation checklist.

Needs and Uses: Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear are required to install and operate vessel monitoring systems. Automatic position reports are submitted on an hourly basis whenever the vessel is at sea. The National Marine Fisheries Service (NMFS) proposes to revise the current requirements to add an installation checklist that vessel operators would follow and then submit to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS will use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

Affected Public: Business or other for-profit organizations.

Frequency: One-time, 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 Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@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: March 12, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6591 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403C]

Proposed Information Collection; Comment Request; Tortugas Access Permits.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Armor at 301–713–3125, ext. 117, or at *John.Armor@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to gain access to the Tortugas ecological reserve, persons must obtain a permit. The permit holders must notify NOAA by radio no less than 30 minutes and no more than 6 hours before entering the reserve, and when leaving it. Permit actions may be appealed.

The purposes of the access permit and notifications are to (1) protect this unique deepwater coral reef and (2) facilitate the enforcement of the no-take regulations in this remote area. The overall intended effect of this collection is to protect the deepwater coral reef community in this area from being degraded by human activities.

II. Method of Collection

Applications and notifications are made by phone. Appeals must be in writing.

III. Data

OMB Number: 0648–0418.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions; State, Local, or Tribal Government.

Estimated Number of Respondents: 101.

Estimated Time Per Response: 10 minutes for a application; 2 minutes for a radio call; and 90 minutes for an appeal.

Estimated Total Annual Burden Hours: 24.

Estimated Total Annual Cost to Public: $28.

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: March 12, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6592 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031403D]

Proposed Collection; Comment Request; Basic Requirements for All Marine Mammal Special Exception Permits to Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan or Ruth Johnson at 301–713- 2289, or to *Amy.Sloan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The respondents will be applicants for and holders of scientific research and enhancement permits, commercial and educational photography permits, public display permits for captures and first-time imports, and Letter of Confirmation holders under the General Authorization for Level B scientific research projects. The Marine Mammal Protection Act (MMPA), the Fur Seal Act (FSA) and the Endangered Species Act (ESA) prohibit the taking, import, and export of marine mammals with certain exceptions. Applicants desiring a permit or authorization to take, import, or export must provide certain information to be used as a basis for determining whether the proposed activity is consistent with the purposes, policies, and requirements of the MMPA, ESA, and/or FSA and if a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted and species taken to ensure compliance with permit conditions and protection of the animals. This also updates information as necessary on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

There is no overlap or duplication for marine mammal permit actions under the ESA as the marine mammal regulations (50 CFR 216.32 - 216.44) address requirements of both laws, and a single application and permit covers all requirements of both.

II. Method of Collection

Most application material is paper and written to respond to a required format. Some reports can be submitted electronically.

III. Data

OMB Number: 0648–0084.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government. The majority of the affected public will be from the scientific research community, photographic journalists, and public display facilities.*Estimated Number of Respondents:* 493.

Estimated Time Per Response: 29 hours for an application for a scientific research or enhancement permit; 20 hours for an application for a public display permit; 10 hours for an application for a photography permit; 19 hours for a major amendment to a permit; 3 hours for a minor amendment to a permit or for a change to a General Authorization; 2 hours for a request to retain or transfer a rehabilitated marine mammal; 1 hour for a foreign government certification and comity statement for a public display export request; 30 minutes for notification of a public display capture or import; 2 hours for a notification of and report on a public display capture; 30 minutes for an emergency transfer waiver of notifications; 30 minutes for an initial escape report; 1 hour for an one-week status report on an escape; 2 hours for a six-month status report on an escape; 12 hours for a scientific research/enhancement annual or final report; 2 hours for public display or photography permit annual or final report; 8 hours for a General Authorization annual or final report; 2 hours for a marine mammal inventory (1 hour for a transport notification, 30 minutes for a data sheet and a person/holder/facility sheet); and 2 hours for recordkeeping.

Estimated Total Annual Burden Hours: 6,462.

Estimated Total Annual Cost to Public: $1,000.

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: March 12, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6593 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010203E]

Marine Mammals; File No. 1026–1671

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Belinda L. Rubinstein, New England Aquarium, Central Wharf, Boston, MA 02110 has been issued a permit to take harbor seals (Phoca vitulina), harp seals (*Phoca groenlandica*), gray seals (*Halichoerus grypus*), hooded seals (*Cystophora cristata*) and ringed seals (*Phoca hispida*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; andSoutheast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 5, 2002, notice was published in the **Federal Register** (67 FR 50632) that a request for a scientific research permit to take harbor seals, harp seals, gray seals, hooded seals, and ringed seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Solitary seals will be captured, tagged, sampled (including tooth extraction, blubber biopsy, blood and milk collection, anal swabs and fecal samples), and released. In addition to taking wild animals, the applicant also requests authority to sample conspecifics held in rehabilitation facilities. Samples may be exported and re-imported for analyses. The purposes of the research are to study habitat utilization using satellite telemetry and flipper tagging, determine stock association, and monitor health of phocids along the east coast of the U.S., from Maine to Virginia.

Dated: March 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–6594 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Advisory Group Meeting of the U.S. Strategic Command

AGENCY: USSTRATCOM, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Strategic Advisory Group (SAG) will meet in a closed session on April 24 and 25, 2003.

The mission of the SAG is to provide timely advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command during the development of the Nation's war plans. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated April 17, 1995. Access to this information must be strictly limited to personnel having the requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact on national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C., section 552b(c), and that, accordingly, this meeting will be closed.

DATES: April 24 and 25, 2003.

ADDRESSES: USSTRATCOM, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–6030.

FOR FURTHER INFORMATION CONTACT: Connie Druskis, SAG, (402) 294–4102; Jerome Mahar, Joint Staff, (703) 614–6465.

Dated: March 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–6384 Filed 3–18–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 19, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 13, 2003.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision of a currently approved collection.

Title: Report of Children with Disabilities Exiting Special Eduation During the School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 30508.

Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under IDEA–B exiting special education. The form satisfies reporting requirements and is used by OSEP to monitor SEAs and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the Browse Pending Collections link and by clicking on link number 02233. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Carey at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–6489 Filed 3–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 9, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide an update on remediation activities at the Molten Salt Reactor Experiment (MSRE). MSRE operated at Oak Ridge National Laboratory from 1965 to 1969 to test the concept of using molten, radioactive salt for commercial nuclear power reactors. During initial decommissioning activities it was discovered that the potential for nuclear criticality existed due to unstable carbon-fluoride compounds that had formed in the system. Remedial actions were initiated to mitigate risks at MSRE, and a Record of Decision was signed in July 1998 for removal of the fuel and flush salts.

Tentative Agenda:

• Mike Jugan, DOE–Oak Ridge, will provide a historical review of the MSRE project and an update on current and planned activities.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on March 14, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–6517 Filed 3–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–068]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 12, 2003.

Take notice that on March 7, 2003, ANR Pipeline Company (ANR), tendered for filing a notification to the Commission of a change in the termination date of a Firm Storage Service Agreement and certain associated transportation agreements.

ANR states that the notice and associated agreement reflect that the negotiated rate agreement between ANR and Reliant Energy Marketing Services, Inc. and all underlying service will be terminated on April 1, 2003 instead of March 31, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6542 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–341–000 and ER03–342–000]

Calpine Power America—OR, LLC and Calpine Power America—CA, LLC; Notice of Issuance of Order

March 12, 2003.

Calpine Power America—OR, LLC and Calpine Power America—CA, LLC (collectively, ''Applicants'') filed an application for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of capacity, energy and ancillary services, resale of transmission rights and for the reassignment of transmission rights. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On February 24, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the establishment of a period of time for the filing of protests.

Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 26, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are 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 Applicants, 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 Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order by the Director, Division of Tariffs and Market Development-South, are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6524 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–353–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 6, 2003, CenterPoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, tendered for filing its compliance filing in conformity with the letter order of the Federal Energy Regulatory Commission issued on February 19, 2003 in Docket No. RP02–353–000.

CEGT states that a copy of this filing has been served on each person designated on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6528 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–246–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 7, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective March 3, 2003:

Substitute First Revised Sheet No. 560
Substitute Original Sheet No. 560A

CEGT states that the purpose of this filing is to comply with the Commission's order issued February 27, 2003, in Docket No. RP03–246–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6532 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC03–27–000 and EC02–113–002]

Cinergy Services, Inc.; Notice of Filing

March 12, 2003.

Take notice that on March 5, 2003, Cinergy Services, Inc. filed with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's Order issued on February 4, 2003 in Docket No. EC02–113–000, 102 FERC § 61,128.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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. The Commission strongly encourages electronic filings.

Comment Date: March 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6521 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–295–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 2003.

Take notice that on March 4, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of April 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage service comprises the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6538 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–296–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 12, 2003.

Take notice that on March 5, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of April 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission (Columbia) under its Rate Schedule FSS. The costs of the above referenced storage service comprises the rates and charges payable under ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6539 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–111–001]

El Paso Natural Gas Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on February 28, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective January 1, 2003.

Sub Twenty-Seventh Revised Sheet No. 20
Sub Thirty-Second Revised Sheet No. 24
Sub Twenty-Sixth Revised Sheet No. 26
Sub Twenty-Sixth Revised Sheet No. 27
Sub Fourteenth Revised Sheet No. 38

El Paso states that the tendered tariff sheets revise El Paso's inflation adjustment filing in Docket No. RP03–111–000 to escalate for inflation the California Receipt Service usage rates recently accepted by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6529 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–401–003]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 10, 2003, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective March 1, 2003.

AlaTenn states that the purpose of the filing is to comply with the Commission's Order issued on February 25, 2003 in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6526 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–297–000]

MIGC, Inc.; Notice of Tariff Filing

March 12, 2003.

Take notice that on May 6, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, the following tariff sheets, to become effective May 1, 2003.

First Revised Sheet No. 2
First Revised Sheet No. 34
Second Revised Sheet No. 37
Fourth Revised Sheet No. 48
Fourth Revised Sheet No. 49
First Revised Sheet No. 49A
Fifth Revised Sheet No. 50
Seventh Revised Sheet No. 51
Sixth Revised Sheet No. 52
Fourth Revised Sheet No. 52A
Third Revised Sheet No. 54
Sixth Revised Sheet No. 66
Second Revised Sheet No. 66A
Third Revised Sheet No. 69
Third Revised Sheet No. 70
Fourth Revised Sheet No. 74
Third Revised Sheet No. 81
Original Sheet No. 81A
First Revised Sheet No. 84A
Fourth Revised Sheet No. 90A
Second Revised Sheet No. 90C
Original Sheet No. 90G
Original Sheet No. 90H
Third Revised Sheet No. 115

MIGC asserts that the purpose of this filing is to update MIGC's tariff to provide MIGC with more flexibility to enhance Shipper rights on a not unduly discriminatory basis, to allow MIGC to more effectively manage imbalances and measurement equipment on its system and to make effective certain housekeeping changes. Specifically, MIGC proposes the following revisions:

Authorize MIGC to waive any provisions of its effective tariff regarding MIGC rights or Shipper obligations for good cause and on a basis which is not unduly discriminatory.

Allow MIGC the flexibility to offer early contract terminations or reduction for all Shippers on a not unduly discriminatory basis.

Allow MIGC the flexibility to bear costs associated with constructing new interconnects.

Add tariff language providing for the purchase and sale of gas supply by MIGC for the purpose of maintaining

system balance and operating pressures as previously approved in Docket No. RP97–416.

Revise cash out formula to provide for the cash out of all imbalances.

Provide that measurement facilities shall be installed, owned, maintained and operated by MIGC, unless agreed to otherwise.

Make several housekeeping revisions.

MIGC states that copies of the filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6540 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–017]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 7, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 478, with an effective date of April 1, 2003.

National Fuel states that the purpose of this filing is to submit for Commission review and acceptance four non-conforming service agreements and the tariff revision identifying these agreements. The agreements contain provisions which deviate from the Form of Service Agreement for Firm Storage Transportation and Firm Storage Service contained in National Fuel's Volume No. 1 Tariff in the following areas: rate, term, and miscellaneous.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6541 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–38–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 5, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, certain tariff sheets to be effective March 5, 2003.

Natural states that the purpose of the filing is to cancel Natural's Rate Schedule X–85, which provided for an exchange service between Natural and Northern Natural Gas Company (Northern) pursuant to a gas exchange agreement between Natural and Northern dated May 5, 1980.

Natural states that the subject tariff sheets are being filing in compliance with Ordering Paragraph (A) of the Commission's order issued February 26, 2003 in Docket No. CP03–38–000. Such order authorized Natural to abandon its exchange service with Northern authorized in Docket No. CP81–64–000.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. CP03–38–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6523 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–235–001]

Northern Natural Gas Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 5, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of February 13, 2003:

1st Rev. 9th Revised Sheet No. 201
Substitute Second Revised Sheet No. 233
Substitute Fifth Revised Sheet No. 264
Original Sheet No. 308
Sheet No. 309
Substitute Third Revised Sheet No.400
Substitute Second Revised Sheet No. 402
Substitute First Revised Sheet No. 403
Substitute Fourth Revised Sheet No. 431
Substitute Fourth Revised Sheet No. 441
Substitute Fourth Revised Sheet No. 446

Northern states that the filing is being made in compliance with the Commission's order issued on February 12, 2003, in Docket No. RP03–235–000 (Order):

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 17, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–6531 Filed 3–18–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–294–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 2003.

Take notice that on February 28, 2003, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Tenth Revised Sheet No. 161, with an effective date of March 1, 2003.

Paiute indicates that the purpose of its filing is to reflect (1) a reduction in the monthly billing determinants for one of its firm transportation shippers, Sierra Pacific Power Company, and (2) a recent change in the name of another of its firm transportation shippers.

Paiute states that copies of the filing are being served upon all of Paiute's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 17, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–6537 Filed 3–18–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–129–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 7, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 249; Original Sheet No. 249A; Second Revised Sheet No. 250; Original Sheet No 250A; First Revised Sheet No. 254; and Second Revised Sheet No. 254A, to be effective February 1, 2003.

Panhandle states that this filing is being made to comply with the Commission's Letter Order dated February 26, 2003, in Docket No. RP03–129–000 which directed Panhandle to file actual tariff sheets, consistent with the *pro forma*tariff sheets filed on November 27, 2002, in the subject docket, to be effective February 1, 2003.

Panhandle states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6530 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–259–001]

Questar Pipeline Company; Notice of Tariff Filing

March 12, 2003.

Take notice that on March 7, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 56A; Substitute Second Revised Sheet No. 69; and Substitute Original Sheet No. 69A, to be effective April 7, 2003.

Questar states that this filing proposes to amend Questar's cleanup tariff filing that was filed February 20, 2003. Two sheets in that filing contained language that was not clear or could be interpreted as inconsistent with Commission policy. Questar seeks to rectify the February 20, 2003, filing.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6533 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–318–002]

Questar Southern Trails Pipeline Company; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 10, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective March 1, 2003:

First Revised Sheet No. 1
Second Revised Sheet No. 4
First Revised Sheet Nos. 5, 30, 53, 58, 69, 89 and 112

Southern Trails states that the filing is being made in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–K, 587–L, 587–M and 587–N issued February 6, 2003, (February Order) in Docket Nos. RP02–318–000 and RP02–318–001.

On May 1, 2002, Southern Trails filed tariff sheets in Docket Nos. CP99–163–000, *et al.*, and RP02–318–000 in compliance with the Commission's Preliminary Determination on Nonenvironmental Issues. Southern Trails also filed tariff sheets in compliance with Commission Order Nos. 637, 587–G, 587–L, 587–M and 587–N. On June 5, 2002, the Commission issued an order in Docket Nos. RP02–318–000 and RP02–318–0011 approving Southern Trails' tariff filing, subject to further review, in its compliance with FERC Order Nos. 637 and 587–K through 587–N. Subsequently, the Commission issued the February Order and approved, in part, Southern Trails' FERC Order Nos. 637, 587–G, 587–L, 587–M and 587–N tariff sheets. The Commission, in the February Order, directed Southern Trails to make revisions to its tariff sheets as discussed in the February Order and file revised actual tariff sheets within 30 days of the date of issuance of the order with an effective date of March 1, 2003. This filing is tendered to comply with the Commission's February Order.

Southern Trails states that a copy of this filing has been served upon its customers and the public service commissions of Utah, New Mexico, Arizona and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6527 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–271–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 7, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, with an effective date of April 1, 2003.

Transco states that the purpose of the instant filing is to supplement Transco's Electric Power Tracker filing of February 28, 2003 (February 28 filing), which inadvertently reflected an incorrect calculation of the MDt-Miles and the Traversing Volumetric

Determinants included in the allocation and rate design of the Transmission Electric Power (TEP) Rates.

Further, Transco states that it is removing $2,076 from its Estimated TEP costs included in the February 28 filing related to projected Station 535 TEP costs. Transco has determined that these estimated costs are storage-related and thus should not have been included in the Estimated TEP costs included in February 28 filing.

Transco states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6534 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–274–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 12, 2003.

Take notice that on March 7, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Eleventh Revised Sheet No. 40J.01 and Substitute Eighth Revised Sheet No. 40J.02. The tariff sheets are proposed to be effective April 1, 2003.

Transco states that the purpose of the instant filing is to incorporate the revised electric power rates reflected in Transco's Supplemental Electric Power Tracker Filing in Docket No. RP03–271–000, dated March 7, 2003, into its February 28, 2003, Sunbelt Commodity Rate Filing (February 28 filing). Transco is not proposing any other changes to its February 28 filing.

Transco states that copies of the filing are being mailed to affected customers, interested State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6535 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–273–001]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 13, 2003.

Take notice that on March 7, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Seventeenth Revised Sheet No. 44, with an effective date of April 1, 2003.

Transco states that the filing is being submitted to supplement Transco's Fuel Tracker filing of February 28, 2003, which inadvertently reflected an incorrect calculation of the Commodity Fuel Dt-Miles and The Commodity Volume Traversing Zones included in the calculation of the system transportation fuel retention percentages by zone. The result of the revised calculation of the system transportation fuel retention percentages is an increase in Zone 4A from 0.42% to 0.43% and Zone 5 from 1.19% to 1.20%.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6600 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–286–001]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

March 12, 2003.

Take notice that on March 6, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective on April 1, 2003.

Williston Basin states that it has come to Williston Basins attention that it had incorrectly presented the electric power reimbursement rates on its tariff sheets in the above referenced filing. Williston Basin requests that it be allowed to substitute the corrected sheets for the corresponding sheets in its February 28, 2003, filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6536 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. ER03–5–001, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

March 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–5–001]

Take notice that on March 7, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, submitted for filing a revised Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

Midwest ISO states that a copy of this filing was sent to the GM Transmission, LLC and Northern States Power Company d/b/a Xcel Energy.

Comment Date: March 28, 2003.

2. TRANSLink Development Company, LLC

[Docket No. ER03–216–002]

Take notice that on March 3, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and TRANSLink Development Company, LLC (TRANSLink Development) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to certain provisions of the Appendix I Agreement (Agreement) between the Midwest ISO and TRANSLink Development, pursuant to the Commission's January 15, 2003 Order in docket number ER03–216–000.

The Midwest ISO and TRANSLink have requested an effective date of March 4, 2003.

The Midwest ISO states that it has served copies of its filing on all affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 24, 2003.

3. Mesquite Power, LLC

[Docket No. ER03–427–002]

Take notice that on March 6, 2003, Mesquite Power LLC (Mesquite) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, originally filed on January 17, 2003 and amended on February 28, 2003.

Comment Date: March 21, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–552–001]

Take notice that on March 6, 2003, the New York Independent System Operator, Inc. (NYISO), submitted corrected tariff sheets to the NYISO's Open Access Transmission Tariff (OATT) originally filed on February 21, 2003. The NYISO has requested that the Commission make the filing effective 90 days after the Commission issues a final order accepting it.

The NYISO states that copies of the filing were served on all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 27, 2003.

5. Minnesota Power

[Docket No. ER03–475–001]

Take notice that on March 6, 2003, Minnesota Power tendered for filing with the Federal Energy Regulatory Commission (Commission) Substitute First Revised Sheet Nos. 71, 77, 78 and 79 superseding Original Sheet Nos. 71, 77, 78 and 79 and Original Sheet No. 83 of the Second Revised Rate Schedule FERC No. 136, designated as required by Commission Order No. 614, for wholesale electric service to the City of Hibbing, Minnesota Public Utilities

Commission (Hibbing). Minnesota Power requests an effective date of January 1, 2003.

Comment Date: March 27, 2003.

6. Southern Company Services, Inc.

[Docket No. ER03–596–000]

Take notice that on March 6, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of the Interconnection Agreement between Tenaska Alabama III Partners, L.P. and APC (Service Agreement No. 338 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5).

APC is requesting an effective date of October 1, 2002.

Comment Date: March 27, 2003.

7. Brookhaven Energy Limited Partnership

[Docket No. ER03–597–000]

Take notice that on March 7, 2003, Brookhaven Energy Limited Partnership (Brookhaven Energy), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations.

Brookhaven Energy states that it is a limited partnership formed under the laws of Delaware and intends to construct, own and operate a 540-MW power generation facility to be located in Brookhaven, New York (Facility). The Facility is expected to begin commercial operation by July 2005.

Comment Date: March 28, 2003.

8. Entergy Services, Inc.

[Docket No. ER03–599–000]

Take notice that on March 5, 2003, Entergy Services, Inc. (Entergy Services) submitted for filing on behalf of Entergy Arkansas, Inc. (EAI) a 2003 Wholesale Formula Rate Update (Update) in accordance with: (1) The Power Coordination, Interchange and Transmission Service Agreements (PCITA) between EAI and the Cities of Conway, West Memphis and Osceola Arkansas (Arkansas Cities); the cities of Campbell and Thayer, Missouri (Missouri Cities); and the Arkansas Electric Cooperative Corporation (AECC); (2) the Transmission Service Agreement (TSA) between EAI and the City of Hope, Arkansas (Hope); (3) the TSA between EAI and the Louisiana Energy & Power Authority (LEPA); (4) the Wholesale Power Service Agreement (WPSA) between EAI and the City of Prescott, Arkansas (Prescott); and (5) the WPSA between EAI and the Farmers Electric Cooperative Corporation (Farmers). In addition, the distribution rate charged to the City of North Little Rock pursuant to the Network Integration Transmission Service Agreement is also redetermined by this filing. Entergy Services states that the Update redetermines the formula rate charges and the Transmission Loss Factor in accordance with: (1) The above agreements; (2) the 1994 Joint Stipulation between EAI and AECC accepted by the Commission in Docket No. ER95–49–000, as revised by the 24th Amendment to the AECC PCITA on March 26, 1996 in Docket No. ER96–1116; (3) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95–393–000, as applicable to the Arkansas Cities, the Missouri Cities, Hope and North Little Rock; (4) the formula rate revisions applicable to LEPA accepted by the Commission on January 10, 1997 in Docket No. ER97–257–000; and (5) the Settlement Agreement accepted by the Commission on July 2, 1999 in Docket No. ER98–2028–000 (the 1998 Formula Rate Update proceeding).

Comment Date: March 26, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6017 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–64–000, et al.]

Mill Run Windpower LLC, et al.; Electric Rate and Corporate Filings

March 12, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mill Run Windpower LLC and FPL Energy Pennsylvania Wind, LLC

[Docket No. EC03–64–000]

Take notice that on March 7, 2003, Mill Run Windpower LLC (Mill Run) and FPL Energy Pennsylvania Wind, LLC (FPL Wind) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Applicants request approval of the transfer of 100% of the membership interests in Mill Run from Atlantic Renewable Energy Corporation and Zilkha Renewable Energy, LLC to FPL Wind.

Mill Run states that it is engaged exclusively in the business of owning and operating a 15 MW wind-powered electric generating facility located in Springfield and Stewart Townships, Fayette County, Pennsylvania (the Facility), and selling its capacity and energy at wholesale to Exelon Generation Company LLC. The Applicants request privileged treatment by the Commission of the detailed Membership Interest Purchase Agreement between Zilkha Renewable Energy, LLC and FPL Wind which governs the proposed transfer.

Comment Date: March 28, 2003.

2. Brookhaven Energy Limited Partnership

[Docket No. EG03–42–000]

Take notice that on March 7, 2003, Brookhaven Energy Limited Partnership (Brookhaven Energy), a Delaware limited partnership with its principal

place of business in Houston, Texas, 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.

Brookhaven Energy states that it intends to construct, own and operate a 540–MW power generation facility located in Brookhaven, New York (the Facility). When completed, the Facility will be interconnected to the transmission system of the Long Island Power Authority. The Facility is expected to begin commercial operation by July 2005.

Comment Date: April 1, 2003.

3. Maine Public Service Company

[Docket Nos. ER00–1053–008]

Take notice that on March 7, 2003, Maine Public Service Company (MPS) submitted revisions to its Open Access Transmission Tariff (OATT) to implement an Agreement Regarding Maine Public Service Company's 2002 Informational Filing (Agreement). MPS proposes that the OATT revisions become effective June 1, 2002.

MPS states that copies of this filing were served on the parties to the proceeding, parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: March 28, 2003.

4. Duke Energy Oakland, LLC and Duke Energy South Bay, LLC

[Docket Nos. ER02–10–004, ER98–496–014, ER02–239–004, ER02–240–004 and ER02–1478–003]

Take notice that on March 6, 2003, Duke Energy South Bay, LLC (Duke South Bay) and Duke Energy Oakland, LLC (Duke Oakland) submitted refund reports to the Federal Energy Regulatory Commission (Commission) in response to the Commission's November 21, 2002 Order in the above-referenced Dockets.

Comment Date: March 27, 2003.

5. TXU Pedricktown Cogeneration Company LP

[Docket No. ER03–256–002]

Take notice that on March 7, 2003, TXU Pedricktown Cogeneration Company LP (TXU Pedricktown), tendered for filing with the Federal Energy Regulatory Commission (Commission) a correction of its first revised market-based rate tariff (Tariff) that was filed on January 10, 2003. The correction reflects a slight change to paragraph seven (7) ''Affiliate Sales Prohibited'' of its Tariff to comply with the Commission Staff's request for a language change. TXU Pedricktown is requesting an effective date of December 3, 2002 for its first revised Tariff.

Comment Date: March 21, 2003.

6. Central Maine Power Company

[Docket No. ER03–349–001]

Take notice that on March 7, 2003, Central Maine Power Company (CMP), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, and the Commission's February 14, 2003 Letter Order, an unredacted form of the executed S.D. Warren Somerset Entitlement Agreement, effective as of March 1, 2003, and designated as Original FERC Rate Schedule No. 201.

Comment Date: March 28, 2003.

7. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–366–002 and ER03–368–003]

Take notice that on March 7, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 102 FERC § 61,181 (2003). The Midwest ISO has requested an effective date of 15 days after the Commission rules on whether the Network Integration Transmission Service Agreement between Consumers Energy Company and Michigan Electric Transmission Company dated April 1, 2002 is a Service Agreement under the Midwest ISO OATT or a Grandfathered Agreement under Attachment P of the Midwest ISO OATT.

The Midwest ISO has served copies of its filing on all affected customers. In addition, the Midwest ISO states it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO states it will provide hard copies to any interested parties upon request.

Comment Date: March 28, 2003.

8. Sierra Pacific Power Company

[Docket No. ER03–429–001]

Take notice that on March 7, 2003, Sierra Pacific Power Company (Sierra Pacific), submitted for filing supplemental information and an amendment to the Power Purchase Agreement (PPA) between Sierra Pacific and its affiliate, Nevada Power Company, that was filed with the Commission in the above-referenced docket on January 17, 2003. Sierra Pacific requested confidential treatment of certain of the supplemental information and expedited consideration of the request for approval of the PPA.

Comment Date: March 21, 2003.

9. Nevada Power Company

[Docket No. ER03–430–001]

Take notice that on March 7, 2003, Nevada Power Company (Nevada Power), submitted for filing supplemental information regarding five power purchase agreements (PPAs) between Nevada Power and its affiliate, Sierra Pacific Power Company, that were filed in the above-referenced docket on January 17, 2003. Nevada Power requested confidential treatment of certain of the supplemental information and expedited consideration of the request for approval of the PPAs.

Comment Date: March 21, 2003.

10. Automated Power Exchange, Inc.

[Docket No. ER03–559–001]

Take notice that on March 7, 2003, Automated Power Exchange, Inc. (APX) tendered for filing pursuant to 18 CFR 385.205, an Amended Application for Order Accepting Rate Schedule, Granting Authorizations and Blanket Authority and Waving Certain Requirements. The amended application replaces the application APX filed in this docket on February 26, 2003.

Comment Date: March 28, 2003.

11. Louisville Gas and Electric Company/Kentucky Utilities

[Docket No. ER03–598–000]

Take notice that on March 7, 2003, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted unilateral Service Sales Agreement between Companies and Kansas City Power and Light (KCPL) under the Companies' Rate Schedule MBSS.

Comment Date: March 28, 2003.

12. Cross-Sound Cable Company, LLC

[Docket No. ER03–600–000]

Take notice that on March 3, 2003, Cross-Sound Cable Company, LLC (CSC LLC) filed revised procedures for customers to reassign their firm transmission rights over the Cross Sound Cable (CSC). TransÉnergie U.S., Ltd. filed procedures for the reassignment of CSC transmission rights in Docket No. ER00–1–002 on July 3, 2000 in compliance with the Commission's June 1, 2000 order, 91 FERC § 61,230 approving negotiated rates for transmission service over the CSC. CSC LLC requests that the Commission allow the new reassignment right procedures to become effective March 3, 2003.

CSC LLC states that a copy of this filing has been mailed to each person designated on the official service list complied by the Secretary of the Commission in Docket No. ER00–1–002.

Comment Date: March 24, 2003.

13. San Diego Gas & Electric Company

[Docket No. ER03–601–000]

Take notice that on March 7, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing a revised Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Original Volume No. 10. SDG&E states that the proposed change would increase the charges to End Use Customers by $32.3 million based on the 12-month period ending April 30, 2004.

SDG&E states that the amendment to the TO Tariff is being made so that the TO Tariff will more accurately recover SDG&E's actual transmission revenue requirement. In addition, SDG&E states that it is revising the TO Tariff to adopt a formula rated to derive charges for transmission services. An effective date of May 1, 2003 has been requested for this amendment.

SD&G states that copies of the filing were served on the California Public Utilities Commission, the California Independent System Operator.

Comment Date: March 28, 2003.

14. West Penn Power Company

[Docket No.ER03–602–000]

Take notice that on March 7, 2003, West Penn Power Company, d/b/a Allegheny Power, filed Addenda to its Electric Service Agreement with PPL Electric Utilities Corporation, formerly Pennsylvania Power & Light Company, to add three delivery points. An effective date for the new delivery points of March 10, 2003 is requested.

West Penn Power Company states that copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: March 28, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6016 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–49–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Abandonment of Facilities at Summit Storage Field and Request for Comments on Environmental Issues

March 13, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of a proposal by National Fuel Gas Supply Corporation (National Fuel) to abandon certain facilities at its Summit Storage Field in Summit Township, Erie County, Pennsylvania.[1] These facilities consist of about 752 feet of 4-inch pipe, that would be disconnected and abandoned in place to minimize construction-related disturbances, and two injection/withdraw wells, and one observation well that would be plugged and abandoned. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the abandonment of the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the projects are approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the notice National Fuel provided to affected landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Projects

National Fuel proposes to plug and abandon natural gas storage wells P–

[1] National Fuel's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

1511, P–1518 (indicator well), and P–1528, and to abandon in place the associated 4-inch-diameter well lines. The locations of the project facilities are shown in Appendix 1.[2] The abandonment of the wells and well lines would involve dismantling and removing the appurtenances at the well heads, including meters, valves, drips, and associated piping. The well lines connecting the wellhead to Line S–52 would be disconnected, purged, capped, and abandoned in place. The applicant states that deliverability from the wells has decreased over time, primarily due to deterioration of the facilities and they are not necessary for the continued operation of the storage field. All project components are located in the Summit Heights Mobile Home Park in Summit Township. All work would take place within the existing well sites and National Fuel's 35-foot-wide permanent right-of-way (ROW). No nonjurisdicitonal facilities are involved.

Land Requirements for Construction

The project area encompasses a total of approximately 1.19 acres of land, including the three well pad work areas and a 35-foot-wide ROW associated with each of the three well lines. Work space will be confined to National Fuel's existing 35-foot-wide permanent ROW and the three wellhead areas. No access roads other than public roadways and roadways within the Summit Heights residential community will be required to complete the proposed project. No improvements to these roads will be required for the proposed activities.

Following completion of the abandonment project, National Fuel would allow the easements associated with the permanent ROWs to revert back to the use of property owners in Summit Heights Mobile Home Park. The construction workspaces would be restored and allowed to revert to their previous land use and vegetative cover.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the proposed abandonment project under these general headings:

1. Geology and soils
2. Land use
3. Water resources, fisheries, and wetlands
4. Cultural resources
5. Vegetation and wildlife
6. Air quality and noise
7. Endangered and threatened species
8. Hazardous waste
9. Public safety

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–49–000.
- Mail your comments so that they will be received in Washington, DC on or before April 14, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''Intervener.'' Interveners play a more formal role in the process. Among other things, Interveners have the right to receive copies of case-related Commission documents and filings by other Interveners. Likewise, each Intervener must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an Intervener you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2).[4] Only Interveners have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted

[2] The appendices referenced in this notice are not being printed in the **Federal Register** nor will they be available on the Commission's website. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Intervener status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need Intervener status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors and residents adjacent to the proposed facilities. By this notice we are also asking governmental agencies, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov)* using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The FERRIS link on the FERC Internet Web site also provides access to the texts of the application and supplemental filings by National Fuel, and formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6599 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing

March 12, 2003.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–12449–000.

c. *Date filed*: February 28, 2003.

d. *Applicant:* Neshkoro Power Associates, LLC

e. *Name of Project:* Big Falls Milldam Hydroelectric Project

f. *Location:* On the Little Wolf River (north branch), near the Village of Big Falls, in Waupaca County, Wisconsin. The project does not affect any Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, 920–293–4628 ext. 11.

i. *FERC Contact:* Tim Konnert, Timothy.Konnert@ferc.gov (202) 502–6359

j. *Cooperating Agencies*: We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: April 28, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

m. The application is not ready for environmental analysis at this time.

n. Project Description: The existing Big Falls Milldam Hydroelectric Project consists of the following facilities: (1) a 256-foot-long by 18-foot-high dam, topped with a 76-foot-long fixed crest ogee with 6-inch flashboards and one 16-foot-wide Taintor gate; (2) a 23.27-acre reservoir (Big Falls Flowage) with a negligible gross storage capacity at a normal elevation of 901.65 feet Mean Sea Level; (3) a 7-foot-diameter by 175-foot-long penstock leading to; (4) a powerhouse containing one, vertical-shaft Francis turbine-generator with an installed generating capacity of 350 kilowatts (kW), producing a total of 1,513,514 kilowatt-hours (kWh) annually; and (5) appurtenant facilities.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TYY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the spring of 2004.

Issue Acceptance or Deficiency Letter—May 2003

Issue Scoping Document—June 2003

Notice that application is ready for environmental analysis—September 2003

Notice of the availability of the EA—January 2004

Ready for Commission decision on the application—February 2004

Magalie R. Salas,

Secretary.

[FR Doc. 03–6525 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Unlicensed Project Review and Soliciting Comments, Protests and Motions To Intervene [1]

March 13, 2003.

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Unlicensed Project.

b. *Docket No:* UL03–1–000.

c. *Owner:* William Braamse.

d. *Name of Project:* Rock River Beach Dam Project.

e. *Location:* The project is located on the Rock River between Lake Superior and State Highway M–28, T. 47 N., R. 21 W., sec. 15, Latitude 46°28′21.73″, Longitude 86°55′36.52″, Alger County, Michigan.

f. *Owner Contact*: William Braamse, E4002 State Hwy. M–28, Au Train, MI 49806, telephone number (906) 892–8112.

g. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or e-mail address: *diane.murray@ferc.gov*.

h. *Deadline for filing comments, protests, and/or motions to intervene:* April 14, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.gov* under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Please include the docket number (UL03–1–000) on any comments, protests, or motions to intervene filed.

i. Pursuant to Section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it: (1) Is located on a navigable water of the United States; (2) occupies lands of the United States; (3) utilizes surplus water or water power from a government dam; or (4) is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

l. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular review.

m. Agency Comments—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6601 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Public Comment Meeting for the Proposed Red Lake Gas Storage Project and Request for Comments on Environmental Issues

March 12, 2003.

The staff of the Federal Energy Regulatory Commission (Commission), in cooperation with the staff of the Arizona State Office of the U.S. Department of the Interior, Bureau of Land Management (BLM), is issuing this notice to announce the date and location of a public scoping meeting on the proposed Red Lake Gas Storage Project. The Commission staff will be preparing an environmental impact statement (EIS) for Red Lake Gas Storage, L.P.''s project in Mohave County, Arizona. The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. You are invited to attend the public meeting to enter into the Commission's record any comments you might have. The staff is particularly interested in receiving comments on the alternative pipeline routes identified in its February 28, 2003 notice. Comments received at the scoping meeting will help us to determine the issues to be evaluated in the EIS. The date, time, and location are shown below:

Date and time	Location	Information contact
April 8, 2003, 7–10 pm	Kingman High School, North Campus, Cafeteriam 4182 North Banks Street, Kingman, AZ 86401.	Janna Paronto, BLM, (928) 692–4449.

[1] The purpose of this notice is to gather information to determine whether the existing project meets any or all of the jurisdictional criteria noted in paragraph (i).

Magalie R. Salas,

Secretary.

[FR Doc. 03–6522 Filed 3–18–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0011; FRL–7469–4]

Agency Information Collection Activities; Submission of EPA ICR No. 2083.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Estimating the Value of Improvements to Coastal Waters—A Pilot Study of A Coastal Water Valuation Survey. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Owens, National Center for Environmental Economics, Office of Policy, Economics, and Innovation, Mail Code 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2302; fax number: (202) 566–2338; e-mail address: *owens.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 28, 2002 (67 *FR* 43592), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OEI 2002–0011, which is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Estimating the Value of Improvements to Coastal Waters—A Pilot Study of A Coastal Valuation Survey (EPA ICR Number 2083.01). This is a request for a new collection.

Abstract: This Information Collection Request (ICR) is for a pilot survey being conducted by the Environmental Protection Agency's (EPA) National Center for Environmental Economics (NCEE). The purpose of the pilot survey is to conduct research on and test various aspects of a computerized stated preference survey designed to estimate willingness to pay for water quality improvements in coastal waters. Specifically, we will:

- Test the quality and effectiveness of the computerized survey instrument in yielding robust estimates for both use and non-use values of improvements to coastal water quality;
- Test the effect of the use of color in computerized survey instruments;
- Test the appropriateness of the design values used in the choice questions;
- Test the effect of a $5 incentive on the response rate;
- Test the effectiveness of the survey administration mode for periodic, panel surveys, and
- Test the effectiveness of the survey administration mode for environmental surveys.

The subject of the survey was chosen for a variety of reasons. First, at this time, no suitable information exists that will allow the estimation of the benefits of statewide or national changes in coastal water quality. Existing studies focus on estimating recreational (use) values for very specific reaches of coastal waters, thus limiting the use of the resulting estimates for benefit transfer and ignoring non-use values completely (*e.g.,* Parsons et al. (2000) and Koaru, 1995). Second, the results of this survey will complement those from an ongoing freshwater quality survey (USEPA, 2000). Currently, States, tribes, and other jurisdictions measure water quality by determining if water bodies are clean enough to support basic uses, such as swimming, fishing, and aquatic life. In keeping with these definitions of water quality, the survey will provide estimates of willingness to pay (WTP) for more fishable and swimmable coastal and estuarine waters as well as healthier marine and estuarine aquatic environments. In the valuation portion of the survey, respondents will be asked a series of five questions in which they are asked to compare two programs with the status quo. The programs each affect water quality for the various uses in different ways and cost varying amounts to implement. Analysis of the resulting data will yield WTP estimates for improvements to each of the attributes.

Further development of the survey cannot be completed without a pilot survey. The pilot survey will take place in California using a computerized survey instrument. The survey instrument is specific to the state of California and, depending upon the results of the pilot survey, may be used

to estimate willingness to pay for water quality improvements for the three specific uses noted above. Once the pilot survey is complete and EPA is convinced of the adequacy of the questionnaire, EPA's National Center for Environmental Economics hopes to develop parallel versions of the survey instrument for the remaining 20 coastal states in the contiguous United States as well as a version for inland states. The coastal state versions of the survey will elicit resident's willingness to pay for coastal water improvements within the respondent's home state. The inland version of the survey will elicit willingness to pay for coastal water improvements generally. Together these data will provide valuable information to estimate improvements to coastal waters that may improve the quality of cost-benefit analyses and decision-making at EPA.

The pilot survey is designed to collect information using Knowledge Networks, a survey research firm with a pre-recruited panel of individuals throughout the United States who complete surveys using WebTV. We are requesting permission to conduct a pilot survey of 600 respondents in California. It should be noted, however, that no expectations have been formed regarding the administration mode for future pilots or surveys using this or parallel survey instruments. While we expect to continue using a self-administered computerized format, we plan to explore alternative modes of administration.

The only burden imposed by the pilot survey on respondents will be the time required to complete the survey. Based upon a limited number of cognitive pretest interviews, the survey developers estimate that this will involve an average of 30 minutes per respondents. With a total of 600 respondents for the pilot survey this involves a total of 150 hours. Based on an average hourly rate of $22.15 (including employer costs of all employee benefits), the survey developers expect that the average per-respondent cost for the pilot survey will be $11.08 and the corresponding one-time total cost to all respondents will be $6645.00. This information collection does not involve any special equipment, thus, respondents will not incur any capital or operation and maintenance (O&M) costs.

Responses to the pilot survey will be voluntary. Typically, panel members are free to choose whether or not to respond to any particular survey as long as they meet survey quotas set in their agreement with the research firm. The survey will fully conform to federal regulations—specifically the Privacy Act of 1974 (5 U.S.C. 552a), the Hawkins-Stafford Amendments of 1988 (Pub. L. 100–297), and the Computer Security Act of 1987.

The pilot survey data will be collected and stored electronically by the survey research firm, and all identifying information will be removed by the survey research firm prior to transfer to EPA. EPA will perform all data analyses used to determine the efficacy of this survey instrument for estimating the values associated with improved coastal water quality.

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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average ½ hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals living in the State of California.

Estimated Number of Respondents: 600.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 300 hours.

Estimated Total Annual Cost: $6645, includes $0 annualized capital or O&M costs.

Dated: March 3, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–6579 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0008 ; FRL–7469–3]

Agency Information Collection Activities: Submission of EPA ICR No. 1381.06 (OMB No. 2050–0122) for OMB Review; Comment Request; Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Recordkeeping and Reporting Requirements for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices, ICR #1381.06, OMB Control Number 2050–0122, Active ICR OMB Expiration Date: 08/31/2003.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 19, 2003.

ADDRESSES: Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Office of Solid Waste, (5306W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9037; fax number: (703) 308–8686; email address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. The groups affected by the requirements in part 258 are owners or operators of new Municipal Solid Waste Landfills (MSWLF), existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and Local governments, and private waste management companies. Facilities in the following SIC codes may be affected by this rule listed in the table below:

SIC Code/Affected Entity	
922	Local governments
495	Sanitary services
282	Industrial inorganic chemicals
281	Industrial organic chemicals
287	Miscellaneous

These five groups represent the most identifiable of the several hundred SIC codes. Other major groups affected by these requirements are construction, manufacturing, services, and agricultural products and are included under the ''miscellaneous'' designation. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the applicability criteria in part 258 of the rule-and/or-applicability criteria in § 258.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–2003–0008. The official public docket is the collection of materials that is available for public viewing at the Office of Solid Waste and Emergency Response (OSWER) Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI), and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send by Hand Delivery or Courier the information identified as CBI only to the following address: Regina Magbie, RCRA DCO, 2800 Crystal Drive, 7th Floor, Arlington, VA 22202, Attention: Docket ID No. RCRA–2003–0008. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Technical Information

Title: Recordkeeping and Reporting Requirements for 40 CFR part 258—Solid Waste Disposal Facilities and Practices, OMB Control No. 2050–0122. This information collection is an extension of a currently approved collection that is scheduled to expire on August 31, 2003. Under the PRA regulations, the agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule. 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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable

Burden Statement: The annual public reporting and recordkeeping burden for the current collection of information averages 97 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Current ICR:

Respondents/Affected Entities: Owners/Operators of Municipal Solid Waste Landfills.

Estimated Number of Respondents: 2300.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 239,858 Hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: 0.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–6581 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0105; FRL–7298–6]

Notice of Availability of Regional Pesticide Environmental Stewardship Program (PESP) Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of approximately $500,000 in fiscal year 2003 grant/cooperative agreement funds under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. This funding is for grants to States and federally recognized Native American Tribes for research, public education, training, monitoring, demonstrations, and studies that advance pesticide risk reduction.

DATES: Applications must be received by the appropriate EPA Regional Office on or before May 16, 2003. EPA will make its award decisions by June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional PESP Coordinator listed under Unit V. of this notice.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general but will be of particular interest to eligible applicants which include the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Native American Tribes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult your EPA Regional PESP Coordinator listed under Unit V. of this notice.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0105. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. Additional information is available on EPA's PESP website at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

3. *By mail or in person.* Contact your EPA Regional PESP Coordinator listed under Unit V. of this notice.

II. Availability of FY'03 Funds

With this publication, EPA is announcing the availability of approximately $500,000 in grant/cooperative agreement funds for FY'03. The Agency has delegated grant making authority to the EPA Regional Offices. Federal funding is limited to $40,000 per project and matching funds are not required. Projects which leverage funding from other sources are encouraged.

III. Eligible Applicants

In accordance with the Act, ''. . . Federal agencies, universities, or others as may be necessary to carry out the purposes of the act, . . .'' are eligible to receive funding. Restrictions on the funds appropriated for this program limit the eligible applicants to the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Native American Tribes. The term ''State'' in this notice refers to all eligible applicants.

Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. EPA encourages organizations excluded from applying directly to work with eligible applicants in developing proposals that include them as participants in the projects. Contact your EPA Regional PESP Coordinator for assistance in identifying and contacting eligible applicants.

IV. Activities and Criteria

A. Activities

The goal of PESP is to reduce the risks associated with pesticide use in agricultural and non-agricultural settings in the United States. The purpose of the grant program is to support projects that address this goal. Pesticide pollution prevention, integrated pest management (IPM), IPM in schools, children's health issues related to pesticides, and those research methods for documenting IPM adoption or the reduction of risks associated with changes in pesticide use will receive priority consideration. Other projects will be considered as they complement these goals through public education, training, monitoring, demonstrations, and other activities.

EPA specifically seeks to build IPM capacities or to evaluate the economic feasibility of new IPM approaches at the local level (i.e., innovative approaches and methodologies that use application or other strategies to reduce the risks associated with pesticide use). Projects might focus on, for example:

- Researching the effectiveness of multimedia communication activities for; including but not limited to: promoting local IPM activities, providing technical assistance to pesticide users; collecting and analyzing data to target outreach and technical assistance opportunities; developing measures to determine and document progress in pollution prevention; and identifying regulatory and non-regulatory barriers or incentives to pollution prevention.
- Researching methods for establishing IPM as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the ethic within both governmental and non-governmental institutions of the State or region.
- Initiating research or other projects that test and support: Innovative techniques for reducing pesticide risk or using pesticides in a way to reduce risk, and innovative application techniques to reduce worker and environmental exposure.
- Implementing reduced-risk pest management programs with special considerations of the impact to human health, water and/or air quality, or ecosystem processes. A list of projects funded since FY'98 and their proposals may be obtained at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm or from your Regional PESP Coordinator.

B. Criteria

EPA Regional Offices are responsible for the solicitation, screening, and selection of proposals for funding. A generic request for proposal will be available on EPA's website on or before March 26, 2003, at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm. Interested applicants must contact the appropriate EPA Regional PESP Coordinator to obtain specific instructions, regional criteria, guidance, and format for submitting proposals. Proposals will be evaluated based on the following criteria:

1. Qualifications and experience of the applicant relative to the proposed project.

- Does the applicant demonstrate experience in the field of the proposed activity?
- Does the applicant have the properly trained staff, facilities, or infrastructure in place to conduct the project?

2. Consistency of proposal with the risk reduction goals of PESP.

3. Does the project provide for a quantitative or qualitative evaluation of achieving the stated goals?

- Is the project designed in such a way that it is possible to measure and document the results quantitatively and qualitatively?
- Does the applicant identify the method that will be used to measure and document the results quantitatively and qualitatively?

4. Likelihood the project can be replicated to benefit other communities or the product may have broad utility to a widespread audience. Can this project, taking into account typical staff and financial restraints, be replicated by similar organizations in different locations to address the same or similar problem?

C. Program Management

The awarding of FY'03 funds will be managed through the EPA Regional Offices. Quality Assurance/Quality Control plans may be required, depending on the nature of the project and the data collected. Contact your Regional PESP Coordinator for more information about this requirement.

V. Regional PESP Coordinators

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Andrea Szylvian, 1 Congress St., Suite 1100, (CPT), Boston, MA 02114–2023; telephone: (617) 918–1198; e-mail: szylvian.andrea@epa.gov.

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands), Tara

Masters, Raritan Depot, 2890 Woodbridge Ave., (MS-500), Edison, NJ 08837–3679; telephone: (732) 906–6183; e-mail: masters.tara@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Fatima El-Abdaoui, 1650 Arch St., (3WC32), Philadelphia, PA 19103–2029; telephone: (215) 814–2129; e-mail: el-abdaoui.fatima@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Troy Pierce, 61 Forsyth St., SW., Atlanta, GA 30303–8960; telephone: (404) 562–9016; e-mail: pierce.troy@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Heather McDonald, 77 W Jackson Blvd., (DT-8J), Chicago, IL 60604–3507; telephone: (312) 886–3572; e-mail: mcdonald.heather@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Jerry Collins, 1445 Ross Ave., Suite 1200, (6PD-P), Dallas, TX 75202–2733; telephone: (214) 665–7562; e-mail: collins.jerry@epa.gov.

Region VII: (Iowa, Kansas, Missouri, Nebraska), Brad Horchem, 901 N 5th St., (WWPDPEST), Kansas City, KS 66101; telephone: (913) 551–7137; e-mail: horchem.brad@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Peg Perreault, 999 18th St, Suite 300, (8P-P3T), Denver, CO 80202–2466; telephone: (303) 312–6286; e-mail: perreault.peg@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Paul Feder, 75 Hawthorne St., (CMD-1), San Francisco, CA 94105; telephone: (415) 947–4160; e-mail: feder.paul@epa.gov.

Region X: (Alaska, Idaho, Oregon, Washington), Sandy Halstead, 24106 North Bunn Road, Prosser, WA 99350; telephone: (509) 786–9225; e-mail: halstead.sandra@epa.gov.

List of Subjects

Environmental protection, Pesticides, Risk reduction.

Dated: March 13, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–6586 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7469–9]

Notice of Request for Initial Proposals (IP) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting Initial Proposals (IP) from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the Clean Water Act (CWA) interested in applying for Federal assistance for Water Quality Cooperative Agreements under the CWA section 104(b)(3) in the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Region 6 EPA will award an estimated $1 million to eligible applicants through assistance agreements ranging in size, on average, from $40,000 up to $200,000 (Federal) for innovative projects/demonstrations/studies that can be used as models relating to the prevention, reduction, and elimination of water pollution. From the IPs received, EPA estimates up to10 to 12 projects may be selected to submit full applications. The Agency reserves the right to reject all IPs and not make awards. A request for proposals for tribal governments will be issued under a separate notice.

DATES: EPA will consider all proposals received on or before 12 p.m. midnight central standard time May 5, 2003. IPs received after the due date will not be considered for funding.

ADDRESSES: IPs should be mailed to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of This Request for Initial Proposals

EPA Region 6's Water Quality Protection Division is requesting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA for unique and innovative projects that address the National Pollutant Discharge Elimination System (NPDES) program with special emphasis on concentrated animal feeding operations (CAFO) permitting, sanitary sewer overflow (SSO) impact studies, watershed integration through NPDES, homeland security, and promotion of ''good data'' efforts to support NPDES decisions, as well as, water quality projects relating to water quality standards, assessment methods, and reporting, ecoregion and subregion delineation, and improved approaches to total maximum daily load (TMDL) modeling.

An organization whose IP is selected for Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 & 31.10). Organizations who have an existing agreement under this program are eligible to compete for new awards.

EPA Region 6 Has Identified the Following High Priority Areas for Consideration

WQCAs awarded under section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, ''demonstrations'' are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished though the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of the practices when they contribute to learning about an environmental concept or problem.

EPA Region 6 has identified several subject areas for priority consideration. EPA will award WQCAs for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination

of water pollution in the following subject areas:

CAFO Permitting Support

Demonstration of treatment/reuse/disposal technologies and controls that are designed to reduce CAFO-based nutrients in watersheds, with a demonstration of amount of loading reductions from those technologies, *e.g.*, handling phosphorus-rich poultry litter in northwest Arkansas/northeast Oklahoma; efficacy of wetlands to polish runoff or overflow from ponds and/or land application processes.

The following specific criteria will be used to evaluate this priority area:

- Demonstrate treatment/reuse/disposal technologies and controls through testing and/or modeling.
- Report on the efficiencies.

Demonstration of nutrient indicator tracing in CAFO dominated, nutrient impaired watersheds, *e.g.*, ribo-typing study to determine source of bacteria and pathogens, or nitrogen-ion study to determine source of nitrogen in waters, or hormone or antibiotic study to determine sources of excreted waste material.

The following specific criteria will be used to evaluate this priority area:

- Demonstrate nutrient indicator tracing in CAFO dominated, nutrient impaired watersheds, with identification and differentiation of sources of animal/CAFO wastes from human wastes.

Sanitary Sewer Overflow Studies

Impact studies and/or innovative implementation processes to control SSOs. Innovative pilot projects associated with collection systems and treatment facilities at the headworks for POTWs, to demonstrate the impact to water quality in receiving waters from control technologies on SSOs, *e.g.*, control technologies to reduce pollutant loads from SSOs with emphasis on innovation.

The following specific criteria will be used to evaluate this priority area:

- Overall cost analysis of technologies or controls to implement on a full or larger scale, estimated O&M costs, and a technical evaluation of treatment, based on mass and volume. Biochemical oxygen demand, total suspended solids, and pathogen evaluations are essential, along with other pertinent pollutant identification and evaluation.

Watershed Integration of Water Programs Under the CWA Through NPDES

Development of innovative permit tool(s) supporting watershed-based permitting activities for specific parameters. Establish a technique for identifying all dischargers and their respective contribution levels for parameter(s) of concern within an impaired watershed. Should determine the overall impact of point and non-point dischargers on receiving waters. Pollutant data for water quality parameters, such as nutrients, dissolved oxygen, fecal coliform, etc., could be used in the development of a model (such as self-implementing general permits) for permitting activities. The model may incorporate unique permitting approaches including effluent trading scenarios (in accordance with the Water Quality Trading Policy, January 13, 2003), which may be implemented in the general permit for specific water quality parameters.

The following specific criteria will be used to evaluate this priority area:

- Include consideration of all waterbodies in a watershed.
- Include consideration of all point sources.
- Consider net contribution of non-point sources in aggregate effects.
- Provide aggregate water quality modeling which determines aggregate affects in the watershed.

Homeland Security for NPDES

Studies of ability of conventional or innovative wastewater treatment plant processes to effectively treat, remove, or render harmless biological, chemical, or radiological agents, which could be introduced into the collection or treatment system.

Development of models for hardening of collection systems, lift stations, and wastewater treatment plant processes to prevent introduction of harmful biological, chemical, or radiological agents.

The following specific criteria will be used to evaluate this priority area:

- Actual performance data of processes vs. technical predictions of performance.
- Enhanced security procedure models and development of model emergency operating plans.

Promotion of ''Good Data'' Efforts of EPA and State Agencies To Support NPDES Decisions

Survey of laboratories to identify inconsistencies, errors, and adherence to appropriate QA/QC for whole effluent toxicity (WET) testing and test organism culturing.

The following specific criteria will be used to evaluate this priority area:

- Surveying a sampling of the major laboratories in Region 6, which perform whole effluent toxicity (WET) testing for NPDES permittees.
- A minimum of six laboratories shall be surveyed/audited.
- Investigation shall be performed in accordance with ''Manual for the Evaluation of Laboratories Performing Aquatic Toxicity Testing EPA/600/4–90/031'', all sampling and testing conditions normally required in NPDES permits issued in EPA Region 6, and requirements contained in 40 CFR part 136 for purposes of ensuring compliance with State narrative criteria for the protection of aquatic life.

Indicators of Ecological Condition

Estimation of the extent of waters supporting their designated beneficial uses, and determination of causes of impairment, based on a core set of indicators of ecological condition and environmental stressors. Biological measures should form the primary basis for assessing attainment of the aquatic life use with chemical, physical, and watershed measurements used to assess and rank the relative importance of stressors.

The following specific criteria will be used to evaluate this priority area:

- Mechanisms to evaluate the interrelationships between biological assemblages, ambient water chemistry, fish tissue contaminants, physical habitat, and/or watershed characteristics.
- Offer the potential to improve a State's approaches to make decisions about whether or not water quality standards are being attained.
- Apply a probabilistic approach to site selection to support estimates of conditions across an entire study area.
- Result in the ability to compare environmental indicator data across State and regional boundaries for ambient and reference conditions.
- Offer the potential to improve a State's approach to estimate the extent of waterbody impairment statewide.

Nutrient Criteria

Development of effects based nutrient criteria and assessment methods, based on the relationship(s) between evidence of impairment of biological integrity, and/or other response indicators, and instream nutrient concentrations observed at reference waterbodies.

The following specific criteria will be used to evaluate this priority area:

- Demonstrate approaches or provide tools that may be applied in other areas.
- Apply the latest scientific approaches or innovative techniques to establish and validate the relationship(s) between elevated nutrient concentrations and indicator response.
- Result in recommendations for numeric water quality criteria standards

or criteria that can be applied to a class of waters (rather than individual waters).

• Include mechanisms for technology transfer.

Improved Approaches to TMDL Modeling

Development of best management practice (BMP) performance equations and/or statistical tools to assist in evaluation of waterbody recovery, based on a study of the physical, chemical, and biological processes governing the stochastic properties of pollutants in the environment. The project may lead to TMDL development, implementation, and/or water quality trading on a watershed basis.

The following specific criteria will be used to evaluate this priority area:

• Description of methods to be used to quantify the uncertainty in load estimates and load allocations, and/or the effectiveness of individual BMPs.

• Development of tools that may be transferred to meet the needs of others faced with developing TMDLs or monitoring waterbody recovery.

Ecoregion and Subregion Delineation

Ecoregion and subregion delineation providing an improved basis for waterbody classification, supporting definition of water quality management goals and expectations, development of water quality standards, and water quality monitoring and assessment.

The following specific criteria will be used to evaluate this priority area:

• Conducted in Louisiana, New Mexico, or Oklahoma.

• High degree of coordination among natural resource and environmental management agency scientists.

• Result in completion of ecoregion and subregion boundaries and descriptions for an entire state.

• Conducted using methods comparable to those employed in other states by the EPA Office of Research and Development, National Health and Environmental Effects Research Laboratory, to achieve level IV subregionalization.

• Result in a nationally consistent set of subregion management units.

Statutory Authority, Applicable Regulations, and Funding Level

Funding is authorized under the provisions of the CWA sec. 104(b)(3), 33 U.S.C. 1254(b)(3).

The regulations governing the award and administration of Water Quality Cooperative Agreements are in 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR part 31 (for States, local governments, and interstate agencies).

Applicants requested to submit a full application will be required to comply with Intergovernmental Review requirements (40 CFR part 29) and the Quality Assurance requirements (40 CFR part 30.54 and 31.45) if projects involve environmentally related measurements or data generation.

Total funding available for award by Region 6 is dependent on EPA's appropriation for Fiscal Year 2003; however, it is estimated that $1 million, including the tribal allocation, will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000. A minimum match of five percent will be required for all approved projects and should be included in the total funding requested for each proposal submitted.

Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land are not eligible for funding under this program. New or on-going programs to implement routine environmental controls are not eligible for funding under this program.

Proposal Format and Contents

IPs should be no more than three pages with a minimum font size of 10 pitch in Wordperfect/Word or equivalent. Failure to follow the format or to include all requested information could result in the IP not being considered for funding. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in this IP. The following format should be used for all IPs:

Name of Project:

Priority Area Addressed: (*i.e.,* CAFO Permitting Support, SSO Studies, Homeland Security for NPDES, etc.)

Point of Contact: (Individual and agency/organization name, address, phone number, fax number, e-mail address.)

Is this a Continuation of a Previously Funded Project: (If so, please provide the status of the current grant or cooperative agreement.)

Proposed Federal Amount:

Proposed Non-Federal Match (*Minimum of 5%*):

The match is based on the total project cost not the Federal amount. To determine a proposed minimum match of 5%, use the following example:

Federal amount = $25,000.
Total Project Cost = T.

The Federal amount is 95% of T, therefore:

$25,000 = T × 0.95;
$25,000 / 0.95 = T;
$26,316 = T (round the decimal).

If the total project cost is $26,316, then:

$26,316 × 0.05 = $1,316 non-Federal match.

Proposed Total Award Amount:

Description of General Budget Proposed to Support Project:

Project Description: (Should not exceed two pages of single-spaced text.)

Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA Region 6 will award WQCA on a competitive basis and evaluate IPs based on the specific criteria listed in each priority area and the following general criteria:

• Adequacy of proposal, including the relationship of the proposed project to the priorities identified in this notice, innovation of project proposal and level of multi-organizational support, if needed. (10 points)

• Compliance with proposal format/guidance, including how well the proposal follows the solicitation notice, clearly defined milestones/schedule and clearly identified deliverables. (5 points)

• Cost effectiveness/likelihood of success of the proposal, including adequacy of resources committed to project/realistic budget, realistic implementation schedule and clearly defined measures of success that are reasonably attainable. (5 points)

• Applicant's past performance, if applicable. (3 points)

The IPs will be evaluated by regional staff in a two phased approach. Initially, each IP will be evaluated against the specific criteria listed under the priority area for which it was submitted. In order for the IP to be considered in the second evaluation phase, it must address, at a minimum, ALL the specific criteria listed under the priority area. In the second phase, each IP will be evaluated against the general criteria listed above for a possible total score of 20. Points will be taken away for poor past performance if knowledge of applicant's past performance is available to EPA.

IP Selection

Final selection of IPs will be made by the Director of Water Quality Protection Division, EPA Region 6. Selected

organizations will be notified in writing and requested to submit full applications. Applications, including workplans, are subject to EPA review and approval.

It is expected that unsuccessful applicants will be notified in writing.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the CWA are State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA. IPs received for projects outside of Region 6 will not be considered.

Application Procedure

Please mail three copies of the IP(s).

Dispute Resolution Process

Procedures located in 40 CFR part 30.63 and 30.70 apply.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements. States and interstate agencies meeting the requirements in 40 CFR part 35.504 may include the funds for WQCA in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs in 40 CFR part 35, subparts A and B. For States and interstate agencies that choose to do so, the regulations provide that the workplan commitments that would have been included in the WQCA must be included in the PPG workplan.

A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

May 5, 2003—Proposals due to EPA.

July 2, 2003—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

A list of selected projects will be posted on the Region 6 Water Quality Protection Division, Assistance Programs Branch Web site *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm.* This Web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this Web site and not in the **Federal Register**.

Dated: March 10, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–6576 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7469–2]

Bioavailability Workshop on In Vitro and In Vivo Testing Methods for Metals

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of public meetings.

SUMMARY: This notice announces a public meeting to gather comments from expert scientists and others on in vivo and in vitro-testing protocols for metals which may be applicable at cleanup activities. The 2003 U.S. EPA Bioavailability Workshop will be a 2-day meeting (4 half-day panel sessions) to provide the EPA with expert technical opinions specific to applications of bioavailability measurements for human health risk assessment. The EPA expects to use information presented during this workshop in its efforts to establish the most scientifically-sound approach to utilizing bioavailability measurements at contaminated sites. National experts will participate through presentations and panel discussions. Candid scientific discussion will be encouraged among invited scientists and the workshop audience. A contractor will collect summary notes and comments during the presentations. No formal publication is anticipated although individual authors and presenters may submit manuscripts to journals after presenting the data to EPA. This meeting is being sponsored by EPA's Office of Solid Waste and Emergency Response, the Science Policy Council of EPA's Office of Research and Development, EPA Region 7 and EPA Region 8. There is no charge for attending the conference.

DATES: The workshop will be held on April 15 and 16, 2003. The workshop hours will be from 8:30 am to 4 pm on April 15 and from 8 am to 3 pm on Wednesday, April 16.

ADDRESSES: The workshop will be held at the Safety Harbor Resort, 105 N. Bayshore Drive, Tampa, Florida, 34695. To attend the workshop as an observer, contact Syracuse Research Corp. (SRC) by electronic mail, or by telephone. The electronic registration web site is at *http://conference.syrres.com/bcreg.htm.* Other information can be obtained by calling SRC at 207–883–2605. Individuals need to make their own reservations.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed technical information on this conference call Richard Troast (703–603–8805) Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5204G. Information concerning the meeting (including agenda, speaker list, and registration) is available online at *http://conference.syrres.com/.*

David Lopez,

Director, Region 3/8 Support Center, OERR

[FR Doc. 03–6580 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7469–6]

Science Advisory Board; Drinking Water Committee; Notification of Public Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), Drinking Water Committee (DWC), a Federal Advisory Committee, is announcing a public meeting.

DATES: The meeting will begin on Friday, April 11, 2003, at 9 a.m. (Eastern Time) and adjourn no later than 5:30 p.m. that day.

ADDRESSES: The meeting will be held in Washington, DC. Location of the meeting will be announced on the SAB Web site, *http://www.epa/sab.* For further information concerning the meeting, please contact Dr. James Rowe (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting must contact Dr. James Rowe, Designated Federal Officer, USEPA Science Advisory Board (1400A), Suite 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6488; fax at (202) 501–0582; or via e-mail at *rowe.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. *Action:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the Drinking Water Committee (DWC) of the U.S. EPA Science Advisory Board (SAB) will meet on Friday, April 11, 2003 to receive informational briefings from the Office of Water (OW) and the Office of Research and Development (ORD) regarding EPA's science and research program to support its risk management under the Safe Drinking Water Act. The meeting is open to the public, however, seating is limited and available on a first come basis.

2. *Availability of the Meeting Materials:* Any briefing materials will be made available from the EPA's Office of Water (OW) and the Office of Research Development (ORD) at the time of the meeting. The proposed agenda for the meeting will be posted approximately 10 calendar days prior to the meeting at the SAB's Web site at *http://www.epa.gov/sab.* For questions and information concerning the agenda, please contact Dr. James Rowe (*see* contact information above).

3. *Background on the Meeting:* The purpose of this meeting is to receive informational briefings from the Office of Water and the Office of Research and Development regarding EPA's science/research program to support its risk management under the Safe Drinking Water Act. Public comment is not formally solicited but is welcome (*see* below).

4. *Providing Oral or Written Comments at SAB Meetings:* It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to Dr. James Rowe at the contact information provided in this notice in the following formats: ONE hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

5. *Meeting Access:* Individuals requiring any additional special accommodation at this meeting should contact the DFO indicated above for this FR notice, at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 13, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–6577 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0354; FRL–7287–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by the registrant before September 15, 2003, the Agency will approve these cancellations and the cancellations will become effective on September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Isbell, Special Review and Reregistration Division 7508C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; e-mail address: isbell.diane@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0354. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel three pesticide products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—PHOSMET REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name
2724–169	Vet-Kem Kemolate Emulsifiable Liquid
10163–167	Imidan 50-WP Garden and Home Insecticide
28293–15	Unicorn Phosmet Insecticidal Dust for Dogs

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
2724	Wellmark International 1100 East Woodfield Road, Suite 500 Schaumburg, IL 60173
10163	Gowan Company 370 S. Main Street Yuma, AZ 85364
28293	Unicorn Laboratories 12385 Automobile Blvd. Clearwater, FL 33762

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 15, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

In accordance with the Phosmet Interim Reregistration Eligibility Decision (IRED) document, dated October 30, 2001, and the Memorandum of Agreement signed by Gowan Company on October 20, 2001, the following two products, as identified in Table 1, are prohibited from sale: EPA Reg. Nos. 10163–167 and 28293–15. In addition, Wellmark International is prohibited from selling or distributing existing stocks of phosmet product EPA Reg. No. 2724–169, after March 30, 2003.

Wellmark International signed an Agreement where the signatory, and non-signatory registrants agreed to: Stop formulating phosmet product (EPA Reg. No. 2724–169) for the dog use on August 30, 2002; and stop sales of the product on March 30, 2003. Sales of the subject product at the retail level can continue until supplies are exhausted; and existing stocks of phosmet technical not formulated into the dog use product will be used to formulate livestock use products.

This is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions will be made if EPA determines that a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, organophosphate, pesticides and pests.

Dated: March 4, 2003.

Lois A. Rossi,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–6236 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0045; FRL–7293–7]

Triallate; Completion of Comment Period for Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the Reregistration Eligibility Decision (RED) for triallate. No comments were received for triallate.

FOR FURTHER INFORMATION CONTACT: Dirk V. Helder, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–4610; fax number: (703) 308–8041; e-mail address: helder.dirk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0045. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the closing of the comment period for the triallate RED. The Agency published a notice in the **Federal Register** of May 23, 2001 (66 FR 28469) (FRL–6775–9) and a correction in the **Federal Register** on June 25, 2001 (66 FR 33684) (FRL–6788–1) announcing the availability and start of a 60–day public comment period on the Reregistration Eligibility Decision document for the pesticide active ingredient triallate. This RED was issued as a final document with a 60–day comment period, which closed on July 23, 2001. In this RED, EPA provided its regulatory position on the current registered use of triallate and set forth certain data requirements and label amendments for product reregistration eligibility.

A copy of the triallate RED can be found under docket control number OPP–34226A or on the EPA website at http://www.epa.gov/pesticides/reregistration/status.htm.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredients are eligible for reregistration,'' and either reregister products or take ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticide Tolerances.

Dated: March 4, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–6299 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0013; FRL–7288–3]

Fenbutatin-Oxide; Completion of Comment Period for Tolerance Reassessment Progress and Interim Risk Management Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the 30–day comment period for the Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for fenbutatin-oxide. No comments were submitted. These tolerances are now reassessed and considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5400; fax number: (703) 308–8041; e-mail address: edwards.beth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

EPA issued a notice published in the **Federal Register** of June 11, 2002 (67 FR 39980) (FRL–7181–6), for fenbutatin-oxide. That notice announced the availability of the TRED and opened the 30–day comment period. No comments were received. This notice constitutes and announces the closing of the comment period for the fenbutatin-oxide TRED. This decision has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made that aggregate risks are not of concern. A reregistration eligibility decision (RED) was completed for fenbutatin-oxide in June 1996, prior to FQPA enactment, and therefore needed an updated assessment to consider the provisions of the Act.

B. What is the Agency's Authority for Taking this Action?

The authority for this TRED is found in section 408(q) of the FFDCA, 21 U.S.C. 346a(q). Section 408(q) requires EPA to review tolerances and exemptions for pesticide chemical residues in effect of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of 408(b)(2) or (c)(2). This review is to be completed by Agust 3, 2006.

List of Subjects

Environmental protection, Pesticide Tolerances.

Dated: March 5, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–6298 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7470–1]

Proposed CERCLA Agreement and Covenant Not To Sue; in the Matter of: Tinkham's Garage Superfund Site, Londonderry, New Hampshire

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, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed agreement and covenant not to sue concerning the Tinkham's Garage Superfund site in Londonderry, New Hampshire with the following settling party: Gilcreast Realty Holdings II, LLC. The settlement requires the settling parties to pay $25,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 01–2003–0012).

DATES: Comments must be submitted on or before April 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886. Comments should reference the Tinkham's Garage Superfund Site, Londonderry, New Hampshire, and EPA Docket No. 01–2003–0012 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886.

Dated: March 5, 2003.

Robert W. Varney,

Regional Administrator, Region I, New England.

[FR Doc. 03–6585 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7469–8]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in Arkansas to be listed pursuant to Clean Water Act section 303(d), and requests public comment. Section 303(d) requires that States submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On March 10, 2003, EPA partially approved and partially disapproved

Arkansas' submittal. Specifically, EPA approved Arkansas' listing of 76 waters, associated pollutants, and associated priority rankings. EPA disapproved Arkansas' decisions not to list 52 water quality limited segments and associated pollutants. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to Arkansas' 2002 section 303(d) list, as required by EPA's Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Arkansas' final list.

DATES: Comments must be submitted in writing to EPA on or before April 18, 2003.

ADDRESSES: Comments on the decisions should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–7513, facsimile (214) 665–6490, or email: *caldwell.ellen@epa.gov.* Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 52 water quality limited segments for which EPA disapproved Arkansas' decision not to list can be obtained at EPA Region 6's Web site at *www.epa.gov/earth1r6/6wq/artmdl.htm,* or by writing or calling Ms. Caldwell at the above address. Underlying documents from the record for these decisions are available for public inspection at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards. For those waters, States are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require States to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for States to submit section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under section 303(d) on September 5, 2002. On March 10, 2003, EPA approved Arkansas' listing of 76 waters and associated priority rankings. EPA disapproved Arkansas' decisions not to list 52 water quality limited segments and associated pollutants. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 section 303(d) list. EPA solicits public comment on its identification of 52 additional waters and associated pollutants for inclusion on Arkansas' 2002 section 303(d) list.

TMDLs ESTABLISHED

Subsegment	Waterbody name	Pollutant
081602	Little River—from Bear Creek to Catahoula Lake (Scenic)	Siltation.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Suspended solids.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Turbidity.
081601	Little River—confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Turbidity.
081602	Little River—from Bear Creek to Catahoula Lake (Scenic)	Turbidity.

At 67 FR 15196 (March 29, 2002) EPA published a draft TMDL for a number of waterbody/pollutant combinations in the Calcasieu Estuary. Based on comments received, EPA determined that it was not appropriate to establish TMDLs for four (4) of these waterbody/pollutant combinations. These four (4) waterbody/pollutant combinations were erroneously indicated in the Final Agency Action as having TMDLs established at 67 FR 40735 (June 13, 2002). In fact, TMDLs were not established for these waterbody/pollutant combinations.

Dated: March 10, 2003.

Miguel I Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–6575 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7469–5]

Clean Water Act Section 303(d): Correction Notice of Unintentional Scriveners' Errors on Final Agency Action for Nine (9) Waterbody/Pollutant Combinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice corrects unintentional scriveners' errors concerning the final agency action on nine (9) waterbody/pollutant combinations in the Louisiana Ouachita and Calcasieu river basins. On February 14, 2002, EPA proposed to delist five (5) waterbody/pollutant combinations because Total Maximum Daily Loads (TMDLs) were not needed. In response to comments and further review, EPA determined that TMDLs were indeed warranted for these waterbody/pollutant combinations and published a notice at 67 FR 40738 (June 13, 2002) that these TMDLs had been established. These waterbody/pollutant combinations also were incorrectly published on that same date at 67 FR 40737 as determinations that TMDLs were not needed. Documents from the administrative record files for the 5 TMDLs, including TMDL calculations and responses to comments may be viewed at *http://www.epa.gov/region6/water/tmdl.htm.*

TMDLS NOT ESTABLISHED

Subsegment	Waterbody name	Pollutant
030305	Contraband Bayou (Estuarine)	Copper.
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Lead.
030304	Moss Lake (Estuarine)	Mercury.
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Nickel.

ADDRESSES: Documents from the administrative record files may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

Dated: March 11, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–6578 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0750.

Title: Section 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form Number: n/a.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households.

Number of Respondents: 1,825.

Estimated Time per Response: 1 to 5 minutes.

Frequency of Response: Third Party Disclosure.

Total Annual Burden: 56,940 hours (multiple responses per year).

Total Annual Costs: $0.00.

Needs and Uses: On April 13, 2001, the Commission released a Memorandum Opinion and Order on Reconsideration in MM Docket 00–10, FCC 01–123. This rule expanded the scope of 47 CFR 73.673 to include Class A television station licensees. 47 CFR 73.673 implements the Children's Television Act of 1990 (CTA). The rule requires that commercial TV broadcasters identify programs specifically designed to educate and inform children. This identification will occur at the beginning of the programs. In addition, licensees will provide to publishers of program guides information identifying children's programs and the intended age groups. The rule provides greater clarity about broadcasters' obligations to air programming ''specifically designed'' to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–6515 Filed 3–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011117–030.

Title: United States/Australasia Interconference and Carrier Discussion Agreement.

Parties:

P&O Nedlloyd Limited
Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited
Contship Containerlines, a division of CP Ships (UK) Limited
Hamburg-Süd
Compagnie Marseille Fret
Wallenius Wilhelmsen Lines AS
CMA CGM
FESCO Ocean Management Limited

Maersk Sealand

Synopsis: The proposed agreement modification deletes the United States Australasia Agreement as a party to the agreement, changes the agreement name to the United States/Australasia Discussion Agreement, and deletes the Pacific Islands from the geographic scope. The amendment breaks Article 5.1(a) into two sub-paragraphs and revises the language of various sub-paragraphs to clarify the authority contained in the agreement. New sub-paragraphs 5.1(c) and 5.1(d) authorize agreement and multi-carrier service contracts. The parties are deleting the reference to conferences in Article 7, adding voting procedures for agreement service contracts and amendments in Article 8, and deleting Article 11 authorizing Independent Action. The amendment also makes technical corrections required by Australian law to Appendix B.

Agreement No.: 011435–007.

Title: APL/TMM/Lykes Space Charter Agreement.

Parties:

American President Lines, Ltd.—APL Co. Pte Ltd.,
TMM Lines Limited, LLC,
Lykes Lines Limited, LLC.

Synopsis: The amendment narrows the agreement's geographic scope and revises the agreement's authority and duration; the amendment also re-states the agreement.

Agreement No.: 011845.

Title: CCNI/Lykes Slot Charter Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica S.A.
Lykes Lines Limited, LLC.

Synopsis: The agreement would authorize CCNI to charter space from Lykes on the latter's vessels in the trade between Port Everglades, Florida and Puerto Rico, on the one hand, and ports in Costa Rica, Guatemala, the Dominican Republic, and Colombia, on the other hand, and engage in cooperative activities related to such charter. Expedited Review is requested.

Agreement No.: 011846.

Title: CCNI/Maruba Cooperative Working Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica S.A.
Empresa Maruba S.C.A.

Synopsis: The agreement permits the parties to charter vessels and vessel space to each other in the trade between the Pacific Coast of the United States and the Pacific Coast of Central and South America, on the one hand, and East and South Asia, on the other. It also authorizes the parties to enter into cooperative working agreements concerning the space chartering.

By Order of the Federal Maritime Commission.

Dated: March 14, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–6605 Filed 3–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 2, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Troy Savings Bank Employee Stock Ownership Plan, Troy, New York; to acquire voting shares of Troy Financial Corporation, Troy, New York, and thereby indirectly acquire voting shares of Troy Savings Bank, Troy, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Richmond Community Hospital Foundation, Richmond, Virginia; to acquire voting shares of Consolidated Bank & Trust Company, Richmond, Virginia.

Board of Governors of the Federal Reserve System, March 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–6486 Filed 3–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–52]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210. CDC is requesting an emergency clearance for this data collection with a two week public comment period. CDC is requesting OMB approval of this package 7 days after the end of the public comment period.

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 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project: Select Agent Distribution Activity—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background

This project is designed to provide a systematic and consistent mechanism to review requests that come to CDC for Select Agents. In light of current Bioterrorism concerns and the significant NIH grant monies being directed toward Select Agent research, NCID anticipates the receipt of hundreds of requests for Select Agents. Applicants will be expected to complete an application form in which they will

identify themselves and their institution, provide a CV or biographical sketch, a summary of their research proposal, and sign indemnification and material transfer agreement statements. A user fee will be collected to recover costs for materials, handling and shipping (except for public health laboratories.) The cost to the respondent will vary based on which agent is requested.

Respondents	No. of respondents	No. of responses per respondent	Average burden per Response (in hours)	Total burden (in hours)
Researcher	900	1	30/60	450
Total				450

Dated: March 13, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–6504 Filed 3–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0419]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRECEDEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRECEDEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PRECEDEX (dexemedetomidine). PRECEDEX is indicated for sedation of adult patients in the intensive care unit setting. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PRECEDEX (U.S. Patent No. 4,910,214) from Orion Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PRECEDEX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PRECEDEX is 3,894 days. Of this time, 3,529 days occurred during the testing phase of the regulatory review period, while 365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: April 21, 1989. The applicant claims March 27, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 21, 1989, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 18, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for PRECEDEX (NDA 21–038) was initially submitted on December 18, 1998.

3. *The date the application was approved*: December 17, 1999. FDA has verified the applicant's claim that NDA 21–038 was approved on December 17, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 3,919 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 19, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for

extension acted with due diligence during the regulatory review period by September 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy, identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 7, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–6490 Filed 3–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–1217]

Determination of Regulatory Review Period for Purposes of Patent Extension; TOPAMAX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TOPAMAX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TOPAMAX (topiramate). TOPAMAX is indicated as adjunctive therapy in the treatment of adults with partial onset seizures. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TOPAMAX (U.S. Patent No. 4,513,006) from McNeilab, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TOPAMAX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TOPAMAX is 3,844 days. Of this time, 2,984 days occurred during the testing phase of the regulatory review period, while 860 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 18, 1986. The applicant claims June 17, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 18, 1986, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: August 18, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for TOPAMAX (NDA 20–505) was initially submitted on August 18, 1994.

3. *The date the application was approved*: December 24, 1996. FDA has verified the applicant's claim that NDA 20–505 was approved on December 24, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 19, 2003. Furthermore, any interested person may petition for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 5, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–6507 Filed 3–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0258]

Revised Guidance for Industry on Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a revised guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations.'' This guidance revises the guidance of the same name that issued in October 2000.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the revised guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Aida L. Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:

I. Background

The agency is announcing the availability of a revised guidance for industry entitled ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations.'' This is a revision of the guidance of the same name issued in October 2000. The guidance is intended to provide information to sponsors and/or applicants planning to include bioavailability (BA) and bioequivalence (BE) information for orally administered drug products in investigational new drug applications (INDs), new drug applications (NDAs), and abbreviated new drug applications (ANDAs) and their supplements. Since the October 2000 guidance was issued there have been changes due to the following: (1) Agency thinking based, in part, on input from the Advisory Committee for Pharmaceutical Science, (2) experience with the guidance, and (3) outside comments. Therefore, the agency decided to revise the guidance.

A draft of the revision was published in the **Federal Register** of July 11, 2002, (67 FR 45983). Comments on the draft submitted to the docket were considered carefully during the finalization of this guidance. Only minor, clarifying editorial changes have been made to this final version.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 10, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6491 Filed 3–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 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.

Proposed Project: Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB No. 0915–0174)—Revision

The Division of Facilities and Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under section 621 of title VI and section 1601 of title XVI of the Public Health Service Act, as well as loans insured under the section 242 Hospital Mortgage Insurance Program of the National Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The

information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Hospital Facility Data Abstract	175	1	1	175

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 12, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–6493 Filed 3–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Children and Youth Initiative

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Availability of Funds for Competitive Grants for Youth Initiatives: Health promotion, intentional and unintentional injury prevention, youth wellness, recreation and education, and mentoring programs for American Indian and Alaska Native (AI/AN) youth.

SUMMARY: The Indian Health Service (IHS) announces the availability of approximately $700,000 for competitive grants established under the authority of section 301(a) of the Public Health Service Act, as amended, to be awarded to Tribal, Urban and nonprofit Indian organizations for the support of AI/AN youth. There will be only one funding cycle during Fiscal Year (FY) 2003 (see Fund Availability and Period of Support). This program is described in the *Catalog of Federal Domestic Assistance* at 93.933. Executive Order 12372, which requires intergovernmental review, is not applicable to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010* a PHS led activity for setting priority areas. Potential applicants may obtain a printed copy of *Healthy People 2010,* (Summary Report No. 017–001–00549–5) or CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *http://www.health.gov/healthpeople/publication.*

Projects will be included in one of two categories: (1) Services assessment, which may include the demographics of Native American children and youth between the ages of 5 and 19, the development of a survey tool of youth services and needs, or the development of assessment tools or interdisciplinary teams; or (2) direct services with a prevention component, which may include the forming of children and youth-specific clinics/services/programs/camps/before and after school programs/recreation programs/programs for at risk youth with an injury prevention focus and/or the fostering of traditional values as well as family and intergenerational activities. This may involve children and youth with special needs, particularly at risk populations such as detained or incarcerated youth, or aftercare for youth in residential treatment programs.

Smoke-Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Due Date: An original and two copies of the completed grant application must be submitted with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, by 5 p.m., Eastern Standard Time, on May 15, 2003.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline, with hand carried applications received by 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted as proof of timely mailing. Private metered postmarks will not be accepted as proof of timely mailing. Applications received after the announced closing date will be returned to the applicants and will not be considered for funding.

Additional Dates:

(a) Application Review Date: June 19, 2003.

(b) Applicants Notified of Results (approved, approved unfunded, or disapproved): June 26, 2003.

(c) Anticipated Start Date: July 1, 2003.

Contacts for Assistance: For program information, contact Judith Thierry, D.O., Maternal and Child Health Coordinator, Office of Public Health, IHS, 801 Thompson Avenue, Suite 120, Rockville, Maryland, 20852; (301) 443–5070; *jthierry@hqe.ihs.gov;* or (301) 443–0114 (fax). For grant application and business information, contact Ms. Martha Redhouse, Grants Management Specialist, Grants Management Branch, Division of Acquisition and Grants Management, IHS, 801 Thompson Avenue, Suite 120, Rockville, MD 20852; (301) 443–5204. (The telephone numbers for Dr. Thierry and Ms. Redhouse are not toll-free.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program goal, eligibility and documentation requirements, programmatic activities, funding availability, period of support, and application procedures.

General Program Goals: The goals are to support youth health promotion and wellness programs; to aid in the risk reduction of injuries, early morbidity, and premature mortality from injuries; to aid in the risk reduction of alcohol, tobacco, inhalant and substance abuse; to support a healthy learning environment and staying in school; and to support communities oriented to AI/AN children and youth, and their families. Injury coalitions, recreational programs and/or multidisciplinary evaluation and treatment teams will be considered for these communities. Another, non-exclusive goal is to survey and assess youth or youth programs to better define community needs and consider a plan of action.

Eligibility and Documentation Requirements: Any federally recognized Indian tribe, Indian Tribal organization,

501(c)(3) nonprofit organization including faith-based organizations serving primarily AI/AN is eligible to apply for a demonstration grant from the IHS under this announcement.

Documentation of Support:

(a) Tribal Resolutions

(1) A resolution of the Tribe or Tribal organization supporting this specific project must accompany the application submission.

(2) Applications that propose services to benefit more than one Tribe must include resolutions from all Tribes to be served.

(3) Applications from Tribal organizations will not require resolution(s) if the current, operational Tribal resolution(s) encompasses the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application.

(4) If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

(b) Nonprofit organizations must submit a copy of the 501(c) (3) Certificate;

(c) Letters of Cooperation/ Collaboration/Assistance

(1) Letters included in the application should be specific to this program.

(2) If other related human services programs are to be involved in the project, letters confirming the nature and extent of their cooperation/ collaboration/assistance must be submitted. Indicate if matching funds, cost sharing or in-kind services will be applied.

Project Types:

(a) Demographic projects will identify the health and demographic characteristics of the AI/AN child and youth populations. Inclusion of children and youth with special needs and special populations, *i.e.,* incarcerated youth, must be addressed. The mapping must report the availability of health care and related community services, schools, and after-school programs, including the location of facilities and availability of transportation; socio-economic factors as revealed by the latest U.S. Census date; and selected health data from the IHS computerized, online database of patients' medical records. The Geographic Information System (GIS) is preferred. A project may also involve the search for and/or the development of a survey tool and the methodology to identify youth services and needs, particularly as they pertain to suicide and injury prevention.

(b) The development of teen-specific clinics/programs (*e.g.,* a multidisciplinary clinic for the diagnosis and assessment of special needs or chronic diseases, recreation and wellness programs with content in injury prevention, and case management for at-risk youth) are fitting under this grant. Programs that focus on children and youth abuse/neglect and sexual abuse awareness, prevention, and treatment are also appropriate. The assembling, training and using of interdisciplinary teams for the assessment of children and youth (including assessment and management or case management), or for the risk stratification of children and youth for disease/disability (injury) prevention, health maintenance, improved socialization, and maximization of their learning may also be included in this grant proposal.

(c) The education of children and youth, and their communities and their families, is part of the IHS effort to promote awareness of the particular needs of children and youth.

Therefore, proposed projects may plan, execute and demonstrate strategies that incorporate pamphlets, books, workbooks, posters, modules or training sessions, audio, video, educational television network programming, or other media presentations aimed either at the consumer and/or the supporter of youth initiatives.

Fund Availability and Period of Support: In FY 2003 it is anticipated that approximately $700,000 will be available to support five to ten projects at approximately $40,000 to $60,000 each, and 10 to 20 projects at approximately $5,000 to $15,000 each, inclusive of direct and indirect costs. Projects may be funded in annual budget periods for up to three years, depending on the defined scope of work. Continuation of projects will be based on the availability of appropriations in future years, the continuing need the IHS has for the projects, and satisfactory project performance. The anticipated start date is July 1, 2003.

The Child and Youth Initiative Grant Application Kit: An IHS Grant Application Kit, including form PHS 5161–1 (rev. 07/00), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Reyes Building, Suite 120, 801 Thompson Avenue, Rockville, MD 20852. The telephone number is (301) 443–5204.

Factors for Consideration in Preparing the Application:

(a) Follow the outline provided in the announcement as a guide in preparing the application to facilitate the reviewers' ability to find the required information.

(b) Demonstrate how the project will be coordinated with other agencies and organization inside and outside the community that serves the targeted population. Where possible, indicate the use of volunteers, community resources, and family involvement.

(c) Consider Tribal cultural aspects in your program design.

Application Process: All applications must be typewritten and single-spaced, using consecutively numbered pages on one side of standard-sized on 8½″ x 11″ paper that can be photocopied. The typeface should be black and no smaller than 12 characters per inch in size. The pages should have conventional one inch border margins. The narrative must not exceed 10 typed pages. An additional page may be used for each additional year of funding requested. Excluded from the 10 page limit are the Abstract, Tribal Resolutions(s), 501(c)(3) Nonprofit Certificate, Letters of Documentation or Support, Standard Forms, Table of Contents, and Appendix.

All applications must include the following, in the order presented:

(a) Tribal Resolution(s) and Documentation or 501(c)(3) Certification.

(b) Standard Form 424, Application for Federal Assistance.

(c) Standard Form 424A, Budget Information—Non-Construction Programs (pages 1 and 2).

(d) Standard Form 424B, Assurances—Non-Construction Programs (front and back).

(e) Checklist (pages 25–26) Note: each standard form and the checklist is contained in the PHS Grant Application, Form PHS 5161–1 (Rev. 07/00).

(f) A Project Abstract (may not exceed one typewritten page), which should present a summary view of ''who-what-when-where-how-cost'' to determine acceptability for review.

(g) A table of contents to correspond with numbered pages.

(h) Project Narrative (10 Pages).

(1) Introduction and Need for Assistance.

(2) Project Objective(s), Approach, and Results and Benefits.

(3) Project Evaluation.

(4) Organizational Capabilities and Qualifications.

(5) Budget.

(i) Appendix to include:

(1) Resumes of key staff.

(2) Position descriptions for key staff.

(3) Organizational chart.

(4) Documentation of current certified financial management systems.

(5) Copy of current negotiated indirect cost rate agreement.

(6) A map of the area to benefit from the project.

(7) Application Receipt Card, IHS–815–1A (Rev. 4/97).

(a) Narrative

The narrative section of the application must include the following:

(1) Justification for the need for assistance;

(2) A work plan (including use of appropriate native healing practices), program objectives, approach, expected results, and evaluation process;

(3) Adequacy of management controls; and

(4) Key personnel.

The work plan section should be project-specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions on page 21 of the PHS 5161–1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed ten single-spaced pages, excluding attachments, budget and Tribal Resolutions/501(c)(3), and nonprofit certificates/letters of support (pages must be numbered).

(b) Need for Assistance.

(1) Describe and define the target population at the project location (*e.g.,* Tribal population, number of children and/or youth, data from a previous community needs assessment). Information sources must be appropriately identified.

(2) Describe the existing resources and services available, including the maintenance of Native healing systems, where appropriate, which are related to the specific program/service the applicant is proposing to provide. Supply the name, address, and phone number of a contact person for each.

(3) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, collaborative efforts with State/county programs, and availability of program funding from Federal/non-Federal sources).

(4) Summarize the applicable national, IHS, and/or State standards, laws and regulations, such as those in the arenas of safety, school attendance, and child welfare.

(c) Work Plan.

(1) Project Objectives.

(i) State concisely the objectives of the project.

(ii) Describe briefly what the project intends to accomplish.

(iii) Describe how the accomplishment of the objectives will be measured (including if the accomplishments are replicable).

(2) Approach.

(i) Describe the tasks and resources needed to implement and complete this project.

(ii) Provide a task time line (milestones) breakdown or chart. Include the date that the project will begin to accept clients (if applicable).

(3) Expected Results.

(i) Discuss data collection for the project, and how it will be obtained, analyzed, and maintained by the project. Data should include, but is not limited to, the number of children and youth served, services provided, program outcomes and satisfaction, and costs associated with the program.

(ii) Describe how the data collection will support the stated project objectives and how it will support the project evaluation in order to determine the impact of the project.

(4) Project Evaluation.

(i) Describe the methods for evaluating the project activities, effectiveness of interventions, success in achieving objectives, impact of interventions, acceptance by the targeted population (focus groups and customer surveys), and workload accomplishments.

(ii) Identify who will conduct the evaluation of the projected outcomes and when the evaluation is to be completed.

(iii) Identify the cost of the evaluation (whether internal or external).

(5) Project Continuance. Discuss how the project services will be continued after the grant expires.

(6) Experience Sharing. Indicate the project personnel's willingness to share the project experience with IHS Areas, urban programs, Tribes, and other Tribal organizations.

(d) Adequacy of Management Controls.

(1) Describe where the project will be housed, *i.e.,* facilities and equipment available.

(2) Describe the management controls of the grantee over the direction and acceptability of the work to be performed. Discuss the personnel and financial systems in place and any changes planned for this grant.

(3) Demonstrate that the organization has adequate systems and expertise to manage Federal funds. Include a letter from the organization's accounting firm describing the results of the most recent organization-wide audit.

(e) Key Personnel.

(1) Provide a biographical sketch (qualifications) and position description for the program director and other key personnel as described on page 22 of the PHS 5161–1. Identify existing personnel and new program staff to be hired.

(2) Provide an organizational chart, and indicate how the project will operate within the organization. Describe how this project will interface with other existing available resources.

(3) List the qualifications and experience of consultants or contractors where their use is anticipated. Identify who will determine if the work of a contractor is acceptable.

(f) Budget.

(1) Provide an itemized estimate of costs and a justification for the proposed project by line item on Form SF 424A. Budget Information Non-Construction Programs.

(2) Submit a narrative justification for all costs. Indicate needs by listing the individual items and quantities necessary. The need for these items and the corresponding quantities should be clearly specified in the narrative justification.

(3) Indicate any special start-up costs.

(4) Multi-Year Project—Projects requiring two or three years or funding. Include a brief project narrative and budget for each additional year of funding requested. The applicant may use one additional page to describe the developmental plans for each additional year of the project.

(5) Grant funding may not be used to supplant existing public and private resources.

(g) Assurances. The application shall contain an assurance to the Secretary that the applicant will comply with program regulations 42 CFR part 36, subpart H.

Review Process: Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by reviewers appointed by the IHS. The review will be conducted in accordance with PHS review procedures. The review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, to assign a numerical score to each application, and to determine the likelihood of the project's success. Applications scoring below 60 points will not be funded.

Evaluation Criteria: Applications will be evaluated against the following criteria and weights:

Weight, Criteria, and Description

25%—1 Need—The demonstration of identified problems and risks in the target population. Extent of community involvement and commitment.

40%—2 Work Plan—The soundness and effectiveness of the applicant's plan for conducting the project, with special emphasis on the objectives and methodology portions of the application.

15%—3 Adequacy of Management Controls—The apparent capability of the applicant to successfully conduct the project, including both technical and business aspects. The soundness of the applicant's budget in relation to the project work plan and for ensuring effective utilization of grant funds. Adequacy of facilities and equipment available within the organization or proposed for purchase under the project.

10%—4 Key Personnel—Qualifications and adequacy of the staff.

10%—5 Budget—Clarity and accuracy of project costs, and cost justification for the entire grant period.

100%—Total Weight.

Reporting Requirements:

(1) Progress Report—Project progress reports will be required semiannually by March 30 and September 30 of each funding year. These reports will include a brief description comparing the actual accomplishments to the goals established for the period; the reasons for slippage, if applicable, and other pertinent information as required. A final report is due 90 days after expiration of the project/budget period.

(2) Financial Status Report—A semiannual financial status report will be submitted 30 days after the end of the half-year point of each funding year. Final financial status reports are due 90 days after expiration of the project/budget period. Standard Form 269 (long form) will be used for financial reporting.

Grant Administration Requirements: grants are administered in accordance with the following documents:

(1) 45 CFR part 92. Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-profit Recipients.

(2) Public Health Service Grants Policy Statement, and

(3) Appropriate Cost Principles: OMB Circular A–87, State and Local Governments, or OMB Circular A–122, Nonprofit Organizations.

Results of the Review: Successful applicants will be notified through official Notice of Grant Award (NGA) documents. The NGA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

Dated: March 13, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–6509 Filed 3–18–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–08]

Notice of Proposed Information Collection: Comment Request; Budget-Based Rent Increase

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Budget-Based Rent Increase.

OMB Control Number, if applicable: 2502–0324.

Description of the need for the information and proposed use: This information is necessary to allow certain owners of multifamily housing projects to plan for expected increases in expenditures. The information will be used to determine the reasonableness of expense increases.

Agency form numbers, if applicable: HUD–92547–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 12,500 generating approximately 25,000 annual responses; the frequency of response is annually; the estimated time needed to prepare the response varies from 15 minutes to 1 hour; and the estimated total number of hours needed to prepare the information collection is 15,625.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1955, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–6607 Filed 3–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–07]

Notice of Proposed Information Collection: Comment Request; Housing Counseling Program—Automated Client Management Date System

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Deputy Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0317, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Counseling Program—Automated Client Management Data System.

OMB Control Number, if applicable: 2502–0261.

Description of the need for the information and proposed use. Section 106 of the Housing and Community Development Act of 1974 authorizes HUD to contract with organizations to provide counseling to tenants and homeowners to assist them in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. Counseling agencies are required to submit their qualifications to provide such services. HUD-approved agencies can compete for program funds. Grantees are required to submit performance data to enable HUD to evaluate the effectiveness of the program. This new automated web-based system provides a standard electronic took to record counseling information for automatic input into the HUD–9902 reporting instrument and other necessary reports. The only reporting instrument affected by this submission is the form HUD–9902. Forms HUD–9900 and HUD–9908 are not affected.

Agency form numbers, if applicable: HUD–9900, HUD–9902, HUD–9908.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours response: The estimated total number of hours needed to prepare the information collection is 2,800; the number of respondents is 7,275 generating approximately 7,275 annual responses; the frequency of response is on occasion and annually; and the estimated time needed to prepare the response varies from 10 minutes to 8 hours.

Status of the proposed information collection: Revision of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–6608 Filed 3–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–09]

Notice of Proposed Information Collection: Comment Request; Multifamily Insurance Benefits Claims Package

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Sivert W. Ritchie, Systems Accountant, Office of Financial Services, Department of Housing and Urban Development, 451 7th Street, SW., Room 6254, Washington, DC 20410, telephone (202) 708–2866 ext. 3266 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claims Package.

OMB Control Number, if applicable: 2502–0415.

Description of the need for the information and proposed use: The claims package requests from the mortgagee the necessary fiscal data required for HUD to determine the insurance owned to mortgage lenders that filed an insurance claim. When terms of a multifamily contract are breached or when a mortgagee meets conditions stated within the multifamily contact for an automated assignment, the holder of the mortgage may file for insurance benefits. The law, which supports this action, is statute 12 U.S.C. 1713(g) and Title II, Section 207(g) of the National Housing Act. This Act provides in part that ''* * *'' the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising under the mortgage transaction; (3) all policies of title or other insurance or surety bonds or guaranties and any or all claims there under; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for account of the mortgagor and which have been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers and accounts relating to the mortgage transaction.'' These provisions are further spelled out in 24 CFR 207 Subpart B, Contract Rights and Obligations. The receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claims Package.

Agency form numbers, if applicable: HUD–2742, 2744–A. 2744–B, 2744–C, 2744–D, and 2744–E.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response and hours of response: The estimated total number of hours needed to prepare the information collection is 767; the number of respondents is 118 generating approximately 118 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 15 minutes to 1½ hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 12, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–6609 Filed 3–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–02–1610–DO–086L]

Resource Management Plan; Ring of Fire

AGENCY: Bureau of Land Management (BLM), Anchorage Field Office.

ACTION: Notice of Intent (NOI) to prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS), a request for information for the scoping process, and a call for coal resource information.

SUMMARY: Notice is hereby given that the BLM, Anchorage Field Office, Alaska, is initiating a planning effort to prepare the Ring of Fire RMP. This planning activity encompasses approximately 1.3 million acres of public land. Section 201 and 202 of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1711) and the regulations in 43 CFR 1600 direct this planning effort. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA). As required in 43 CFR 3420.1–2, this notice is also a specific call for coal resource information and identification of areas where there is an interest in future leasing and development of federal coal.

The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify planning issues and to develop planning criteria. The public is invited to nominate potential areas of critical environmental concern (ACEC), and river segments for wild and scenic river consideration during the planning process.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information or request to be placed on the mailing list for the Ring of Fire RMP planning effort by contacting Bob Lloyd, RMP Team Leader or Peter Ditton, Acting Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1246.

SUPPLEMENTARY INFORMATION: The planning area extends from below Dixon Entrance in southeast Alaska to Attu Island at the end of the Aleutian Chain and presents significant challenges. This is a lineal distance of some 2,500 miles. The area contains 80% of the total population of the State including Anchorage, the largest city, and Juneau, the State capital. The boundaries are the Canadian border for the southeast part of the planning area, the Matanuska-Susitna, Anchorage and Kenai Boroughs in Southcentral Alaska, Kodiak Island, and the Alaska Peninsula, and Aleutian Island Chain.

Within this 61,000,000 acre area there are approximately 1,300,000 acres (surface estate) of BLM-administered lands occurring as large blocks to small scattered tracts. Approximately 813,000 acres of the 1.3 million acres have been selected by the State of Alaska and Native Corporations, but have not been conveyed. Due to over selection, BLM will retain management of some of this selected land. Lands administered by BLM and not selected total approximately 463,000 acres.

Preliminary issues and management concerns have been identified by BLM and other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issues that will be addressed in the plan effort are subsistence; oil and gas; access; locatable minerals; off-highway vehicle (OHV) use and designation; wild fire and fuels management; wild, scenic and recreation rivers; recreation; and land tenure adjustments.

DATES: The scoping comment period will commence with the publication of this notice. Meetings and comment deadlines will be announced through the local news media, newsletters and a web site to be developed by a contractor. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meetings will be

scheduled in each of the planning areas. Early participation by all those interested is encouraged and will help determine the future management of lands within the Ring of Fire planning area. At least 15 days public notice will be given for activities where the public is invited to attend. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Written comments will be accepted throughout the planning process at the address shown below. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507; Fax 907–267–1267. Documents pertinent to this proposal may be examined at the Anchorage Field Office located in Anchorage, Alaska. Comments, including names and street addresses of respondents, will be available for public review at the Anchorage Field Office located in Anchorage, Alaska during regular business hours 7:30 a.m. to 4 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from 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 and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping process.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in fire management, geology, forestry, outdoor recreation, archaeology, paleontology, subsistence, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

Peter J. Ditton,

Field Office Manager.

[FR Doc. 03–6272 Filed 3–18–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 10 a.m. on Friday, April 4, 2003, at park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows: Mrs. Sheila Rabb Weidenfeld, Chairman, Mr. Charles J. Weir, Mr. Barry A. Passett, Mr. Terry W. Hepburn, Ms. Elise B. Heinz, Ms. JoAnn M. Spevacek, Mrs. Mary E. Woodward, Mrs. Donna Printz, Mr. Rockwood H. Foster, Mrs. Ferial S. Bishop, Ms. Nancy C. Long, Mrs. Jo Reynolds, Dr. James H. Gilford, Mrs. Sue Ann Sullivan, Brother James Kirkpatrick.

Topics that will be presented during the meeting include:

1. Status of the draft Land Protection Plan.
2. Major construction/development projects.
3. Historic Leasing Program.
4. Duke Power Company right-of-way easement application.
5. Mecklenburg Warehouse planning project.
6. Western Maryland Railroad right-of-way planning study.
7. Business Plan.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Douglas D. Faris, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: February 28, 2003.

Kevin Brandt,

Acting Superintendent, C&O Canal National Historical Park.

[FR Doc. 03–6518 Filed 3–18–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Juan Bautista de Anza National Historic Trail Advisory Commission; Notice of Meeting

SUMMARY: Notice is given in accordance with the Federal Advisory Committee Act that the first meeting of the Juan Bautista de Anza National Historic Trail Advisory Commission will be held from 8:30 a.m. to 4:30 p.m. at the following location and dates.

DATES: Monday, March 31 and Tuesday April 1, 2003.

ADDRESSES: The meeting will be held at the offices of the Pima County Parks and Recreation Department, 3500 West River Road, Tucson, Arizona 85741. A field trip to trail sites along the Santa Cruz River in Tucson, Tubac Presidio State Historic Park, and Tumacacori National Historical Park will occur on the afternoon of March 31. The public is welcome, but transportation will only be provided to commission members.

FOR FURTHER INFORMATION AND COPIES OF MEETING MINUTES CONTACT: Meredith Kaplan, Juan Bautista de Anza National Historic Trail, 1111 Jackson Street, Suite 700, Oakland, California 94607, at 510–817–1438, or *meredith_kaplan@nps.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established in accordance with the National Trails System Act 915 U.S.C. 1241 *et seq.*), as amended by Public Law 191–365 to consult with the Secretary of the Interior on planning and other matters relating to the trail.

Agenda

1. Welcome and introductions
2. Review of Commission purpose and responsibilities
3. Background of accomplishments since 1990 trail authorization
4. Overview, discussion, and recommendations for the Long Range Interpretive Plan

5. Development of strategic plan

This meeting is open to the public and opportunity will be provided for public comments at specific times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission.

Dated: February 4, 2003.

Arthur Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–6519 Filed 3–18–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. TA–2104–5]

U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on January 21, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation No. TA–2104–5, U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)).

Background

As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S.-Chile FTA on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers. The report will assess the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement and the interests of United States consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. The President notified the Congress on January 30, 2003, of his intent to enter into an FTA with Chile.

The ITC has begun its assessment, and it will seek public input for the investigation when a public version of the agreement is made available by the U.S. Trade Representative. The ITC will issue a follow-up **Federal Register** notice and media advisory when it schedules this portion of its investigation.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from James Stamps, Project Leader, Office of Economics (202–205–3227). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

List of Subjects: Chile, tariffs, trade, imports and exports.

By order of the Commission.

Issued: March 13, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–6485 Filed 3–18–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day notice of information collection under review; revision of a currently approved collection; Hate Crime Incident Report and Quarterly Hate Crime Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until May 19, 2003.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigations, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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 of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Hate Crime Incident Report and Quarterly Hate Crime Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–699 and 1–700; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local and State Law Enforcement Agencies. These reports

will gather information necessary to monitor the bias motivation of selected criminal offenses. The resulting data are published annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 16,971 law enforcement agency respondents at 0.167 (10 minutes) hours per report.

(6) *An estimate of the total public burden (in hours) associated with both collections:* There are approximately 11,882 hours annual burden associated with this information collection.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 13, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–6502 Filed 3–18–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed collection; Comments Requested

ACTION: 60-day notice of information collection under review: New collection; individual clearance of BJS publications surveys.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Bill Ballweber, (202) 305–2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Individual Clearance for BJS Publications Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current recipients of agency products. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students. This survey is designed to obtain feedback on four specific BJS products. BJS will be seeking information on the following areas: Recipients' interest in the specified publication, recipients' usage of the publication, and recipients' professional duties/activities, in a general sense.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 2,201 respondents for the survey. It is estimated that the surveys will average 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the annual public burden associated with this collection 183 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 13, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–6500 Filed 3–18–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Reinstatement, without change, of a previously approved collection for which approval has expired, Victim Assistance Grant Program Performance Report.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 195, page 62816 on October 8, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 18, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be

submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP ADMIN Form 739/4 (REV. 8–99). Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. This form will be used to allow the director of OVC to collect performance data from recipients of VOCA victim assistance grant fund.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 57 respondents will complete an estimated 20 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,197 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: March 13, 2003.

Brenda E. Dyer,

Department of Clearance Officer, Department of Justice.

[FR Doc. 03–6501 Filed 3–18–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 91–38, Bank Collective Investment Funds

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of the information collection provisions of the Prohibited Transaction Class Exemption 91–38. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before May 19, 2003.

ADDRESSES: Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 91–38 provides an exemption from the prohibited transaction provisions of ERISA for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan provided that the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the fund. Without this exemption, such transactions might be prohibited by sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transaction for six years.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the Exemption for Certain Transactions Involving Bank Collective Investment Funds. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

*Agency:*Employee Benefits Security Administration, Department of Labor.

Titles: Exemption for Certain Transactions Involving Bank Collective Investment Funds; Prohibited Transaction Class Exemption 91–38.

OMB Number: 1210–0082.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.
Estimated total burden hours: 90.
Respondents: 1,036.
Frequency of Response: On occasion.
Responses: 1,036.
Estimated Total Burden Hours: 86.
Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 13, 2003.

Joseph S. Piacentini,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 03–6556 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 94–20

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the information collection request (ICR) incorporated in Prohibited Transaction Class Exemption 94–20 (PTCE 94–20). A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before May 19, 2003.

ADDRESSES: Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

PTCE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or broker-dealer or an affiliate thereof that is a party in interest with respect to such plan. In the absence of this exemption, certain aspects of these transactions could be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that a bank, broker-dealer of affiliate thereof that wishes to take advantage of the exemption: develop written procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; provide a written confirmation with respect to each transaction in foreign currency; and, maintain records for a period of six years.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in PTCE 94–20. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.
Titles: Foreign Exchange Transactions; PTCE 94–20.
OMB Number: 1210–0085.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.
Respondents: 130.
Frequency of Response: On occasion.
Responses: 650.
Estimated Total Burden Hours: 54.
Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 13, 2003.

Joseph S. Piacentini,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 03–6557 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,713]

Jideco of Bardstown, Inc., Farmington Hills, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 28, 2003, in response to a worker petition filed by a company official on behalf of workers at Jideco of Bardstown, Inc., Farmington Hills, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 3rd day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6567 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,095]

K.T. Mold & Manufacturing, Inc., Woodstock, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative

reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at K.T. Mold & Manufacturing, Inc., Woodstock, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–42,095; K.T. Mold & Manufacturing, Inc., Woodstock, Illinois (March 7, 2003).

Signed in Washington, DC this 12th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6563 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,588]

Osram Sylvania Products, Inc., Central Falls, RI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Osram Sylvania Products, Inc., Central Falls, Rhode Island. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–41,588; Osram Sylvania Products, Inc., Central Falls, Rhode Island (February 3, 2003).

Signed in Washington, DC, this 12th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6562 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,723]

The Rival Company Sweet Springs, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2003 in response to a worker petition filed on behalf of workers at The Rival Company, Sweet Springs, Missouri.

The petitioning group of workers is covered by an earlier petition filed on January 29, 2003 (TA–W–50,280) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of February 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6569 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,232]

Roxio, Inc., Maple Grove, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Roxio, Inc., Maple Grove, Minnesota. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–50,232; Roxio, Inc., Maple Grove, Minnesota (March 7, 2003).

Signed in Washington, DC, this 12th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6564 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,720]

Siemens Business Systems, Rumford, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 19, 2002 in response to a worker petition which was filed on behalf of workers at Siemens Business Systems, Rumford, Maine.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,327, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 11th day of February 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6568 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 31, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 31, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200

Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 02/19/2003 and 02/28/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,913	Sony Electronics (Wkrs)	Mt. Pleasant, PA	02/19/2003	02/03/2003
50,914	Air Products and Chemicals (Wkrs)	Cumberland, RI	02/19/2003	02/03/2003
50,915	Techbooks (Wkrs)	York, PA	02/19/2003	02/11/2003
50,916	SAB Miller/Tumwater Brewery (IBT)	Tumwater, WA	02/19/2003	02/18/2003
50,917	Trout Creek Lumber (Wkrs)	Trout Creek, MT	02/19/2003	02/18/2003
50,918	Northfield Acquisition Company (MN)	Northfield, MN	02/19/2003	02/13/2003
50,919	Southern Farm Fish Processing (AR)	Eudora, AR	02/19/2003	02/18/2003
50,920	Thomson (IBEW)	Marion, IN	02/19/2003	02/18/2003
50,921	NVF (Wkrs)	Hartwell, GA	02/19/2003	02/10/2003
50,922	Premtec Inc. (Wkrs)	Gastonia, NC	02/19/2003	01/20/2003
50,923	Gretag (Wkrs)	Holyoke, MA	02/19/2003	02/01/2003
50,924	Shaw Alloy Piping Products, Inc. (Wkrs)	Shreveport, LA	02/19/2003	02/14/2003
50,925	Annette Island Packing Company (Wkrs)	Metlakatla, AK	02/19/2003	02/11/2003
50,926	Hartford Compressors, Inc. (Comp)	W. Hartford, CT	02/19/2003	02/14/2003
50,927	Southwire Specialty Products (Wkrs)	Osceola, AR	02/19/2003	02/12/2003
50,928	Preferred Fabricators, Inc. (Comp)	Helenwood, TN	02/19/2003	02/11/2003
50,929	S.D. Warren (Comp)	Skowhegan, ME	02/19/2003	02/13/2003
50,930	Land O' Lakes (MN)	Perham, MN	02/19/2003	02/11/2003
50,931	Meadwestvaco (PACE)	St. Joseph, MO	02/19/2003	02/19/2003
50,932	F/V Miss Synova (Comp)	Metlakatla, AK	02/19/2003	02/18/2003
50,933	F/V Marilynn (Comp)	Nikiski, AK	02/19/2003	02/18/2003
50,934	Shadowline, Inc. (Comp)	Morganton, NC	02/24/2003	02/11/2003
50,935	Coe Newnes/McGhee (Wkrs)	Ukiah, CA	02/24/2003	02/07/2003
50,936	International Mill Service (Wkrs)	Portland, OR	02/24/2003	02/19/2003
50,937	Gerber Plumbing Fixtures Corporation (GMP).	Kokomo, IN	02/24/2003	02/12/2003
50,938	Rexnord Industries (Comp)	Milwaukee, WI	02/24/2003	02/21/2003
50,939	J-Sports, Inc. (Comp)	Knoxville, TN	02/24/2003	02/14/2003
50,940	Olympic Security Services, Inc. (Comp)	Oklahoma City, OK	02/24/2003	02/10/2003
50,941A	Harting, Inc. of North America (Co.)	Elgin, IL	02/24/2003	02/14/2003
50,941	Harting, Inc. (Comp)	Elgin, IL	02/24/2003	02/14/2003
50,942	SMC (Wkrs)	Chatsworth, CA	02/24/2003	02/07/2003
50,943	Tree Top, Inc. (IBT)	Selah, WA	02/24/2003	02/13/2003
50,944	Honeywell International (Wkrs)	Burbank, CA	02/24/2003	02/07/2003
50,945	Chem Fab (AR)	Hot Springs, AR	02/24/2003	02/19/2003
50,946	Sara Lee Intimate Apparel (Comp)	Statesville, NC	02/25/2003	02/11/2003
50,947	Kuhn Tool and Die Company (Comp)	Meadville, PA	02/25/2003	01/31/2003
50,948	Tordenskjold Marine Mobile (AL)	Daphne, AL	02/25/2003	02/13/2003
50,949	Caterpillar, Inc. (Comp)	Leland, NC	02/25/2003	02/20/2003
50,950	Birds Eye Foods, Inc. (EIU)	Green Bay, WI	02/25/2003	02/21/2003
50,951	General Electric Company (Wkrs)	Jonesboro, AR	02/25/2003	02/21/2003
50,952	Trinity Industries (Wkrs)	McKees Rocks, PA	02/25/2003	02/07/2003
50,953	Advanced Energy (Wkrs)	Voorhees, NJ	02/25/2003	02/19/2003
50,954	Eaton Corporation (Comp)	Norwood, NC	02/25/2003	02/13/2003
50,955	Specialized Bicycle Components (Comp)	Salt Lake, City, UT	02/25/2003	02/20/2003
50,956	Gerber/Woodbridge Sanitary Pottery Corp. (IBT).	Woodbridge, NJ	02/25/2003	02/14/2003
50,957	Compass Aerospace NW (Wkrs)	Shelton, WA	02/25/2003	02/18/2003
50,958	Fiberesin Industries (Comp)	Marinette, WI	02/25/2003	02/19/2003
50,959	Harper Brush Works (Comp)	Fairfield, IA	02/25/2003	02/18/2003
50,960	American Identity (Comp)	Marcus, IA	02/25/2003	02/17/2003
50,961	CSI Ltd, Inc. (Comp)	Burlington, IA	02/25/2003	02/19/2003
50,962	Sykes Enterprises, Inc. (MN)	Eveleth, MN	02/25/2003	02/19/2003
50,963	CF Gomma USA, Inc. (Comp)	Columbia City, IN	02/25/2003	02/20/2003
50,964	Oetiker, Inc. (Comp)	Marlette, MI	02/25/2003	02/13/2003
50,965	Cresecent Carboard Co., LLC (Comp)	Lee, MA	02/25/2003	02/19/2003
50,966	Acco Chain and Lifting Products (Wkrs)	Saltville, VA	02/25/2003	02/24/2003
50,967	CMI Northwest (Comp)	Portland, OR	02/25/2003	02/15/2003
50,968	Maintowoc Cranes ()	Maintowoc, WI	02/25/2003	02/21/2003
50,969	Teradyne (Wkrs)	Westford, MA	02/25/2003	02/11/2003
50,970	On Semiconductor (Comp)	Phoenix, AZ	02/25/2003	02/20/2003
50,971	IMCO Recycling (Wkrs)	Post Falls, ID	02/25/2003	02/14/2003
50,972	Ontario Die Int. of Tennessee (Wkrs)	Lebanon, TN	02/25/2003	02/11/2003
50,973	Graftech International (Comp)	Clarksville, TN	02/25/2003	02/24/2003

APPENDIX—Continued

[Petitions instituted between 02/19/2003 and 02/28/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,974	Divine, Inc. (MA)	Burlington, MA	02/25/2003	02/24/2003
50,975	Pasco Tool and Plastics, Inc. (Comp)	Meadville, PA	02/25/2003	02/24/2003
50,976	Madeleine Manufactoring Co., Inc. (Comp)	Union, SC	02/25/2003	02/15/2003
50,977	Wabash Technologies (Comp)	Huntington, IN	02/25/2003	02/14/2003
50,978	Magnus Group, Inc. (The) (Comp)	Emigsville, PA	02/25/2003	02/20/2003
50,979	C-Cor.Net Corporation (Wkrs)	State College, PA	02/25/2003	02/13/2003
50,980	International Paper (Wkrs)	Natchez, MS	02/26/2003	02/07/2003
50,981	Southeastern Paper Products (Comp)	Miami, FL	02/26/2003	02/07/2003
50,982	Tarkett, Inc. (Wkrs)	Newburgh, NY	02/26/2003	02/13/2003
50,983	Advanced Machining, Inc. (Comp)	Newberg, OR	02/26/2003	02/20/2003
50,984	Micro Technology, Inc. (Comp)	Anaheim, CA	02/26/2003	01/04/2003
50,985	S.B. Foot Tanning Company (Comp)	Dumas, TX	02/26/2003	02/11/2003
50,986	F.L. Smithe Machine Company (IAMAW)	Duncanville, PA	02/26/2003	02/11/2003
50,987	Environmental Textiles (Wkrs)	Claremore, OK	02/26/2003	02/25/2003
50,988	Indiana Steel and Wire (Comp)	Muncie, IN	02/26/2003	02/10/2003
50,989	Sara Lee (BCTGM)	Eau Claire, WI	02/26/2003	02/10/2003
50,990	Material Handling Associates (Wkrs)	Greene, NY	02/26/2003	02/18/2003
50,991	Milliken (Wkrs)	Thomson, GA	02/26/2003	02/18/2003
50,992	Lonza Group (Comp)	Los Angeles, CA	02/26/2003	02/04/2003
50,993	F/V Darcie Michelle (Comp)	Dillingham, AK	02/26/2003	02/19/2003
50,994	William O. Olsen, Sr. (Comp)	Clarks Point, AK	02/26/2003	02/18/2003
50,995	F/V Kira (Comp)	South Naknek, AK	02/26/2003	02/24/2003
50,996	F/V Netta (Comp)	S. Naknek, AK	02/26/2003	02/24/2003
50,997	Dale Blatchford (Comp)	S. Naknek, AK	02/26/2003	02/24/2003
50,998	Anishia Elbie (Comp)	S. Naknek, AK	02/26/2003	02/24/2003
50,999	F/V 7, Zs (Comp)	S. Naknek, AK	02/26/2003	02/24/2003
51,000	John Savo (Comp)	Naknek, AK	02/26/2003	02/24/2003
51,001	Egain Communications, Inc. (CA)	Novato, CA	02/27/2003	02/18/2003
51,002	Ansell Healthcare (Comp)	Wilkesboro, NC	02/27/2003	02/26/2003
51,003	Plexus Corporation (Comp)	Poway, CA	02/27/2003	01/02/2003
51,004	Fiber-Line, Inc. (Wkrs)	Hickory, NC	02/27/2003	02/17/2003
51,005	Louisiana Pacific Corporation (Wkrs)	Missoula, MT	02/27/2003	02/20/2003
51,006	Forecaster of Boston (Comp)	Fall River, MA	02/27/2003	02/05/2003
51,007	Cedar Creek Fibers, LLC (Wkrs)	Fayetteville, NC	02/27/2003	02/22/2003
51,008	IBM Corporation (Wkrs)	Beaverton, OR	02/27/2003	02/24/2003
51,009	Vermont American Corporation (Wkrs)	Louisville, KY	02/27/2003	02/24/2003
51,010	Ethan Allen, Inc. (Comp)	Mayville, NY	02/27/2003	02/25/2003
51,011	Ivy Steel and Wire (USWA)	Baltimore, MD	02/27/2003	02/20/2003
51,012	Convergys (Wkrs)	Cincinnati, OH	02/27/2003	02/20/2003
51,013	Data-Ray (Comp)	Westminster, CO	02/27/2003	02/26/2003
51,014	Ingersoll-Rand Company (Comp)	Campbellsville, KY	02/27/2003	02/26/2003
51,015	F/V Sis Vera—Bristol Bay (Comp)	Dillingham, AK	02/27/2003	02/26/2003
51,016	F/V Helen Marg—Bristol Bay (Comp)	Dillingham, AK	02/27/2003	02/26/2003
51,017	F/V Marilyn Marie—Bristol Bay (Comp)	Dillingham, AK	02/27/2003	02/26/2003
51,018	Ametek (Comp)	Grand Junction, CO	02/28/2003	02/20/2003
51,019	Ametek (Comp)	West Chicago, IL	02/28/2003	02/27/2003
51,020	Shalmet Corporation (Comp)	Orwigsburg, PA	02/28/2003	02/26/2003
51,021	Advanced Materials Technology, Inc. (Wkrs)	Tempe, AZ	02/28/2003	02/26/2003
51,022	Fellowes, Inc. (Comp)	Itasca, IL	02/28/2003	02/21/2003
51,023	National Steel Corporation (Comp)	Mishawaka, IN	02/28/2003	02/26/2003
51,024	Whelling-Pittsburgh Steel Corporation (Comp).	Wheeling, WV	02/28/2003	02/14/2003
51,025	Zyquest, Inc. (Wkrs)	De Pete, WI	02/28/2003	02/21/2003

[FR Doc. 03–6570 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,416]

Sprague Industries, Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2003, in response to a worker petition filed by a company official on behalf of workers at Sprague Industries, Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 28th day of February, 2003.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6565 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,693]

Wards Cove Packing Company, Seattle, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2003, in response to a worker petition filed by a company official on behalf of workers at Wards Cove Packing Company, Seattle, Washington.

The petitioning group of workers is covered by an earlier petition filed on January 13, 2003 (TA–W–50,542), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 25th day of February, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6566 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agricultural and Logging in the United States: 2003 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement; Correction

AGENCY: Employment and Training Administration.

ACTION: Correction.

SUMMARY: This document corrects the document which was published Wednesday, February 26, 2003. (68 FR 8929).

EFFECTIVE DATE: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Charlene G. Giles (202) 693–2950 (not a toll-free call).

SUPPLEMENTARY INFORMATION: In the **Federal Register** Volume 68, Number 38 beginning on page 8929 in the issue of Wednesday, February 26, 2003, make the following correction: On page 8929 in the third Column Table—2003 Adverse Effect Wage Rates (AEWRs) change the Hawaii wage rate which is listed at $9.29 to $9.42. The correction is necessary because we have been informed that the Hawaii rate contained in the Adverse Effect Wage Rate Forecast—Year 2003 published by the U.S. Department of Agriculture (USDA), Office of the Chief Economist, did not accurately report the Hawaii rate as determined by the USDA National Agricultural Statistics Service.

Signed at Washington, DC, this 13th day of March 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–6559 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February and March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,406; Siemens ICN, Lake Mary, FL

TA–W–42,041; Mo-Tech Corp., Oakdale, MN

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,106; Profile Group LLC, Coldwater, MI

TA–W–50,862; Fishing Vessel (F/V) Silver Eagle, Dillingham, AK

TA–W–50,745; Monaco Coach Corp., Bend, OR

TA–W–50,841; Fishing Vessel (F/V) Lynn C, Port Heiden, AK

TA–W–50,717; Fishing Vessel (F/V) Echo 3, Clarks Point, AK

TA–W–50,638; Golding View Fisheries, Inc., Anchorage, AK

TA–W–50,618; Fishing Vessel (F/V) Lila-L, Naknek, AK

TA–W–50,611; Acme Electronics, LLC, Cuba, NY

TA–W–50,503; Fishing Vessel (F/V) Kirsten Marie, Port Heiden, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,804; Aetna, Inc., Allentown, PA

TA–W–50,910; Managed Business Solutions, Fort Collins CO

TA–W–50,861; Andrew Corp., Glen Rock, PA

TA–W–50,635; Science Applications International Corp., Energy Technologies and Service Group, Anchorage, AK

TA–W–50.894; Electronic Data Systems Corp., Albuquerque, NM

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier or components for trade-affected companies.

TA–W–50,498; Ram Tool Co., Inc., Conneaut Lake, PA

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) has been met.

TA–W–50,641; Shipley, LLC, a Div. of Rohm and Hass Co., Marlboro, MA

The investigation revealed that criterion (a)(2) (I.A.) (No employment declines) and (a)(2)(B) (No shift in production to a foreign country) have been met.

TA–W–50,675; Springfield Wire, Inc., Springfield, MA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,617; American Paper Mills of Vermont, Gilman, VT: May 28, 2001

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,188; JDS Uniphase, West Trenton, NJ: November 14, 2001

TA–W–50,891; OSRAM Sylvania, Electronic Control Systems, Lake Zurich, IL: February 11, 2002

TA–W–50,866; AstenJohnson, Inc., Jonesboro Dryer Div., Jonesboro, GA: February 6, 2002

TA–W–50,806; Levolor Kirsch Window Fashions, a Div. of Newell Rubbermaid, Ogden, UT: February 5, 2002

TA–W–50,724; Zimmerman Sign Co., Longview, TX: January 28, 2002

TA–W–50,673; Monterey, Inc., Cowan, TN: January 16, 2002

TA–W–50,699; Jideco of Bardstown, Inc., Bardstown, KY: January 22, 2002

TA–W–50,572; Scott Mills, Gastonia, NC: January 8, 2002

TA–W–50,513; Sherwood Harsco Corp., Gas & Fluid Control Group, Washington, PA: January 6, 2002

TA–W–50,506; Consolidated Metco, Div. of Amsted Industries, Clackamas, OR: December 10, 2001

TA–W–50,370; Ultimate Tool, Inc., Erie, PA: December 18, 2001

TA–W–50,052; Westab, Meadwestvaco Corp., Forton Royal, VA November 5, 2001

TA–W–50,869; Lear Corp., Grand Rapids-Alpine Div., Grand Rapids, MI: February 7, 2002

TA–W–50,973; Graftech International, formerly UCAR Carbon Co., Clarksville, TN: February 24, 2002

TA–W–50,941 & A; Harting, Inc., Elgin, IL and Harting, Inc. of North America, Elgin, IL: February 14, 2002

TA–W–50,908; Halliburton Formation Evaluation Machine Shop, Alvarado, TX: February 13, 2002

TA–W–50,875; Rockford Powertrain Co., Loves Park, IL: February 12, 2002

TA–W–50,830; Tyco Plastics, LP, Louisville, Facility, Louisville, KY: January 29, 2002

TA–W–50,735; Kincaid Furniture Co., Inc., Lenoir, NC: January 27, 2002

TA–W–50,648; Isaac Hazan and Co., The Hazan Group, Secaucus, NJ: January 10, 2002

TA–W–50,567; Firmenich, Inc., Patillas, PR: January 7, 2002

TA–W–50,426; B.I. Transportation, Inc., Burlington, NC: December 27, 2001

TA–W–50,091; Polar Equipment, Inc., d/b/a Cook Inlet Processing, Kodiak, AK: November 14, 2001

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,141; Tecumseh Products Co. including leased workers of Flexstaff and Waterstone Group, New Holstein, WI: November 11, 2001

TA–W–50,822; Henlopen Manufacturing Co., Inc., Techpack International Div. of Pechiney, Watertown, CT, including contract workers of Jaci Carroll Staffing, Watertown, CT: January 30, 2002

TA–W–50,787; Tinnerman Palnut Engineered Products, LLC, Massillon, OH: January 31, 2002

TA–W–50,732; Delphax Technologies, Inc., Minnetonka, MN January 27, 2002

TA–W–50,656; Evenflo Co., Inc., Suring WI: January 22, 2002

TA–W–50,655; Evenflo Co., Inc., Ball Ground, GA: January 22, 2002

TA–W–50,647; General Electric Corp., Euclid, OH: January 22, 2002

TA–W–50,644; Newell Rubbermaid, Levolor-Kirsch Window Fashions, High Point, NC: January 20, 2002

TA–W–50,436; Amcor White Cap LLC, Chicago Manufacturing Facility, Chicago, IL: December 17, 2001

TA–W–50,913; Sony Electronics, Display Systems Service Center, Mt. Pleasant, PA: February 3, 2002

TA–W–50,928; Preferred Fabricators, Inc., Helenwood, TN: February 11, 2002

TA–W–50,839; Fishing Vessel (F/V) Seamaid, Nushagak, AK: Janaury 28, 2002

TA–W–50,636; Fishing Vessel (F/V) Indiana, Ketchikan, AK: January 21, 2002

TA–W–50,627; Fishing Vessel (F/V) Flue Angel, Bristol Bay, AK: January 20, 2002

TA–W–50,601; Valeo Switches and Detection Systems, Ft. Worth, TX: January 13, 2002

TA–W–50,497; C–COR.net Corp., Manlius, NY: January 2, 2002

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAF*TA–TAA*) and in accordance with section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAF*TA–TAA* issued during the month of February and March 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAF*TA–TAA* the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06117; Texfi Industries, Inc., New York, NY

NAFTA–TAA–06502; Mo-Tech Corp., Oakdale, MN

NAFTA–TAA–06151; Grand Processing, Inc., Textile Div., Brooklyn, NY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07618; Alcatel USA Marketing, Inc, Voice Network Div. (VND), Wireline Access Product Group, Litespan 2000 Product Group, Plano, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06293; Micro Molding Technologies, Boynton Beach, FL: June 17, 2001

NAFTA–TAA–07656; Sequoia Apparel, Inc., Porterville, CA: October 25, 2001

I hereby certify that the aforementioned determinations were issued during the months of February and March 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 7, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6561 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Application for Certificate to Employ Homeworkers, WH–46, Piece Rate Measurements, and Homeworker Handbook (WH–75). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 19, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. *Background:* Section 11(d) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum requirements of the Act. Restrictions exist on seven homework industries, (knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries). Homework in these industries is permitted only in certain hardship cases. Homework is permitted under FLSA in all other industries, provided the employer maintains homeworker handbooks for such employees who record hours of work and certain other required payroll information. Further, employers of homeworkers in certain restricted industries must first obtain a certification from the Department of Labor authorizing the employment of such workers. Employers in the restricted industries under the certification program who pay workers based on piece rates must maintain documentation of the work measurements used to establish such piece rates and the circumstances under which measurements were conducted. This information collection is currently approved for use through September 30, 2003.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* 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, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for the extension of this information collection in order to assure compliance with the FSLA in homework employment.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application to Employ Homeworkers.

OMB Number: 1215–0013.

Agency Number: WH–46 and WH–75.

Affected Public: Business of other for-profit; Individuals or households; Not-for-profit institutions.

Total Respondents (Recordkeeping and Reporting): 4,650.

Total Responses (Recordkeeping and Reporting): 18,575.

Time per Response: 30 minutes.

Frequency: On Occasion.

Estimated Total Burden Hours (Recordkeeping and Reporting): 9,517.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Title	Form No.	Number of respondents	Number of responses	Avg. time per responses (min)	Burden hr(s)
Application To Employ Homeworkers	WH–46	50	25	30	12.5
Homeworker Handbooks	WH–75	4,600	18,400	30	9,200

RECORDKEEPING BURDEN

Title	Number of recordkeepers	Number of records	Avg. time per response (min)	Burden hours
Piece Rate Measurement	50	150	60½	151.25
Homeworker Handbooks	1,150	18,400	½	153

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 13, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–6558 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on March 26 and 27, 2003. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday—March 26, 2003 Meeting Rooms 7 & 8

10–11:30 a.m.—Committee on Productivity and Foreign Labor Statistics

1. New measures of the ratios of hours worked to hours paid for major sector productivity.
2. Industry productivity measures for the service sector: overview of trends and plans for future development.
3. Brief update on plans for NAICS conversion.
4. International trends in manufacturing productivity.
5. Discussion of agenda items for the Fall 2003 meeting.

1–2:30 p.m.—Committee on Compensation and Working Conditions

1. Discussion of what items are included in and excluded from the Employment Cost Index.
2. Continued discussion of the methods of determining the cost of benefits, and how benefit usage figures into cost calculations.
3. Discussion of agenda items for the Fall 2003 meeting.

3–4:30 p.m.—Committee on Employment and Unemployment Statistics

1. Impact of Census 2000 on the CPS–CES gap—Tom Nardone.
2. Review of past and current approaches, and discussion of possible future approaches to benchmarking State and area labor force estimates to the CPS—Sandi Mason.
3. Impact of the CES Redesign and NAICS implementation on sub-national data—John Steward.
4. Discussion of agenda items for the Fall 2003 meeting.

Thursday—March 27, 2003 Meeting Rooms 7 & 8

8:30–10 a.m.—Committee on Price Indexes

1. The new superlative CPI (C–CPI–U) is routinely revised to incorporate more recent information. The first such revisions were issued with CPI data for January 2003. The impact of the revisions on the behavior of the superlative measure will be discussed.
2. In conjunction with the Bureau of Economic Analysis, BLS staff undertook an analysis of the differences in behavior of the CPI and the implicit price deflators for the personal consumption expenditures (PCE) component of the national accounts. The results of this analysis will be presented.
3. Use of hedonic quality adjustment techniques in the CPI has expanded considerably over the past several years. Reactions to the recommendations of the Committee on National Statistics on this topic and our future research plans will be presented.
4. Discussion of agenda items for the Fall 2003 meeting.

10:30 a.m.–12 p.m.—Council Meeting

1. Commissioner's address.
2. Discussion of agenda items for the Fall 2003 meeting.

1:30–3 p.m.—Committee on Occupational Safety and Health

1. 2001 Survey of Occupational Injuries and Illnesses Results: a. December Summary Release; b. March Case and Demographics Release;
2. Status of Internet Data Collection: Recommendations regarding new data on Time of Event; and Start of Shift.
3. Upcoming publications: a. CFOI Chart Book; b. Respirator Survey Analytical Tables, c. Workplace Violence, Multiple Fatalities.
4. Budget Update.
5. Recommendations for new Committee Members.
6. Discussion of agenda items for the Fall 2003 meeting.

The meetings are open to the public. Persons with disabilities wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council at 202–691–5869 or *jack_t@bls.gov,* for appropriate accommodations.

Due to scheduling difficulties, we have been unable to provide the full 15 days of advance notice for the meeting.

Signed at Washington, DC this 14th day of March, 2003.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 03–6560 Filed 3–18–03; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. APP. 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC)

Date of Meeting: April 23, 2003.

Time of Meeting: 10 a.m. to 12 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than April 4, 2003. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: J. William Leonard, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: March 13, 2003.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 03–6516 Filed 3–18–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274.''

2. *Current OMB approval number:* 3150–0032.

3. *How often the collection is required:* 10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

4. *Who is required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

5. *The number of annual respondents:* 9 Agreement State licensees.

6. *The number of hours needed annually to complete the requirement or request:* 35 hours.

7. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

Submit, by May 19, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–6545 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Corporation; Perry Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60(b) for Facility Operating License No. 59, issued to FirstEnergy Corporation (the licensee), for operation of the Perry Nuclear Power Plant (PNPP), located in Lake County, Ohio. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

10 CFR 50.60 requires that pressure-temperature (P–T) limits be established for reactor pressure vessels during normal operating and hydrostatic or leak rate testing conditions in accordance with appendices G and H to part 50. Specifically, 10 CFR part 50, appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), section XI, appendix G limits. The licensee requested in its submittal that the staff exempt PNPP from application of specific requirements of 10 CFR part 50, section 50.60(a) and appendix G, and substitute use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the K_{IC} fracture toughness curve shown in ASME section XI, appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME section X appendix G, Fixture G–2210 (the K_{Ia} fracture toughness curve); using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, appendix G. Therefore, an exemption from 10 CFR 50.60 would also be required. It should be noted that,

although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the P–T limits required by 10 CFR 50.60 are based on the 1989 edition of the ASME Code.

The new P–T limits calculated by the methodologies that are subject to the exemptions are incorporated into the PNPP Technical Specifications by an associated proposed license amendment submitted by the licensee. The proposed action is in accordance with the licensee's application for exemption and amendment dated June 4, 2002.

The Need for the Proposed Action

The revised P–T limits are desired to allow required reactor vessel hydrostatic and leak tests to be performed at a significantly lower temperature. These tests are to be performed during the upcoming refueling outage scheduled to commence in April 2003. The lower temperature for the tests can reduce refueling outage critical path time by reducing or eliminating the heatup time to achieve required test conditions.

Environmental Impacts of the Proposed Action

The Commission has evaluated the proposed action and concludes that the exemption and associated license amendment described above would provide an adequate margin of safety against brittle failure of the PNPP reactor vessel. Since the proposed changes do not adversely affect the integrity of the reactor vessel, the function of the vessel to act as a radiological barrier during an accident is not affected.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is not significant increase in occupational or public radiation exposure. Therefore, there are not significant environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there is not significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources that those previously considered in the Final Environmental Statement for the PNPP, dated April 1974.

Agencies and Persons Consulted

On March 11, 2003, the staff consulted with the Illinois State Official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The Staff official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 4, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm-adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of March, 2003.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6543 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix G for Facility Operating License No. DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook (D. C. Cook) Nuclear Plant, Unit 2, located in Berrien County, Michigan. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, which would allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–641 as the basis for revised reactor vessel pressure and temperature (P–T) curves, and low temperature overpressure protection system setpoints in the D. C. Cook Unit 2 Technical Specifications (TSs).

The regulation at 10 CFR part 50, section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, ''The appropriate requirements on both the P–T limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the ASME Code, section XI, Appendix G, limits.

ASME Code Case N–641 permits the use of alternate reference fracture toughness (*i.e.,* use of ''K_{IC} fracture toughness curve'' instead of ''K_{IA} fracture toughness curve,'' where K_{IC} and K_{IA} are ''Reference Stress Intensity Factors,'' as defined in ASME Code, section XI, Appendices A and G,

respectively) for reactor vessel materials in determining the P–T curves and low temperature overpressure protection system setpoints for effective temperature and allowable pressure. Since the K_{IC} fracture toughness curve shown in ASME Code, section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve), provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, section XI, Appendix G, Figure G–2210–1 (the K_{IA} fracture toughness curve), using ASME Code Case N–641 to establish the P–T curves and low temperature overpressure protection system setpoints would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption to apply ASME Code Case N–641 is required.

The proposed action is in accordance with the licensee's application dated July 23, 2002, as supplemented by letters dated November 15, 2002, and January 24, 2003.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–641 in order to revise the method used to determine the P–T curves and because low temperature overpressure protection system setpoints continued use of the method specified by Appendix G to 10 CFR part 50, unnecessarily restricts the P–T operating window.

The underlying purpose of Appendix G, is to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. This is accomplished through regulations that, in part, specify fracture toughness requirements for ferritic materials of the RCPB. Pursuant to 10 CFR part 50, Appendix G, it is required that P–T limits for the reactor coolant system (RCS) be at least as conservative as those obtained by applying the methodology of the ASME Code, section XI, Appendix G. Current P–T limits produce operational constraints by limiting the P–T range available to the operator to heat up or cool down the plant. The operating window through which the operator heats up and cools down the RCS becomes more restrictive with continued reactor vessel service. Reducing this operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent low temperature overpressure protection system actuation due to pressure surges associated with normal plant evolutions, such as reactor coolant pump start and swapping operating charging pumps with the RCS in a water-solid condition. P–T limits for an increased service period of operation of 32 effective full-power years for D.C. Cook Unit 2, based on ASME Code, section XI, Appendix G requirements, would significantly restrict the ability to perform plant heatup and cooldown, and create an unnecessary burden to plant operations, and challenge control of plant evolutions required with the Over Pressure Protection Section enabled. Continued operation of D.C. Cook Unit 2 with P–T curves developed to satisfy ASME Code, section XI, Appendix G, requirements without the relief provided by ASME Code Case N–641 would unnecessarily restrict the P–T operating window, especially at low temperature conditions. Use of the K_{IC} curve in determining the lower bound fracture toughness of RPV steels is more technically correct than use of the K_{IA} curve, since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{IA} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{IA} curve greatly exceeds the margin of safety required, and that the K_{IC} curve is sufficiently conservative to protect the public health and safety from potential RPV failure. Application of ASME Code Case N–641 will provide results that are sufficiently conservative to ensure the integrity of the RCPB, while providing P–T curves and low temperature overpressure protection system setpoints that are not overly restrictive. Implementation of the proposed P–T curves and low temperature overpressure protection system setpoints, as allowed by ASME Code Case N–641, does not significantly reduce the margin of safety.

In the associated exemption, the NRC staff has determined that, pursuant to 10 CFR part 50, section 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of ASME Code Case N–641.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the use of the alternative analysis method to support the revision of the RCS P–T limits.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

On February 10, 2003, the staff consulted with the Michigan State official, Ms. Sara De Cair of the Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the

NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 23, 2002, as supplemented by letters dated November 15, 2002, and January 24, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of March 2003.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6544 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 9, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 9, 2003—3:30 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 11, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–6547 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 9, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 9, 2003—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to review the license renewal application for the St. Lucie nuclear plant and the NRC staff's initial Safety Evaluation Report. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Florida Power and Light Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Timothy Kobetz (telephone 301/415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 11, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–6548 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1107, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1107, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident'' is being developed to describe methods acceptable to the NRC staff for implementing requirements with respect to the sumps and suppression pools performing the functions of water sources for emergency core cooling, containment heat removal, or containment atmosphere clean up. Section 1.1.4 of DG–1107 contains discussions of active debris mitigation systems in lieu of the passive sump screens that are in many of the nuclear plants. Specifically, comments on alternative solutions to debris strainers for ensuring long-term cooling are solicited.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch,

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2003.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1107, contact Dr. Bhagwat Jain at (301) 415–6778, e-mail *BPJ@NRC.GOV*.

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–42056; fax (301) 415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of February, 2003.

For the Nuclear Regulatory Commission.

Nilesh C. Chokshi,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–6520 Filed 3–18–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (''FAIR Act'').

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency inventories of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Pub. L. 105–270) (''FAIR Act''). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the fourth and final release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency web-site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

Mitchell E. Daniels, Jr.,

Director.

Fourth and Final FAIR Act Release 2002

Agency	Contact
Commission on Civil Rights	Tina Louise Martin (202) 376–8364, *www.usccr.gov.*
Department of Defense, Office of the Inspector General	Jonilyn Benarick (703) 604–9872, *www.dodig.osd.mil/pubs/index.html.*
Department of Transportation, Office of the Inspector General	Jacqueline Weber (202) 366–1495, *www.oig.dot.gov.*
Department of Veterans Affairs	Julie Gough (202) 273–5048, *www.va.gov/OPP/fairact/default.htm.*
National Transportation Safety Board	Steve Goldberg (202) 314–6210, *www.ntsb.gov/abt_ntsb/fair_act.htm.*
Office of National Drug Control Policy	Daniel Petersen (202) 395–6745, *www.whitehousedrugpolicy.gov.*
Office of Science and Technology	Stan Sokul (202) 456–6070, *www.ostp.gov.*

[FR Doc. 03–6498 Filed 3–18–03; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* System Access Application.

(2) *Form(s) submitted:* BA–12.

(3) *OMB Number:* 3220–XXXX.

(4) *Expiration date of current OMB clearance:* Not applicable.

(5) *Type of request:* New collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 516.

(8) *Total annual responses:* 900.

(9) *Total annual reporting hours:* 283.

(10) *Collection description:* The collection obtains information from railroad employers needed to provide system access to employees who will be allowed to submit employer reporting forms to the RRB over the Internet. information obtained includes the level of access the employee will have to the system, *i.e.* view only, data entry/modification, or approval.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck

Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–6494 Filed 3–18–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25958; 812–12891]

T. Rowe Price Balanced Fund, Inc., et al.; Notice of Application

March 13, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act to invest in securities and other financial instruments. The requested order also would amend a prior order.[1]

APPLICANTS: T. Rowe Price Balanced Fund, Inc. (''Balanced Fund''); T. Rowe Price Blue Chip Growth Fund, Inc.; T. Rowe Price California Tax-Free Income Trust; T. Rowe Price Capital Appreciation Fund; T. Rowe Price Capital Opportunity Fund, Inc.; T. Rowe Price Corporate Income Fund, Inc.; T. Rowe Price Developing Technologies Fund, Inc.; T. Rowe Price Diversified Small-Cap Growth Fund, Inc.; T. Rowe Price Dividend Growth Fund, Inc.; T. Rowe Price Equity Income Fund, Inc.; T. Rowe Price Equity Series, Inc.; T. Rowe Price Financial Services Fund, Inc.; T. Rowe Price Fixed Income Series, Inc.; T. Rowe Price Global Technology Fund, Inc.; T. Rowe Price GNMA Fund; T. Rowe Price Growth & Income Fund, Inc.; T. Rowe Price Growth Stock Fund, Inc.; T. Rowe Price Health Sciences Fund, Inc.; T. Rowe Price High Yield Fund, Inc.; T. Rowe Price Index Trust Inc.; T. Rowe Price Institutional Equity Funds, Inc.; T. Rowe Price Institutional International Funds, Inc.; T. Rowe Price International Funds, Inc.; T. Rowe Price International Index Fund, Inc.; T. Rowe Price International Series, Inc.; T. Rowe Price Media & Telecommunications Fund, Inc.; T. Rowe Price Mid-Cap Growth Fund, Inc.; T. Rowe Price Mid-Cap Value Fund, Inc.; T. Rowe Price New America Growth Fund; T. Rowe Price New Era Fund, Inc.; T. Rowe Price New Horizons Fund, Inc.; T. Rowe Price New Income Fund, Inc.; T. Rowe Price Personal Strategy Funds, Inc.; T. Rowe Price Prime Reserve Fund, Inc.; T. Rowe Price Real Estate Fund, Inc.; T. Rowe Price Retirement Funds, Inc.; T. Rowe Price Reserve Investment Funds, Inc.; T. Rowe Price Science & Technology Fund, Inc.; T. Rowe Price Short-Term Bond Fund, Inc.; T. Rowe Price Small-Cap Stock Fund, Inc.; T. Rowe Price Small-Cap Value Fund, Inc.; T. Rowe Price Spectrum Fund, Inc. (together with any other fund of funds relying on the Spectrum Fund Order, ''Spectrum Funds''); T. Rowe Price State Tax-Free Income Trust; T. Rowe Price Summit Funds, Inc.; T. Rowe Price Summit Municipal Funds, Inc.; T. Rowe Price Tax-Efficient Funds, Inc.; T. Rowe Price Tax-Exempt Money Fund, Inc.; T. Rowe Price Tax-Free High Yield Fund, Inc.; T. Rowe Price Tax-Free Income Fund, Inc.; T. Rowe Price Tax-Free Intermediate Bond Fund, Inc.; T. Rowe Price Tax-Free Short-Intermediate Fund, Inc.; T. Rowe Price U.S. Bond Index Fund, Inc.; T. Rowe Price U.S. Treasury Funds, Inc.; T. Rowe Price Value Fund, Inc.; T. Rowe Price Institutional Income Funds, Inc. (collectively, together with any other registered open-end investment company that is in the same group of investment companies as the named investment companies, the ''Price Funds''); and T. Rowe Price Associates, Inc. (''T. Rowe Price'').

FILING DATES: The application was filed on October 8, 2002 and amended on March 13, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 7, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o T. Rowe Price Associates, Inc., 100 East Pratt Street, Baltimore, MD 21202, Attn.: Henry H. Hopkins, Esq. and Forrest R. Foss, Esq.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0578 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Balanced Fund is a Maryland corporation registered under the Act as an open-end management investment company. T. Rowe Price is an investment adviser registered under the Investment Advisers Act of 1940, and is the investment adviser to the Balanced Fund. The Balanced Fund will invest in shares of the T. Rowe Price Institutional High Yield Fund (''IHY Fund'') and/or any other Price Fund (collectively, the ''Underlying Funds''), as well as directly in stocks, bonds, and other securities. Applicants request that the relief also apply to other existing Price Funds and any Price Funds that might be organized in the future (collectively, the ''Upper-Tier Funds'') that wish to invest in any existing or future Underlying Fund.[2]

2. The IHY Fund was created for the purpose of offering a high yield investment option to institutional clients of T. Rowe Price and Price International and various Price Funds, such as the Balanced Fund, that invest a portion of their assets in high yield bonds. Applicants believe that the IHY Fund will provide a more efficient and cost-effective means of investing assets of the Balanced Fund, as well as other Price Funds acting as Upper-Tier Funds,

[1] T. Rowe Price Spectrum Fund, Inc., *et al.*, Investment Company Act Release Nos. 21371 (Sept. 22, 1995) (notice) and 21425 (Oct. 18, 1995) (order) (''Spectrum Fund Order''). Condition 2 of the Spectrum Fund Order was amended by Reserve Investment Funds, Inc., *et al.*, Investment Company Act Release Nos. 22732 (July 2, 1997) (notice) and 22770 (July 29, 1997) (order).

[2] Applicants represent that all existing entities that currently intend to rely on the requested order are named as applicants and that any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

that are allocated to high yield securities.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Balanced Fund's investment policies contemplate that its investments will include direct investments in equity securities, bonds, and other securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Balanced Fund and other Upper Tier Funds to invest in Underlying Funds and directly in securities as proposed, would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

B. Spectrum Fund Order

1. Applicants also request an order under section 12(d)(1)(J) of the Act and under sections 6(c) and 17(b) of the Act to amend the Spectrum Fund Order and permit an Upper-Tier Fund in which a Spectrum Fund invests pursuant to the Spectrum Fund Order (''Spectrum Underlying Fund'') to purchase shares of an Underlying Fund in excess of the limits contained in section 12(d)(1)(A)(i) of the Act but within the limits in section 12(d)(1)(A)(ii) and (iii).

2. Applicants believe that the proposed modification of the Spectrum Fund Order satisfies the standards of sections 12(d)(1)(J), 6(c), and 17(b). The requested amendment would allow a Spectrum Underlying Fund to own in excess of 3% of the outstanding voting securities of IHY Fund or another Underlying Fund. Applicants submit that any concerns about undue influence underlying section 12(d)(1) of the Act are addressed by the fact that the Spectrum Underlying Fund and the IHY Fund or another Underlying Fund will be in the same group of investment companies. Since the Spectrum Underlying Fund will remain subject to the limits in section 12(d)(1)(A)(ii) and (iii) when it invests in the IHY Fund or another Underlying Fund, applicants submit that concerns about complex fund structures and layering of fees will not be present. Applicants also submit that the conditions to the Spectrum Fund Order (as they would be modified) and the conditions to the requested order further would address these concerns.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contact under section 15 of the Act, the board of directors/trustees (''Board'') of the Balanced Fund or any Upper Tier Fund, including a majority of the directors/trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Balanced Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Balanced Fund or an Upper Tier Fund from investing directly in securities as described in the application.

Applicants also agree that conditions number 2 and 5 to the Spectrum Fund Order would be modified as follows (for purposes of these conditions, the defined terms have the same meanings as in the Spectrum Fund Order):

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent such Underlying Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the Underlying Fund (a) that are money market funds or short-term bond funds for short-term cash management purposes; or (b) within the limits in section 12(d)(1)(A)(ii) and (iii) of the Act.

5. Any sales charges or service fees charged with respect to securities of Spectrum Fund, when aggregated with (i) any sales charges and service fees paid by Spectrum Fund with respect to securities of the Underlying funds, and (ii) any sales charges and service fees paid by an Underlying Fund with respect to securities acquired as permitted in condition 2(b), shall not exceed the limits set forth in Rule 2830 of the Rules of Conduct of the National Association of Securities Dealers, Inc.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6552 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25957; File No. 812–12668]

Lincoln Benefit Life Co. et al.; Notice of Application

March 12, 2003.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an amended order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Lincoln Benefit Life Company (''Lincoln Benefit''), Lincoln Benefit Life Variable Annuity Account (the ''VA Account''), and Lincoln Benefit Life Variable Life Account (the ''VL Account'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order of the Commission amending a prior order granted April 30, 2002 (Release No. IC–25562) (the ''April 30 Order''), which authorized Applicants to effect a substitution of shares of one underlying portfolio for shares of another portfolio. The purpose of the Amendment is to modify a term of the April 30 Order pertaining to limits on the receipt of direct or indirect future benefits from the Replacement Fund, its adviser, or their affiliates.

FILING DATE: The application was filed on June 11, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Commission's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 7, 2003, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0806, Attention: Christopher S. Petito, Esq.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants' Representations

1. Lincoln Benefit is a stock life insurance company organized under the laws of the state of Nebraska. The VA Account is a segregated asset account of Lincoln Benefit. It was established in 1992 and is registered as a unit investment trust under the 1940 Act. Lincoln Benefit issues certain variable annuity contracts through the VA Account.

2. The VL Account was established in 1992 and is registered as a unit investment trust under the 1940 Act. The VL Account is used to fund certain variable life insurance policies issued by Lincoln Benefit. (The VA Account and the VL Account are referred to collectively as the ''Separate Account Applicants.'' Certain variable annuity contracts and variable life policies are referred to herein as ''Contracts.'').

3. In the substitution approved by the April 30 Order (the ''Substitution''), Lincoln Benefit, on behalf of the Separate Account Applicants, substituted shares of T. Rowe Price MidCap Growth Fund (the ''Replacement Fund''), a series of the T. Rowe Price Equity Series, Inc., for shares of the Strong Discovery Fund II (the ''Replaced Fund''). The Substitution is described in more detail in the Notice of Application for the April 30 Order [Release No. IC–25509 (April 4, 2002) (the ''Notice'')].

4. One of the representations (the ''Service Fee Representation'') in the Notice, which Applicants now seek to amend, is the following:

> Lincoln Benefit does not currently receive, and will not receive for three years from the date of the requested Commission order, any direct or indirect benefit from the Replacement Fund, T. Rowe Price Inc., or any of its affiliates at a higher rate than Lincoln Benefit has received from the Replaced Fund, SCM, or any of its affiliates, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements, either with specific reference to the Replacement Fund or as part of an overall business arrangement.

5. Applicants state that on May 17, 2002, they effected the Substitution in full compliance with the April 30 Order. Applicants represent that they intend to continue to comply with Service Fee Representation unless and until the amended order is granted.

6. Applicants seek to amend the April 30 Order to permit the replacement of the Service Fee Representation with the following representation (the ''Amended Service Fee Representation''):

> Lincoln Benefit will not receive, for three years from the date of the Substitution, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter, or their respective affiliates, in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than it received from the Replaced Fund, its adviser or underwriter, or their respective affiliates, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue-sharing or other arrangements in connection with such assets. Lincoln Benefit represents that the Substitution and its selection of the Replacement Fund was not motivated by any financial consideration paid or to be paid to it by the Replacement Fund, its adviser or underwriter, or their respective affiliates.

Applicants state that the effect of the Amended Service Fee Representation would be to limit the effects of the Service Fee Representation to assets attributable to Contracts actually affected by the Substitution.

7. Applicants state that after the Notice was issued, they learned that another substitution order involving similar circumstances would be issued to other insurance companies and their respective separate accounts in part based on a representation identical in substance to the Amended Service Fee Representation.[*] Applicants contacted the Commission staff during the notice period and participated in discussions with the staff. Through those discussions, Applicants determined that applying for an amendment before issuance of the April 30 Order would have required issuance of a new notice and a new notice period, thereby delaying the Substitution. Applicants were particularly concerned that delaying the Substitution could possibly harm affected Contract owners because of the potentially adverse effects of dwindling assets on the Replaced Fund's expenses and performance. Because Applicants thought it would be in the best interests of Contract owners to effect the Substitution without delay, they decided to effect the Substitution on the terms set forth in the Notice and wait to seek the amendment until after the April 30 Order issued. Applicants believed that following this course of action would not prejudice their ability to obtain the requested relief. On May

[*] American Enterprise Life Insurance Company, *et al.,* Release No. IC–25518 (April 10, 2002) (notice).

1, 2002, an order was issued to American Enterprise Life Insurance Company, *et al.* (Release No. IC–25561) (the ''May 1 Order''). Applicants note that the Amended Service Fee Representation is consistent with the corresponding representation made in the exemptive application filed by American Enterprise Life Insurance Company, *et al.*

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(c) is both to protect the expectations of investors that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves the substitution.

2. By approving the April 30 Order, the Commission determined that the Substitution was ''consistent with the protection of the investors and the purposes fairly intended by the policy and provisions of [the 1940 Act].'' Applicants submit that the amended order also will meet this standard. Applicants submit that the requested amendment is appropriate and in the public interest, and that the interests of fairness require that the April 30 Order be amended to be no more restrictive than the relief granted other parties in the same circumstances.

3. Applicants submit that a restriction of the type in the April 30 Order is less necessary in the context of a liquidation. Applicants submit that in this situation, the need for a substitution is forced on the insurer and is not a product of the insurer's independent business planning. Accordingly, Applicants argue, it is less likely that an improper or self-interested motive has prompted the insurer's action, and it should not be presumed that a prophylactic measure like the Service Fee Representation is necessary. Moreover, Applicants believe that because the Amended Service Fee Representation directly and fully denies the existence of any financial incentive from the Replacement Fund or its affiliates, the broad restriction imposed by the existing Service Fee Representation is wholly unnecessary.

4. Second, Applicants submit that the existing Service Fee Representation places a significant burden on assets that are entirely unrelated to the Substitution. Applicants state that because the Replaced Fund was not popular among investors, only a few Contracts and a small amount of Applicants' subaccount assets were invested in the Replaced Fund. On the other hand, a significant amount of subaccount assets were invested in the Replacement Fund, which was an existing investment option under the Contracts. Applicants submit that in the absence of the Substitution, the service fee rate was set and could be changed as a product of arm's length bargaining between Applicants and the Replacement Fund's adviser. Applicants submit that it is unfair to impose an artificial restriction on Applicants' negotiating posture with respect to all service fees for all of those assets, as well as assets relating to new product developments entirely unrelated to the Substitution, because of a substitution that was compelled by circumstances beyond Applicants' control.

5. Applicants also argue that imposing the restriction in the existing Service Fee Representation may discourage insurers in some circumstances from selecting the most appropriate replacement fund in future substitutions. Applicants argue that limiting service fees with respect to all other funds in a replacement fund's fund complex creates an incentive for insurers to effect substitutions only with members of fund families in which the insurer does not already invest, and that this incentive may conflict with the interests of investors.

6. Applicants submit that fairness requires that the Service Fee Representation be amended to conform with the representation on which the May 1 Order was based. Applicants submit that the circumstances there were identical in all material respects with the circumstances presented by this substitution. Applicants state that both cases involved the liquidation of an unaffiliated fund for reasons unrelated to the affected insurers and the substitution into another unaffiliated fund. Applicants submit that by granting the May 1 Order, the Commission determined that a representation such as the Amended Service Fee Representation was in the public interest in circumstances involving a substitution prompted by liquidation of an unaffiliated fund. Given the similarity of the two cases, Applicants submit that here also, the proposed change in the Service Fee Representation would be fair and in the public interest.

7. Applicants submit that, for the reasons summarized above, their request meets the standards set out in Section 26(c) of the 1940 Act. Accordingly, Applicants request an order, pursuant to Section 26(c) of the 1940 Act, amending the April 30 Order as requested above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6495 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25959; File No. 812–12828]

Allianz Life Insurance Company of North America, et al.

March 14, 2003.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Allianz Life Insurance Company of North America (''Allianz Life''), Allianz Life Variable Account A (''Allianz Account A''), Allianz Life Variable Account B (''Allianz Account B''), Allianz Life Insurance Company of New York (''Allianz Life of NY'') and Allianz Life of NY Variable Account C (''Allianz Account C''). Allianz Life and Allianz Life of NY are collectively referred to as the ''Insurance Company Applicants.'' Allianz Account A, Allianz Account B and Allianz Account C are collectively referred to as the ''Separate Account Applicants.''

FILING DATE: The application was filed on May 20, 2002, and amended and restated on August 6, 2002, December 16, 2002, March 7, 2003 and March 13, 2003.

SUMMARY OF APPLICATION: Applicants request an order of approval to permit the substitution of shares of The Dreyfus Stock Index Fund (''Dreyfus Fund'') for shares of Franklin Templeton Variable Insurance Products Trust's (the ''Trust's'') Franklin S&P 500 Index Fund (''Franklin Fund'') (the ''Substitution'').

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Allianz Life Insurance Company of North America, 5701 Golden Hills Drive, Minneapolis, Minnesota 55416, Attention: Stewart D. Gregg, Esq.

FOR FURTHER INFORMATION CONTACT: Leland B. Erickson, Staff Attorney, or Zandra Y. Bailes, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Allianz Life is organized under the laws of the state of Minnesota. Allianz Life offers fixed and variable life insurance and annuities and group life, accident and health insurance. Allianz Life is licensed to do direct business in 49 states and the District of Columbia. Allianz Life is a wholly-owned subsidiary of Allianz Versicherungs AG Holding.

2. Allianz Life of NY is organized under the laws of the state of New York. (Until January 1, 2003, Allianz Life of NY was known as Preferred Life Insurance Company of New York). Allianz Life of NY offers variable annuities, group life, and group accident and health insurance. Allianz Life of NY is licensed to do business in six states, including New York and the District of Columbia. Allianz Life of NY is a wholly-owned subsidiary of Allianz Life, which is a wholly-owned subsidiary of Allianz Versicherungs AG Holding.

3. Allianz Account A is a segregated asset account of Allianz Life. Allianz Account A was established by Allianz Life on May 31,1985, under Minnesota insurance laws. Allianz Account A is used to fund certain variable life insurance policies issued by Allianz Life. Allianz Account A is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Allianz Account A is registered as a unit investment trust under the 1940 Act.

4. Allianz Account B is a segregated asset account of Allianz Life. Allianz Account B was established by Allianz Life on May 31, 1985, under Minnesota insurance laws. Allianz Account B is used to fund certain variable annuity contracts issued by Allianz Life. Allianz Account B is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Allianz Account B is registered as a unit investment trust under the 1940 Act.

5. Allianz Account C is a segregated asset account of Allianz Life of NY. Allianz Account C was established by Allianz Life of NY on February 26, 1988 under New York insurance laws. (Until January 1, 2003, Allianz Account C was known as Preferred Life Account C). Allianz Account C is used to fund certain variable annuity contracts issued by Allianz Life of NY. Allianz Account C is divided into several subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. Allianz Account C is registered as a unit investment trust under the 1940 Act.

6. The Separate Account Applicants support certain variable annuity contracts and variable life policies (collectively, the ''Contracts'') issued by the Insurance Company Applicants. The Contracts offer a large number of widely diverse variable investment options. For purposes of clarity, the Contracts can be divided into four general categories. There are currently offered contracts and three categories of closed contracts no longer available for sale.

- First, there are six currently offered Contracts that historically have offered the Franklin Fund. Each of these Contracts currently offers a total of 50 variable investment options, including a money market investment option. (The Franklin Fund is not included as one of the 50 available options, as it is closed to allocations of new premium payments and transfers of Contract value.) Each Contract in this Category offers the same 50 investment options.
- Second, there are two ''Category 1 Closed Contracts.'' These are Contracts that are no longer available for sale. Each of these Contracts makes available the same investment options that are available through currently offered Contracts, and, as such, each of these Contracts permits owners of existing Contracts to allocate new premium payments and transfers among 50 investment options.
- Third, there is one ''Category 2 Closed Contract.'' This Contract is no longer available for sale. This Contract permits owners of existing Contracts to allocate new premium payments and transfers among forty-two variable investment options, including a money market option.
- Fourth, there are three ''Category 3 Closed Contracts.'' These Contracts are no longer available for sale. These contracts permit owners of existing Contracts to allocate new premiums (if permitted by the terms of the Contract) and transfers among thirty-six variable investment options, including one money market option. Each Contract in this Category offers the same thirty-six investment options.

7. As of March 13, 2003, 42 of the 50 investment options offered through currently offered Contracts and Category 1 Closed Contracts have been offered through each of these Contracts for a year or more. All of the investment options available in the Category 2 Closed Contract other than the Dreyfus Fund have been available for over a year. Lastly, all of the investment options available in the Category 3 Closed Contracts other than the Dreyfus Fund have been available through each of these Contracts for over a year. In addition, Applicants will not add or close any investment options prior to the effective date of the proposed Substitution.

8. Under the Contracts, the Insurance Company Applicants reserve the right to substitute one of the variable investment options with another variable investment option subject to prior approval of the Commission. Moreover, the Insurance Company Applicants are entitled to limit further investment in a variable investment option.

9. Each Contract permits transfers of Contract values. In most instances, up to twelve transfers may be made during each year free of charge.[1] There is currently no limitation on the aggregate number of transfers that may be made,

[1] 1 For the Allianz Life variable immediate annuity contract, currently an unlimited number of transfers is permitted each year without charge, however, Allianz Life has reserved the right to limit the number of free transfers each year (File Number 33–76190).

other than the twelve free transfers per year limit referred to above. A charge may be assessed for transfers made after the accumulation period ends. For deferred variable annuity contracts, after the accumulation period, no transfers are permitted from the fixed annuity option to the variable annuity option.

10. The Contracts provide for a free withdrawal privilege equal to at least 10% of Contract value annually; this right is not subject to reduction or withdrawal. No tax liability or consequences are associated with the transfer of Contract values within the Contract.

11. The Franklin Fund is part of the Trust, which was organized as a Massachusetts business trust on April 26, 1988. Shares of the Franklin Fund are sold to the Separate Account Applicants for the purpose of funding the Contracts. The Franklin Fund is managed by Franklin Advisers, Inc. (''Franklin Advisers''). The Franklin Fund's investment objective is to match the performance of the Standard & Poor's 500 Composite Stock Price Index (''S&P 500 Index'') before the deduction of fund expenses. The Franklin Fund seeks to invest at least 80% of its total assets in the common stocks of companies included in the S&P 500 Index. The Trust offers two classes of shares of the Franklin Fund to insurance company separate accounts. The terms of the Class 1 and Class 2 shares are identical except that the Class 2 shares bear the expenses of the Class 2 distribution plan. The Trust is registered as an open-end management company under the 1940 Act, and its shares are registered as securities under the Securities Act of 1933 (''1933 Act''). Under an agreement with Franklin Advisers, SSgA Funds Management, Inc. (''SSgA'') is the Franklin Fund's sub-adviser. Neither Franklin Advisers nor SSgA is affiliated with the Applicants.

12. The Dreyfus Fund is a Maryland Corporation formed on January 24, 1989. It is registered as an open-end management company under the 1940 Act, and its shares are registered as securities under the 1933 Act. The investment adviser for the Dreyfus Fund is The Dreyfus Corporation (''Dreyfus''). Shares of the Dreyfus Fund are currently sold exclusively to insurance company separate accounts for the purpose of funding variable annuity contracts and variable life insurance policies. Like the Franklin Fund, the Dreyfus Fund's investment objective is to match the total return of the S&P 500 Index. The Dreyfus Fund attempts to have a correlation with the S&P 500 Index of at least .95 before expenses. A correlation of 1.00 would mean that the Dreyfus Fund and the S&P 500 Index were perfectly correlated. The Dreyfus Fund offers two classes of shares, Initial Class and Service Class. The terms of the Initial Class and Service Class are identical except that the Service Class shares bear the expenses of the Service Class distribution plan. Mellon Equity Associates, an affiliate of Dreyfus, serves as the Dreyfus Fund's index fund manager. Neither Dreyfus nor Mellon Equity Associates is affiliated with the Applicants.

13. In December of 2001, the Insurance Company Applicants were informed by Franklin Advisers that the Board of Trustees of the Franklin Fund had determined that the Franklin Fund would be dissolved and liquidated. Franklin Advisers stated that the closing of the Franklin Fund was proposed primarily because the Franklin Fund had not attracted and/or retained sufficient assets to be a sufficiently economically viable fund.

14. Effective May 1, 2002, in anticipation of the closing of the Franklin Fund, the Insurance Company Applicants closed the Franklin Fund to new premiums and transfers. Also on May 1, the Insurance Company Applicants added the Dreyfus Fund as a variable investment option offered through the Contracts.

15. Applicants request the Commission's approval to effect the substitution of shares of the Franklin Fund with shares of the corresponding class of shares of the Dreyfus Fund. Dreyfus Initial Class shares would be substituted for Franklin Class 1 shares, and Dreyfus Service Class shares would be substituted for Franklin Class 2 shares.

16. Applicants believe that the Dreyfus Fund is an appropriate replacement for the Franklin Fund, and an appropriate investment vehicle for the Contract owners, because the two Funds share a virtually identical investment objective. The Franklin Fund and the Dreyfus Fund both seek to match the performance of the S&P 500 Index. Both funds use similar policies and strategies to attempt to match the performance of the S&P 500 Index.

17. The expenses of the Franklin Fund and the Dreyfus Fund as of December 31, 2002, and currently, as a percentage of average daily net assets, are as follows:

	Franklin Fund Class 1	Dreyfus Fund Initial Class	Franklin Fund Class 2	Dreyfus Fund Service Class
Management Fees	0.15%	0.25%	0.15%	0.25%
Rule 12b–1 Fee	N/A	N/A	[2] 0.25%	0.25%
Other Expenses	0.14%	0.02%	0.14%	0.02%
Total Expenses Before Reimbursement or Fee Waiver	0.29%	0.27%	0.54%	0.51%
Management Fee Reduction	[3] (0.01%)	N/A	[3] (0.01%)	N/A
Total Expenses After Reimbursement or Fee Waiver	0.28%	0.27%	0.53%	0.51%

[2] While the maximum amount payable under the Franklin Fund's Class 2 Rule 12b–1 plan is 0.35% per year of the fund's average daily net assets, the Board of Trustees of the Trust has set the current rate at 0.25% per year.

[3] The manager has agreed in advance to reduce its fee to reflect reduced services resulting from the Fund's investment in a Franklin Templeton money fund. This reduction is required by the Fund's Board of Trustees and an order of the Commission.

18. As the foregoing chart indicates, for each Class, as of December 31, 2002, the Dreyfus Fund had lower expense ratios than the corresponding class of the Franklin Fund. In addition, the Applicants believe that the addition of assets resulting from the Substitution may result in even lower expense ratios for the Contract owners that have currently allocated their Contract values to the Franklin Fund.

19. Contract owners were first notified of the proposed Substitution in May of 2002. This notice informed Contract owners of the proposed Substitution and the reason for the Substitution, and also provided Contract owners a toll free number for obtaining a current prospectus for the Dreyfus Fund. In addition, on or before February 4, 2003, approximately 60 days prior to the projected effective date of the Substitution, Contract owners were sent a second notice of the Substitution. The

Applicants filed this notice with the Commission on January 27, 2003, as a supplement to Contract owners' prospectuses. This notice

- Informed Contract owners of the proposed Substitution and the projected effective date of the Substitution (approximately April 4, 2003);
- Informed Contract owners that a substitution of Dreyfus Fund shares for Franklin Fund shares would occur if contrary transfer instructions were not received from the owner;
- Informed owners that they were entitled to a ''free transfer right'' prior to the Substitution commencing on the date of the notice. This free transfer right permits Contract owners to make one transfer from the Franklin Fund, without that transfer incurring any transfer charge or counting toward any limitation on free transfers. If the Contract owners choose to transfer Contract value from the Franklin Fund to multiple transferee funds, it will still count as only one (free) transfer;
- Informed owners that there would be no charge associated with a default allocation of Franklin Fund assets to the Dreyfus Fund, and that any such default allocation will not count toward any limit on free transfers;
- Informed owners that from the date of the Substitution owners would have an additional thirty-day free transfer right out of the Dreyfus Fund, if they had not already exercised their free transfer right, without that transfer incurring any transfer charge or counting toward any limitation on free transfers;
- Included a transfer form that can be filled out and mailed by the customer;
- Included information regarding all investment options currently available under their Contract; and
- Included instructions for obtaining a current prospectus for the Dreyfus Fund or any other currently available investment option.

20. The Insurance Company Applicants will confirm all transfers made at the request of Contract owners during the free transfer period, as well as any transfer of Contract value made in connection with the Substitution, in accordance with Rule 10b–10 under the Securities Exchange Act of 1934.

21. Within five days following the Substitution, the Insurance Company Applicants will send Contract owners a third notice. The third notice will inform the Contract owners that the Substitution has taken place and notify them that they are entitled to one free transfer from the Dreyfus Fund for a period of thirty days from the date of the Substitution, if they have not already exercised this right prior to the Substitution. Specifically, the third notice will inform Contract owners that the free transfer right permits Contract owners to make one transfer of Contract value attributable to the Franklin Fund out of the Dreyfus Fund and into any other investment option without that transfer incurring any transfer charge or counting toward any limitation on free transfers. If Contract owners choose to transfer Contract value to multiple transferee funds, it will still count as only one (free) transfer. The third notice will include a transfer form that can be filled out and mailed by the customer. The notice will include information regarding all investment options currently available under their Contract. Lastly, the notice will include directions for obtaining prospectuses for any of the investment options available under the Contract. In addition, a current prospectus for the Dreyfus Fund will be included with the third notice to Contract owners affected by the Substitution, if not previously provided. The Insurance Company Applicants will file this notice with the Commission pursuant to Rule 497 under the 1933 Act as a supplement to their current prospectuses.

22. At the close of business on the date selected for the Substitution, the Insurance Company Applicants will redeem shares of the Franklin Fund held on behalf of their respective Separate Account Applicants in kind. Simultaneously, the Insurance Company Applicants, on behalf of each of its Separate Account Applicants, will place a purchase order for shares of the corresponding class of the Dreyfus Fund so that each purchase will be for the exact amount of the assets received as redemption proceeds. Accordingly, at all times monies attributable to Contract owners then invested in the Franklin Fund will remain fully invested and will result in no change in the amount of any owner's contract value, death benefit or investment in the applicable Separate Account Applicant.

23. The redemption and purchase will be made at prices based on the current net asset values next computed after receipt of the redemption request and purchase order and, therefore, in a manner consistent with Rule 22c–1 under the 1940 Act. The full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in Contract owner's contract values following the Substitution without reduction for brokerage or other such fees or charges. The Insurance Company Applicants, or the adviser to the Dreyfus Fund or the Franklin Fund, will pay all expenses incurred in connection with the Substitution, including legal, accounting, brokerage, and other fees and expenses.

24. Neither the rights nor the obligations of the Insurance Company Applicants under the Contracts will be altered in any way. The proposed Substitution will in no way alter insurance benefits to Contract owners. The Substitution will not have any adverse tax consequences to Contract owners. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed Substitution than before the proposed Substitutions. The proposed Substitution will not be treated as a transfer for the purpose of assessing transfer charges.

25. The Insurance Company Applicants represent that the proposed Substitution and the selection of the Dreyfus Fund were not motivated by any financial consideration paid or to be paid to the Insurance Company Applicants or their affiliates by the Dreyfus Fund, its adviser or underwriter or their affiliates. The Insurance Company Applicants represent that, immediately after the Substitution, they will not receive any direct or indirect benefits from the Dreyfus Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than they had received from the Franklin Fund, its advisor or underwriter (or their affiliates), including without limitation, 12b–1, shareholder service, administration or other service fees, revenue sharing or other arrangements. As noted above, the Substitution is occurring because of the planned closing of the Franklin Fund.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Specifically, section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.''

2. Section 26(c) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of

the substitution within five (5) days after the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a unit investment trust receive prior Commission approval.

3. Applicants assert that the purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. The Applicants state that the Contracts are designed with a number of features that provide adequate protection to Contract owners in the event of a substitution. These features include free partial withdrawal rights, transferability between investment options including 12 free transfers per year, and a significant number of investment options. In addition, Contract owners are free to transfer to any other option available under the relevant Contract for approximately 60 days prior to the date of the Substitution and 30 days after the Substitution (''Free Transfer Period'') without any transfer fee and without that transfer counting as one of the twelve permitted each year free of charge. In addition, the Contracts provide reasonably diversified investment options. Contract owners will be assessed no charges whatsoever in connection with the Substitution, and their annual fund expense ratios are expected to decrease. Further, Contract owners will be substituted into the Dreyfus Fund, whose investment objectives and policies are substantially similar in all material respects to those of the Franklin Fund. In addition, expenses for the Dreyfus Fund are lower than those of the Franklin Fund.

4. Applicants submit that the Substitutions do not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act. The Substitution will be in accordance with Contract owners' objectives and risk expectations because the investment objective of the Franklin Fund is nearly identical to that of the Dreyfus Fund. In addition, the Contracts provide adequate protection in the event of a substitution. Moreover, the Substitution will be subject to the following terms and conditions:

(a) After receipt of Notice informing a Contract owner of the Substitution, a Contract owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Contract owners to consider their reinvestment options;

(b) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer, brokerage, or similar charge;

(c) Neither the Contract owners, the Franklin Fund, nor the Dreyfus Fund will bear any costs of the Substitution, and all legal costs and any brokerage or other costs incurred in the Substitution will be paid by the Insurance Company Applicants or Franklin Advisers, and accordingly, the Substitution will have no impact on the Contract owners' Contract values;

(d) The Substitution will in no way alter the contractual obligations of the respective Insurance Company Applicants or the rights and privileges of Contract owners under the Contracts, or alter insurance benefits to Contract owners; and

(e) The Substitution will in no way alter the tax benefits to Contract owners.

5. Applicants represent that the fees and expenses of the Dreyfus Fund have historically been less than those of the Franklin Fund. Accordingly, the proposed Substitution poses no concerns in connection with the fees and expenses that will arise therefrom.

Applicants' Conclusions

Applicants request an Order of the Commission pursuant to section 26(c) of the 1940 Act to permit them to effect the Substitution on the terms set forth in the Application. Applicants believe, for all of the reasons stated in the Application, that their request for approval meets the standards set forth in section 26(c).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6549 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47489; File No. SR–Amex–2003–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Add iShares S&P 100 Index Fund to the List of Exchange Traded Funds for Which the Exchange Pays Non-Reimbursed Fees to Third Parties

March 12, 2003.

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 February 27, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. 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 add the iShares S&P 100 Index Fund to the list of Exchange Traded Funds (''ETFs'') for which the Exchange pays non-reimbursed fees to third parties, (included in Note 4 to the Amex Equity Fee Schedule). The text of the proposed rule change is available at the Amex and at 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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has included in Note 4 to the Amex Equity Fee Schedule a list of ETFs that are subject to transaction charges set forth in Item 9 to the Equity Fee Schedule, relating to ETFs for which the Exchange pays unreimbursed fees to a third party.[4] The Exchange is adding to this list the iShares S&P 100 Index Fund (Symbol: OEF). This fund is listed on the Chicago Board Options Exchange and will be traded on the Amex pursuant to unlisted trading privileges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Amex. At any time within 60 days of the filing of the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Amex. All submissions should refer to file number SR–Amex–2003–13 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6551 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47479; File No. SR–Amex–2002–86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC To Eliminate the Obligation of Specialists to Accord Priority to Non-Public Customer Options Orders

March 11, 2003.

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 17, 2002, the American Stock Exchange LLC (''Amex'') 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 Amex. 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 amend paragraphs (a) and (d) of Amex Rule 950, and add new paragraph (q) to Amex Rule 950, to provide that when a specialist represents an options order as agent, the specialist is required to accord priority only to those orders of public customers over the specialist's principal transactions. The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

Rule 950. Rules of General Applicability

(a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in options contracts: 100, 101, 104, 105, 106, 110, 112, 117, 123, 129, 130, 135, 150, 151, 152, 153, [155,] 157, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term ''stock'' wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 *et seq.*) shall not be applicable to Exchange option transactions.

(b)–(c) No change.

(d) No change.

Commentary—

.01 No change

.02 A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a) No change

(b) No change

(c) No change

(d) No change

For purposes of this Rule, [and] Rule 950(e)(iv) *and 950(q)* the term ''public customer of a member organization'' means a customer that is neither a member nor a broker-dealer.

.03 No change

.04 No change

.05 No change

(f)–(p) No change

(q) The provisions of Rule 155 shall apply to Exchange options transactions as modified below:

A specialist shall give precedence to the options orders of a public customer of a member organization entrusted to the specialist as an agent in any option in which he is registered before executing at the same price any purchase or sale in the same option for

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[4] *See* Securities Exchange Act Release No. 46764 (November 1, 2002), 67 FR 68704 (November 12, 2002) (SR–Amex–2002–81).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

an account in which he has an interest. However, the requirements of this Rule shall not apply to those option orders which are not executable because of the restrictions of Securities Exchange Act Rule 11a1–1, the two tick requirement of Rule 111 and the procedures for the handling of percentage orders pursuant to Rule 154.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend Amex Rule 950 for the purpose of revising the obligation of specialists in representing options orders. Currently, Amex Rule 950(a) incorporates and applies Amex Rule 155 to options so that a specialist is required to give precedence to orders entrusted to him as an agent in any option in which he is registered before executing at the same price any purchase or sale in the same option for an account in which he has an interest.[3] This amendment to paragraphs (a) and (d) of Amex Rule 950, and the addition of new paragraph (q) to Amex Rule 950, would revise the obligation of options specialists so that such specialists are obligated to accord priority only to public customer orders. The term ''public customer of a member organization'' is defined as an order which, if executed, results in the purchase or sale for an account in which no member or broker-dealer has an interest.[4]

Amex represents that a number of developments in the options industry and at the Amex in recent years have resulted in an increasing number of options orders left with specialists for representation. In particular, the consolidation of firms and changing economics have resulted in a decline in the number of independent floor brokers who formerly represented orders in trading crowds at the Amex.[5] In addition, the enhanced use of electronic order routing systems by firms has further increased the number of options orders that specialists represent. Therefore, a larger percentage of all options orders traded in a particular trading crowd are now being electronically routed and either automatically executed via the Amex's automatic execution system or placed in the specialist's order display book, the Amex Options Order Display Book (''AODB''),[6] for execution.

The introduction of the Booth Automated Routing System (''BARS'')[7] at the Amex further permits member firms to manage their order flow more efficiently by providing members a choice of sending orders electronically to their floor broker booths for further action or using existing electronic order routing systems to send orders directly to the specialist. With the advent of a reduction in floor broker operations and the speed of electronic order routing, such orders increasingly are routed electronically to the specialist for handling. Accordingly, the Amex does not believe that it is appropriate for a specialist to be denied the opportunity to compete for orders merely because it is representing such orders that have in the past been represented by floor brokers.

The Amex believes it will become increasingly difficult for specialists to compete against Registered Options Traders (''ROTs'') and other members in the trading crowd given the preference for electronic order routing. As the percentage of electronically routed orders increases, the incentive to assume the affirmative obligations and exposure in managing a specialist unit decrease. Therefore, the Amex believes this proposal is justified in light of the particular responsibilities, burdens and costs borne by specialists as compared to other market participants. For example a specialist unit has greater market making responsibilities than ROTs and other non-specialists, higher capital requirements, and other costs such as staffing in connection with brokerage quote updating and quote processing.

The Amex offers the following example to help illustrate how the current order precedence rule works at the Amex. A specialist who had been bidding $2 as dealer receives an order for a broker-dealer that has been electronically routed by an unaffiliated floor broker via BARS. The broker-dealer is seeking to buy 50 contracts of XYZ at a limit of $2 at a time when the market is 2 (bid) − 2.25 (offer). A Registered Options Trader (''ROT'') now walks into the trading crowd to sell 100 contracts of XYZ at $2. The specialist must represent the order of the floor broker and, in addition, may bid as dealer to compete against other non-specialists to trade against the ROT order for 100 contracts. The specialist, however, must, when bidding as dealer, accord priority to the order of the floor broker and cannot compete to trade against that order. If competition in the trading crowd is such that the specialist is allocated 20 contracts (or less) in the trade of 100 contracts, the specialist will have no chance to participate, as principal, in the trade. If the specialist did not have to accord priority to the order of the broker-dealer, the specialist would be able to compete equally with the other trading crowd participants and assert its participation right if the trade occurred at the specialist's previously established principal bid or offer.

The Amex believes this proposal is substantially similar to a proposal by the Chicago Board Options Exchange, Inc. (''CBOE'') that was approved by the Commission.[8] Pursuant to the CBOE proposal, the designated primary market makers (''DPMs''), when representing an order as agent, would be required to accord priority only to public customer orders over their own principal transactions.[9] The Amex represents that it has based the instant proposal on the CBOE rule change, and therefore, submits it is identical to the CBOE's approved rule. Amex therefore believes that approval of the proposal would place Amex specialists on an equal footing with DPMs so that a specialist when representing an order accords priority only to public customer orders.

The Amex, notes, however, that although Commission approval of this

[3] According to the Amex, the specialist does not have to give precedence to those orders which are not executable because of the restrictions of Rule 11a1–1(T) under the Act or because of the two-tick requirement of Commentary .01(b) to Amex Rule 950(c).

[4] *See* Commentary .02 to Amex Rule 950(d).

[5] For example, Amex ''spread'' brokers no longer exist because of the inability to profitably remain in business. These specialized floor brokers at the Amex focused on executing options spread orders. *See* File No. SR–Amex–2001–48.

[6] The AODB is the electronic options specialist book that receives and stores both market and limit orders directed to the Amex through its electronic order routing system or given to the specialist by traders.

[7] BARS is an order routing system permitting brokers to manage and route orders for Amex traded securities. *See* Securities Exchange Act Release No. 45782 (April 18, 2002), 67 FR 20559 (April 25, 2002).

[8] *See* Securities Exchange Act Release No. 45103 (November 26, 2001), 66 FR 63083 (December 4, 2001) (notice of SR–CBOE–00–42) and 45341 (January 25, 2002) 67 FR 5016 (February 1, 2002) (approval order of SR–CBOE–00–42).

[9] *Id.*

proposal may be consistent with the Act, such approval will not relieve a specialist of its fiduciary obligations under the federal securities laws or agency law principles when acting as an agent.[10] The Commission, in approving the CBOE proposed rule change, specifically stated that its approval was based solely on its determination that the CBOE proposal was consistent with the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange. Therefore, like the CBOE rule filing, approval of this proposal will not affect existing fiduciary duties.[11]

Accordingly, the Amex believes that the instant proposal limiting the priority of options orders to those orders of public customers entrusted to specialists for execution is consistent with the Act and Amex rules. The addition of new paragraph (q) to Amex Rule 950 will, therefore, allow specialists acting as agent to compete equally with other members and broker-dealers in the trading crowd by not being required to afford priority to such member or broker-dealer orders.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

[10] *See In re E.F. Hutton & Co.* Securities Exchange Act Release No. 25887 (July 6, 1988) (''Manning Decision''). The Amex represents that the Commission found that broker-dealers owe a fiduciary duty to their limit order customers not to trade ahead of such orders unless the customer knows of the firm's limit order policy. Furthermore, under agency law principles, a specialist acting as agent has an obligation to act solely for its customer and not compete with the customer's order unless the customer understands such specialist intends to compete.

[11] The Amex offers the following as an example: A specialist that acts as agent for any customer has an obligation to act solely for the benefit of the customer in all matters connected with the customer's order, and not compete with the customer concerning the order unless the customer understands its agent is to compete, and such understanding is fully disclosed.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 self-regulatory organization 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. 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 Amex. All submissions should refer to File No. SR–Amex–2002–86 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6554 Filed 3–18–03; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47492; File No. SR–CBOE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Expand the Order Types That Can Trade on the Exchange's Large Order Utility (''LOU'')

March 13, 2003.

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 March 10, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)[3] of the Act and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to expand the order types that can trade on the Exchange's LOU system. Below is the text of the proposed rule change. Proposed new language is in italics:

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.10 LOU System Operations

This Rule governs the operation of the Large Order Utility (''LOU'') system.

(a) Definitions. For purposes of this Rule, the following definitions shall apply.

(i) The term ''LOU'' means a facility of the Exchange that provides order routing, handling, and execution for eligible options orders routed electronically to the Exchange.

(ii) The term ''In-Person Wheel'' means an order allocation mechanism

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

whereby orders are evenly assigned to Market-Makers logged onto the In-Person Wheel for up to five contracts per Market-Maker for each order.

(iii) The term ''Linkage Order'' means an order routed to the Exchange through the Options Intermarket Linkage pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage.

(b) LOU Eligibility.

The following criteria must be met for an order to be eligible for LOU:

(i) The order must be a market order or marketable limit order that is not for an account in which a member, or any non-member broker-dealer (including foreign broker-dealer) has an interest *except as provided under Interpretation .02 of this Rule;*

(ii) The order must be of a size greater than the RAES eligibility limit for the subject option series as established pursuant to Rule 6.8(c);

(iii) the order may not be a Linkage Order;

(iv) at the time the order is received, the Exchange must be disseminating a quote at the national best bid or offer (NBBO) for the appropriate side of the market;

(v) at the time the order is received, the Exchange's disseminated quote may not be a manual quote;

(vi) the order must be in an option class which is designated as subject to the terms of Rule 6.8.B concerning booked orders; and,

(vii) the order must be in an option class designated by the appropriate FPC as subject to this Rule 6.10.

The senior person then in charge of the Exchange's Control Room shall have the authority to turn off LOU with respect to a class of options if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.

(c) Order Receipt.

(i) Orders Equal to or Smaller than the Exchange's Disseminated Quotation Size. When LOU receives an order smaller than the Exchange's disseminated quotation size, the system will automatically stop the order against the Exchange's disseminated market. The order will then be automatically routed for representation in the crowd to allow for price improvement and to allocate the order to members of the trading crowd pursuant to paragraph (d) below.

(ii) Orders Larger than the Exchange's Disseminated Quotation Size. When LOU receives an order larger than the Exchange's disseminated quotation size, the system will automatically stop a portion of the order against the Exchange's disseminated market up to the Exchange's disseminated size. The stopped portion of the order will then be automatically routed for representation in the crowd to allow for price improvement and to allocate the order to members of the trading crowd pursuant to paragraph (d) below. Simultaneously, the balance of the order that was not stopped at the Exchange's disseminated price will be routed for normal order handling.

(d) Execution and Allocation. Upon receipt, the LOU order (or the stopped portion of the LOU order) shall be announced and exposed to the crowd to allow for price improvement. Any portion of a LOU order that does not receive price improvement will be allocated as follows:

(i) The LOU order will be assigned in open outcry consistent with Rule 6.45 and Rule 8.87. To the extent an order is not fully assigned in open outcry, the remaining portion of the order will be assigned to Market-Makers via the In-Person Wheel. If a portion of the LOU order still remains after the In-Person Wheel allocations are exhausted, the balance of the order shall be assigned in accordance with the RAES trade allocation methodology in effect for the subject option class pursuant to Rule 6.8, Interpretation and Policy .06.

(e) Obligations of Participating Market-Makers. Any Market-Maker who is present in the trading crowd and who makes markets in a particular security traded in that crowd, must be logged onto the In-Person Wheel for that security.

. . . Interpretations and Policies

.01 The provisions of Rule 8.17 regarding stopping of option orders shall not apply to orders received pursuant to this Rule 6.10.

.02 Broker-Dealer Access to LOU. The appropriate FPC may determine, by class and/or series to allow the following broker-dealer orders to be eligible for LOU, provided that such broker-dealer orders will not be stopped pursuant to this Rule against orders in the limit order book:

(a) broker-dealer orders, or

(b) broker-dealer orders that are not for the accounts of market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934.

* * * * *

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 CBOE 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 CBOE 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

On July 11, 2002, the Securities and Exchange Commission (''Commission'') approved a CBOE rule change to establish the Large Order Utility (''LOU'').[5] Through LOU, eligible orders larger than CBOE's maximum RAES limit for the relevant option are stopped at the Exchange's disseminated price up to the size of the Exchange's disseminated quote, and are subsequently routed to the trading crowd for allocation and possible price improvement in open outcry. Because CBOE has recently expanded the RAES system (Rule 6.8) to allow broker-dealer orders to trade on RAES,[6] the Exchange now seeks to similarly expand Rule 6.10 to allow LOU to handle broker-dealer orders.

As proposed, Rule 6.10 would be modified to provide that the appropriate Floor Procedure Committee may allow the following two broker-dealer order categories to be eligible for LOU on a class or series basis: (1) All broker-dealer orders, and (2) all broker-dealer orders except orders for the accounts of market makers or specialists. These orders would receive full LOU treatment except that they would not receive LOU treatment when CBOE's NBBO quote is represented by an order on CBOE's limit order book. Currently, broker-dealer orders eligible for RAES do not automatically execute against the limit order book. Therefore, the Exchange does not believe it is appropriate, at this time, to allow broker-dealer orders such capability through LOU.

2. Statutory Basis

The Exchange believes that the proposed rule change will help a

[5] *See* Securities Exchange Act Release No. 46185 (July 11, 2002), 67 FR 47585 (July 19, 2002).

[6] *See* Securities Exchange Act Release No. 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002).

broader range of orders to automatically secure disseminated prices. The Exchange therefore believes the proposal is consistent with section 6(b)[7] of the Act in general and furthers the objectives of section 6(b)(5)[8] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and rule 19b–4(f)(6) thereunder[10] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until more than 30 days from the date on which it was filed, and the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.[11] 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.

The CBOE has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest in that it will enable the CBOE to guarantee execution of broker-dealer orders at the disseminated price at the full disseminated size (except in the case where CBOE's NBBO quote is represented by an order on the Exchange's limit order book). For this reason, the Commission designates the proposal to be effective and operative immediately.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 CBOE. All submissions should refer to File No. SR–CBOE–2003–09, and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6496 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] The Exchange submitted a letter to the Division of Market Regulation (''Division'') of the Commission stating its belief that the proposal is consistent with Section 11(a) of the Act, 15 U.S.C. 78k(a), and Rule 11a2–2(T) under the Act, 17 CFR 240.11a2–2(T), and requesting interpretive guidance. *See* letter to Catherine McGuire, Chief Counsel, Division, Commission, from Stephen M. Youhn, Senior Attorney, CBOE, dated March 12, 2003. In response to the Exchange's request, Commission staff has provided interpretive guidance to the Exchange under Section 11(a) of the Act. *See* letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Stephen M. Youhn, CBOE, dated March 12, 2003.

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47483; File No. SR–ISE–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. To Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

March 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4[2] thereunder, notice is hereby given that on February 27, 2002, the International Securities Exchange LLC (''ISE'' 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 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 initial listing standards to allow options to be listed on ''covered securities'' when, among other things, the trading price of the underlying security was at least $3 for the five business days prior to certification with The Options Clearing Corporation.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

Rule 502. Criteria for Underlying Securities

* * * * *

(b) No change.

(1)–(4) No change.

(5) Either:

(i) If the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or

[(i)] *(ii) If the underlying security is not a ''covered security,''* [T]*t*he market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days: or

[ii] *(iii)* The underlying security meets the guidelines for continued approval in Rule 503; options on such underlying security are traded on at least one other registered national securities exchange; and the average daily trading volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

(c) Securities of Restructured Companies.

(1)–(3) No change.

(4) ''Market Price'' Guideline. In determining whether a Restructure Security satisfies the market price history guidelines set forth in Rule 502(b)5) (the Market Price Guideline''), the Exchange may consider the market price history of the Original Equity Security prior to the ''ex-date'' of the Restructuring Transaction if:

(i) the Restructure security satisfies the ''Substantiality Test'' set forth in subparagraph (c)(5) below; and

(ii) in the case of the application of the Market Price Guideline to a Restructure Security that is distributed pursuant to a public offering or a rights distribution:

(A) the Restructure Security trades ''regular way'' on an exchange or automatic quotation system for at least the five trading days immediately preceding the date of selection; and

(B) at the close of trading on each trading day on which the Restructure Security trades ''regular way'' prior to the date of selection, and the opening of trading on the date of selection, the market price of the Restructure Security was at least $7.50*, or, if the Restructure Security is a ''covered security,'' as defined in Rule 502(b)(5)(i), the market price of the Restructure Security was at least $3.00.*

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

The Exchange proposes to amend its pricing requirement for securities underlying options traded on the Exchange (''underlying securities''). ISE Rule 502(b)(5) currently provides that options can be listed on underlying securities if (i) the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, or (ii) options on the underlying security are traded on at least one other registered national securities exchange and have a average daily trading volume of at least 5,000 contracts.

The Exchange now proposes to amend ISE Rule 502(b)(5) to allow the listing of options on underlying securities that are ''covered securities'' under section 18(b)(1)(A) of the Securities Act of 1933 [3] (''1933 Act'') so long as the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of an underlying security will be measured by the closing price reported in the primary market in which the underlying security is traded.

For the purposes of consistency within the ISE Rules, the Exchange proposes to amend ISE Rule 502(c)(4)((ii)(B), which provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of ISE Rule 502(b)(5) and specifically references the $7.50 market price per share requirement. The amendment would reflect that the market price standard for Restructure Securities also is reduced from $7.50 to $3.00 as long as the Restructure Security is a ''covered security'' as defined in ISE Rule 502(b)(5).

This proposed rule change is identical to a change by the Chicago Board Options Exchange, Inc. (''CBOE'') to its initial listing standards that became effective January 15, 2003.[4] The ISE seeks to amend its initial listing standards to be consistent with those of the CBOE so that the ISE is not at a competitive disadvantage with respect to the options classes it may list. In addition, changing the pricing standard to the proposed $3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection. In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority (''OPRA'') have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed $3.00 market price per share standard is consistent with the guideline contained in ISE Rule 503(b)(4) related to the withdrawal of approval of underlying securities, which sets a $3.00 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security. In addition, the Exchange believes that a ''look back'' period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security. The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's existing quarterly delisting program,[5] would contribute to reducing unnecessary quote traffic.

(2) Statutory Basis

The Exchange's basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [6] that an exchange have rules to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in

[3] Section 18(b)(1)(A) of the 1933 Act provides that ''[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *'' 15 U.S.C. 77r(b)(1)(A). The term ''covered security,'' for operation of the proposed amendment to ISE Rule 502(b)(5), would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[4] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

[5] The Exchange states that it maintains an active delisting program that requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

[6] 15 U.S.C. 78f(b)(4).

securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of rule 19b–4 [8] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under rule 19b–4(f)(6)(iii) of the Act,[9] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date in order for it to implement the proposed rule change as quickly as possible. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.[10] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period,[11] and, therefore, the proposal is effective and operative upon filing with the Commission.

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 Section. 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–ISE–2003–04 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6497 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47484; File No. SR–ISE–2003–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees

March 11, 2003.

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 March 6, 2003, the International Securities Exchange, Inc. (''ISE'' 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 ISE. 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 is proposing to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage (''Linkage'') and to specify that such fees are for a one-year pilot. The text of the proposed rule change is below; proposed new language is in italics.

* * * * *

SCHEDULE OF FEES

	Amount	Billable unit	Frequency	Notes
Electronic Market Place				
Execution Fees				
• Customer	$0.05	contract/side	Transaction	Fee waived through June 30, 2003.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62).

[11] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SCHEDULE OF FEES—Continued

	Amount	Billable unit	Frequency	Notes
• Facilitation	0.15	contract/side	Transaction.	
• Market Maker & Firm Proprietary (*for a pilot period expiring on January 30, 2004,* including members of other exchanges executing Linkage transactions, except for Satisfaction Orders)				
A.D.V. Less Than 300,000	0.21	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. From 300,001 to 500,000	0.17	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. From 500,001 to 700,000	0.14	contract/side	Transaction	Based on Exchange A.D.V.
A.D.V. Over 700,000	0.12	contract/side	Transaction	Based on Exchange A.D.V.
• Surcharge for Options on Nasdaq 100 Index Tracing Stock℠, the Nasdaq Biotechnology Index®, the iSharesS&P 100 Index Fund, options on Select Sector SPDR® Funds*, and exchange traded funds based on indexes developed by the Frank Russell Company**.	0.10	contract/side	Transaction	Excludes Public Customer Orders; Firm Proprietary fees for trades in the iShares S&P 100 Index Fund waived through May 31, 2003. *Applies to P Orders and P/A Orders in these options for a pilot period expiring on January 30, 2004.* *Financial Select Sector SPDR Fund XLF), Technology Select Sector SPDR Fund (XLK), Utilities Select Sector SPDR Fund (XLU). **Russell 2000 Value iShares (IWN), Russell 2000 Growth iShares (IWO), Russell 1000 Growth iShares (IWF), Russell 1000 Value iShares (IWD).
* * * * * * *				
Comparison Fee	.03	contract/side	Transaction	Fee waived for Customer Trades through June 30, 2003. *Applies to P Orders and P/A Orders for a pilot period expiring on January 30, 2004.*

* * * * *

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

In File No. SR–ISE–2002–19, the Exchange adopted rules governing operation of the Linkage.[3] That filing also specified that certain existing Exchange fees would apply to Linkage trades. The purpose of this filing is to clarify that three ISE fees apply to Linkage trades: trade execution fees; a $.10 surcharge for options traded pursuant to licensing agreements (but only for executions in options specifically subject to the surcharge); and the $.03 comparison fee. Furthermore, at the request of the Commission staff, this filing would establish each of these Linkage-related fees as a one-year pilot, expiring on January 30, 2004. The Exchange intends to file an additional rule change prior to the expiration of this pilot period either to extend the term of the pilot or to establish these fees on a permanent basis.

2. Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 self-regulatory organization 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.

[3] See Securities Exchange Act Release No. 47293 (January 31, 2003), 68 FR 6232 (February 6, 2003).

[4] 15 U.S.C. 78f(b)(4).

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 ISE. All submissions should refer to SR–ISE–2003–11 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6553 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47488; File No. SR–NASD–2002–107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. To Retroactively Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperSoes Transactions in Low-Priced Securities

March 12, 2003.

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 August 6, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On August 19, 2002, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] On August 30, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] On October 9, 2002, Nasdaq submitted Amendment No. 3 to the proposed rule change.[5] On February 21, 2003, Nasdaq submitted Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Retroactive to July 1, 2002, Nasdaq proposes to: (1) Establish a $75 maximum execution fee cap for a single SuperSoes transaction; and (2) Establish a $37.50 maximum cap on the rebate amount provided by Nasdaq to market participants that provide liquidity to its market.[7] The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

7010. System Services

(a)–(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—$0.10 per order entry (entering party only)

Per Share Charge—$0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee—$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003, the per share charge will be $0.002 per share executed for all fully or partially executed orders (entering party only).

Effective July 1, 2002, [F] *f*or trades in securities that are executed at a price of $1.00 or less per share, the maximum charge per trade under this section shall not exceed $75.00.

(3) No change.

(4) Liquidity provider rebate.

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003:

(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of $0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) NASD members will receive a rebate of $0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(C) *Effective July 1, 2002,* [F] *f*or trades in securities that are executed at a price of $1.00 or less per share, the maximum rebate available per trade under section (4) of this rule shall not exceed $37.50.

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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.

[5] 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 Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 16, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 30, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made a technical correction to the proposed rule text.

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2002 (''Amendment No. 3''). In Amendment No. 3, Nasdaq made a technical correction to the proposed rule text.

[6] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 20, 2003 (''Amendment No. 4''). In Amendment No. 4, Nasdaq made technical corrections to the proposed rule text.

[7] Nasdaq also filed a separate proposal, pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii), to establish these same fee and rebate limits on a going-forward basis. *See* Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR–NASD–2002–106).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to control trading costs for low-priced stocks, Nasdaq proposes to establish, retroactive to July 1, 2002, a maximum SuperSoes execution fee of $75.00 per trade and liquidity provider rebate cap of $37.50 per trade for securities trading at $1.00 or less per share.

Nasdaq assessed on parties entering orders into SuperSoes a $0.002 per share charge for all resulting full or partial trade executions. This fee applied regardless of the price of the individual security traded and there was no maximum fee per individual trade. Nasdaq also rebated $0.001 per share to market participants that provided liquidity to the market by having their quotes accessed by SuperSoes orders, when those quoting market participants did not themselves charge a separate fee for that access. When a market participant entered an order into SuperSoes that interacted with the quote of an access fee-charging Electronic Communications Network (''ECN''), Nasdaq likewise rebated $0.001 per share to that entering party. Like the per-share SuperSoes execution fee, these rebates had no maximum dollar amount.

Nasdaq represents that market activity caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the prices of these securities declined, market participants generally needed to purchase or sell an increasing number of total shares to actively participate in the market for these issues. This increase in the size of individual transactions, when combined with SuperSoes' unlimited per share fee structure, raised execution costs to market participants. Similarly, large transactions involving low-priced securities also can result in disproportionate liquidity-provider rebates.

In response, Nasdaq has determined to establish per trade maximums for SuperSoes execution fees and liquidity provider rebates in low-priced ($1.00 or less per share) securities. Under the proposal, Nasdaq would cap at $75 the maximum execution fee it would impose on the entering party for a single SuperSoes trade where the price of the security traded was one dollar or less. For rebates, Nasdaq would cap at $37.50 the amount it gives back to market participants for providing liquidity in low-priced securities or when their orders access the low-priced quotes of fee-charging ECNs. Nasdaq notes that the ratio between its low-priced maximum per trade fee and per trade rebate is the same as those that are applicable to higher-priced issues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers, and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, 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, as amended, 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 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–107 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6550 Filed 3–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 19, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205–7528 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Reporting and Recordkeeping Requirements on Small Business Lending Companies—13 CFR 120–302''.

Form No: N/A.

Description of Respondents: Small Business Lending Companies.

Annual Responses: 2,400.

Annual Burden: 2,400.

SUPPLEMENTARY INFORMATION: *Title:* ''Statement of Personal History''.
Form No: 1081.
Description of Respondents: Certified Development Companies.
Annual Responses: 300.
Annual Burden: 75.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Charles George, Deputy Assistant Administrator, Office of Government Contracting & Business Development, Small Business Administration, 409 3rd Street SW., Suite 8000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles George, Deputy Assistant Administrator, 202–401–2899 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:
Title: ''8(a) Annual Update''.
Form No: 1450.
Description of Respondents: 8(a) Program Participants.
Annual Responses: 5,000.
Annual Burden: 13,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–6488 Filed 3–18–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9U44]

State of Pennsylvania

Cameron County and the contiguous counties of Clearfield, Clinton, Elk, McKean and Potter in the State of Pennsylvania constitute an economic injury disaster loan area as a result of a fire that occurred on February 28, 2003 in the Borough of Emporium. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on *December 12, 2003* at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.189 percent. The number assigned for economic injury for this disaster is 9U4400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 12. 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–6487 Filed 3–18–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of Proposed United States—Central America Free Trade Agreement

AGENCY: Office of the United States Trade Representative, Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Central America Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by April 25, 2003, to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR0071@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, TPSC, Office of the USTR, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3804(a)(1), the United States Trade Representative notified the Congress of the President's intent to enter into trade negotiations with the five members of the Central American Economic Integration System (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, hereinafter ''Central America''). The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/10/2002–10–01-centralamerica-house.PDF* and *http://www.ustr.gov/releases/2002/10/2002–10–01-centralamerica-senate.PDF,* respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing conducted on November 19, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63954) (Oct. 16, 2002). The formal launch of the negotiations occurred on January 8, 2003 in Washington, D.C. The first round of negotiations took place January 27–31, 2003, in San Jose, Costa Rica, and the second round of negotiations was held February 24–28, 2003, in Cincinnati, Ohio.

The FTA will build on the Caribbean Basin Initiative (CBI). Since 1985, the U.S. trade relationship with Central America has been driven by U.S. unilateral trade preferences through the CBI. By moving from unilateral trade preferences to a reciprocal trade agreement, the FTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Central American-origin goods and also address trade in services, trade in agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance, complementing ongoing domestic, bilateral, and multilateral efforts in the region. Finally, the FTA will lend momentum to concluding the Free Trade Area of the Americas negotiations by January 2005.

Two-way trade in goods between the United States and Central America totaled $20 billion in 2001, consisting of $9 billion in U.S. exports and $11 billion in U.S. imports. Leading U.S. exports to Central America include textiles, machinery, electrical

machinery and equipment, and plastics. Leading U.S. imports from Central America include apparel products and edible fruits.

2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to ''review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public.'' USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0071@ustr.gov.* Persons making submissions by e-mail should use the following subject line: ''Central America Employment Review.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries will be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–6499 Filed 3–18–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–11]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on the petition received must identify the petition docket number involved and must be received on or before April 8, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14324 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Brown (202) 267–7653, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 14, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–14324.

Petitioner: West Air Incorporated.

Section of 14 CFR Affected: 14 CFR 21.197(c)(2) and 135.411(b).

Description of Relief Sought: To permit West Air Incorporated to ferry aircraft from their Cessna Caravan fleet, as needed, without first submitting a Form 8130–6 to the FAA.

[FR Doc. 03–6622 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held April 10, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- April 10:
- Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting).
- Publication Consideration/ Approval:
- Final Draft, *Next Generation Air/ Ground Communication System (NEXCOM) VDL Mode 3 Interoperability,* RTCA Paper No. 040–03/PMC–268, prepared by SC–198.
- Final Draft, *Standards for Airport Security Access Control Systems,* RTCA Paper No. 023–03/PMC–265, prepared by SC–199.
- Final Draft, *Minimum Operational Performance Standards for 1090 MHz Automatic Dependent Surveillance*—Broadcast (ADS–B), RTCA Paper No. 036–03/PMC–266 and RTCA Paper No. 037–03/PMC–267, prepared by SC–186.
- Final Draft, *Minimum Aviation System Performance Standards (MASPS) for Traffic Information Service*—Broadcast (TIS–B), RTCA Paper No. 042–03/PMC–269, prepared by SC–186.
- Discussion:
- Special Committee Chairman's Reports
- Action Item Review:
- Review/Status—All open action items
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 13, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–6624 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–05–C–00–ATW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of 49 U.S.C. 40117 and part 148 of the Federal Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 18, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jeff Mulder, Airport Manager of the Outagamie County Airport at the following address: W6390 Challenger Drive, Suite 201, Appleton, Wisconsin 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Outagamie under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 27, 2003 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Outagamie was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 31, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2008.

Proposed charge expiration date: October 1, 2008.

Total estimated PFC revenue: $318,170.

Brief Description of proposed project: Acquire Snow Removal Equipment (2 tow behind brooms).

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: none requested.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Outagamie.

Issued in Des Plaines, Illinois on March 12, 2003.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–6625 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2000–7918, FMCSA–2001–8398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 37 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will

not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

DATES: This decision is effective March 23, 2003.. Comments from interested person should be submitted by April 18, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov.* Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 37 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 37 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Carl W. Adams
Glenn A. Babcock, Jr.
David W. Ball
David F. Bardsley, Sr.
William E. Beckley
Joseph M. Blankenship
Willie Burnett, Jr.
Charles C. Chapman
Dennis J. Christensen
Robert P. Conrad, Sr.
David L. Davis
Jerald O. Edwards
Elias Gomez, Jr.
Robert K. Hodge
William G. Holland
Thomas E. Howard
Spencer E., Leonard
Thomas F. Marczewski
Boy E. Mathews
Velmer L. McClelland
Duane A. McCord
James T. McGraw, Jr.
Clarence M. Miles, Jr.
Robert A. Moss
Robert A. Murphy
John E. Musick
Henry C. Patton
Bobby G. Pool, Sr.
Robert Radcliff, Jr.
Billy G. Saunders
Daniel J. Schaap
George D. Schell
Scottie Stewart
Clarence L. Swann, Jr.
Thaddeus E. Temoney
Harry C. Weber
Yu Weng

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 3135(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 37 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 33406, 65 FR 57230, 65 FR 45817, 65 FR 77066, 65 FR 66286, 66 FR 13825, 65 FR 78256, 66 FR 16311). Each of these 37 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 18, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary

statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). the FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 13, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–6627 Filed 3–18–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–A

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 4506–A, Request for Public Inspection or Copy of Exempt Organization Tax Form.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 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 Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Title: Request for Public Inspection or Copy of Exempt Organization IRS Form.

OMB Number: 1545–0495.

Form Number: 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Current Actions: There are no changes being made to form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 20,000.

Estimated Time Per Response: 1 hr. 1 min.

Estimated Total Annual Burden Hours: 20,400.

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: (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 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.

Approved: March 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6602 Filed 3–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5452

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5452, Corporate Report of Nondividend Distributions.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 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 Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Report of Nondividend Distributions.

OMB Number: 1545–0205.

Form Number: 5452.

Abstract: Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Current Actions: There are no changes being made to form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,700.

Estimated Time Per Response: 31 hrs. 51 minutes.

Estimated Total Annual Burden Hours: 54,145.

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: (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 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.

Approved: March 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6603 Filed 3–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–5–91]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, PS–5–91 (TD 8437), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(e)).

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–1251.

Regulation Project Number: PS–5–91.

Abstract: This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A–3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 49,950.

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: (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 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.

Approved: March 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6604 Filed 3–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

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 extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to evaluate claimant's eligibility for waiver of collection, payment plans or compromises on VA benefits debts.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before May 19, 2003.

ADDRESSES: Submit written comments on the collection of information to David Sturm, VA Debt Management Center, Bishop Henry Whipple Federal Building, 1 Federal Drive, Room 156D, Ft. Snelling, MN 55123 or e-mail to: *DMCDSTUR@VBA.VA.GOV.* Please refer to ''OMB Control No. 2900–0165'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: David Sturm at (612) 970–5702 or FAX (612) 970–5687.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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: Financial Status Report, VA Form 5655.

OMB Control Number: 2900–0165.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 5655 is attached to first collection letters sent to debtors owing VA benefit debts. Submission of the completed form is voluntary on the part of the debtor unless he or she requests waiver of collection, makes a compromise offer, wishes to make installment payments or establish his or her inability to pay the debt under any circumstances. Federal employees subject to salary offset may use Form 5655 to support their contention that the proposed offset schedule would create extreme hardship. The information obtained is used to determine the financial status of the debtors, his/her ability to pay, and the feasibility of exploring compromise.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,553 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,553.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6612 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

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 to ensure that lenders correctly compute the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 19, 2003.

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 *mailto:irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0386'' 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: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26–8923 when requesting guaranty on an interest rate reduction refinancing loan. VA loan examiners must assure that the requirements of the Deficit Reduction Act of 1984 and applicable VA regulations are met before the issuance of guaranty. The form ensures that lenders correctly compute the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans.

Affected Public: Business or other for profit.

Estimated Annual Burden: 16,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6613 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

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 enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 19, 2003.

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. 2900–0564'' 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 (Pub. L. 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: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 24–0296 is used to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 198,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6614 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

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 revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for work-study benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 19, 2003.

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. 2900–0209'' 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 (Pub. L. 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.

Titles:

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8691.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement (Student Services), VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Eligible veterans, selected reservists, and survivors or dependents complete VA Form 22–8691 to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

VA uses the information to determine the applicant's eligibility to work-study allowance and the amount payable.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,566.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8691—6,625 hours.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—1,333 hours.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—275 hours.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—1,333 hours.

Estimated Average Burden Per Respondent: 7 minutes.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961—15 minutes.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—5 minutes.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—3 minutes.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 64,000.

a. Application for Work-Study Allowance (38 Up.So.CA. Chapters 30, 31, 32 and 35; 10 Up.So.CA Chapter 1606), VA Form 22–8961—26,500.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—16,000.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—5,500.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—16,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6615 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

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 April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0262.''

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. 2900–0262'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Designation of Certifying Official(s), VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8794 is used to provide notification to VA of the designated person(s) who may certify reports of the enrollment and pursuit or training on behalf of an educational institution or job training establishment. The information is used to ensure that educational benefits are not made improperly based on a report from someone other than a designated certifying official.

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 December 20, 2002, at page 78042–78043.

Affected Public: State, local or Tribal government, business or other for-profit, and not for-profit institutions.

Estimated Annual Burden: 333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6616 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

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 April 18, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0379.''

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. 2900–0379'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct. When a claimant elects to receive an advance

payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service.

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 December 17, 2002, at page 77321.

Affected Public: Not-for-profit institutions, Individuals or households, Business or other for-profit, Federal Government, and State, Local or Tribal Governments.

Estimated Annual Burden: 10,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,000.

Estimated Annual Responses: 124,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6617 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

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 April 18, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0198.''

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. 2900–0198'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

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 November 15, 2002, at page 69305.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,720.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6618 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

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 April 18, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), 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. 2900–0051.''

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. 2900–0051'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

OMB Control Number: 2900–0051.

Type of Review: Extension of a currently approved collection.

Abstract: VA reimburses State Approving Agency (SAA) for necessary salary, and fringe and travel expenses incurred in the approval and supervision of education and training programs. VA makes the reimbursement retrospectively on a monthly or quarterly basis after receiving an itemized invoice from SAAs supported by document (such as reports of visit to schools and programs approved by SAA). VA Form 22–7398 serves as the form for SAA to request reimbursement. The information is used to ensure that the reimbursements are proper and accurate. Without the report, VA would

have no means to compare the efficiency and effectiveness of SAAs.

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 December 20, 2002, at page 78041–78042.

Affected Public: State, Local or Tribal Governments, and Federal Government.

Estimated Annual Burden: 228 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 57.

Estimated Total Annual Responses: 228.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6619 Filed 3–18–03; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Wednesday,
March 19, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI23

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No.; I.D. 020522126–3051–02]

RIN 0648–AQ03

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon

AGENCY: Fish and Wildlife Service (FWS), Interior, and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: We, FWS and NMFS, collectively ''the Services,'' designate critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a threatened species listed under the Endangered Species Act of 1973, as amended (Act). We designate 14 geographic areas among the Gulf of Mexico rivers and tributaries as critical habitat for the Gulf sturgeon. These 14 geographic areas (units) encompass approximately 2,783 river kilometers (rkm) (1,730 river miles (rmi)) and 6,042 square kilometers (km^2) (2,333 square miles (mi^2)) of estuarine and marine habitat.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with and with the assistance of the Services, insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposal, including data on economic and other impacts of the designation.

DATES: The effective date of this rule is April 18, 2003.

ADDRESSES: The complete administrative record, including comments and materials received, as well as supporting documentation, used in the preparation of this final rule are available for public inspection, by appointment, during normal business hours at the Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405. Copies of the final rule, economic analysis, and information regarding this critical habitat designation are available on the Internet at *http://alabama.fws.gov/gs/.*

FOR FURTHER INFORMATION CONTACT: Gail Carmody, Field Supervisor, Panama City Field Office (see **ADDRESSES** section) (telephone 850/769–0552; facsimile 850/763–2177), or Stephania Bolden, Fishery Biologist, National Oceanic and Atmospheric Administration (NOAA) Fisheries, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702 (telephone 727/570–5312; facsimile 727/570–5517). Information regarding this designation is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrinchus (=oxyrhynchus) desotoi*), also known as the Gulf of Mexico sturgeon, is an anadromous fish (breeding in freshwater after migrating up rivers from marine and estuarine environments), inhabiting coastal rivers from Louisiana to Florida during the warmer months and overwintering in estuaries, bays, and the Gulf of Mexico. It is a nearly cylindrical primitive fish embedded with bony plates or scutes. The head ends in a hard, extended snout; the mouth is inferior and protrusible and is preceded by four conspicuous barbels. The tail (caudal fin) is distinctly asymmetrical, the upper lobe is longer than the lower lobe (heterocercal). Adults range from 1.2 to 2.4 meters (m) (4 to 8 feet (ft)) in length, with adult females larger than males. The Gulf sturgeon is distinguished from the geographically disjunct Atlantic coast subspecies (*A. o. oxyrinchus*) by its longer head, pectoral fins, and spleen (Vladykov, 1955; Wooley, 1985). King *et al.* (2001) have documented substantial divergence between *A. o. oxyrinchus* and *A. o. desotoi* using microsatellite DNA testing.

Distribution and Status

Historically, the Gulf sturgeon occurred from the Mississippi River east to Tampa Bay. Its present range extends from Lake Pontchartrain and the Pearl River system in Louisiana and Mississippi east to the Suwannee River in Florida. Sporadic occurrences have been recorded as far west as the Rio Grande River between Texas and Mexico, and as far east and south as Florida Bay (Wooley and Crateau, 1985; and Reynolds, 1993).

In the late 19th century and early 20th century, the Gulf sturgeon supported an important commercial fishery, providing eggs for caviar, flesh for smoked fish, and swim bladders for isinglass, a gelatin used in food products and glues (Huff, 1975; and Carr, 1983). Gulf sturgeon numbers declined due to overfishing throughout most of the 20th century. The decline was exacerbated by habitat loss associated with the construction of water control structures, such as dams and sills (submerged ridge or vertical wall of relatively shallow depth separating two bodies of water), mostly after 1950. In several rivers throughout the species' range, dams have severely restricted sturgeon access to historic migration routes and spawning areas (Boschung, 1976; Wooley and Crateau, 1985; and McDowall, 1988).

On September 30, 1991, we listed the Gulf sturgeon as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) (56 FR 49653). Other threats and potential threats identified in the listing rule included modifications to habitat associated with dredged material disposal, desnagging (removal of trees and their roots), and other navigation maintenance activities; incidental take by commercial fishermen; poor water quality associated with contamination by pesticides, heavy metals, and industrial contaminants; aquaculture and incidental or accidental introductions; and the Gulf sturgeon's slow growth and late maturation. The Gulf sturgeon listing rule and the Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995), which was approved by the Services and the Gulf States Marine Fisheries Commission, provide a more detailed discussion of the reasons for the species' decline and threats to surviving populations (available by request or at the FWS Internet site, see **ADDRESSES**).

The Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995) recommended that genetic studies be done to determine geographically distinct management units. Some work in this regard has been completed (Stabile *et al.*, 1996), but we have not formally adopted management units at this time. For purposes of this final rule, we have used the term subpopulation to subdivide the Gulf sturgeon population

based on geography, degree of connectedness, and genetic interchange (Lande and Barrowclough, 1987; and King *et al.*, 2001). Seven subpopulations are described in the ''Critical Habitat Unit Descriptions'' section of this rule.

Feeding Habits

Gulf sturgeon feeding habits in freshwater vary depending on the fish's life history stage (*i.e.*, young-of-the-year, juvenile, subadult, adult). Young-of-the-year Gulf sturgeon remain in freshwater feeding on aquatic invertebrates and detritus approximately 10 to 12 months after spawning occurs (Mason and Clugston, 1993; and Sulak and Clugston, 1999). Juveniles (less than 5 kg (11 lbs) are believed to forage extensively and exploit scarce food resources throughout the river, including aquatic insects (*e.g.*, mayflies and caddisflies), worms (oligochaetes), and bivalve molluscs (Huff, 1975; and Mason and Clugston, 1993). Juvenile (ages 1 to 6) Gulf sturgeon collected in the Suwannee River are trophically active (foraging) near the river mouth at the estuary, but trophically dormant (not foraging) in summer holding areas upriver—a portion of the juvenile population reside and feed year round near the river mouth at the estuary, not just in winter (K. Sulak, U.S. Geological Survey (USGS), pers. comm. 2002). In the Choctawhatchee River, juvenile (ages 1 to 6) Gulf sturgeon did not remain near the estuary at the river mouth for the entire year, instead, they were located during winter months in Choctawhatchee Bay and returned upriver to resting areas in the spring (F. Parauka, FWS, pers. comm. 2002). Subadult (age 6 to sexual maturity) and adult (sexually mature) Gulf sturgeon do not feed in freshwater (Wooley and Crateau, 1985; and Mason and Clugston, 1993).

Many reports indicate that adult and subadult Gulf sturgeon lose a substantial percentage of their body weight while in freshwater (Wooley and Crateau, 1985; Mason and Clugston, 1993; and Clugston *et al.*, 1995) and then compensate the loss during winter feeding in the estuarine and marine environments (Wooley and Crateau, 1985; and Clugston *et al.*, 1995). Gu *et al.* (2001) tested the hypothesis that subadult and adult Gulf sturgeon do not feed significantly during their annual residence in freshwater by comparing stable carbon isotope ratios of tissue samples from subadult and adult Suwannee River Gulf sturgeon and their potential freshwater and marine food sources. A large difference in isotope ratios between freshwater food sources and fish muscle tissue suggests that subadult and adult Gulf sturgeon do not feed significantly in freshwater. The isotope similarity between Gulf sturgeon and marine food resources strongly indicates that this species relies almost entirely on the marine food web for its growth (Gu *et al.*, 2001).

Once subadult and adult Gulf sturgeon leave the river, having spent at least 6 months in the river fasting, we presume that they immediately begin feeding. Upon exiting the rivers, Gulf sturgeon are found in high concentrations near their natal river mouths. Lakes and bays at the mouths of the river systems where Gulf sturgeon occur are important because they offer the first opportunity for Gulf sturgeon exiting their natal rivers to forage. Gulf sturgeon must be able to consume sufficient quantities of prey while in estuarine and marine waters to regain the weight they lose while in the river system and to maintain positive growth on a yearly basis. In addition, reproductively active Gulf sturgeon require additional food resources to obtain sufficient energy necessary for reproduction (Fox *et al.*, 2002; and D. Murie and D. Parkyn, University of Florida (UF), pers. comm. 2002).

Adult and subadult Gulf sturgeon, while in marine and estuarine habitat, are thought to forage opportunistically (Huff, 1975), primarily on benthic (bottom dwelling) invertebrates. Gut content analyses have indicated that the Gulf sturgeon's diet is predominantly amphipods, lancelets, polychaetes, gastropods, shrimp, isopods, molluscs, and crustaceans (Huff, 1975; Mason and Clugston, 1993; Carr *et al.*, 1996b; Fox *et al.*, 2000; and Fox *et al.*, 2002). Gulf sturgeon from the Suwannee River subpopulation are known to forage on brachiopods (Murie and Parkyn, pers. comm. 2002); however, this is not a documented prey item of other subpopulations. Ghost shrimp (*Lepidophthalmus louisianensis*) and the haustoriid amphipod (*Lepidactylus* spp.) are strongly suspected to be important prey for adult Gulf sturgeon over 1 m (3.3 ft) (Heard *et al.*, 2000; and Fox *et al.*, 2002). This hypothesis is based on the following evidence: (1) Gulf sturgeon have been consistently located and observed actively feeding in areas where numerous burrows similar to those occupied by ghost shrimp exist (Fox *et al.*, 2000) and in areas having a high density of ghost shrimp and haustoriid amphipods (Heard *et al.*, 2000), (2) the digestive tracts of two adult Gulf sturgeon that died during netting operations contained numerous ghost shrimp (Fox *et al.*, 2000), (3) stomach contents of a 30 kg (67 lb) sturgeon taken in the upper portion of Choctawhatchee Bay contained more than 100 individual haustoriid amphipods and 67 ghost shrimp (Heard *et al.*, 2000), and (4) approximately one-third of 157 sturgeon guts analyzed by Carr *et al.* (1996b) contained exclusively brachiopods and ghost shrimp.

Reproduction

Gulf sturgeon are long-lived, with some individuals reaching at least 42 years in age (Huff, 1975). Age at sexual maturity for females ranges from 8 to 17 years, and for males from 7 to 21 years (Huff, 1975). Gulf sturgeon eggs are demersal (they are heavy and sink to the bottom), adhesive, and vary in color from gray to brown to black (Vladykov and Greeley, 1963; Huff, 1975; and Parauka *et al.*, 1991). Chapman *et al.* (1993) estimated that mature female Gulf sturgeon weighing between 29 and 51 kg (64 and 112 lb) produce an average of 400,000 eggs. Habitat at egg collection sites consists of one or more of the following: limestone bluffs and outcroppings, cobble, limestone bedrock covered with gravel and small cobble, gravel, and sand (Marchant and Shutters, 1996; Sulak and Clugston, 1999; Heise *et al.*, 1999a; Fox *et al.*, 2000; and Craft *et al.*, 2001). On the Suwannee River, Sulak and Clugston (1999) suggest a dense matrix of gravel or cobble is likely essential for Gulf sturgeon egg adhesion and the sheltering of the yolk sac larvae, and is a habitat spawning adults apparently select. Other substrates identified as possible spawning habitat include marl (clay with substantial calcium carbonate), soapstone, or hard clay (W. Slack, Mississippi Museum of Natural Science (MMNS), pers. comm. 2002; and F. Parauka, pers. comm. 2002). Water depths at egg collection sites ranged from 1.4 to 7.9 m (4.6 to 26 ft), with temperatures ranging from 18.2 to 23.9 degrees Celsius (°C) (64.8 to 75.0 degrees Fahrenheit (°F)) (Fox *et al.*, 2000; Ross *et al.*, 2000; Craft *et al.*, 2001). Laboratory experiments indicated optimal water temperature for survival of Gulf sturgeon larvae is between 15 and 20 °C (59 and 68 °F), with low tolerance to temperatures above 25 °C (77 °F) (Chapman and Carr, 1995). Researchers hypothesize that spawning must take place where the hydrological and chemical settings are appropriate for gamete (mature reproductive cell) function, and temperature, pH, and dissolved oxygen conditions are stable and appropriate for embryonic and yolk sac larval development (Sulak and Clugston, 1999).

Sulak and Clugston (1999) suggested that sturgeon spawning activity in the Suwannee River is related to the phase

of the moon, but only after the water temperature has risen to 17 °C (62.6 °F). Other researchers however, have found little evidence of spawning associated with lunar cycles (Slack *et al.*, 1999; and Fox *et al.*, 2000). Spawning in the Suwannee River occurs during the general period of spring high water, when ionic conductivity and calcium ion concentration are most favorable for egg development and adhesion (Sulak and Clugston, 1999). Fox *et al.* (2002) found no clear pattern between timing of Gulf sturgeon entering the river and flow patterns on the Choctawhatchee River. Ross *et al.* (2001b) surmised that the high flows in early March were a cue for sturgeon to begin their upstream movement in the Pascagoula River.

Atlantic sturgeon (*A. oxyrinchus*) exhibit a long inter-spawning period, with females spawning at intervals ranging from every 3 to 5 years, and males every 1 to 5 years (Smith, 1985). It is believed that Gulf sturgeon exhibit similar spawning periodicity, as male Gulf sturgeon are capable of annual spawning, and females require more than one year between spawning events (Huff, 1975; and Fox *et al.*, 2000).

Freshwater Habitat

In the spring (March to May), most adult and subadult Gulf sturgeon return to their natal river, where sexually mature sturgeon spawn, and the population spends until October or November (6 to 8 months) in freshwater (Odenkirk, 1989; Foster, 1993; Clugston *et al.*, 1995; and Fox *et al.*, 2000). Fox *et al.* (2000) found that some individuals of the Choctawhatchee River subpopulation do not enter the river until the summer months. Gulf sturgeon migration is further discussed in the ''Migration'' section of this rule. During their early life history stages, sturgeon require bedrock and clean gravel or cobble substrate for eggs to adhere to and for shelter for developing larvae (Sulak and Clugston, 1998). Young-of-the-year appear to disperse widely, using extensive portions of the river as nursery habitat. They are typically found on sandbars and sand shoals over rippled bottom and in shallow, relatively open, unstructured areas. Given that the river is generally nutrient poor with low levels of total phosphorus and organic carbon, suggesting low productivity, this dispersal may be an adaptation to exploit scarce food resources (Randall and Sulak, 1999). Clugston *et al.* (1995) reported that young Gulf sturgeon in the Suwannee River, weighing between 0.3 and 2.4 kg (0.7 and 5.3 lb), remain in the vicinity of the river mouth and estuary during the winter and spring.

Adult Gulf sturgeon spawn in upper river reaches. On some river systems such as the Pascagoula River and Apalachicola River, some adult and subadult Gulf sturgeon remain near the spawning grounds throughout the summer months (Wooley and Crateau, 1985; and Ross *et al.*, 2001b), but the majority move downstream to areas referred to as summer resting or holding areas. In other rivers, most Gulf sturgeon spawn and move downstream to aggregation areas also referred to as summer resting or holding areas. A few Gulf sturgeon have been documented remaining at or near their spawning grounds throughout the winter (Wooley and Crateau, 1985; Slack *et al.*, 1999; and Heise *et al.*, 1999a). Adults and subadults are not distributed uniformly throughout the river, but show a preference for these discrete areas usually located in lower and middle river reaches (Hightower *et al.*, in press). Often, these resting areas are located in close proximity to natural springs throughout the warmest months of the year, but are not located within a spring or thermal plume emanating from a spring (Clugston *et al.,* 1995; Foster and Clugston, 1997; and Hightower *et al.*, in press). These resting areas are also often located in deep holes or shallow areas along straight-aways ranging from 2 to 19 m (6.6 to 62.3 ft) deep (Wooley and Crateau, 1985; Morrow *et al.*, 1998a; Ross *et al.*, 2001a and b; Craft *et al.*, 2001; and Hightower *et al.*, in press). The substrates consisted of mixtures of limestone and sand (Clugston *et al.*, 1995), sand and gravel (Wooley and Crateau, 1985; and Morrow *et al.*, 1998a), or just sandy substrate (Hightower *et al.*, in press).

River flow may serve as an environmental cue that governs both sturgeon migration and spawning (Chapman and Carr, 1995; and Ross *et al.*, 2001b). If the flow rate is too high, sturgeon in several life-history stages can be adversely affected. Data describing the sturgeon's swimming ability in the Suwannee River strongly indicates that they cannot continually swim against prevailing currents of greater than 1 to 2 m per second (3.2 to 6.6 ft per second) (K. Sulak, USGS, pers. comm. cited in Wakeford, 2001). If the flow is too strong, eggs might not be able to settle on and adhere to suitable substrate (Wooley and Crateau *et al.*, 1985). Flows that are too low can cause clumping of eggs, which leads to increased mortality from asphyxiation and fungal infection (Wooley and Crateau *et al.*, 1985). Flow velocity requirements for age 0 sturgeon may vary depending on substrate type. Chan *et al.* (1997) found that age 0 Gulf sturgeon under laboratory conditions exposed to water velocities over 12 centimeters per second (cm/s) (4.7 inches per second (in/s)) preferred a cobble substrate, but favored water velocities under 12 cm/s (4.7 in/s) and then used a variety of substrates (sand, gravel, and cobble).

Gulf sturgeon require large areas of diverse habitat that have natural variations in water flow, velocity, temperature, and turbidity (FWS *et al.*, 1995; and Wakeford, 2001). Natural surface and groundwater discharges influence a river's characteristic fluctuations in volume, depth, and velocity (Leitman *et al.*, 1993; and Albertson and Torak, 2002). Change in temperature is thought to be an important factor in initiating sturgeon migration (Wooley and Crateau, 1985; Chapman and Carr, 1995; and Foster and Clugston, 1997) (see ''Migration'' section for temperature ranges). Laboratory experiments indicate that Gulf sturgeon eggs, embryos, and larvae have the highest survival rates when temperatures are between 15 and 20 °C (59 and 68 °F). Mortality rates of Gulf sturgeon gametes and embryos are highest when temperatures are 25 °C (77 °F) and above (Chapman and Carr, 1995) (see ''Reproduction'' section for more detail). Researchers have documented temperature ranges at Gulf sturgeon resting areas between 15.3 and 33.7 °C (59.5 and 92.7 °F) with dissolved oxygen levels between 5.6 and 9.1 milligrams per liter (mg/l) (Morrow *et al.*, 1998a; and Hightower *et al.*, in press).

In comparison to other fish species, sturgeon have a limited behavioral and physiological capacity to respond to hypoxia (insufficient oxygen levels) (Secor and Niklitschek, 2001). Basal metabolism, growth, consumption, and survival are sensitive to changes in oxygen levels (Secor and Niklitschek, 2001). In laboratory experiments, young shortnose sturgeon (*A. brevirostrum*) (less than 77 days old) died at oxygen levels of 3.0 mg/l and all sturgeon died at oxygen levels of 2.0 mg/l (Jenkins *et al.*, 1993). Data concerning the temperature, oxygen, and current velocity requirements of cultured sturgeon are being collected. Researchers plan to use information gained from these laboratory experiments on hatchery-reared sturgeon to develop detailed information on water flow requirements of wild sturgeon throughout different phases of their freshwater residence (Wakeford, 2001).

Estuarine and Marine Habitat

Most subadult and adult Gulf sturgeon spend cool months (October or November through March or April) in estuarine areas, bays, or in the Gulf of Mexico (Odenkirk, 1989; Foster, 1993; Clugston *et al.*, 1995; and Fox *et al.*, 2002). Studies of subadult Gulf sturgeon (ages 4 to 7) in Choctawhatchee Bay found that 78 percent of tagged fish remained in the bay the entire winter, while 13 percent ventured into a connecting bay. Possibly the remaining 9 percent overwintered in the Gulf of Mexico (FWS, 1998). Adult Gulf sturgeon are more likely to overwinter in the Gulf of Mexico, with 45 percent of the tagged adults presumed to have left Choctawhatchee Bay and spent extended periods of time in the Gulf of Mexico (Fox and Hightower, 1998; and Fox *et al.*, 2002). In contrast, Gulf sturgeon from the Suwannee River subpopulation are known to migrate into the nearshore waters, where they remain for up to two months and then depart to unknown feeding locations in the open Gulf of Mexico (Carr *et al.*, 1996b; and Edwards *et al.*, in prep.).

Research in Choctawhatchee Bay indicates that subadult Gulf sturgeon show a preference for sandy shoreline habitats with water depths less than 3.5 m (11.5 ft) and salinity less than 6.3 parts per thousand (Parauka *et al.*, in press). Fox and Hightower (1998) found that adult Gulf sturgeon monitored in Choctawhatchee Bay use some of the same habitats as subadults. The majority of tagged fish have been located in areas lacking seagrass (Fox *et al.*, 2002; and Parauka *et al.*, in press).

Craft *et al.* (2001) found that Gulf sturgeon in Pensacola Bay appear to prefer shallow shoals 1.5 to 2.1 m (5 to 7 ft) and deep holes near passes. Unvegetated, fine to medium-grain sand habitats, such as sandbars, and intertidal and subtidal energy zones resulting in sediment sorting and a preponderance of sand support a variety of potential prey items including estuarine crustaceans, small bivalve mollusks and lancelets (Menzel, 1971; Abele and Kim, 1986; American Fisheries Society, 1989; and M. Brim, FWS, pers. comm. 2002).

Habitats used by Gulf sturgeon in the vicinity of the Mississippi Sound barrier islands tend to have a sand substrate and an average depth of 1.9 to 5.9 m (6.2 to 19.4 ft). Preliminary data from bottom samples taken in these barrier island areas show that all samples contain lancelets (*Branchiostoma*). Since lancelets are a documented prey of Gulf sturgeon, it is likely that Gulf sturgeon are feeding along the sand substrate at barrier island passes (Ross *et al.*, 2001a). Gulf of Mexico nearshore (less than 1.6 km (1 mi)) unconsolidated, fine-medium grain sand habitats, including natural inlets and passes from the Gulf to estuaries, support crustaceans such as mole crabs, sand fleas, various amphipod species, and lancelets (Menzel, 1971; Abele and Kim, 1986; American Fisheries Society, 1989; and Brim, pers. comm. 2002).

Estuary and bay unvegetated habitats have a preponderance of sandy substrates that support burrowing crustaceans, such as ghost shrimp, small crabs, various polychaete worms, and small bivalve mollusks (Menzel, 1971; Abele and Kim, 1986; American Fisheries Society, 1989; and Brim, pers. comm. 2002). Gulf sturgeon are often located in these areas, and because their known prey items are present, it is assumed that Gulf sturgeon are foraging.

Migration

Migratory behavior of the Gulf sturgeon seems influenced by sex, reproductive status, water temperature, and possibly river flow. Carr *et al.* (1996b) reported that male Gulf sturgeon initiate migration to the river earlier in spring than females. Fox *et al.* (2000) found no significant difference in the timing of river entry due to sex, but reported that males migrate further upstream than females and that ripe (in reproductive condition) males and females enter the river earlier than nonripe fish (Fox *et al.*, 2000). Most adults and subadults begin moving from estuarine and marine waters into the coastal rivers in early spring (*i.e.*, March through May) when river water temperatures range from 16.0 to 23.0 °C (60.8 to 73.4 °C) (Huff, 1975; Carr, 1983; Wooley and Crateau, 1985; Odenkirk, 1989; Clugston *et al.*, 1995; Foster and Clugston, 1997; Fox and Hightower, 1998; Sulak and Clugston, 1999; and Fox *et al.*, 2000), while others may enter the rivers during summer months (Fox *et al.*, 2000). Some research supports the theory that spring migration coincides with the general period of spring high water (Chapman and Carr, 1995; Sulak and Clugston, 1999; and Ross *et al.*, 2001b), however, observations on the Choctawhatchee River have not found a clear relationship between the timing of river entrance and flow patterns (Fox *et al.*, 2002).

Downstream migration from fresh to saltwater begins in September (at about 23°C (73.4°F)) and continues through November (Huff, 1975; Wooley and Crateau,1985; and Foster and Clugston, 1997). During the fall migration from fresh to saltwater, Gulf sturgeon may require a period of physiological acclimation to changing salinity levels, referred to as osmoregulation or staging (Wooley and Crateau, 1985). This period may be short (Fox *et al.*, 2002) as sturgeon develop an active mechanism for osmoregulation and ionic balance by age one (Altinok *et al.*, 1997). On some river systems, timing of the fall migration appears to be associated with pulses of higher river discharge (Heise *et al.*, 1999a and b; Ross *et al.*, 2000 and 2001b; and Parauka *et al.*, in press).

Sturgeon ages 1 through 6 remain in the mouth of the Suwannee River over winter. In late January through early February, young-of-the-year Gulf sturgeon migrate down river for the first time (Sulak and Clugston, 1999). Huff (1975) noted that juvenile Gulf sturgeon in the Suwannee River most likely participated in pre- and post-spawning migrations, along with the adults.

Findeis (1997) described sturgeon (Acipenseridae) as exhibiting evolutionary traits adapted for benthic cruising. Tracking observations by Sulak and Clugston (1999), Fox *et al.* (2002), and Edwards *et al.* (in prep.) support that individual fish move over an area until they encounter suitable prey type and density, at which time they forage for extended periods of time. Individual fish often remained in localized areas (less than 1 km^2 (0.4 mi^2) for extended periods of time (greater than two weeks) and then moved rapidly to another area where localized movements occurred again (Fox *et al.*, 2002). It is unknown precisely how much benthic area is needed to sustain Gulf sturgeon health and growth, but because Gulf sturgeon have been known to travel long distances (greater than 161 km (100 mi)) during their winter feeding phase, significant resources must be necessary. These winter migrations are an important strategy for feeding and for occasional travel to non-natal rivers for possible spawning and resultant genetic interchange among subpopulations. Bays and portions of Gulf of Mexico waters adjacent to the lakes and bays near the mouths of the rivers where Gulf sturgeon occur are believed to be important for feeding and/or migrating (inter-river migrations that facilitate maintenance of the natural hierarchy of between river genetic variability).

When temperature drops occur that are associated with major cold fronts, researchers of the Escambia, Yellow, and Suwannee Rivers subpopulations have been unable to locate adult Gulf sturgeon within the bays (Craft *et al.*, 2001; and Edwards *et al.*, in prep.). They hypothesize that the drop in water temperatures associated with cold fronts disperses sturgeon to more distant foraging grounds. It is currently

unknown whether Gulf sturgeon undertake extensive offshore migrations, and further study is needed to determine whether important winter feeding habitat occurs in farther offshore areas.

Sulak and Clugston (1999) described two hypotheses regarding areas adult Gulf sturgeon may overwinter in the Gulf of Mexico in order to find abundant prey. The first hypothesis is that Gulf sturgeon spread along the coast in nearshore waters in depths less than 10 m (33 ft). The alternative hypothesis is that they migrate far offshore to the broad sedimentary plateau in deep water (40 to 100 m (131 to 328 ft)) west of the Florida Middle Grounds, where over twenty species of bottom-feeding fish congregate in the winter (Darnell and Kleypas, 1987). Available data support the first hypothesis. Evaluation of tagging data has identified several nearshore Gulf of Mexico feeding migrations, but no offshore Gulf of Mexico feeding migrations or areas. Telemetry data document that Gulf sturgeon from the Pearl River and Pascagoula River subpopulations migrate from their natal bay systems to Mississippi Sound and move along the barrier islands, with relocation of tagged individuals greatest in the passes between islands (Ross *et al.*, 2001a; and Rogillio *et al.*, 2002). Gulf sturgeon from the Choctawhatchee River, Yellow River, and Apalachicola River have been documented migrating in the nearshore Gulf of Mexico waters between Pensacola and Apalachicola Bays (Fox *et al.*, 2002; and F. Parauka, pers. comm. 2002). Telemetry data in the Gulf of Mexico usually locate sturgeon in depths of 6 m (19.8 ft) or less (Ross *et al.*, 2001a; Fox *et al.*, 2002; Rogillio *et al.*, 2002; and F. Parauka, pers. comm. 2002).

River-Specific Fidelity

Stabile *et al.* (1996) analyzed tissue from Gulf sturgeon in eight drainages along the Gulf of Mexico for genetic diversity. They noted significant differences among Gulf sturgeon stocks and suggested that they displayed region-specific affinities and may exhibit river-specific fidelity. Stabile *et al.* (1996) identified five regional or river-specific stocks (from west to east): (1) Lake Pontchartrain and Pearl River, (2) Pascagoula River, (3) Escambia and Yellow Rivers, (4) Choctawhatchee River, and (5) Apalachicola, Ochlockonee, and Suwannee Rivers.

Tagging studies suggest that Gulf sturgeon exhibit a high degree of river fidelity (Carr, 1983). From 1981 to 1993, 4,100 fish were tagged in the Apalachicola and Suwannee Rivers. Of these, 868 total fish were recaptured (FWS *et al.* 1995). Of the recaptured fish, 860 fish (99 percent) were recaptured in the river of their initial collection. Eight fish moved between river systems and represented less than 1 percent (0.009) of the 868 total fish recaptured (FWS *et al.*, 1995). We have no information documenting spawning adults in non-natal rivers. Foster and Clugston (1997) noted that telemetered Gulf sturgeon in the Suwannee River returned to the same areas as the previous summer, and suggested that chemical cuing may influence distribution.

To date, biologists have documented a total of 22 Gulf sturgeon making inter-river movements from natal rivers. They are as follows: Apalachicola River to Suwannee River, six Gulf sturgeon (Carr *et al.*, 1996b); Apalachicola River to Deer Point Lake (North Bay of the St. Andrew Bay system), one fish (Wooley and Crateau, 1985); Suwannee River to Apalachicola River, three sturgeon (Carr *et al.*, 1996b; and F. Parauka, pers. comm. 2002); Choctawhatchee River to Apalachicola River, one sturgeon (F. Parauka, pers. comm. 2002); Yellow River to Choctawhatchee River, three female sturgeon (two adult, one subadult) (Craft *et al.*, 2001); Yellow River to Louisiana Estuarine area, one female sturgeon (Craft *et al.*, 2001); Escambia River to Yellow River, one mature female on spawning grounds (Craft *et al.*, 2001); Suwannee River to Ochlockonee River, one sturgeon (FWS *et al.*, 1995); Choctawhatchee River to Escambia River, one male sturgeon (Fox *et al.*, 2002); Choctawhatchee River to Escambia, one female sturgeon (Fox *et al.*, 2002); Pearl River (Bogue Chitto) to Pascagoula River, one sturgeon (Ross *et al.*, 2001b); Choctawhatchee River to Pascagoula River, one subadult sturgeon (Ross *et al.*, 2001b); and Pascagoula River to Yellow River, one sturgeon (Ross *et al.*, 2001b).

Tallman and Healey (1994) noted that observed straying rates between rivers were not the same as actual gene flow rates, *i.e.*, inter-stock movement does not equate to interstock reproduction. The gene flow is low in Gulf sturgeon stocks, with each stock exchanging less than one mature female per generation (Waldman and Wirgin, 1998).

Previous Federal Action

Federal action on the Gulf sturgeon began in 1982, when the fish was included as a Category 2 candidate species for listing in the FWS's vertebrate notices of review dated December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958), and in the animal notice of review dated January 6, 1989 (54 FR 554). At that time, the FWS gave Category 2 designation to species for which listing as threatened or endangered was possibly appropriate, but for which additional biological information was needed to support a proposed rule. A status report on the Gulf sturgeon (Hollowell, 1980) had concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the FWS completed a report on the conservation status of the Gulf sturgeon, which recommended listing it as a threatened species (Barkuloo, 1988).

The Services jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, we stated that designation of critical habitat was not prudent due to the species'' broad range and the lack of knowledge about specific areas used by the species. We published the final rule on September 30, 1991 (56 FR 49653) to add Gulf sturgeon to the list of threatened species, and included a special rule under section 4(d) of the Act to allow the take of Gulf sturgeon, in accordance with applicable State fish and wildlife conservation laws and regulations, for educational and scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes.

Section 4(a)(3)(A) of the Act requires that critical habitat be designated concurrently with a determination that a species is endangered or threatened, to the maximum extent prudent and determinable. When such a designation is not determinable at the time of final listing of a species, or if a prompt determination of endangered or threatened status is essential to the conservation of the species, section 4(b)(6)(C) of the Act provides for an additional year to promulgate a final critical habitat designation. In the final rule listing Gulf sturgeon as a threatened species, we found that a critical habitat designation may be prudent but was not determinable. We found that prompt determination of threatened status was essential to the conservation of the species and stated that we would make a final decision on designation of critical habitat by May 2, 1992. This decision, however, was not made.

On August 11, 1994, the Sierra Club Legal Defense Fund, Inc. (Fund), on behalf of the Orleans Audubon Society and Florida Wildlife Federation, gave written notice of their intent to file suit against the Department of the Interior for failure to designate critical habitat for the Gulf sturgeon within the statutory time limits established under

the Act. The Fund filed suit on October 11, 1994 (*Orleans Audubon Society* v. *Babbitt,* Civ. No. 94–3510 (E.D. La)). Following a court order on August 9, 1995, granting the Fund's motion for summary judgement, the Services published a notice of decision on critical habitat designation for the Gulf sturgeon on August 23, 1995 (60 FR 43721). We determined that critical habitat designation was not prudent based on the lack of additional conservation benefit to the species.

On September 22, 1995, the Services and the Gulf States Marine Fisheries Commission approved the Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995). The recovery plan established the criteria that must be met prior to the delisting of the Gulf sturgeon. The recovery plan also identified the actions that are needed to assist in the recovery of the Gulf sturgeon.

On August 12, 1996, the plaintiffs filed a motion to add the Department of Commerce as a defendant in the lawsuit. The Fund amended their complaint to challenge the August 1995 ''not prudent'' determination. On October 30, 1997, the court granted the plaintiffs' motion for summary judgment, with relief restricted to a remand of the ''not prudent'' determination to the Services, requiring that the Services publish a determination on designation of critical habitat, based on the best scientific information available. On February 27, 1998, we published a notice of decision (63 FR 9967) on critical habitat designation for the Gulf sturgeon. We again determined that lack of additional conservation benefit from critical habitat designation for this species made such designation not prudent.

On December 18, 1998, the Sierra Club sued the Services challenging the new determination not to designate critical habitat for the Gulf sturgeon (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.* CA No. 98–3788 (E.D. La.)). On January 25, 2000, the Court issued an order granting our motion for summary judgment and dismissing the complaint. The Sierra Club filed an appeal and, in March 2001, the United States Court of Appeals for the 5th Circuit reversed the decision of the District Court and instructed the District Court to remand the decision to us for reconsideration (*Sierra Club* v. *U.S. Fish and Wildlife Service, 245 F.3d 434* (5th Cir. 2001)). On August 3, 2001, the District Court issued an order directing us to publish a proposed decision concerning critical habitat designation for the Gulf sturgeon by February 2, 2002, and a final decision by August 2, 2002. Negotiation with the plaintiff resulted in an agreement to submit the proposed decision to the **Federal Register** on or by May 23, 2002, and the final decision on or by February 28, 2003.

On June 6, 2002, we published a proposed rule in the **Federal Register** in which we announced our determination that designation of critical habitat was prudent, proposed designation of critical habitat for Gulf sturgeon, announced four public meetings and hearings, and requested comments on the proposal by September 23, 2002 (67 FR 39106). On August 8, 2002, we published a notice in the **Federal Register** (67 FR 51530) announcing the availability of the draft economic analysis and the extension of the comment period through October 7, 2002. We also corrected the address of a public hearing to be held in Defuniak Springs, FL on August 20, 2002. We held public meetings and public hearings on the proposed rule and draft economic analysis at four locations: Live Oak, Florida, on August 19, 2002; Defuniak Springs, Florida, on August 20, 2002; Biloxi, Mississippi, on August 21, 2002; and Kenner, Louisiana, on August 22, 2002.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposal to designate critical habitat for the Gulf sturgeon. In addition, we published newspaper notices inviting public comment on the proposed rule and the draft economic analysis, and announced the public meetings and hearings in the following newspapers: *St. Petersburg Times,* Pensacola *News Journal,* Panama City *The News Herald,* Fort Walton *Daily News,* Crystal River *Citrus County Chronicle, Tallahassee Democrat,* and *The Gainesville Sun,* in Florida; *The Brewton Standard, Dothan Eagle, Geneva County Reaper,* and *Mobile Register,* in Alabama; Hinds County *The Clarion-Ledger* and Gulfport's *The Sun Herald,* in Mississippi; and New Orleans *The Times-Picayune* and Baton Rouge's *The Advocate* in Louisiana.

We held four public meetings and four public hearings on the proposed rule (see ''Previous Federal Action'' section for dates and locations). Transcripts of these hearings are available for inspection (*see* **ADDRESSES**).

We received written letters or e-mails from a total of 126 parties which included 2 congressional representatives from Georgia, 10 Federal agencies, 13 State agencies, 5 county governments, 93 groups or individuals, and 3 peer reviewers. Of the 128 total responses, 29 supported the proposed rule, 2 opposed it, and the rest were neutral.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from six knowledgeable individuals having expertise either with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. Three of these experts provided a written response generally supporting the designation and provided additional information that we have incorporated into the rule as appropriate. We appreciate the responses of these peer reviewers, and believe their input has improved the content of this rule.

We reviewed all comments received for substantive issues and new data regarding critical habitat and Gulf sturgeon. Some comments resulted in changes between the proposed and final designations, and those comments are discussed in the ''Summary of Changes From the Proposed Rule'' section of this document. Written comments and oral statements presented at the public hearings and received during the comment period are addressed in the following summary. For readers' convenience we have assigned comments to major issue categories. We have combined similar comments into single comments and responses.

Peer Review Comments

Comment 1: Three peer reviewers recommended that additional areas be included as critical habitat, sometimes stating that the areas contain the primary constituent elements upon which Gulf sturgeon rely. Others requested inclusion based on historic use or potential use by the Gulf sturgeon in these areas. The areas requested for inclusion were St. Joseph Bay in Florida, the western portion of Lake Pontchartrain and all of Lake Maurepas in Louisiana, and the Strong River in Mississippi.

Also, twenty eight commenters recommended that additional areas be included as critical habitat, with some stating that the areas contain the primary constituent elements. Others requested inclusion based on historic use or potential use by the Gulf sturgeon in these areas. Other commenters expressed concerns that the proposed designation did not include all of the current range of the Gulf sturgeon. The areas requested for inclusion were the Ochlockonee River, Withlacoochee

River (central Florida river, not the tributary of the Suwannee River), West Bay, East Bay of St. Andrew Bay system, St. Andrew Bay, St. Joseph Bay, Tampa Bay, and the Hillsborough River in Florida; an additional Choctawhatchee River reach, Mobile Bay, Murder Creek (tributary of the Conecuh River), Alabama River, Bayou La Batre, and Perdido Bay in Mobile Bay, in Alabama; Strong River in Mississippi; the western portion of Lake Pontchartrain, Tickfaw River, Tchefuncte River, Lake Maurepas, Chandeleur Sound, in Louisiana; and the coastline from Mississippi to Tampa Bay, Florida.

Our Response: Section 4(b)(2) of the Act directs us to designate critical habitat on the basis of the best scientific data available. However, no or insufficient data were provided to us to support inclusion of any of the above areas as critical habitat. While many of these areas may have historically supported Gulf sturgeon populations and/or may currently support populations, we cannot document that they are essential to the conservation of the Gulf sturgeon.

The definition of critical habitat in section 3(5)(A) of the Act includes ''(I) 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) which 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.'' By definition, essential critical habitat generally describes a subset of the area potentially containing primary constituent elements for a species. As discussed in the methods section of the proposed and this final rule, to determine areas essential for the conservation of the Gulf sturgeon, we used the best scientific data available pertaining to known habitat requirements of the species. Areas designated as critical habitat for the Gulf sturgeon are within the current known range of the species and contain one or more primary constituent elements essential for the conservation of the species. In our proposed and final designation of critical habitat, we selected essential habitat areas that currently contain populations or provide habitat components essential to the conservation of the species. During this analysis, it was determined that some areas containing one or more primary constituent elements did not represent suitable habitat or were otherwise not essential to the conservation of the species.

Comment 2: One peer reviewer stated that the designation of critical habitat for the Chickasawhay River (Unit 2) should be expanded upstream to the beginning of the Chickasawhay River starting at the confluence of the Chunky and Okatibbee Rivers, north of Enterprise (Clarke County, Mississippi). This area contains the primary constituent elements as noted in the proposed rule, including potential spawning habitat. Research efforts conducted during spring 2002 by the University of Southern Mississippi (USM)-MMNS Gulf sturgeon research group documented the most upstream movement of a radio-tagged individual on the Chickasawhay River traveling as far upstream as the confluence of the Chunky and Okatibbee rivers. This individual was originally tagged at the mouth of the Pascagoula River during early-March 2002.

Our Response: The area requested for inclusion would add 19 rkm (12 rmi) to the designation on the Chickasawhay River in Mississippi. However, we believe that what we proposed for the Gulf sturgeon including the portion of the Chickasawhay River proposed for designation, includes sufficient habitat to conserve the species. Accordingly, we have not made the requested change. Moreover, 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 prohibitions.

Comment 3: One peer reviewer questioned whether all Gulf sturgeon overwinter in the marine and estuarine environment and what the potential impacts on the population would be if critical habitat had a temporal component to its designation.

Our Response: A few Gulf sturgeon have been documented remaining at or near their spawning grounds throughout the winter (Wooley and Crateau, 1985; Slack *et al.*, 1999; and Heise *et al,.* 1999a). However, this is an exception to the normal behavior of adult Gulf sturgeon. During winter months, juveniles often remain in the estuary near the river mouth, but adult and sub-adults leave the riverine habitat to forage in the estuarine and marine areas. Critical habitat has no temporal boundaries, only spatial. If an area is designated as critical habitat, it receives equal protection throughout the year regardless of the presence or absence of the species.

Comment 4: One peer reviewer and one commenter questioned our rationale for deriving seven subpopulations from the five that were proposed by Stabile *et al.* (1996).

Our Response: We first evaluated the Gulf sturgeon in the context of its current distribution throughout the historic range to determine what portion of the range must be designated to ensure conservation of the species. We considered several factors in this evaluation: (1) Maintaining overall genetic integrity and natural rates of inter-river genetic exchange, thereby minimizing the potential for inbreeding, (2) retaining potentially important selective pressure at the margins of the species' range by protecting the eastern- and western-most subpopulations, (3) decreasing the extinction risk of a subpopulation by protecting adjacent subpopulations that can provide a rescue effect, if needed, (4) avoiding the potential for subpopulation extirpation from environmental catastrophes, and (5) protecting sufficient habitat essential to the conservation of the species.

In their analysis of Gulf sturgeon subpopulations from eight drainages along the Gulf of Mexico for genetic diversity, Stabile *et al.* (1996) identified five regional or river-specific stocks (from west to east)—(1) Lake Pontchartrain and Pearl River, (2) Pascagoula River, (3) Escambia and Yellow Rivers, (4) Choctawhatchee River, and (5) Apalachicola, Ochlockonee, and Suwannee Rivers.

All five genetic stocks are represented by the seven subpopulations occupying the critical habitat units. The number, distribution, and range of the seven Gulf sturgeon subpopulations included in these units are necessary to protect and support the extent and diversity of the species' genetic integrity and can provide a rescue effect, if needed (see ''Methods'' section). We believe that these seven river systems, with their associated estuarine and marine environments, represent habitat that is essential for the conservation of the Gulf sturgeon.

Comment 5: Four commenters, including one peer reviewer, noted that the western boundary in Lake Pontchartrain (Unit 8) seemed arbitrary.

Response: Critical habitat areas in Unit 8 provide juvenile, subadult and adult feeding, resting and passage habitat for Gulf sturgeon from the Pascagoula and Pearl Rivers subpopulations. Lake Pontchartrain is divided into eastern and western areas by the Lake Pontchartrain Causeway (a twin highway bridge supported by pilings extending 33.6 km (20.9 mi) from the north to the south). Gulf

sturgeon from the Pearl River subpopulation have been documented (by tags) to use the eastern half of Lake Pontchartrain. Researchers believe that the eastern portion of the lake provides important winter habitat for juveniles and subadults, and they have located tagged individuals in Lake Pontchartrain and have repeatedly caught untagged sturgeon between Goose Point and Point Platte, an area believed to be used for winter feeding. While Gulf sturgeon have been documented in the western portion of the Lake (generally near the mouth of small rivers), it is not known whether those sturgeon are part of the Pearl and Bogue Chitto Rivers spawning subpopulation, or if they are part of a smaller spawning subpopulation that might exist within the Tickfaw, Tangipahoa, or Tchefuncte Rivers. We, therefore, conclude that the eastern portion, but not the western portion, of Lake Pontchartrain provides essential winter habitat for the Pearl River subpopulation, as data supports inclusion of the eastern portion of Lake Pontchartrain as critical habitat. Although the Lake Pontchartrain Causeway does not restrict fish movement, it does provide an appropriate and easily identifiable boundary.

Public Comments

Issue A: General Biological Comments

Comment 6: One commenter believes that forestry practices (*e.g.*, the use of silvicultural Best Management Practices and application of streamside management zones, to protect surface water quality during forestry operations) actively contribute to the conservation of the Gulf sturgeon by providing an important incentive for private landowners to retain forested riverine corridors adjacent to sturgeon habitat.

Our Response: We agree that Best Management Practices when applied correctly to silvicultural activities do protect and improve the quality of surface waters and, therefore, do contribute to the conservation of the Gulf sturgeon.

Comment 7: Some commenters questioned the basis of our statement that adult Gulf sturgeon do not feed while in freshwater.

Our Response: As stated in the proposed and final rules (see ''Feeding Habits'' section), many reports indicate that subadult and adult Gulf sturgeon fast and lose between 4 and 15 percent of their total body weight while in freshwater, and then compensate the loss during winter feeding in estuarine and marine environments (Carr, 1983; Wooley and Crateau, 1985; Clugston *et al*,. 1995; Morrow *et al.*, 1998a; Heise *et al*, 1999a; Sulak and Clugston, 1999; and Ross *et al.*, 2000). Gu *et al.* (2001) tested the hypothesis that subadult and adult Gulf sturgeon do not feed significantly during their annual residence in freshwater by comparing stable carbon isotope ratios of tissue samples from subadult and adult Gulf sturgeon and their potential freshwater and marine food sources. A large difference in isotope ratios between freshwater food sources and fish muscle tissue suggests that subadult and adult Gulf sturgeon do not feed significantly in freshwater. The isotope similarity between subadult and adult Gulf sturgeon and marine food resources strongly indicates that this species relies almost entirely on the marine food web for its growth (Gu *et al.*, 2001).

Comment 8: One commenter questioned whether fish tagging studies were limited to adults or whether they included other life stages as well.

Our Response: Juveniles (age 1 to 6 years), subadults (age 6 years to sexual maturity), and adults (sexually mature) have been marked with different types of equipment, but primarily with T-bar tags (external) and passive integrated transponder (PIT) tags (internal). Young-of-the-year less than 20 cm (7.8 inches) tail length are too small to tag with the standard markers and therefore are exclusively pit tagged (Mike Randall, USGS, pers. comm. 2002).

Comment 9: Four commenters had questions regarding Gulf sturgeon prey items and foraging areas.

Our Response: As stated in the proposed rule (67 FR 39107), the diet of the Gulf sturgeon depends on its life history stage. While adults are not known to forage in freshwater, juveniles and young-of-the-year do. We have used data from stomach content analysis and telemetry studies to identify probable Gulf sturgeon foraging areas, *i.e.*, those areas with substrate that supports the known prey items, coupled with tracking data indicating sturgeon presence. We relied on two observations to conclude that subadult and adult Gulf sturgeon do not forage in freshwater: (1) Gulf sturgeon lose a substantial percentage of their body weight while in freshwater in summer and then compensate for the loss during winter, and (2) stable isotopes from sturgeon muscle tissue and their potential marine food sources are similar, while there is a large difference between muscle tissue and potential freshwater food sources. Gulf sturgeon researchers and the Services are certain that the existing data support these conclusions regarding Gulf sturgeon food items and foraging locations.

Comment 10: Commenters wondered what we know of Gulf sturgeon's overall use of estuarine and marine waters.

Our Response: While research indicates that Gulf sturgeon utilize estuarine and marine areas for staging, resting and foraging, researchers continue to investigate Gulf sturgeon over-wintering behavior and locale. We are not able, at this time, to readily discern the Gulf sturgeon's overall utilization of marine and estuarine areas and we look forward to evaluating additional information when it becomes available.

Comment 11: Some commenters questioned whether we were knowledgeable of Gulf sturgeon migration routes.

Our Response: We have identified and described Gulf sturgeon spawning migrations from coastal/marine areas to the rivers; however, inter-riverine migratory patterns are not well understood. When we could identify inter-riverine movements (mostly from telemetry data), we included appropriate inshore coastal waters in the critical habitat designation to provide protection for migrating sturgeon (*e.g.*, Unit 11). Research is ongoing to investigate Gulf sturgeon inter-riverine migrations (*e.g.*, recording broad movement patterns via satellite tags), and researchers are presently collating data to analyze Gulf-wide movements.

Issue B: Site-specific Biological Comments

Comment 12: One commenter questioned whether any areas south of the Suwannee River in Florida were historic critical habitat for Gulf sturgeon.

Our Response: Since this is the first critical habitat designation for the Gulf sturgeon, we presume that the commenter is asking whether areas south of the Suwannee River were of importance to the Gulf sturgeon historically. There are few reported sightings of Gulf sturgeon using rivers south of the Suwannee River, but there are historic and recent records of Gulf sturgeon in Tampa Bay and Charlotte Harbor. At one time, the Tampa Bay area produced large commercial landings of Gulf sturgeon. There have been reported Gulf sturgeon sightings in the Florida Keys during winter months. Some biologists theorize that the Suwannee River population of Gulf sturgeon may winter in the Tampa Bay and Charlotte Harbor areas; however, further research is needed in this area.

Comment 13: Two commenters asked how we determined the upstream limit on the Suwannee River, and one commenter stated that the published literature does not report the use of the Suwannee River upstream of 230 rkm (143 rmi).

Our Response: We received unpublished information from Gulf sturgeon experts (Ken Sulak, USGS, pers. comm. 2002; Jim Clugston, retired USGS, pers. comm. 2002) of sightings of young-of-the-year Gulf sturgeon as far upstream on the Suwannee River as to the confluence with Roaring Creek at 304 rkm (200 rmi). This is approximately 11 rkm (18 rmi) upstream of the designated critical habitat, which stops at 293 rkm (182 rmi). We believe that the area known as Big Shoals on the Suwannee River captures the upstream-most significant spawning areas and, therefore, we included upstream to this point. We have included the 0.31 rkm (0.50 rmi) of habitat upstream from Big Shoals to the confluence with Long Branch for ease of identification. It is correct that the published literature on the Suwannee River documents spawning sites no further upstream than at 230 rkm (143 rmi), but we have relied on the above unpublished literature from reliable sources to determine the upstream limit on this system.

Comment 14: Two commenters requested that the Services omit areas adjacent to military lands from the designation under the Act's section 4(b)(2). The rationale presented included proximity to a military base that is used for military testing and training, restricting military's ability to quickly respond to training and testing due to long-lead time administrative considerations required for consultations, and reducing the number of formal consultations performed by the Services.

Our Response: The Department of Defense (DOD) did not request that areas adjacent to military lands be excluded from critical habitat designation. In any case, we have no data indicating that these areas should be excluded. We have been successfully and efficiently conducting section 7 consultations with military bases in these critical habitat areas for over 10 years, and we intend to continue working as partners with the armed forces to uphold the Act without compromising national security. We do not foresee any impacts to military readiness as a result of the adjacent critical habitat designation.

Comment 15: One commenter reported that unusually large fish have been taken from a fish trap on the Tennessee River near the mouth of Chickamauga Creek, above Chattanooga, Tennessee.

Our Response: Historic information indicates that Gulf sturgeon did not venture as far inland as Tennessee, so we are fairly certain the large fish captured in the fish traps were not Gulf sturgeon. These fish may have been lake sturgeon (*A. fulvescens*) or shovelnose sturgeon (*Scaphirhynchus platorhynchus*), although these species are uncommon, particularly in east Tennessee. Paddlefish (*Polyodon spathula*), which attain weights of over 45 kg (100 lb) are found in the Tennessee River; however, additional information would be necessary to clearly identify the species involved and none was provided by the commenter.

Issue C: National Environmental Policy Act (NEPA) Compliance

Comment 16: One commenter stated that the Services should withdraw the proposed rule pending compliance with NEPA, through preparation of an environmental assessment or an environmental impact statement (EIS). The commenter stated that FWS's position that NEPA only applies to critical habitat designations in the 10th Circuit, based upon that circuit's 1996 decision in *Catron County Bd. of Comm.* v. *USFWS*, 75 F.3d 1429, is unlawful. The commenter stated that the two exceptions to NEPA compliance identified by the 10th Circuit (*i.e.*, unavoidable conflict between NEPA and another statute or duplicative procedures provided by NEPA and a second statute) are not present in the case of critical habitat designation. The commenter stated that the proposed critical habitat rule was subject to NEPA because the effects of the designation are broader than protecting habitat. They believe that future Federal actions that are likely to adversely affect critical habitat will be prohibited. They also believe that an environmental assessment may reveal a more effective alternative to preventing extinction of the sturgeon than designating critical habitat.

Our Response: The Services believe that in *Douglas Co.* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the Court correctly interpreted the relationship between NEPA and critical habitat designation under the Act. The Ninth Circuit Court rejected the suggestion, identical to that raised by the commenter, that irreconcilable statutory conflict or duplicative statutory procedures are the only exceptions to application of NEPA to Federal actions. The Court held that the legislative history of the Act demonstrated that Congress intended to displace NEPA procedures with carefully crafted procedures specific to critical habitat designation. Further, the *Douglas County* Court held that the critical habitat mandate of the Act conflicts with NEPA in that, although the Secretary may exclude areas from critical habitat if such exclusion would be more beneficial than harmful, the Secretary has no discretion but to include areas in the designation if exclusion of such areas would result in extinction. This lack of discretion renders application of NEPA procedures (*e.g.*, consideration of broad environmental impacts, alternatives analysis) superfluous (this lack of discretion to consider broad environmental impacts was the basis for the 6th Circuit's determination that NEPA does not apply to listing decisions under the Act, in *Pacific Legal Foundation* v. *Andrus*, 657 F2d 829 (6th Cir. 1981)). The Court noted that the Act also conflicts with NEPA's demand for impact analysis, in that the Act dictates that the Secretary ''shall'' designate critical habitat for listed species based upon an evaluation of economic and other ''relevant'' impacts, which the Court interpreted as narrower than NEPA's directive. Finally, the 9th Circuit, based upon a review of precedent from several circuits including the 5th Circuit, held that an EIS is not required for actions that do not change the physical environment.

In addition, we note that Federal actions that might adversely affect critical habitat are not necessarily prohibited. Many Federal actions may adversely affect critical habitat without the effect rising to the level of destruction or adverse modification of the critical habitat. In those cases where we find that a Federal project would destroy or adversely modify critical habitat, we must identify reasonable and prudent alternatives (RPAs) to the project that would avoid the destruction or adverse modification (see ''Effects of Critical Habitat Designation'' section). The RPAs must be capable of being implemented in a manner consistent with the intended purpose of the action, be consistent with the action agency's legal authority and jurisdiction, and be economically and technically feasible.

Issue D: Section 7 Consultation Issues

Comment 17: One commenter expressed concerns that the critical habitat designation will make it more difficult for fisheries managers to sample for non-endangered fish in these rivers and fears they will be required to apply for permits and provide annual reports, and that in some cases, fishery activities may be stopped due to

sampling being conducted in areas designated as critical habitat.

Our Response: The Gulf sturgeon is a listed species and thereby protected under the Act regardless of whether or not critical habitat has been designated, therefore permits and annual reporting may be necessary if the activities being conducted for fisheries management may result in the incidental take of a Gulf sturgeon. Given that the fish has been federally protected for 10 years and fisheries management in all states throughout the Gulf sturgeon's range has proceeded unhampered, we are unclear as to the reasons for this concern. Critical habitat designation may result in required project modifications only for activities with a Federal nexus and then only if the activity were to destroy or adversely modify the primary constituent elements contained in the designated habitat (*i.e.*, prey, spawning habitat, water quality, water quantity, sediment quality, or migratory passage).

Comment 18: One commenter questioned whether water quality issues may arise from the establishment of the critical habitat and another requested that the existing government databases be updated to reflect current water quality of southern rivers, since water quality has improved subsequent to the historic decline of the species.

Our Response: As required under section 7 of the Act, the Environmental Protection Agency (EPA) consults with us regarding water quality standards to ensure that they are protective of endangered and threatened species. The EPA anticipates consulting with us every three years as part of its triennial review of State delegated water quality standards for Alabama, Florida, Mississippi, and Louisiana under section 303(d) of the Clean Water Act. During each review period all data relative to Gulf sturgeon and water quality will be updated and reviewed to ensure that the standards continue to be protective. The EPA recently released a new database on the water quality of the nation's rivers. This information is available on its web site (www.epa.gov). Future consultations will consider impacts to Gulf sturgeon and associated critical habitat, and will take changes in water quality into account.

Comment 19: One commenter questioned whether the FWS provided information on flow requirements needed for critical habitat in the Apalachicola, Chattahoochee, and Flint Rivers (ACF) negotiations and whether such information was available to the public.

Our Response: The FWS presented information about the hydrological characteristics of potential sturgeon spawning habitat on the Apalachicola River as a result of separate requests from the Georgia and Florida negotiators to the ACF Compact. This information is summarized in our response to comment 42. Our information was based on a single set of measurements at one potential spawning site, and for reasons summarized in our response to comment 41, we do not characterize this information as ''flow requirements needed for critical habitat.'' This information is available to the public upon request. However, the U.S. Army Corps of Engineers (USACE) is conducting more detailed surveys intended to augment and refine our initial measurements and will use these new measurements in preparing its biological assessment of the effects of Federal reservoir operations on federally-protected species and their habitats.

Comment 20: One commenter requested that the Services withdraw their proposed critical habitat designation for the Gulf sturgeon and instead address any needs of the species in the context of the ongoing ACF Compact process.

Our Response: The ACF Compact is a Federal law that authorizes, among other things, the States of Alabama, Florida, and Georgia, but not the Federal government, to negotiate a water allocation formula for equitably apportioning the surface waters of the ACF Basin. Under the leadership of the non-voting Federal Commissioner to the Compact, Federal agencies, including the Services, have provided technical assistance to the States' negotiators on various water management issues, including the needs of species protected under the Act. The State negotiators are not obligated to act upon any such technical assistance, and the Compact does not relieve Federal agencies, including the Services, of responsibilities under other Federal statutes or court rulings. This rule designating critical habitat fulfills our requirements under the Act and the order of the United States Court of Appeals for the Fifth Circuit.

Comment 21: One commenter stated that by designating the Apalachicola River as critical habitat for the Gulf sturgeon, the Federal government necessarily becomes involved in the water negotiations for the ACF Compact and usurps authority from the State of Georgia to negotiate stream flows in that river basin.

Our Response: State and Federal roles under the ACF Compact are quite distinct, as noted in our response to comment 20, and this rule in no way alters those roles. No authority is taken from the States, as the critical habitat provisions of the Act apply to Federal agencies and their actions only. Federal agencies acting in the ACF Basin are obligated to comply with sections 7 and 10 of the Act with or without an ACF Compact, and the States are solely empowered to negotiate a water allocation formula for the ACF Basin with or without designated critical habitat for the Gulf sturgeon.

Comment 22: The USACE's Mobile District expressed concern with potential requirements to alter reservoir operations at the Jim Woodruff Lock and Dam on the Apalachicola River in Florida, in order to support minimum flow for Gulf sturgeon spawning. They are concerned that a critical habitat designation could require substantial upstream flow releases.

Our Response: As noted in the response to comment 42, preliminary data suggest that if adjustments to reservoir operations are reasonable and prudent in the conservation of the sturgeon, such adjustments would likely occur infrequently, since it appears that flows do not limit sturgeon spawning habitat availability in most years on the Apalachicola River. Under section 7(a)(2) of the Act, Federal agencies must avoid jeopardizing the continued existence of a species or the destruction or adverse modification of designated critical habitat. During the consultation process, Federal agencies share responsibility with us for determining what operational adjustments, if any, would be reasonable and prudent for sturgeon conservation. We acknowledge that the USACE must consider its responsibilities for flood control, power generation, navigation, water quality, other fish and wildlife, etc., as well as listed species conservation, in making its operational decisions, and we appreciate the complexities of these decisions.

Comment 23: One commenter objected to critical habitat designation because it would impede construction of any dam deemed necessary by the public for water supply, flood control, and recreation.

Our Response: The Act's requirements regarding proposed and designated critical habitat apply only to Federal actions, such as constructing Federal reservoirs or issuing Federal permits for non-Federal reservoirs (*e.g.*, a Clean Water Act section 404 permit). For such actions, the Federal agency's responsibility is to consult with us to ensure that its actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Reasonable and prudent alternatives to

avoid jeopardy or critical habitat destruction resulting from reservoir construction, or reasonable and prudent measures to minimize take resulting from reservoir construction, would depend entirely on the size, location, and operational plan of the reservoir and its effects on the primary constituent elements (*e.g.*, flow regime, water quality, passage). Reservoirs constructed downstream of spawning habitat would have far different and likely greater impacts than those constructed upstream of spawning habitat or on tributaries.

Comment 24: Three commenters requested clarification and examples of specific activities that may affect essential features of the designated area, a quantitative definition or explanation of ''appreciably reduce,'' and information on how we intend to quantify the degree of impacts. One commenter requested that a mechanism be developed to assess the severity of the action based on the ability of the impacted area to recover as viable habitat.

Our Response: The value of critical habitat is appreciably diminished when an action considerably reduces the capability of designated or proposed critical habitat to satisfy requirements essential to the conservation of a listed species. We continue to consult with agencies to determine the effects of an action on the primary constituent elements within the designated critical habitat by utilizing the best available scientific data. It is our intent to carefully assess each proposed project within Gulf sturgeon critical habitat and analyze how the proposed action may impact (both directly and indirectly; both temporally and spatially) those physical or biological features that were the basis for determining the habitat to be critical. As stated in the proposed rule, actions that may destroy or adversely modify Gulf sturgeon critical habitat may include, but are not limited to, dredging; dredge material disposal; channelization; in-stream mining; land uses that cause excessive turbidity or sedimentation; water impoundment; hard-bottom removal for navigation channel deepening; water diversion; dam operations; release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater via point sources or dispersed non-point sources; release of chemical or biological pollutants that accumulate in sediments; and other physical or chemical alterations of channels and passes. Note, however, that these same activities may be carried out in a way that does not destroy or adversely modify critical habitat. Such assessments are highly site and fact specific and the information about the species and its habitat is continually expanding. Therefore, whether the ''appreciably diminish'' threshold has been met is a consultation-specific determination.

Comment 25: One commenter expressed concerns that the critical habitat designation will prevent maintenance dredging which is required for continued use of the Gulf Intracoastal Waterway (GIWW).

Our Response: Gulf sturgeon migration and feeding may occur within the GIWW in some of the proposed units. As stated in the proposed rule (67 FR 39114), portions of the GIWW that consist primarily of excavated land cuts and canals have been excluded from this designation because they were not available to the species historically, and therefore, are not considered to be essential for the conservation of the species.

The GIWW requires periodic dredging by the USACE to maintain safe and adequate passage. As stated in the proposed rule (67 FR 39125), dredging is an action that may destroy or adversely modify Gulf sturgeon critical habitat. We will work closely with the USACE to identify appropriate measures to reduce dredging impacts to Gulf sturgeon critical habitat while allowing maintenance dredging to continue in the GIWW without interruption.

Issue E: Public Involvement

Comment 26: Three commenters had questions and concerns regarding boating and sturgeon with regard to records of boat strikes on sturgeon and options for regulating boat speed. One commenter stated that critical habitat is just another way to impose restrictions and regulations on the boating public.

Our Response: Regulating speed of boats to prevent sturgeon injury or death would be an issue related to ''take'' of Gulf sturgeon and not related to critical habitat. Boat speed is unlikely to have any significant effect on primary constituent elements for Gulf sturgeon.

Comment 27: One commenter asked how anyone can be of help in our project of recovery and designation of critical habitat for the Gulf sturgeon.

Our Response: Maintaining a natural vegetative buffer along streams and rivers, and participating in watershed conservation groups that work on protecting and restoring river and bay habitat help conserve the sturgeon's critical habitat.

Comment 28: One commenter wondered how the critical habitat designation would raise public awareness and offer additional educational and informational benefit.

Our Response: Critical habitat provides non-regulatory benefits to the species by informing the public (via newspaper articles, newspaper notices, public meetings, public hearings, etc.) of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat helps focus conservation activities for a listed species on the areas that contain the physical and biological features that are essential for conservation of that species, and alerts the public and land-managing agencies to the importance of those areas.

Issue F: Methods

Comment 29: One commenter suggested that we have not included unoccupied habitat upstream of dams in the Apalachicola River Basin and the Hillsborough River Basin because access is not available. The commenter believes that these areas may be essential to the conservation of the species.

Our Response: The commenter provided no data to support why these two areas may be essential. Further, we have no historic records of Gulf sturgeon using the Hillsborough River. Areas upstream of water control structures were included elsewhere because they contain the only known suitable spawning habitat for a subpopulation that shows evidence of reproduction, and therefore, were deemed essential to the conservation of the species. We believe there is sufficient habitat downstream of the Jim Woodruff Lock and Dam on the Apalachicola River to sustain a population of Gulf sturgeon. We believe that what we have designated for the Gulf sturgeon is based on the best available scientific information and includes what we consider to be essential to the conservation of the Gulf sturgeon.

Comment 30: The Services intend to protect spawning habitats from catastrophic occurrences by including both the main stem spawning sites and at least one tributary site. One commenter asked why we included just one tributary site.

Our Response: Each subpopulation for which critical habitat was designated had historic records of sturgeon using a mainstem river and at least one additional tributary. We included at least one tributary for relief from potentially catastrophic events. Including additional tributaries without historic records was not feasible because we have no indication that the sturgeon

would use these areas, and therefore, no evidence that they are essential to the conservation of the species. When data documented fairly recent use of additional tributaries, those tributaries were included. For example, the Pascagoula River subpopulation has sections of the Bouie River, the Leaf River, and the Chickasawhay River designated as critical habitat because data support sturgeon use.

Comment 31: One commenter asked if any of the proposed critical habitat is in the State of Georgia.

Our Response: No. Although the historic range of the Gulf sturgeon includes the Flint River, and possibly parts of the Chattahoochee River, we determined that none of the historic habitat in Georgia is essential to the conservation of the Gulf sturgeon.

Comment 32: One commenter suggested that the critical habitat designation should be limited to a few specific areas within the range of the Gulf sturgeon that are most important to their continued survival (*e.g.*, spawning areas, nursery areas, summer holding areas, and fall and winter foraging areas).

Our Response: We considered the biological basis for a more site-specific approach and concluded that it would not secure all biological features essential for the conservation of the species. The site-specific approach would neglect the importance of a migration corridor between spawning, resting, and feeding areas. Also, young-of-year and possibly juvenile sturgeon (less than 5 kg (11 lbs) (Mason and Clugston, 1993)) actively forage throughout the riverine system.

Comment 33: One commenter requested that we discuss our rationale for not designating unoccupied areas when the Services had previously stated that unoccupied habitat would be necessary for Gulf sturgeon recovery.

Our Response: As we stated in the proposed rule, since approval of the Recovery Plan in 1995 and our 1998 ''not prudent'' finding, the science of conservation biology has matured. The methods section cites numerous recent publications that contributed to our decision to select the areas we did and why they constitute habitat sufficient for the conservation of the species. We have also collected significant new biological information on this species. For example, we now have a better understanding on status of the Pearl River system subpopulation; we are confident that adult Gulf sturgeon are accessing spawning habitats above Pools Bluff Sill and Bogue Chitto Sill during high flows; spawning was confirmed in 1999 on the Pascagoula River subpopulation; usage of the Chickasawhay River, a major tributary to the Pascagoula River, was recently documented; spawning was confirmed in 2001 at five locations on the Escambia River; young-of-year have been confirmed on the Yellow River system and population estimates are 580 Gulf sturgeon 1 m (3.3 ft) or greater in size; additional suitable spawning sites were documented on the Apalachicola River in 2002; and between 1993 and 1998, additional spawning sites were confirmed on the Suwannee River population. We believe that what we have designated for the Gulf sturgeon is based on the best available scientific information and includes those areas essential to the conservation of the Gulf sturgeon.

Comment 34: Three commenters requested that the Services provide additional detail or quantify the specific habitat requirements for each life history stage, specifically abundant prey, flow regime, water temperature, salinity, pH, oxygen content, etc.

Our Response: We have summarized the current knowledge of the species, including life history requirements in the ''Background'' section of this rule. However, data are not yet available to more quantitatively express the primary constituent elements of Gulf sturgeon critical habitat. To make the critical habitat rule adaptive to increasing knowledge, we have kept the primary constituent elements general. When consultations on projects occur, biologists will use the best available science available at the time of consultation to determine whether the functions of those elements would be adversely modified by the proposed Federal action. Research is ongoing, and as those data are collected, we expect to understand better Gulf sturgeon and its life history requirements.

Comment 35: One commenter stated that habitat is identified primarily for adults (spawning sites, resting areas, winter feeding), but not for larvae, juvenile, and subadult life stages. S/he also suggested a need to cite specific studies rather than using the term ''gathered all available'' data.

Our Response: The commenter is referring to statements in the ''Methods'' section, which is written in general terms to explain how we decided which riverine, estuarine, and marine areas to include as critical habitat. We disagree with the commenter that the rule ignores life stages besides the adult stage. We stated in the proposed rule that we included riverine habitat from the river mouth up to and including spawning grounds to provide sufficient habitat for the riverine life stages of Gulf sturgeon. These life stages require habitat for summer resting or staging areas, juvenile feeding, entire young-of-year life cycle (including larval stages), passage throughout the river (protects all life stages), and passage into and out of estuarine habitat for adults and subadults. All of the selected areas are known to be used by Gulf sturgeon for some portion of their life cycle. Subadult and adult sturgeon use estuarine and marine areas for feeding and passage between river systems. Designation of critical habitat units in estuaries and bays adjacent to the riverine units described above would protect both passage of sturgeon to and from their feeding and spawning grounds and also the abundance of estuarine and marine prey for juvenile and adult sturgeon.

Specific references used for making our determination are cited throughout the ''Background'' and ''Critical Habitat Unit Descriptions'' sections of the proposed and final rules. A complete list of all references cited is presented in the ''References Cited'' section of this final rule.

Comment 36: One commenter stated that the areas included in the proposal are those where studies have been directed toward sturgeon and that it should not be assumed that other rivers do not have critical habitat just because sturgeon have not been found in routine fishery surveys. They also stated that routine fishery surveys can and have missed the presence of sturgeon.

Our Response: We have based our designation on the best scientific data available. However, the level of research and status surveys conducted on many subpopulations is limited. Because of the limited availability of data specific to each river system and specific to the Gulf sturgeon's use of the marine and estuarine environment, we acknowledge that habitat other than that identified in this final rule may later be found to be essential to the conservation of Gulf sturgeon. To the extent feasible, we will continue to conduct and support surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Gulf sturgeon in areas not included as critical habitat will continue to receive protection under the section 7 jeopardy standard and the section 9 prohibitions on take.

Comment 37: One commenter suggested that we clarify our use of vague terms in the proposed rule (*e.g.*, strongly suspect, believed to appear, possibly appropriate, relatively sediment free).

Our Response: We appreciate the commenter's sentiments. However, it is seldom possible to make statements with complete or even relative certainty when describing the biological and habitat requirements of an endangered or threatened species. We have expressed ourselves as definitively as possible using the best available scientific data, recognizing the need for consultation-specific flexibility over time as new information is developed about the species and its habitat.

Comment 38: Two commenters requested clarification of the lateral extent of the critical habitat unit descriptions in the estuarine and marine areas; clarification of our mean high water line determination, and clarification of our use of an average high water calculation over an 18.6 year period rather than using all available tidal data.

Our Response: Regulatory jurisdiction in coastal areas is administered by the USACE and is described in 33 CFR 329.14(a)(2) as ''the line on the shore reached by the plane of the mean (average) high water (MHW).'' 33 CFR 329.14(a)(2) further states that when precise determination of the MHW line is necessary, it is preferable to average tidal data over a period of 18.6 years, which is a Metonic cycle, *i.e.*, the period in which new and full moon recur in the same order and on the same days as in the preceding cycle.

Issue G: Jurisdiction

Comment 39: Three comments were received on the proposed jurisdictional responsibilities for the management of the Gulf sturgeon. Two commenters believe that FWS, instead of NMFS, should have jurisdiction in the estuarine areas, and one commenter requested clarification on the technical basis for determining areas of regulatory jurisdiction in coastal areas.

Our Response: In 1974, a memorandum of understanding (MOU) was developed to clarify jurisdictional responsibilities for the NMFS and FWS. Section 1(a) of the 1974 MOU outlines jurisdiction by waterbody and states that all non-mammalian species, with a few exceptions not including Gulf sturgeon, that reside the major portion of their lifetime in estuarine waters shall be under the jurisdiction of the NMFS. Similarly, the FWS would have jurisdiction over species that spend the major portion of their lifetimes on land and/or in fresh water.

While the MOU does not contain specifics on jurisdictional boundaries for critical habitat, the Services have applied the standard set for listing species to this critical habitat rule—that is, NMFS will have jurisdictional responsibility for marine waters and the FWS for fresh water. In estuarine waters, the Services will consult based on their respective expertise as described in the proposed rule. Under this arrangement, the FWS will consult with the EPA since it has expertise in water quality issues, and the NMFS will consult with the USACE to maximize efficiency for the action agency when other federally protected species may be present (*e.g.*, protected sea turtles which fall under the jurisdiction of NMFS in marine and estuarine waters).

Issue H: Economic Analysis

Comment 40: One commenter supported the two-baseline approach to the economic analysis used by the Services, and went on to suggest that the lower baseline, that identifies costs solely attributable to critical habitat designation, need not be included in the analysis to be responsive to the decision in *New Mexico Cattle Growers Association* v. *USFWS*, 248 F.3d 1277 (10th Cir. 2001). The commenter paraphrased the 10th Circuit's holding as requiring that costs resulting from the listing of a species must be considered along with the costs of critical habitat designation in determining whether the costs of such designation outweigh the benefits. The commenter went on to support the inclusion of costs associated with both jeopardy consultations and adverse modification consultations, and resulting project modification costs, in the economic analysis, stating that the full spectrum of impacts associated with the listing and critical habitat designation presents a more realistic and comprehensive understanding of probable impacts in the affected region.

Our Response: In *New Mexico Cattle Growers Association*, the 10th Circuit ruled that the full costs of critical habitat designation must be captured in an economic analysis performed in accordance with section 4(b)(2) of the Act, and thus that costs that might be incurred co-extensively as a result of both listing and critical habitat designation must be included in the analysis. For example, projects that might modify spawning habitat of Gulf sturgeon would give rise to a consultation on both jeopardy and adverse modification grounds, and the costs of such consultations must be attributable to critical habitat designation.

Comment 41: One commenter raised questions about impacts to Federal hydropower generation in the ACF Basin. Without specific details as to the minimum and maximum flows necessary for spawning and other flow-related habitat questions, the commenter contends ''the economic ramifications of this proposal cannot be properly considered, as required by law.''

Our Response: We agree that a meaningful assessment of economic impacts that could result from modifying the operations of the USACEs' ACF reservoirs to avoid or minimize impacts to Gulf sturgeon habitat in the Apalachicola River is not possible at this time because too many variables, such as those listed by the commenter, are unknown. Based on the limited data that are currently available about the flow rates that inundate potential spawning habitat, the FWS believes that any reasonable and prudent adjustments to ACF project operations to protect sturgeon spawning would be infrequent. As a result, the costs over time to project purposes such as hydropower would be relatively small. The basis for this preliminary determination and a brief description of the informal consultation that is underway between the USACE and the FWS about ACF project operations effects on sturgeon follows.

Possible flow-related limitations to spawning habitat in the Apalachicola River were not recognized until the spring of 2002, when project operations and unusually low basin runoff entering the fourth year of a regional drought exposed limestone outcroppings and other hard-bottom portions of the main channel. These hard-bottom areas, which likely support spawning by the small Apalachicola sub-population, are inundated during the spring months of most years by the combination of unregulated basin runoff and the USACEs' operations of the ACF reservoirs for project purposes other than the conservation of species and habitats protected under the Act. On May 2, 2002, FWS personnel surveyed a site near where sturgeon larvae were collected in 1977 (Wooley *et al.*, 1982) and 1987 (Foster *et al.*, 1988). FWS estimated the maximum discharge that would fully expose the outcropping and the minimum discharge that would fully inundate it. These estimates were 173 cubic meters per second (cms) (6,118 cubic feet per second (cfs)) and 317 cms (11,200 cfs), respectively. The minimum depth at which Gulf sturgeon eggs have been collected is 1.4 m (4.6 ft) (Fox *et*

al., 2000). The estimated discharge corresponding to 1.4 m (4.6 ft) inundation of the bottom of the limestone shelf was 424 cms (14,970 cfs), and 612 cms (21,610 cfs) for the top of the shelf. During the March 15 to May 15 timeframe, when sturgeon spawning most likely occurs, daily average flow rates have exceeded 424 cms (14,970 cfs) and 612 cms (21,610 cfs) 87 percent and 63 percent of the time, respectively, in the 1929 to 2002 flow record of the Chattahoochee gage. March 15 to May 15 average discharge exceeds these flow rates in 97 percent and 77 percent of the years, respectively.

If flow rates between 424 cms (14,970 cfs) and 612 cms (21,610 cfs) are sufficient for successful sturgeon spawning on the Apalachicola River, any adjustments to reservoir operations that appear reasonable and prudent for sturgeon conservation would occur relatively infrequently, during the occasional years when spring-time hydrologic conditions and operations for other project purposes do not provide flows in this range. However, this flow range is based on one set of measurements at one site and relies upon the minimum depth at which eggs have been previously collected (4.6 feet); other sites with different hydrologic characteristics may support spawning and depths less than 4.6 feet may allow for successful spawning. Annual monitoring of the Apalachicola sturgeon population by net sampling shows year classes represented for all years from 1986 to 1998. In none of these years were all days in the March 15 to May 15 time frame greater than 612 cms (21,610 cfs), but all of these years had at least 11 days greater than 612 cms (21,610 cfs). In 2002, no days from March 15 to May 15 had flow greater than 612 cms (21,610 cfs). We will not know for 3 years, when year class 2002 individuals would become large enough to sample with the nets used in annual monitoring, whether the unusually low spring flows of 2002 resulted in a lost year class.

The USACE and FWS have initiated a study of sturgeon spawning habitat in the Apalachicola River that will provide a more complete relationship between flow and habitat availability than the single site measured by FWS in May 2002. The USACE will use the results of this study and other information in a biological assessment of the effects of its current operations on the sturgeon, its proposed critical habitat, and other federally-protected species. This assessment will determine whether current operations may adversely affect federally-protected species and their habitats and if so, serve to initiate formal consultation with the FWS. Until this consultation is completed, it is premature to make estimates of its economic impact, which is dependent on the results of studies that are still underway and on USACE decisions relative to reservoir operations that will weigh its responsibilities under the Act with other statutory responsibilities.

Comment 42: One commenter stated that the economic analysis does not provide sufficient information to determine if the benefits of exclusion outweigh the benefits of inclusion of individual critical habitat units. The comment goes on to ask whether inclusion of any unit would materially affect the recovery of the Gulf Sturgeon, and requests that the Services provide a metric by which to determine whether inclusion of any unit is economically warranted.

Our Response: Section 4(b)(2) of the Act directs that critical habitat, areas containing biological and physical features essential to the conservation of the species, shall be designated after taking into account the economic impacts and other relevant impacts of such designation. The Secretaries of the Interior and Commerce have the discretion to exclude areas from such designation if the benefits of exclusion outweigh the benefits of inclusion, unless failure to designate such areas will result in the extinction of the species concerned. This language does not establish a test of whether inclusion is ''economically warranted.''

Comment 43: One commenter suggested that uncertainty over the spatial and temporal scale that would be involved in future application of the destruction or adverse modification standard should be acknowledged, that costs could depend upon whether that standard is applied to the designated critical habitat as a whole, within individual units, or some other scale, and whether the standard would be triggered by temporary or long term impacts.

Our Response: The Gulf sturgeon's affinity for natal river systems and the importance of every breeding unit of the species suggests that individual units or groups of units that are used by stocks or subpopulations which fulfill essential geographic distribution requirements are the appropriate scale for the analysis. The outcome of each destruction or adverse modification analysis is highly fact specific, dependent not only upon the species and designated critical habitat at issue, but also upon the particular project and its impact upon the primary constituent elements of the critical habitat. The economic analysis for this rule estimated costs of consultations on projects that the consulting Federal agencies advised were likely to be implemented in the next 10 years. Thus, the uncertainty in the analysis would be attributable to unforseen or uncertain projects and their impacts, as well as a lack of detail about each projected project, and there is no way to address this uncertainty in any non-speculative manner.

Comment 44: The Mobile and New Orleans Districts of the USACE raised questions regarding the economic analysis' incorporation of dredging windows as potential project modifications.

Our Response: Based on comments received from the USACE and further analysis by the Services, the economic analysis has been modified by removing dredging windows as potential project modifications that would be included in each formal consultation and omitting estimated costs of such. These changes reflect the extreme improbability that dredging windows would be recommended or adopted as a project modification to reduce impacts to critical habitat (as opposed to preventing take), given the availability of other means of protecting sturgeon or its habitat with adequate coordination and planning between the USACE and us.

Comment 45: Several commenters expressed concerns over the potential effects of critical habitat designation on water flow regimes in the Apalachicola River, and whether needs to alter flow regimes to protect sturgeon or its habitat might impose costs by impacting hydropower or businesses and recreation dependent on existing reservoirs (*e.g.*, Lake Sidney Lanier).

Our Response: Section 3.4 of the economic analysis has been revised to more fully discuss the factors associated with estimating economic impacts related to flow regime modifications that may emerge from consultation with the USACE as reasonable and prudent for the sturgeon and its habitat in the Apalachicola River. Conservation of listed species is one of many responsibilities the USACE must consider in operating the Apalachicola Basin reservoir projects, which are variously authorized for the purposes of flood control, hydropower, navigation, recreation, water quality, water supply, and fish and wildlife. Changing reservoir operations for sturgeon conservation could affect the degree to which the USACE is able to fulfill other project purposes; however, under normal and wet rainfall conditions, existing operations appear adequate to protect the sturgeon and its habitat. If

project operations do not release enough water, as is the case during droughts, spawning habitat may be exposed or too shallow for sturgeon to use successfully. The USACE and FWS are presently in informal consultation on the effects of ACF reservoir operations on federally-listed species, and are investigating the relationship between flow and sturgeon spawning habitat availability in the Apalachicola River. Although these studies are not yet completed, the FWS believes that project modifications for sturgeon conservation would likely represent reasonable minor adjustments to existing operations that would minimize the impacts of unavoidably adverse conditions. The economic analysis concludes that the effects of such modifications on the regional economy would be small (less than 0.1 percent).

Comment 46: Several commenters suggested that the economic analysis did not adequately address secondary impacts of critical habitat designation on the economy on a regional scale. These commenters expressed concerns about impacts on the shipping and navigation industries and their support services, on future commercial and industrial development, and on commercial fishing, particularly shrimp fishing.

Our Response: Section 2.1 of the economic analysis has been revised to provide more information on the current level of economic activity in the areas in or around the critical habitat designation. Specific information on State gross products and time series employment data have been added. Regional data on waterborne economic activity, including waterborne commerce, commercial fishing, recreational fishing, other water-based recreation, and hydropower generation are more fully presented. Thus, the revised economic analysis provides an appropriate economic baseline against which to evaluate the significance of section 7 costs associated with critical habitat designation.

After identifying and evaluating the activities likely to give rise to section 7 consultations and thus direct costs of critical habitat designation in section 3.2, the economic analysis discusses potential secondary impacts on the regional economy in section 3.4. Past consultations have not resulted in project changes that have affected the regional economy, including the particular activities of concern to the commenters, and no comments provided specific examples of how future consultations would result in regional economic impacts.

Waterborne commerce is unlikely to be affected by the critical habitat designation because all available evidence indicates that future operations and maintenance navigation projects will proceed without changes to timing and scope. Moreover, the frequently maintained portions of the major shipping channels located within the critical habitat designation are altered to an extent that any primary constituent elements for sturgeon that are still present in the channels are unlikely to be appreciably diminished from their current baseline by Federal actions in the channels. Portions of shipping channels that are not frequently maintained and new dredge material disposal sites likely contain one or more primary constituent elements and therefore have a higher likelihood for project modifications to be recommended.

No limitations to commercial fishing activities are expected to result from section 7 consultations pertaining to Gulf sturgeon (see Section 3.4.3 of the economic analysis).

Past consultations and available evidence do not indicate that county-wide economies or employment will be impacted by this critical habitat designation (see Section 3.4.4 of the economic analysis).

Comment 47: One Mississippi County Commissioner expressed concern over closure of a shipping channel through Little Lake and the lower Pearl River, and its impact on commercial navigation.

Our Response: If the shipping channel were closed, it would be attributable to litigation filed by the Tulane Environmental Law Clinic over water quality certification, and not due to sturgeon protection. Thus, no modifications were made to the economic analysis.

Comment 48: Two commenters stated that the economic analysis should acknowledge the controversy surrounding option and existence values and the methodologies available to estimate these values. One commenter, the USACE, stated that it does not allow these values to be claimed in its economic studies ''because the academic community does generally not accept the procedures used to estimate them.'' The USACE went on to state that the studies presented in the economic analysis are not related to the Gulf sturgeon, the studies' methods are not discussed, and inclusion of the information adds nothing to the document.

Our Response: The final economic analysis notes the controversy that the commenter discusses as revolving around the use of contingent valuation methodology. Therefore, the economic analysis in Section 5.2 has been revised to better explain the relevance of these values to this critical habitat designation, by including a fuller explanation of contingent valuation methodology, and adding more detail to the discussion and exhibits relating to the economic literature on valuation of natural resources such as threatened and endangered species, and the applicability of the benefits transfer methodology.

Comment 49: Two comments stated that the economic analysis presented a flawed analytical approach in ignoring the time value of money and present values.

Our Response: The economic analysis has been modified (see Section 4.3) to include the present value of the total estimated costs of the critical habitat designation, using 2 discount rates in order to provide a measure of sensitivity analysis. The economic analysis now also presents annualized cost estimates for the 10 year period considered for this designation.

Comment 50: Two comments state that the economic analysis fails to meet requirements for economic analyses, including using inappropriate and archaic research techniques.

Our Response: We believe that the methodology used is appropriate for and consistent with the analysis of economic impacts required by the Act, which does not mandate a strict cost-benefit analysis. The methodology used to produce the economic analysis has been peer-reviewed. We further believe that the research used is appropriate for the analysis required by the Act, and provides the best available scientific information available. Economic analyses are typically based on direct conversations with the action agencies regarding their expected future actions and costs.

Comment 51: One comment stated that it is unreasonable to predict zero costs associated with project modifications attributable solely to critical habitat designation.

Our Response: No information was provided, and none was available, regarding project modifications that would be attributable solely to critical habitat designation, as opposed to being attributed co-extensively to take of or jeopardy to the species.

Comment 52: One comment stated that the economic analysis did not fully consider costs to the States that might arise from consultations with EPA over pollution discharge permits.

Our Response: There is no evidence that past or future EPA projects have or

will be delayed due to consultations regarding sturgeon protection. Current EPA water quality standards take protection of endangered and threatened species and their habitat, including Gulf sturgeon, into account.

Comment 53: One comment asserted that the economic analysis should cover at least a 20-year period.

Our Response: To be credible, the economic analysis must estimate economic impacts based on activities that are reasonably foreseeable. The revised economic analysis does include annualized cost estimates to 10 years. It is difficult to predict the costs of consultations on activities beyond a 10-year window. Costs for section 7 consultations may increase or decrease dependent on factors other than inflation or deflation. For example, changes in requirements for development of a biological assessment may occur, or fluctuations in the cost of biologists and consultants. In order to maintain reasonable confidence in the estimated total section 7 costs, the analysis quantifies costs occurring within a ten year time frame. However, the final economic analysis does include annualized cost estimates, to the extent that these may inform the commenter's projections of costs over a 20-year period (see Section 4.3).

Comment 54: A few commenters stated that the economic analysis may underestimate impacts on small businesses secondarily impacted by consultations with Federal agencies.

Our Response: The courts have held that the Regulatory Flexibility Act requires an agency to perform a regulatory flexibility analysis only when a rule directly regulates them (Mid-Tex Elec. Coop, Inc. V. FERC, 773 F.2d 327 (D.C. Cir. 1985) and American Trucking Ass'ns, Inc. V. EPA, 175 F.3d 1027, 1044 (D.C. Cir. 1991)). Accordingly, the economic analysis considered the total costs that may affect small entities through section 7 of the Act. Activities likely to be impacted include those associated with operation and maintenance of navigation projects, highway bridge construction, and pipeline construction projects. The analysis found that less than one percent of these industries in the region would be affected and that it was likely that most of the costs imposed by the designation would be passed through to the Federal government as the government contracts for such services.

Issue I: Potential Impact to Commercial Shrimp Fishery

Comment 55: Three commenters requested clarification on how designation of critical habitat would impact the commercial shrimp fishery, and if sturgeon are a bycatch of shrimping.

Our Response: Shrimp trawling may impact both the Gulf sturgeon and its critical habitat. Shrimp trawling may directly affect Gulf sturgeon by capturing them in trawl nets. There is one documented non-lethal take of a sturgeon during testing of a Turtle Excluder Device (TED) equipped flounder trawl off Long Island, New York; the Atlantic sturgeon was approximately 1 m (3 ft) in total length, and was released alive (J. Mitchell, NOAA Fisheries, Pascagoula Laboratory, pers. comm. 2002). In addition, a single sturgeon is reported in the NOAA Fisheries shrimping bycatch database (E. Scott-Denton, NOAA Fisheries, Galveston Laboratory, pers. comm. 2002) as taken by shrimp trawling; an Atlantic sturgeon was captured off Georgia (Atlantic Ocean) in 1995. Anecdotal information indicates that while some sturgeon are taken by shrimp trawlers, many fish are alive as local researchers are often contacted so they may tag and release the fish (H. Rogillio, LADWF, pers. comm. 2002). Currently shrimp fishers report fewer sturgeon are being caught in the nets, which may reflect escapement through the TED or fewer incidents being reported. Regardless of critical habitat, the Gulf sturgeon was listed as a threatened species under the Act on September 30, 1991, and it, therefore, is protected wherever it occurs. Take of Gulf sturgeon that is not authorized (*e.g.*, through a section 7 consultation or through an incidental take permit) is unlawful.

The most likely effect of shrimp trawling on Gulf sturgeon critical habitat would be the disturbance of the benthic environment by trawling gear. This issue is being investigated at the NOAA Fisheries Galveston Laboratory. Until such time as conclusive data becomes available, any correlation between shrimp trawling and a negative effect on Gulf sturgeon critical habitat would be tenuous. While benthic molluscan and crustacean prey items favored by Gulf sturgeon could conceivably be disturbed as the shrimp trawl passes over the bottom, a possible effect of that disturbance would be to make them more susceptible to predation by Gulf sturgeon, possibly enhancing foraging opportunities. Although shrimp trawls may capture Gulf sturgeon, and the benthos within critical habitat may be disturbed, there is little to suggest that shrimp trawling significantly affects the Gulf sturgeon or its critical habitat at this time.

Issue J: Policy and Regulations

Comment 56: One commenter stated that the proposed action serves to provide an additional layer of bureaucracy without any tangible benefits and appears to be a redundant and reaction to litigation filed against the Services in 1994 by the Sierra Club Legal Defense Fund and the Florida Wildlife Federation. Three commenters stated that the Services previously made not prudent determinations regarding critical habitat and requested additional information (data/biological factors) and detail to explain the Services change in position.

Our Response: We had previously determined that designation of Gulf sturgeon critical habitat was not prudent given that such designation would not benefit the species based upon a view that jeopardy and adverse modification were essentially wholly overlapping standards under the Act. After the Fifth Circuit Court of Appeals rejected this interpretation, as stated in the proposed rule (67 FR 39112), we have reconsidered and found that designation will be clearly beneficial to the species. Recent research has determined and qualified numerous areas important for Gulf sturgeon spawning, resting, staging, and foraging. Many of these important areas are only utilized seasonally, and therefore not afforded the protection when the species is absent. By designating critical habitat, the Services will be able to manage impacts to those physical and biological features (primary constituent elements) that are essential to the conservation of the species regardless of the species presence or absence through the consulting mechanism under section 7 of the Act. For example, other Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation will protect areas that are necessary for the conservation of the species. It may also serve to enhance awareness within Federal agencies and the general public of the importance of Gulf sturgeon habitat and the need for special management considerations.

Summary of Changes From the Proposed Rule

Seven changes have been made from the proposed to the final rule designating Gulf sturgeon critical habitat—calculation of the total area included in designation; inclusion of identical amendments to both 50 CFR parts 17 and 226; verification of bridge

position in Unit 1; additional specifics on fish location in Unit 2; and exclusion of areas in Units 2, 8 and 9 under section 4(b)(2) of the Act.

For the proposed rule, river kilometers (and river miles) were measured with USACE mileage tables (USACE, 1985a and b), when available for a particular river reach. When not reported in the USACE mileage tables, several Geographic Information System (GIS) data layers were used to map all units and to calculate mileages, including data from NOAA, Environmental Systems Research Institute, Inc., and USGS. For the final rule, we still relied on the USACE mileage tables (USACE, 1985a and b) to calculate mileages when available for a particular river reach, but the remaining reaches were measured and mapped using the National Hydrography Dataset from the USGS at a scale of 1:100,000 (2001–2002 data set). This data layer, not available to us during the proposed rule, is available for the entire range of the mapped Gulf sturgeon critical habitat and has a higher resolution than the GIS data layers used for the proposed rule maps. Greater resolution results in the ability of the mapper to see and measure more of the rivers natural bends, thereby resulting in higher and more accurate river lengths. This change from using different data layers resulted in an additional river mileage of 259 rkm (161 rmi), which is a more accurate reflection, in reported total river kilometers and miles for all States, with no inclusion of additional areas.

In the proposed rule, we inadvertently provided different amendments to be included in 50 CFR part 17 (FWS) and part 226 (NMFS). For the final rule we are making identical amendments to both Parts. The amendment includes: (1) Maps and textual unit descriptions of all 14 critical habitat units, (2) the primary constituent elements essential for the conservation of Gulf sturgeon, and (3) a description of regulatory jurisdiction.

Below are descriptions of unit-specific changes. The changes stated below do not include those attributed to our more fine-scale mapping from the proposed rule.

Unit 1

On the Bogue Chitto River, Pike County, Mississippi, we reduced critical habitat in this river reach by approximately 3.2 km (2 mi) due to an error in what we believed to be the location of Quinn Bridge. We have documentation of a Gulf sturgeon sighting 1.6 km (1 mi) north of Quinn Bridge. In the proposed rule, we were given information that stated that Quinn Bridge was located on Mississippi (MS) Highway 570. Since the sighting was 1.6 km (1 mi) upstream of Quinn Bridge (MS Highway 570), in the proposed rule we ended the designation upstream of Quinn Bridge at Lazy Creek to encompass the fish location and to boundary at an area easily identifiable. We now know that Quinn Bridge is located along MS Highway 44 (Estes *et al.* 1991), so in order to include the fish location and to boundary the designation at an area easily identifiable, we have included up to MS Highway 570 in the unit, which is the first crossing north of MS Highway 44. See ''Map 1.1'' to clarify locations of MS Highly 570 and MS Highway 44.

Unit 2

On the Bouie River, Forrest County, Mississippi, we received more specific information during the comment period on the location of a Gulf sturgeon captured above the gravel pits above Glendale Road in 1977. This fish was located approximately 0.80 rkm (0.50 rmi) above Glendale Road, not further upstream as originally believed. For ease of identification, we have included up to the southern-most road crossing of Interstate 59 in the unit. We have, therefore, reduced this river reach by 14.5 rkm (9.0 rmi).

In the proposed rule, we inadvertently provided different amendments to be included in 50 CFR part 17 (FWS) and part 226 (NMFS). For the final rule we are making identical amendments to both Parts. The amendment includes: (1) Maps and textual unit descriptions of all 14 critical habitat units, (2) the primary constituent elements essential for the conservation of Gulf sturgeon, and (3) a description of regulatory jurisdiction.

The Services are also excluding major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, under Section 4(b)(2).

Unit 8

The Services are excluding major shipping channels, as identified on standard navigation charts and marked by buoys, under Section 4(b)(2).

Unit 9

The Services are excluding major shipping channels, as identified on standard navigation charts and marked by buoys, under Section 4(b)(2).

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. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

In order for habitat to be included in a critical habitat designation, the habitat features must be ''essential to the conservation of the species.''

When we designate critical habitat, 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 have designated only currently known essential areas. We will not speculate about what areas might be found to be essential if better information becomes 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 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.

Methods and Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this final rule is based on the best scientific information available concerning the species' present and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on the Gulf sturgeon, including the physical and biological features that are essential for the conservation of the species (see ''Primary Constituent Elements'' section), and identified the areas containing these features. The information used includes known locations; our own site-specific species and habitat information; State-wide Geographic Information System (GIS) coverages (*e.g.*, land ownership, bathymetry (the measurement of depths of water in oceans, seas, and lakes), and estuarine substrates); the final listing rule for the Gulf sturgeon; recent biological surveys and reports; peer-reviewed literature; our recovery plan; discussions and recommendations from Gulf sturgeon experts; and information received during Gulf sturgeon recovery meetings. The Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995) contains valuable biological information, and it is cited throughout this document. However, the state of our knowledge regarding Gulf sturgeon biology and distribution has changed markedly since publication of the recovery plan for this species. The recovery criteria put forth in this recovery plan were deemed preliminary and may now warrant revision in light of new information. As a result of recent research and survey efforts directed towards this species, substantial portions of the biological information presented in the recovery plan are now dated or obsolete. Thus, although the recovery plan is a valuable source of information, it is not the final authority on the natural history and distribution of this species.

In the past, we had assumed, based on the information available at the time, that unoccupied habitat would be necessary for the recovery of the Gulf sturgeon. Since approval of the recovery plan in 1995 and our 1998 not prudent finding, we have collected new biological information on this species. We have analyzed what is necessary for the conservation of the Gulf sturgeon, as described above, and based on the best scientific information available at this time, we have determined that unoccupied habitat is not essential to the conservation of the Gulf sturgeon.

Determining the Scale of the Final Designation

We first evaluated the Gulf sturgeon in the context of its current distribution throughout the historic range to determine what portion of the range must be included to ensure conservation of the species. We considered several factors in this evaluation—(1) maintaining overall genetic integrity and natural rates of inter-river genetic exchange, thereby minimizing the potential for inbreeding, (2) retaining potentially important selective pressure at the margins of the species' range by protecting the eastern- and western-most subpopulations, (3) decreasing the extinction risk of a subpopulation by protecting adjacent subpopulations that can provide a rescue effect, if needed, (4) avoiding the potential for subpopulation extirpation from environmental catastrophes, and (5) protecting sufficient habitat to support conservation of the species.

The historic range of the Gulf sturgeon included nine major rivers and several smaller rivers from the Mississippi River, Louisiana, to the Suwannee River, Florida, and in marine waters of the Central and Eastern Gulf of Mexico, south to Tampa Bay (Wooley and Crateau, 1985; and FWS *et al.*, 1995). Seven of these major river systems continue to support reproducing subpopulations. These include (from west to east)—the Pearl, Pascagoula, Escambia, Yellow/Blackwater, Choctawhatchee, Apalachicola, and Suwannee Rivers.

The Gulf Sturgeon Recovery/Management Plan (FWS *et al.*, 1995) noted the importance of identifying and maintaining genetic integrity and diversity during restoration efforts on Gulf sturgeon. A severe loss of genetic variability may lead to a decline in the fitness of a species (Soulé, 1987). Evidence suggests that peripheral subpopulations are often genetically and morphologically divergent from central subpopulations (Lesica and Allendorf, 1995). Distinct traits found in peripheral subpopulations may be crucial to the species, allowing adaptation in the face of environmental change (Lesica and Allendorf, 1995; and Allendorf *et al.*, 1997). In light of these considerations, we determined that the inclusion of stocks or subpopulations from both the eastern and the western margins of the current range were necessary to protect the potential evolutionary importance of those subpopulations (Scudder, 1989; Lesica and Allendorf, 1995; and Young and Harig, 2001).

While telemetry data indicate that Gulf sturgeon from one genetically distinct drainage occasionally enter another river and also mix during the winter months in estuarine and marine habitats, a genetic analysis of tissue samples concluded that Gulf sturgeon exhibit strong natal river fidelity, with stocks exchanging less than one mature female per generation on the average (Waldman and Wirgin, 1998). These low gene flow estimates strongly suggest that natural recolonization of extirpated subpopulations of Gulf sturgeon would proceed slowly (Waldman and Wirgin, 1998). Semi-isolated subpopulations are more vulnerable to the effects of demographic and environmental population fluctuations (Forney and Gilpin, 1989; and Wahlberg *et al.*, 1996).

Gene flow estimates are usually higher between adjacent stocks, suggesting that migrants from semi-isolated subpopulations are exchanged primarily with neighboring subpopulations (Waldman and Wirgin, 1998). The loss of any intermediate subpopulations by a single environmental catastrophe could seriously limit a species' recovery (Kautz and Cox, 2001; and Young and Harig, 2001). In light of this, we determined that it is necessary to designate as critical habitat rivers used by subpopulations evenly spaced between the western- and eastern-most limits of the current range. To ensure conservation of the species, subpopulations must be geographically located so that they can serve as sources of sturgeon emigration, albeit at a slow rate (Waldman and Wirgin, 1998), to adjacent rivers and so that they can provide a rescue effect if an adjacent subpopulation is extirpated (Brown and Kodric-Brown, 1977; Hanski and Gyllenberg, 1993; and Young and Harig, 2001).

Designating critical habitat for only a few subpopulation units, or for units not spaced in a manner that allows genetic exchange with other subpopulations, could increase the vulnerability of the species due to isolation of subpopulations. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox, 2001). To reduce the risk of extinction through these processes, it is important to establish multiple protected subpopulations across the landscape (Soulé and Simberloff, 1986; and Wiens, 1996).

Because of these considerations, we reached the conclusion that this designation should include critical habitat units within the major river

systems that support the seven currently reproducing subpopulations (FWS *et al.*, 1995) and associated marine habitats. These river systems include (from west to east)—the Pearl, Pascagoula, Escambia, Yellow/Blackwater, Choctawhatchee, Apalachicola, and Suwannee Rivers. We believe that with proper protection and management, these units collectively represent habitat necessary to provide for the conservation of the species. The number, distribution, and range of Gulf sturgeon subpopulations included in these units is necessary to protect and support the extent and diversity of the species' genetic integrity and can provide a rescue effect, if needed. The Services believe that these seven river systems, with their associated estuarine and marine environments, represent habitat that is essential for the conservation of the Gulf sturgeon.

Assessing Specific Habitat Areas Essential to the Conservation of Gulf Sturgeon

Once we determined that the proper scale of the critical habitat designation should cover the area occupied by the seven reproducing subpopulations, we evaluated which habitats used by those seven subpopulations are essential to their conservation. To conduct this evaluation, we assessed the critical life history components of Gulf sturgeon as they relate to habitat. Gulf sturgeon use the rivers for spawning, larval and juvenile feeding, adult resting, and staging, and to move between the areas that support these components. Gulf sturgeon use the lower riverine, estuarine, and marine environment during winter months primarily for feeding, and more rarely, for inter-river migrations.

We then investigated what habitat types support these life history components and where these habitat areas are located. We evaluated empirical data, published and unpublished literature, and solicited the views of experts. These habitat components are described in the ''Primary Constituent Elements'' section of this final rule. We identified known or presumed spawning sites in each of the seven river systems. Some spawning sites have been conclusively identified; others are presumed due to the presence of suitable habitat. We identified known or presumed sites used for resting or staging. We identified areas where subadult and adult Gulf sturgeon occur during winter and are presumed to be feeding. These areas are primarily in the marine or estuarine environment; young-of-the-year and juveniles feed mostly in the riverine environment. As a component of the above identifications, we gathered all available data on locations and habitat use of marked (tagged) fish.

To determine which areas should be designated as critical habitat, we then evaluated where the necessary constituent elements of Gulf sturgeon habitat intersected with areas known to be used by both marked and unmarked fish. Detailed location data, where available, is included with each unit description in the ''Critical Habitat Unit Descriptions'' section of this final rule. Because most of the sturgeon species' farthest upstream movement is for spawning (Bain, 1997; and J. Hightower, USGS-Biological Resources Division, pers. comm. 2002), we have determined that the designation should include areas as far upstream as the furthest known or presumed spawning site. Therefore, in rivers where spawning sites have been confirmed, critical habitat extends upstream to a geographically identifiable point, such as a river confluence upstream of those sites. In areas where spawning sites are presumed but not confirmed, we have included river reaches that contain the appropriate substrate necessary for spawning, if those areas occur within close proximity of Gulf sturgeon historic and/or current sightings or captures, and if they are still accessible to sturgeon (*e.g.*, not entirely blocked by dams). The riverine critical habitat units include areas that continue to offer at least periodic passage of Gulf sturgeon to known and presumed spawning sites. Successful reproduction and recent recruitment have been documented in each riverine unit by eggs, larvae, and/or juveniles, or by a mixed age structure. We are proposing to protect subpopulation extirpation from a catastrophic occurrence by including up to both the main stem spawning sites and at least one tributary site.

We have included riverine habitat from the river mouth upstream to and including spawning grounds in order to provide sufficient habitat necessary for the other riverine life stages of Gulf sturgeon while they reside in the riverine habitats. Habitat necessary for these life stages includes habitat for summer resting or staging areas, juvenile feeding, entire young-of-the-year life cycle, passage throughout the river, and passage into and out of estuarine habitat. All of the selected areas are known to be used by Gulf sturgeon for some portion of their life cycle.

Subadult and adult sturgeon use estuarine and marine areas for feeding and passage between river systems. Designation of critical habitat units encompassing estuaries and bays adjacent to the riverine units discussed above will protect unobstructed passage of sturgeon from feeding areas to spawning grounds. In evaluating the estuarine and marine areas, we first reviewed where Gulf sturgeon from the seven adjacent riverine units have been documented by telemetry relocations and tag returns from incidental captures. We also considered areas for which we have Gulf sturgeon sightings and targeted and incidental capture records. When available, we reviewed habitat data (*e.g.*, bathymetry, substrate type, and community structure) associated with these estuarine and marine systems and compared these data with studies pertaining to the habitat requirements and preferences of Gulf sturgeon. We also evaluated data for evidence of critical migratory pathways between the river systems and the adjacent bays and Gulf of Mexico that allow Gulf sturgeon to travel to important feeding areas, as well as allow for the occasional travel to non-natal rivers for possible spawning and genetic interchange. Where documented inter-riverine movements have occurred, but no telemetry data exist to identify the migratory path (*e.g.*, between the Pascagoula River and Yellow River, the Pascagoula and Choctawhatchee Rivers, and between Suwannee River and Apalachicola River), we have not designated a migration route. We then assessed the Gulf sturgeon's overall use of estuarine and marine waters and delineated specific critical habitat boundaries.

Migration and feeding may take place within the GIWW in some of the units. Portions of the GIWW that consist primarily of excavated land cuts and canals have been excluded from this designation because they were not available historically, and, therefore, are not considered to be evolutionarily significant.

This final designation includes a significant portion, but not all, of the species' historic range. The fourteen critical habitat units include riverine main stems and in some cases tributaries, distributaries (a river branch flowing away from the main stem in the floodplain) and adjacent estuarine and marine areas that contain one or more of the primary constituent elements essential for the conservation of the Gulf sturgeon (see ''Primary Constituent Elements'' section). The omission of some historically occupied river drainages and estuarine and marine areas from this critical habitat designation does not diminish their individual or cumulative importance to the species. Rather, it is our

determination that the seven riverine units with known spawning and seven associated estuarine and marine units included in this rule include the habitats essential for the conservation of the Gulf sturgeon. With unobstructed passage in the estuarine and marine habitat, the subpopulations within the designated critical habitat units may eventually populate presently unoccupied coastal river systems or augment adjacent surviving small subpopulations.

Although the Mobile River Basin is the largest Gulf of Mexico drainage east of the Mississippi River, it has been extensively impounded and modified for navigation. Further, there have been relatively limited reports of captures and no evidence of reproduction of Gulf sturgeon from that system for many years. Gulf sturgeon have been reported from other river systems. Some of these other systems historically supported a commercial fishery (*e.g.*, Mobile River, Ochlockonee River) and some may support small reproducing subpopulations (*e.g.*, Techefuncte River, Ochlockonee River, Mobile River); however, there is no recent documented spawning and we have no evidence at this time that these systems are essential to the conservation of the species. Therefore, we have not included them as critical habitat.

The data available to us are insufficient to support a determination that Lake Maurepas, Breton and Chandeleur Sounds, the Mississippi River Delta, St. Louis, Biloxi, Mobile, Perdido, St. Andrews, St. Joseph, Ochlockonee, or Apalachee Bays are essential to the conservation of the species. Records within the majority of these bays are relatively scarce. Although some Gulf sturgeon from the seven subpopulations may occasionally use these bays for winter foraging, there are insufficient data to support these bays' regular winter use or importance and no documented spawning. Therefore, we have not included these bays in our critical habitat designation.

The amount of research and status surveys conducted on many Gulf sturgeon subpopulations is limited. Because of the limited availability of data specific to each river system and specific to the Gulf sturgeon's use of the marine environment, we are aware that habitat other than that identified in this final rule may later be found to be essential to the conservation of Gulf sturgeon. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Gulf sturgeon surviving in, or moving to rivers that are not being included as critical habitat will continue to receive protection under the section 7 of the Act including the jeopardy standard and the section 9 of the Act prohibitions on take (see ''Critical Habitat'' section).

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on 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, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Based on the best available information, primary constituent elements essential for the conservation of the Gulf sturgeon include the following:

(1) Abundant food items, such as detritus, aquatic insects, worms, and/or molluscs, within riverine habitats for larval and juvenile life stages; and abundant prey items, such as amphipods, lancelets, polychaetes, gastropods, ghost shrimp, isopods, molluscs and/or crustaceans, within estuarine and marine habitats and substrates for subadult and adult life stages.

(2) Riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone, or hard clay;

(3) Riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions;

(4) A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging, and for maintaining spawning sites in suitable condition for egg attachment, egg sheltering, resting, and larval staging;

(5) Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(6) Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and

(7) Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (*e.g.*, an unobstructed river or a dammed river that still allows for passage).

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (see ''Primary Constituent Elements'' section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the ''Effects of Critical Habitat'' section as ''Federal Actions That May Affect Critical Habitat and Require Consultation.'' For example, riverine spawning sites for Gulf sturgeon must be relatively sediment-free for successful egg development and may need best management practices implemented in the watershed upstream to prevent an excessive accumulation of sediment in these areas. None of the critical habitat units are presently under special management or protection provided by a legally operative plan or agreement for the conservation of the Gulf sturgeon. Therefore, we have determined that all units may require special management or protection.

Critical Habitat Designation

The areas designated as critical habitat for the Gulf sturgeon provide one or more of the primary constituent elements described above. Tables 1 and 2 summarize the location and extent of the designated critical habitat. All of the designated areas require special management considerations to ensure their contribution to the conservation of the Gulf sturgeon. The boundaries of critical habitat units are described generally below.

TABLE 1.—APPROXIMATE LINEAR DISTANCE OF THE RIVERINE CRITICAL HABITAT UNITS FOR THE GULF STURGEON

[Main Stems Are Listed First and Tributaries Are Indented]

Critical habitat unit—river systems	State	River kilometers	River miles
1. Pearl (East, West, and all distributaries)	Louisiana/Mississippi	632	393
Bogue Chitto		163	101
2. Pascagoula		203	126
Leaf		164	102
Bouie	Mississippi	10	6
Chickasawhay		232	144
Big Black Creek		8	5
3. Escambia	Florida/	117	73
Conecuh	Alabama	127	79
Sepulga		11	7
4. Yellow	Florida/	154	96
Blackwater	Alabama	18	11
Shoal		13	8
5. Choctawhatchee	Florida/	249	155
Pea	Alabama	92	57
6. Apalachicola	Florida	254	158
Brothers		24	15
7. Suwannee	Florida	293	182
Withlacoochee		19	12
Total		2,783	1,730

TABLE 2.—APPROXIMATE AREA OF THE ESTUARINE AND MARINE CRITICAL HABITAT UNITS FOR THE GULF STURGEON

Critical habitat unit—estuarine and marine systems	State	Kilometers[2]	Miles[2]
8. Lake Borgne	Louisiana/	718	277
Little Lake	Mississippi/	8	3
Lake Pontchartrain	Alabama	763	295
Lake St. Catherine		26	10
The Rigolets		13	5
Mississippi Sound		1,879	725
MS near shore Gulf		160	62
9. Pensacola Bay	Florida	381	147
10. Santa Rosa Sound	Florida	102	39
11. Near shore Gulf of Mexico	Florida	442	171
12. Choctawhatchee Bay	Florida	321	124
13. Apalachicola Bay	Florida	683	264
14. Suwannee Sound	Florida	546	211
Total		6,042	2,333

Critical Habitat Unit Descriptions

The river reaches within units 1 to 7 designated as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline,'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

Unit 1. Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi

Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

The majority of recent Gulf sturgeon sightings in the Pearl River drainage have occurred downstream of the Pools Bluff Sill on the Pearl River, near Bogalusa, Washington Parish, Louisiana, and downstream of the Bogue Chitto Sill on the Bogue Chitto River in St. Tammany Parish, Louisiana. Between 1992 and 1996, 257 Gulf sturgeon were captured from the Pearl River system (West Middle River, Bogue Chitto River, East Pearl River, and West Pearl River). The subpopulation was estimated at 292 fish, of which only 2 to 3 percent were adults (Morrow *et al.*, 1998b). The annual mortality rate was calculated to be 25 percent. Preliminary results from captures between 1992 and 2001 suggest a stable subpopulation of 430 fish, with approximately 300 adults (Rogillio *et al.*, 2002). These Pearl River distributaries are used for migration to spawning grounds, summer resting holes, and juvenile feeding. Gulf sturgeon have been captured in all of these distributaries and all are designated as critical habitat.

The presence of juvenile Gulf sturgeon (1 to 4 years old) in the Pearl River system indicates successful spawning at some location in the Pearl River system. It is believed that the only suitable habitat for spawning for the Pearl River subpopulation of Gulf sturgeon occurs above the sills on the Pearl River and the Bogue Chitto River with access to these areas only during high flows (Morrow *et al.*, 1996; and Morrow *et al.*, 1998a). Bedrock and limestone outcropping that are typical of Gulf sturgeon spawning areas in other systems do not occur here. However, within the Pearl drainage, spawning areas likely include soapstone, hard clay, gravel and rubble areas, and undercut banks adjacent to these substrates (W. Slack, pers. comm. 2001). Although the Pools Bluff Sill blocks upstream movement on the Pearl River during periods of low water, potential spawning sites have been identified upstream of the sill at various locations between Monticello, Lawrence County, Mississippi, and the Ross Barnett Dam spillway, Hinds and Rankin Counties, Mississippi (F. Parauka, pers. comm. 2002). Gulf sturgeon have also been recently reported as far upstream as Jackson, Hinds County, Mississippi (Morrow *et al.*, 1996; Lorio, 2000; and W. Slack, pers. comm. 2002). The Ross Barnett Dam upstream of Jackson prevents sturgeon movement further upstream at all flow conditions. Identified suitable spawning habitat, presence of juvenile fish, and documented adult captures support our inclusion of the Pearl River up to the spillway of the Ross Barnett Dam.

The Bogue Chitto Sill, located on the Bogue Chitto River near its confluence with the Pearl River, also hinders movement of Gulf sturgeon upstream of the sill except during high water flows. Suitable spawning habitat occurs within the Bogue Chitto upriver of the sill (W. Slack, pers. comm. 2001; W. Granger, FWS, pers. comm. 2002; and F. Parauka, pers. comm. 2002) and juvenile, adult and subadult Gulf sturgeon have been documented on the Bogue Chitto River as far upstream as one mile north of Quinn Bridge (Mississippi State Highway 44), McComb, Pike County, Mississippi (W. Slack pers. comm. 2001; D. Oge, Louisiana Department of Environmental Quality, pers. comm. 2002; and F. Parauka, pers. comm. 2002). We, therefore, have designated as critical habitat the main stem of the Bogue Chitto River upstream of Quinn Bridge (Mississippi State Highway 44) to Mississippi State Highway 570 for ease of identification.

Unit 2. Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi

Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.

Subpopulation estimates, calculated from sturgeon captures in 1999 and 2000 in the summer holding areas on the Pascagoula River, range between 162 and 216 individuals (Heise *et al.*, 1999a; and Ross *et al.*, 2001b). Due to the sampling technique, these estimates are based primarily on large fish and do not account for juvenile or subadult fish (S. Ross, USM, pers. comm. 2001).

Gulf sturgeon spawning on the Bouie River was confirmed via egg collection in 1999 (Slack *et al.*, 1999; and Heise *et al.*, 1999a). This is the only confirmed spawning area in the Pascagoula River drainage. Downstream, the Bouie River is sometimes used as a summer holding area (Ross *et al.*, 2001b). Gulf sturgeon have been documented using the area above the known spawning habitat approximately 0.80 rkm (0.50 rmi) north of Glendale Road (Reynolds, 1993; and W. Slack, pers. comm. 2002). Additional

suitable spawning habitat has been identified in this upstream reach (F. Parauka, pers. comm. 2002), and since Gulf sturgeon have rarely been documented upstream of spawning grounds, we have included the 4.8 rkm (3 rmi) of river reach upstream of the confirmed spawning grounds. For ease of identification, we have stopped on the southern-most road crossing of Interstate 59, where it crosses the Bouie River. Confirmed use for spawning and use as a summer holding area support the inclusion of the Bouie River as critical habitat.

Documented sightings of Gulf sturgeon and identified suitable spawning habitat upstream to Mississippi State Highway 588 (Reynolds, 1993; W. Slack, pers. comm. 2002; and F. Parauka, pers. comm. 2002), confirmed use as a migration corridor, and confirmed use by juvenile Gulf sturgeon (W. Slack, pers. comm. 2002) support the inclusion of the Leaf River as critical habitat.

Documented sightings of Gulf sturgeon using the Chickasawhay River (Miranda and Jackson, 1987; Reynolds, 1993; and Ross *et al.*, 2001b) upstream to Quitman (Ross *et al.*, 2001b), and the presence of apparently suitable spawning habitat at Quitman (F. Parauka, pers. comm. 2002), support the inclusion of this river reach as critical habitat for spawning, migration, and juvenile feeding. We have included the suitable spawning habitat located within 0.8 rkm (0.5 rmi) upstream of Mississippi State Road 512 and have extended the designation 9 rkm (5.5 rmi) upstream to the confluence with Oaky Creek for ease of identification.

Gulf sturgeon use the West and East distributaries of the Pascagoula River during spring and fall migrations (Ross *et al.*, 2001b). Summer resting areas have been consistently documented on Big Black Creek and on the Pascagoula River (Ross *et al.*, 2001a and b). Confirmed use for migration and/or summer resting areas and probable feeding use by juveniles support our inclusion of these river reaches.

Unit 3. Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama

Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers and shorelines.

Sufficient data are not yet available to estimate historic or current subpopulation size of the Escambia River drainage subpopulation. Collection and tagging of Gulf sturgeon, monitoring, and eventual subpopulation estimates are in the initial phases on the Escambia River in Florida and the Conecuh River in Alabama.

Suitable spawning habitat (Parauka and Giorgianni, 2002) and a reported larval sighting (N. Craft, Florida Department of Environmental Protection (FDEP), pers. comm. 2001), just below the Point A Dam (221 rkm (137 rmi)) on the Conecuh River support inclusion of critical habitat upstream to the Point A Dam. The Point A Dam prevents sturgeon movement further upstream at all flow conditions. In addition, spawning has been confirmed between rkm 161 and 170 (rmi 100 and 105.6) (Craft *et al.*, 2001) on the Conecuh River. The use of the river main stem for spawning, adult resting areas, juvenile feeding and resting, and the use for migration to these sites supports our inclusion of the Escambia/Conecuh River main stem as critical habitat for the Escambia River subpopulation of Gulf sturgeon.

Historic sightings reported from the 1910s and 1920s, and as recently as 1991, have been documented in Escambia County, Alabama, on the Sepulga River (Reynolds, 1993). Estes *et al.* (1991) describe the Sepulga as having smooth rock walls, and long pools with stretches of rocky shoals and sandbars. We included the Sepulga River reach upstream to Alabama County Road 42, Escambia County, Alabama, because it has suitable spawning habitat and documented sightings.

We believe it is most likely that Gulf sturgeon use the Escambia River main stem and all the distributaries for exiting and entering the Escambia/Conecuh River. Gulf sturgeon have been documented to use distributaries near the river mouth within other systems (*e.g.*, Suwannee, Pearl, and Pascagoula River systems) for migration into and out of riverine habitat. We, therefore, have included all distributaries on the Escambia River system (*i.e.*, White River, Little White River, Simpson River, and Dead River) in Unit 3.

Unit 4. Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama

Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers and shorelines.

The USGS conducted a subpopulation study in the Yellow River system during the spring (May to July) and fall (October) of 2001. Based on the capture of 98 fish in the spring and the capture/recapture of 94 fish that fall, the USGS estimated the subpopulation to consist of 580 Gulf sturgeon of 1 m (3.3 ft) or greater in size (M. Randall, USGS, pers. comm. 2001). This estimate excludes fish younger than 3 to 4 years of age.

Five distinct limestone outcrops have been documented as possible spawning sites on the Yellow River, between rkm 43 and 134 (rmi 26.7 and 83.3) (Parauka and Giorgianni, 2002). Several sites consist of brittle marl and limestone, and others of porous limestone. The lowest downstream site (rkm 43 (rmi 26.7)) is a primitive rock revetment, a manmade structure with a fair amount of rock substrate (Craft *et al.*, 2001). In recent years, biologists working for the State of Alabama have observed young-of-the-year Gulf sturgeon near limestone outcrops 3.2 km (2 mi) south of Alabama State Highway 55 (136 rkm (84 rmi)) (Craft *et al.*, 2001), which confirms that reproduction is occurring within this subpopulation. The river upstream of Alabama State Highway 55 is shallow, sandy, and creek-like and, therefore, not believed suitable for spawning (M. Randall, pers. comm. 2001; F. Parauka, pers. comm. 2001; and G. Morgan, Conecuh National Forest, pers. comm. 2001). Preliminary surveys located four potential summer resting

areas on the Yellow River main stem (Craft *et al.*, 2001). Recent fish captures and the confirmation of spawning at the furthest upstream spawning habitat location near Alabama State Highway 55 support our inclusion of the Yellow River main stem to Alabama State Highway 55 (136 rkm (84 rmi)) as critical habitat for the Yellow River subpopulation of Gulf sturgeon.

The inclusion of the Shoal River, from the Yellow River confluence upstream to the Florida Highway 85 bridge (13 rkm (8 rmi)), is supported as critical habitat because it is a confirmed summer resting area (Lorio 2000). The potential for distributaries Weaver River and Skim Lake to be used for migration to and from the Yellow River system (Craft *et al.*, 2001) supports their inclusion as critical habitat. The current and historic use of deep holes by Gulf sturgeon on the Blackwater River main stem and between Wright Basin and Cooper Basin demonstrate the importance of this area for summer resting and staging (Reynolds, 1993; and Craft *et al.*, 2001) and support its inclusion as critical habitat for the Yellow River subpopulation.

Unit 5. Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama

Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

Preliminary estimates of the size of the Gulf sturgeon subpopulation in the Choctawhatchee River system are 2,000 to 3,000 fish over 61 cm (24 inches (in)) total length (F. Parauka, pers. comm. 2001).

Biologists have located Gulf sturgeon within 0.8 rkm (0.5 rmi) downstream of the Elba Dam, Coffee County, Alabama, on the Pea River (Lorio, 2000) and have identified suitable spawning habitat from the Elba Dam to the Pea River mouth (Parauka and Giorgianni, 2002; and Hightower *et al.*, in press). The Elba Dam prevents sturgeon movement further upstream at all flow conditions. This river reach has one confirmed spawning site, and Gulf sturgeon often use the lower reach for summer resting (Fox *et al.*, 2000; and Hightower *et al.*, in press). Suitable spawning and resting habitat, confirmed spawning, and young-of-the-year and juvenile feeding (F. Parauka, pers. comm. 2001) support inclusion of the Pea River reach as critical habitat.

Five spawning sites and seven resting areas have been identified on the Choctawhatchee River main stem between the river mouth (0 rkm (0 rmi)) and upstream to 150 rkm (93 rmi) (Hightower *et al.*, in press). Biologists have identified suitable spawning habitat (limestone outcrops) periodically between 135 rkm (84 rmi) to the confluence of the West Fork Choctawhatchee River and East Fork Choctawhatchee River (224 rkm (139 rmi)) (Parauka and Giorgianni, 2000; H. Blalock-Herod, FWS, pers. comm. 2002; and Hightower *et al.*, in press). Fox *et al.* (2000) located a male at 150 rkm (93 rmi) and another male in spawning condition near Newton (214 rkm (133 rmi)) on the Choctawhatchee River, 8 rkm (5 rmi) downstream of the confluence of the West Fork Choctawhatchee River and East Fork Choctawhatchee River. Since Gulf sturgeon rarely occur upstream of spawning grounds, we have included up to the confluence of West Fork Choctawhatchee River and East Fork Choctawhatchee River for ease of identification and with the probability of unconfirmed spawning grounds. Suitable habitat, confirmed spawning, and young-of-the-year and juvenile feeding support the inclusion of the Choctawhatchee River main stem as critical habitat.

No sturgeon have been documented within Holmes Creek, except for the section that connects the Choctawhatchee River and Boynton Cutoff, north and south. We have included this river section of Holmes Creek because it acts as part of the Choctawhatchee River main stem. In 1994, Gulf sturgeon were captured during March and April at the mouths of Indian River, Cypress River, and Bells Leg, indicating that sturgeon probably use these distributaries as migratory corridors to and from the Choctawhatchee River main stem. All distributaries, including the Indian River, Cypress River, Bells Leg, and Mitchell River, are included as critical habitat.

Unit 6. Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida

Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

Based on mark/recapture studies conducted in 1998 and 1999 in the Apalachicola River downstream of Jim Woodruff Lock and Dam, the summer subpopulation of subadult and adult Gulf sturgeon was estimated to be between 270 and 321 individuals (FWS, 1998; and FWS, 1999). Seventy-one sturgeon were collected in the upper Brothers River, upstream of the Brickyard Cutoff and downstream of Bearman Creek between June and September 1999 (FWS, 1999; and Lorio, 2000). Gulf sturgeon captured on the Brothers River have not been included in the Apalachicola River subpopulation size estimate although they are believed to be part of the subpopulation.

The Gulf sturgeon became restricted to the portion of the Apalachicola River downstream of the Jim Woodruff Lock and Dam upon the construction of the dam in the 1950s. Wooley *et al.* (1982) documented the capture of two Gulf sturgeon larvae on the Apalachicola River just downstream of the Jim Woodruff Lock and Dam, thereby confirming successful spawning up to the dam. Resting aggregations are often seen at the base of the dam. Seven potential spawning sites have been identified in the upper Apalachicola River between Highway 20 and the Jim Woodruff Lock and Dam (120 to 171 km (76 to 106 rmi)) (Parauka and Giorgianni, 2002). Suitable spawning and resting habitat, confirmed spawning, and young-of-the-year and juvenile feeding support inclusion of the Apalachicola River as critical habitat.

The entire main stem of the Brothers River, a major tributary of the Apalachicola River, is also included as critical habitat. Spawning has not been documented within this tributary, but an important resting area is located in the uppermost section of the Brothers River between Brickyard Cutoff and Bearman Creek (FWS, 1999; and Lorio, 2000). Sturgeon use the lower Brothers River as a resting and possible osmoregulation area (staging) before migrating into the estuarine and marine habitats for winter feeding (Wooley and Crateau, 1985). The Apalachicola River distributaries, including the East River, St. Marks River and Little St. Marks River, are included, based on information derived from other systems. Gulf sturgeon tend to use more than just the main stem for migration into and out of the river systems (*e.g.*, Suwannee, Choctawhatchee, and Pearl Rivers).

Unit 7. Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida

Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

The Suwannee River supports the largest Gulf sturgeon subpopulation among the coastal rivers of the Gulf of Mexico (Huff, 1975; and Gilbert, 1992). Sulak and Clugston (1999) reported 5,344 uniquely tagged Suwannee River sturgeons from 1986 to 1998. Multiple models using various age classes have been used to estimate the subpopulation size of Gulf sturgeon on the Suwannee River system. Chapman *et al.* (1997) estimated the subpopulation at 3,152 fish greater than age 6. Sulak and Clugston's (1999) estimate was 7,650 individuals greater than 61 cm (24 in) total length and older than age 2. Pine and Allen (2001) estimated the Suwannee River subpopulation at 5,500 individuals age 2 to 25. Based on intensive egg sampling efforts conducted between 1993 and 1998, Sulak and Clugston (1999) estimated that 30 to 90 female fish spawn per year.

Marchant and Shutters (1996) collected two Gulf sturgeon eggs from the Suwannee River in April 1993. These were the first Gulf sturgeon eggs collected in the wild. Between 1993 and 1998, three spawning sites were confirmed with the collection of Gulf sturgeon eggs on artificial substrate samplers (Marchant and Shutters, 1996; and Sulak and Clugston, 1999). Young-of-the-year have been documented using the river between rkm 10 to the confluence with Roaring Creek at approximately rkm 285 (177 rmi) on the Suwannee River main stem (Carr *et al.*, 1996a; Sulak and Clugston, 1999; K. Sulak, pers. comm. 2002; and J. Clugston, pers. comm. 2002). It is believed that the farthest upstream that sturgeon spawn during high water is Big Shoals, near White Springs, Hamilton and Columbia Counties, Florida, but adult sturgeon are probably unable to move upstream of Big Shoals (Huff, 1975; K. Sulak, pers. comm. 2002; and M. Randall, pers. comm. 2002). Suitable spawning habitat has been identified upstream to Big Shoals (Huff, 1975; H. Blalock-Herod, pers. comm. 2002). Foster and Clugston (1997) located five major resting areas throughout the Suwannee River. A deep river bend and a shallow sandy section were characteristic features of the resting areas (Foster and Clugston, 1997). Confirmed use for spawning, identified and probable spawning habitat upstream to Big Shoals, young-of-year and juvenile feeding, and summer resting support the inclusion of the Suwannee River as critical habitat. For ease of identification, the Suwannee River has been included in the unit upstream of Big Shoals 0.8 rkm (0.5 rmi) to its confluence with Long Branch Creek.

Adult Gulf sturgeon sightings and suitable spawning habitat on the lower Withlacoochee River near Florida State Road 141, Hamilton and Madison Counties, Florida, support the inclusion of this area as critical habitat. We have included shoals (5 rkm (3 rmi)) located just upstream of where sturgeon have been observed as possible spawning habitat, and have stopped at Florida State Road 6 (14 rkm (9 rmi)), upstream from the shoals, for ease of identification.

The Suwannee River branches near its mouth into the East Pass and West Pass. Gulf sturgeon adults use the East Pass and West Pass for emigration and immigration (Mason and Clugston, 1993; and Edwards *et al.*, in prep.). The West pass is divided into two primary channels—Wadley Pass, connected to the Gulf of Mexico by a straight dredged channel across the northern portion of the Sound, and Alligator Pass, used by juveniles (Huff, 1975), connected to the Gulf of Mexico by an undredged, natural channel. Confirmed use of the East Pass, West Pass, and Alligator Pass, and probable use of the Wadley Pass by adult and juvenile Gulf sturgeon for migration and feeding support the inclusion of all distributaries of the Suwannee River as critical habitat.

Unit 8. Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama

Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shoreline of the mainland between Heron Bay Point, Mississippi and Point aux Pins, Alabama. Critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swamp islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nautical mile (nm) (1.9 km) seaward of the western most extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 ©)), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We, therefore, have defined that section of the unit southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8′W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral

extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

The Pearl River and its distributaries flow into The Rigolets, Little Lake, and Lake Borgne, the western extension of Mississippi Sound. The Rigolets connect Lake Pontchartrain and Lake St. Catherine with Little Lake and Lake Borgne. The Pascagoula River and its distributaries flow into Pascagoula Bay and Mississippi Sound.

This unit provides juvenile, subadult and adult feeding, resting, and passage habitat for Gulf sturgeon from the Pascagoula and the Pearl River subpopulations. One or both of these subpopulations have been documented by tagging data, historic sightings, and incidental captures as using Pascagoula Bay, The Rigolets, the eastern half of Lake Pontchartrain, Little Lake, Lake St. Catherine, Lake Borgne, Mississippi Sound, within 1 nm (1.9 km) of the nearshore Gulf of Mexico adjacent to the barrier islands and within the passes (Davis *et al.*, 1970; Reynolds, 1993; Rogillio, 1993; Morrow *et al.*, 1998a; Ross *et al.*, 2001a; Rogillio *et al.*, 2002; and F. Parauka, pers. comm. 2002). Substrate in these areas range from sand to silt, all of which contain known Gulf sturgeon prey items (Menzel, 1971; Abele and Kim, 1986; and American Fisheries Society, 1989).

The Rigolets is an 11.3 km (7 mi) long and about 0.6 km (0.4 mi) wide passage connecting Lake Pontchartrain and Lake Borgne (U.S. Department of Commerce (USDOC), 2002). This brackish water area is used by adult Gulf sturgeon as a staging area for osmoregulation and for passage to and from wintering areas (Rogillio *et al.*, 2002). Lake St. Catherine is a relatively shallow lake with depths averaging approximately 1.2 m (4 ft), connected to The Rigolets by Sawmill Pass. Bottom sediments in Sawmill Pass are primarily silt; Lake St. Catherine's are composed of silt and sand (Barrett, 1971). Incidental catches of Gulf sturgeon are documented from Lake St. Catherine and Sawmill Pass (Reynolds, 1993; and H. Rogillio, Louisiana Department of Wildlife and Fisheries, pers. comm. 2002). Based on the proximity of Little Lake, Lake St. Catherine, and Sawmill Pass to The Rigolets and Pearl River, we believe these areas are also used for staging and feeding and, therefore, we have included them with The Rigolets as critical habitat.

Rogillio (1990) and Morrow *et al.* (1996) indicated that Lake Pontchartrain and Lake Borgne were used by Gulf sturgeon as wintering habitat, with most catches during late September through March. Lake Pontchartrain is 57.9 km (36 mi) long, 35.4 km (22 mi) wide at its widest point, and 3 to 4.9 m (10 to 16 ft) deep (USDOC, 2002). Morrow *et al.* (1996) documented Gulf sturgeon from the Pearl River system using Lake Pontchartrain (verified by tags) and summarized existing Gulf sturgeon records, which indicated greater use of the eastern half of Lake Pontchartrain. Although Rogillio *et al.* (2002) did not relocate any of their sonic tagged adult Gulf sturgeon in Lake Pontchartrain, the eastern part of this lake is believed to be an important winter habitat for juveniles and subadults (H. Rogillio, pers. comm. 2002). Furthermore, we believe that Gulf sturgeon forage in Lake Pontchartrain during the winter. The Lake Pontchartrain Causeway, twin toll highway bridges, extends 33.6 km (20.9 mi) across Lake Pontchartrain from Indian Beach on the south shore to Lewisburg and Mandeville on the north shore. Sediment data from Lake Pontchartrain indicate sediments have a greater sand content east of the causeway than west (Barrett, 1976). Most records of Gulf sturgeon from Lake Pontchartrain are located east of the causeway, with concentrations near Bayou Lacombe and Goose Point, both on the eastern north shore (Reynolds, 1993; and Morrow *et al.*, 1996). While Gulf sturgeon have also been documented west of the causeway, generally near the mouths of small river systems (Davis, 1970), we have excluded the western portion of Lake Pontchartrain because we believe that the sturgeon utilizing this area are coming from western tributaries and not the Pearl River.

Lake Pontchartrain connects by The Rigolets with Lake Borgne. Lake Borgne, the western extension of Mississippi Sound, is partly separated from Mississippi Sound by Grassy Island, Half Moon (Grand) Island and Le Petit Pass Island. Lake Borgne is approximately 14.3 km (23 mi) in length, 3 to 6 km (5 to 10 mi) in width and 1.8 to 3 m (6 to 10 ft) in depth (USDOC, 2002). Most of Lake Borgne sediment is clay and silt (Barrett, 1971). Many Gulf sturgeon were anecdotally reported as taken incidentally in shrimp trawls in Lake Borgne 0.6 to 1.2 km (1 to 2 mi) south of the Pearl River between August and October from the 1950s through the 1980s (Reynolds, 1993). There are twenty-two additional records of Gulf sturgeon in Lake Borgne (D. Walther, FWS, pers. comm. 2002). Known locations are spread out around the perimeter of the Lake, including at the mouth of The Rigolets, Violet Canal, Bayou Bienvenue, Polebe, Alligator Point, and at Half Moon Island (Reynolds, 1993). We have included all of Lake Borgne as critical habitat.

The Mississippi Sound is separated from the Gulf of Mexico by a chain of barrier islands, including Cat, Ship, Horn, and Petit Bois Islands. Natural depths of 3.7–5.5 m (12 to 18 ft) are found throughout the Sound and a channel 3.7 m (12 ft) deep has been dredged where necessary from Mobile Bay to New Orleans (USDOC, 2002). Incidental captures and recent studies confirm that both Pearl River and Pascagoula River adult Gulf sturgeon winter in the Mississippi Sound, particularly around barrier islands and barrier islands passes (Reynolds, 1993; Ross *et al.*, 2001a; and Rogillio *et al.*, 2002). Pascagoula Bay is adjacent to the Mississippi Sound. Gulf sturgeon exiting the Pascagoula River move both east and west, with telemetry locations as far east as Dauphin Island and as far west as Cat Island and the entrance to Lake Pontchartrain, Louisiana (Ross *et al.*, 2001a). Tagged Gulf sturgeon from the Pearl River subpopulation have been located between Cat Island, Ship Island, Horn Island, and east of Petit Bois Islands to the Alabama State line (Rogillio *et al.*, 2002). Gulf sturgeon have also been documented within 1 nm (1.9 km) off the barrier islands of Mississippi Sound. We, therefore, have included 1 nm (1.9 km) offshore of the barrier islands of Mississippi Sound. Habitat used by Gulf sturgeon in the vicinity of the barrier islands is 1.9 to 5.9 m (6.2 to 19.4 ft) deep (average 4.2 m (13.8 ft)), with clean sand substrata (Heise *et al.*, 1999b; Ross *et al.*, 2001a; and Rogillio *et al.*, 2002). Preliminary data from substrate samples taken in the barrier island areas indicate that all samples contained lancelets (Ross *et al.*, 2001a). Inshore locations where Gulf sturgeon were located (Deer Island, Round Island) were 1.9 to 2.8 m (6.2 to 9.2 ft) deep and all had mud (mostly silt and clay) substrata (Heise *et al.*, 1999b), typical of substrates supporting known Gulf sturgeon prey.

Unit 9. Pensacola Bay System in Escambia and Santa Rosa Counties, Florida

Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa

Rosa Island (defined at 33 CFR 80.810 (g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, Florida. The lateral extent of unit 9 is the MHW line on each shoreline of the included waterbodies.

The Pensacola Bay system includes five interconnected bays, including Escambia Bay, Pensacola Bay, Blackwater Bay, East Bay, and the Santa Rosa Sound. The Santa Rosa Sound is addressed separately in unit 10. The Escambia River and its distributaries (Little White River, Dead River, and Simpson River) empty into Escambia Bay, including Bass Hole Cove, Saultsmar Cove, and Macky Bay. The Yellow River empties into Blackwater Bay. The entire system discharges into the Gulf of Mexico, primarily through a narrow pass at the mouth of Pensacola Bay.

The Pensacola Bay system provides winter feeding and migration habitat for Gulf sturgeon from the Escambia River and Yellow River subpopulations. Over the past four years, FDEP researchers have conducted tracking studies in the Pensacola Bay system to observe Gulf sturgeon winter migrations. They have identified specific areas in the bays where Escambia River and Yellow River Gulf sturgeon collect, or migrate through, during the fall and winter season. These studies also identified two main habitat types where Gulf sturgeon concentrate during winter months. Movement is generally along the shoreline area of Pensacola Bay. Gulf sturgeon showed a preference for several areas in the bay, including Redfish Point, Fort Dickens, and Escribano Point, near Catfish Basin (FWS, 1998; and Craft *et al.*, 2001). Sandy shoal areas, located along the south and east side of Garcon Point, south shore of East Bay (Redfish Point area) and near Fair Point, appear to be commonly used, especially in the fall and early spring. During midwinter, sturgeon are commonly found in deep holes located north of the barrier island at Ft. Pickens, south of the Pensacola Naval Air Station, and at the entrance of Pensacola Pass. The depth in these areas ranges from 6 to 12.1 m (20 to 40 ft). Other areas where tagged fish were frequently located include Escribano Point, near Catfish Basin, and the mouth of the Yellow River. Previous incidental captures of Gulf sturgeon have been recorded in Pensacola Bay, Big Lagoon, and Bayou Grande (Reynolds, 1993; and Lorio, 2000).

Unit 10. Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida

Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, Florida and the east by U.S. Highway 98 bridge in Fort Walton Beach, Florida. The northern and southern boundaries of unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

The Santa Rosa Sound is a lagoon between the mainland and Santa Rosa Island that connects Pensacola Bay in the west with Choctawhatchee Bay in the east. The Sound extends east to west approximately 57.9 km (35.9 mi) and varies in width between 0.32 and 3.5 km (0.2 to 2.2 mi) (FDEP, 1993). The Intracoastal Waterway transects the sound. The Santa Rosa Sound is designated as critical habitat because we believe it provides one continuous migratory pathway between Choctawhatchee Bay, Pensacola Bay, and the Gulf of Mexico for feeding and genetic interchange. Within the last 3,000 years, periodic shoaling closed the opening of Choctawhatchee Bay to the Gulf of Mexico. For many years, the Santa Rosa Sound provided the only way for Choctawhatchee River Gulf sturgeon to migrate to the Gulf of Mexico (Wakeford, 2001). Recent locations of subadult and adult Gulf sturgeon within the Santa Rosa Sound confirm its present use by the Choctawhatchee River subpopulations (Fox *et al.*, 2002; and F. Parauka, pers. comm. 2002). The Escambia and Yellow Rivers subpopulations may also use this area due to its close proximity. Gulf sturgeon have been located mid-channel and in shoreline areas in 2 to 5.2 m (6.6 to 17.1 ft) depths and sand substrate. The approximate length of the critical habitat unit is 52.8 km (33 miles). Bridges were chosen as the eastern and western boundaries for ease in identification. Any portion of the sound not included in this unit is captured by the adjacent critical habitat units.

Unit 11. Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties in Florida

Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary of the unit is 1 nm (1.9 km) offshore of the northern boundary; the eastern boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

Unit 11 includes winter feeding and migration habitat for Gulf sturgeon from the Yellow River, Choctawhatchee River, and Apalachicola River subpopulations. Telemetry relocation data suggest that these subpopulations feed in nearshore Gulf of Mexico waters between their natal river systems (Fox *et al.*, 2002; and F. Parauka, pers. comm. 2002). Gulf sturgeon from the Choctawhatchee River subpopulation have been documented both east and west of Choctawhatchee Bay (Fox *et al.*, 2002; and F. Parauka, pers. comm. 2002). During the winter of 2001–2002, personnel from both USGS and FWS attached pop-up satellite tags to 20 Gulf sturgeon (12 from the Suwannee River, 4 from the Choctawhatchee River, 2 from the Apalachicola River, and 2 from the Yellow River) to identify winter feeding areas in the Gulf of Mexico. Due to a design flaw, errors in attachment, or sturgeon's ability to successfully shed the tags, the tags failed to report reliable data with only two exceptions. One of the Choctawhatchee River-tagged Gulf sturgeon was located in Hogtown Bayou in Choctawhatchee Bay; however, this provided no new information as we already knew that some adult Gulf sturgeon overwinter in this bayou. The other operating tag had been attached to a Yellow River Gulf sturgeon. Manual tracking in the vicinity of that Yellow River Gulf sturgeon led to the relocation of another tagged Gulf sturgeon. As a result, tagged individuals from three different subpopulations (Choctawhatchee, Yellow, and Apalachicola Rivers) were relocated on multiple occasions in close proximity to one another, suggesting an important feeding area just offshore of Mexico Beach, Crooked Island East, and Crooked Island West over sand substrate. These data suggest that Gulf sturgeon from the Yellow River, Choctawhatchee River, and Apalachicola River remain within 1.6 km (1 mi) of the coastline between these river systems (F. Parauka, pers. comm. 2002). Examination of bathymetry data along the Gulf of Mexico coastline between the Pensacola Bay and Apalachicola Bay reveals that depths of less than 6 m (19.7 ft), where Gulf sturgeon are generally found, are all

contained within 1 nm (1.9 km) from shore. Gulf nearshore substrate contains unconsolidated, fine-medium grain sands which support crustaceans such as mole crabs, sand fleas, various amphipod species, and lancelets (Menzel, 1971; Abele and Kim, 1986; and American Fisheries Society, 1989). Based on movement patterns, it appears these Gulf sturgeon were feeding in the nearshore Gulf of Mexico on route to their natal rivers. Given this information, we have included the nearshore (up to 1 nm (1.9 km)) Gulf of Mexico waters in this unit between Pensacola and Apalachicola Bays.

Unit 12. Choctawhatchee Bay in Okaloosa and Walton Counties, Florida

Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, and rivers are excluded at their mouths/entrances. The western unit boundary is the U.S. Highway 98 bridge at Fort Walton Beach, Florida; the southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810 (f). The lateral extent of unit 12 is the MHW line on each shoreline of the included water bodies.

Choctawhatchee Bay provides important habitat for maintaining the health of subadult and adult Gulf sturgeon as evidenced by a large number of Gulf sturgeon overwintering in the system (FWS, 1997; FWS 1998; and Parauka *et al.*, in press). The Choctawhatchee Bay offers a feeding area for both subadults and adults (FWS, 1998; and Fox *et al.*, 2002). Tagged subadults showed a preference for shoreline habitats which are predominated by sandy substrates, low salinity and water depths less than 3 m (10 ft) (FWS, 1997; FWS, 1998; and Parauka *et al.*, in press). Most adult Gulf sturgeon were located in shallow water (2 to 4 m (6.6 to 13.1 ft)) with predominantly (greater than 80 percent) sandy sediment (Fox *et al.*, 2002). Ghost shrimp, a component of the sturgeon diet, are typically found in substrates ranging from sandy mud to organic silty sand (Felder and Lovett, 1989), and their densities were greatest nearshore along the middle and eastern portions of the Choctawhatchee Bay (Heard *et al.*, 2000), the area frequented by the Gulf sturgeon (Fox *et al.*, 2002). We have included the deeper central portion of the Bay in unit 12 as critical habitat because the Gulf sturgeon are known to use the deeper bay waters for movement between the shoreline areas (Fox *et al.*, 2002).

Unit 13. Apalachicola Bay in Gulf and Franklin County, Florida

Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's Cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern unit boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e–h)); the western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary of the unit is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6'N, 84°33.2'W. The lateral extent of unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

The Apalachicola River empties into Apalachicola Bay near Little Bay and Big Bay. The Apalachicola Bay system, a highly productive lagoon-and-barrier-island complex, consists of the bay proper, East Bay, St. George Sound, Indian Lagoon, and St. Vincent Sound (Wakeford, 2001). It is relatively shallow, averaging 2 to 3 m (6.6 to 9.8 ft) in depth (Livingston, 1980). The benthic habitat type most often found in Apalachicola Bay system is soft sediment, comprising approximately 70 percent of the estuarine area (Livingston, 1980). Its composition of sand, clay, and silt varies considerably depending on the location in the bay. The Apalachicola Bay connects with the Gulf of Mexico through several passes, including Indian Pass, West Pass, East Pass, and Sike's Cut, a man-made opening established in the mid 1950s (Odenkirk, 1989).

Unit 13 provides winter feeding migration habitat for the Apalachicola River Gulf sturgeon subpopulation. Gulf sturgeon have been documented by sightings, incidental captures, and telemetry studies throughout Apalachicola Bay, East Bay, St. George Sound, St. Vincent Sound, and Indian Lagoon (Swift *et al.*, 1977; Wooley and Crateau, 1985; Odenkirk, 1989; FWS, 2000; and F. Parauka, pers. comm. 2002). Gulf sturgeon have also been documented in Indian Pass, West Pass, East Pass, and just north of Dog Island (Wooley and Crateau, 1985; Odenkirk, 1989; FWS, 2000; and F. Parauka, pers. comm. 2002). Substantial weight gains and the presence of suitable habitat for prey items indicate that Gulf sturgeon are feeding while within these bodies of water (Wooley and Crateau, 1985; and Odenkirk, 1989). These areas are also used for accessing adjacent marine and estuarine feeding areas designated in unit 11. Gulf sturgeon are believed to migrate from Apalachicola Bay into the Gulf of Mexico following prevailing currents and exiting primarily through the two most western passes (Indian and West) (Odenkirk, 1989). No Gulf sturgeon have been documented using Sike's Cut, a man-made opening established in the 1950s bisecting Little St. George Island and St. George Island; therefore, Sike's Cut is excluded from our designation.

Tag return data from incidental captures and recent relocation data document Gulf sturgeon south of the Apalachicola barrier islands, generally within a mile of the shoreline (Odenkirk, 1989; and FWS, 2000). On June 8, 1992, a commercial shrimp fisherman provided anecdotal information that he and other shrimp fishermen, had caught hundreds of Gulf sturgeon, with estimated weights generally between 22.7 to 27.2 kg (50 to 60 lbs), in the same location, each spring (April, May, and June), for the past thirty years (1962 to 1992) (F. Parauka, pers. comm. 2002). The fishermen described the location as south of St. George Island, within a few hundred yards of the beach. He described the capture areas as being adjacent to a shoal extending approximately 3.2 km (2 mi) offshore. Examination of bathymetric data shows that there are several shoals in that general vicinity. Since we are unable to confirm the specific location of the area described by this fisherman, we are extending this critical habitat unit only 1 nm (1.9 km) offshore of the barrier islands bordering Apalachicola Bay and Cape San Blas, a distance for which we have supporting telemetry data. In doing so, we will capture some of the shallow shoals extending south of the barrier islands, which we believe provide important foraging substrate.

Unit 14. Suwannee Sound in Dixie and Levy Counties, Florida

Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′N, 83°12′W) to the Federal-State boundary at 29°17′N, 83°21′W; the southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 29°11′N, 83°04′W) to the Federal-State boundary at 29°04′N, 83°15′W. The lateral extent of unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries and other rivers, creeks, or water bodies.

The Suwannee River system is unique among Gulf sturgeon river systems in that the river flows directly into the Suwannee Sound and Gulf of Mexico without any intervening barrier islands. Suwannee Sound is a shallow (typically less than 2 m (6.6 ft)), estuarine basin, a little less than 10 nm (8 km) long and a little over 4 nm (8 km) wide at its widest point. It is enclosed on its seaward side by Suwannee Reef, an approximately 14.6 nm (27 km) long arc of oyster reefs and shoals (Edwards *et al.*, in prep.). The bathymetry of waters off the coastline and north and south of Suwannee Sound is different from the waters adjacent to other systems. Shallow waters are not confined to the nearshore environment, and depths less than 6 m (19.7 ft) extend 9 to 10 mi (14.5 to 16.1 km) off the coastline.

Telemetry data confirm that subadult and adult Gulf sturgeon leave the river during October and November and enter Suwannee Sound and the nearshore Gulf of Mexico (Carr *et al.*, 1996b; and Edwards *et al.*, in prep.). Tracking data indicate that Gulf sturgeon move slowly and remained offshore of Suwannee Sound in nearby shallow (less than 6 m (19.7 ft)) marine/estuarine habitats for a period of two months, until at least mid or late December. Overall movement patterns are punctuated by periods of slow movement within small areas, suggesting foraging (Edwards *et al.*, in prep.). Mason and Clugston (1993) found large, immigrating Suwannee River Gulf sturgeon fed on nearshore coastal shelf organisms lancelets (*Branchiostoma caribaeum*), brachiopods (*Glottida pyramida*), unidentified pelagic shrimps, polychaetes, unidentified marine molluscs, starfish and sea cucumbers. Carr *et al.* (1996b) found that adult Gulf sturgeon feed primarily on brachiopods and ghost shrimp, before entering the river. The consumption of brachiopods as a primary Gulf sturgeon food source is currently being researched by the University of Florida. Numerous underwater beds containing brachiopods have recently been located in the Suwannee River estuary and adjacent areas in Suwannee Sound (D. Murie and D. Parkyn, pers. comm. 2002). Recent stomach content analyses using a non-lethal method of stomach pumping (lavaging) support that Gulf sturgeon from the Suwannee River subpopulation feed primarily on brachiopods, and to lesser amounts on ghost shrimp, amphipods, and worms prior to entering the river (D. Murie and D. Parkyn, pers. comm. 2002).

Gulf sturgeon tracking and relocation data were used to delineate the boundaries of this critical habitat unit. In 1998, 18 out of 19 sonic-tagged Gulf sturgeon were consistently relocated and found to be concentrated in a relatively small area (115 km^2 (44.4 mi^2)) offshore of Suwannee Sound (Edwards *et al.*, in prep.). Specific locations within the concentration area were around Waldley Channel, West Gap, and Hedemon Reef. The farthest offshore area was Hedemon Reef, approximately 5 to 6 nm (9.3 to 11.1 km) from the Suwannee River opening. Previous telemetry data and tag recaptures documented Gulf sturgeon using Gulf of Mexico waters as far out as 9 nm (16.7 km) (Sulak and Clugston, 1999; and Edwards *et al.*, in prep.). More recently, on March 22, 2002, two Gulf sturgeon were observed jumping in the area of 29°14′N, 83°18′W, further substantiating the Gulf sturgeon's use of shallow State waters further offshore (greater than 6 nm (11.1 km)) (Harris, pers. comm. 2002). Benthic samples taken where the fish were jumping were comprised of fine sand substrate and lancelets. Although lancelets are recovered less frequently than brachiopods in the stomachs of Suwannee River Gulf sturgeon, this may be a result of quicker decomposition of lancelets during digestion compared to brachiopods. Our designation, therefore, includes waters out to 9 nm (16.7 km) to encompass these areas that we believe are essential for the conservation of the Gulf sturgeon. The northern extent of the tracked sturgeon concentration area depicted in Edwards *et al.* (in prep.) corresponds approximately to the northern-most extremity of Big Pine Island. We, therefore, have chosen that easy-to-identify location for the northern limit of this critical habitat unit. The southern extent of the concentration area depicted in Edwards *et al.* (in prep.) corresponds approximately to Richards Island. In addition to the telemetry data, Gulf sturgeon sightings are frequently reported around Deer Island and Derrick Key (F. Chapman, UF, pers. comm. 2002). Derrick Key is approximately 1 m (1.6 km) offshore of Richards Island. Based on these data, we are designating the southernmost extremity of Richards Island for the southern limit of unit 14.

Although Gulf sturgeon have been relocated both north and south of this critical habitat area (Reynolds, 1993; F. Chapman, pers. comm. 2002; and Edwards *et al.*, in prep.), records are relatively rare and encompass approximately 643.7 km (400 mi) of coastline (from Charlotte Harbor to Apalachicola Bay). While Gulf sturgeon may congregate in additional shallow water areas or migrate throughout the entire area, without additional information we cannot include additional areas as critical habitat.

Land Ownership

Upon statehood in 1811 for Louisiana, 1817 for Mississippi, 1819 for Alabama, and 1845 for Florida, these States were granted ownership of lands beneath tidally influenced and navigable waters up to the high water mark (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). It is possible that prior sovereigns or the States have made grants to private parties which include lands below mean high waters of the navigable waters included within this rule. Thus, this rule may affect limited parcels of private land. However, we believe that the majority of lands designated here as critical habitat are owned by the States of Louisiana, Mississippi, Alabama, and Florida. The majority of riparian lands bordering riverine critical habitat units are in private ownership. Table 3 summarizes public lands adjacent to designated critical habitat units.

TABLE 3.—PUBLIC LANDS ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS

Unit 1. Pearl—Lefleur's Bluff SP, Pearl River WMA, Bogue Chitto NWR, Old River WMA, John C. Stennis Space Center.
Unit 2. Pascagoula—Desoto NF, Pascagoula River WMA, Ward Bayou WMA, MS Sandhill Crane NWR.
Unit 3. Escambia-Lower Escambia River WtrMA, Conecuh NF.
Unit 4. Yellow—Yellow River WtrMA, Eglin Air Force Base, Conecuh NF, Blue Spring WMA, Blackwater River Recreational Area.

TABLE 3.—PUBLIC LANDS ADJACENT TO DESIGNATED CRITICAL HABITAT UNITS—Continued

Unit 5. Choctawhatchee—Choctawhatchee River SF, Choctawhatchee River Delta Preserve, Choctawhatchee River WtrMA.
Unit 6. Apalachicola—Chattahoochee Nature Park, Torreya SP, Apalachicola Bluffs and Ravines Preserve, Apalachicola WMA, Apalachicola River WtrMA, Apalachicola NF, Apalachicola National Estuarine Research Reserve
Unit 7. Suwannee—Ft. Union CA, Holton Creek CA, Suwannee River SP CA, Twin Rivers SF, Madison Co. CA, Anderson Spring CA, Charles Spring CA, Allen Mill Pond CA, Peacock Spring CA, Little River CA, Troy Springs CA, Grady CA, Stuart Landing CA, Hatchbend CA, Rock Bluff CA, Log Landing CA, Wannee CA, Fanning Springs SRA, Andrews WMA, Manatee Springs SP, Fowler's Bluff CA, Cummer Sanctuary, Lower Suwannee NWR, Troy Springs SP, Convict Spring CA, Yellow Jacket CA, Suwannee River SP, Big Shoals SP, Big Shoals CA, Camp Branch CA, Deep Creek CA, Stephen Foster State Folk Culture Center, Suwannee Valley CA, Swift Creek CA, Woods Ferry CA
Unit 8. Lake Borgne, Mississippi Sound, Lake Pontchartrain—Biloxi WMA, Bayou Sauvage NWR, Big Branch Marsh NWR, Grand Bay NWR, Gulf Islands NS, Buccaneer SP, St. Hospital WMA, Fontainebleau SP, St. Tammany SWR, Pearl River WMA, Fort Pike State Historic Site
Unit 9. Pensacola Bay—Gulf Islands NS, Eglin AFB, Pensacola Naval Air Station, Garcon Point WMD, Yellow River WtMR, Lower Escambia River Mgt. Area, Bay Bluffs Park, Escambia Bay Bluffs, Fort Pickens AP, Yellow River Marsh AP
Unit 10. Santa Rosa Sound—Gulf Islands NS, Eglin AFB.
Unit 11. Near Shore GOM—Gulf Islands NS, Eglin AFB (main base and Cape San Blas), St. Vincent NWR, St. Joe SP, Salina Park, Tyndall AFB, St. Andrew SP, Camp Helen SRA, Deer Lake SP, Grayton SRA, Topsail Hill St. Preserve, Henderson SRA, Pensacola Naval Air Station, Perdido Key SRA, Fort Pickens AP, St. Andrew Bay AP, St. Joseph Bay AP
Unit 12. Choctawhatchee Bay—Choctawhatchee River Delta Preserve, Rocky Bayou State Recreation SRA, Eglin AFB, Basin Bayou Recreation Area.
Unit 13. Apalachicola Bay—St. Vincent NWR, St. George Island SP, Apalachicola WMA, Apalachicola National Estuarine Research Reserve, Apalachicola Bay AP
Unit 14. Suwannee Sound—Lower Suwannee NWR, Cedar Keys NWR, Big Bend Seagrasses AP.

*Abbreviations—AFB=Air Force Base, AP=Aquatic Preserve, CA=Conservation Area, NF=National Forest, NS=National Seashore, NWR=National Wildlife Refuge, SCA=State Commemorative Area, SF=State Forest, SP=State Park, SRA=State Recreation Area, SWR=State Wildlife Refuge, WMA=Wildlife Management Area, WMD=Water Management District, WtrMA=Water Management Area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies to all activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat if their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Consultation for Designated Critical Habitat

If a Federal action may affect a listed species or its designated critical habitat, the action agency must initiate consultation with us (50 CFR 402.14). Through this consultation, we would advise the agency whether the action would likely jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, or both.

When we issue a biological opinion that concludes that an action is likely to result in the destruction or adverse modification of critical habitat, we must provide reasonable and prudent alternatives to the action, if any are identifiable. Reasonable and prudent alternatives are actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the proposed action, are consistent with the scope of the action agency's authority and jurisdiction, are economically and technologically feasible, and would likely avoid the destruction or adverse modification of critical habitat (50 CFR 402.02).

Reinitiation of Prior Consultations

Following designation of critical habitat, regulations at 50 CFR 402.16 require a Federal agency to reinitiate consultation for previously reviewed actions that may affect critical habitat and over which the agency has retained discretionary involvement or control.

Activities That May Destroy or Adversely Modify Gulf Sturgeon Critical Habitat

Section 4(b)(8) of the Act requires us, in any proposed or final rule designating critical habitat, to briefly describe and evaluate those activities that may adversely modify such habitat, or that may be affected by such designation, to the maximum extent practicable. Activities that may destroy or adversely modify critical habitat for the Gulf sturgeon, or that may be affected by such designation, include, but are not limited to the following actions when authorized, funded or carried out by a Federal agency:

(1) Actions that would appreciably reduce the abundance of riverine prey for larval and juvenile sturgeon, or of estuarine and marine prey for juvenile and adult Gulf sturgeon, within a designated critical habitat unit, such as dredging; dredged material disposal; channelization; in-stream mining; and land uses that cause excessive turbidity or sedimentation.

(2) Actions that would appreciably reduce the suitability of Gulf sturgeon spawning sites for egg deposition and development within a designated critical habitat unit, such as impoundment; hard-bottom removal for navigation channel deepening; dredged material disposal; in-stream mining; and land uses that cause excessive sedimentation.

(3) Actions that would appreciably reduce the suitability of Gulf sturgeon riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, believed necessary for minimizing energy expenditures and possibly for osmoregulatory functions, such as dredged material disposal upstream or directly within such areas; and other land uses that cause excessive sedimentation.

(4) Actions that would alter the flow regime (the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) of a riverine critical habitat unit such that it is appreciably impaired for the purposes of Gulf sturgeon migration, resting, staging, breeding site selection, courtship, egg fertilization, egg deposition, and egg development, such as impoundment; water diversion; and dam operations.

(5) Actions that would alter water quality within a designated critical

habitat unit, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredging; dredged material disposal; channelization; impoundment; in-stream mining; water diversion; dam operations; land uses that cause excessive turbidity; and release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater via point sources or dispersed non-point sources.

(6) Actions that would alter sediment quality within a designated critical habitat unit such that it is appreciably impaired for normal Gulf sturgeon behavior, reproduction, growth, or viability, such as dredged material disposal; channelization; impoundment; in-stream mining; land uses that cause excessive sedimentation; and release of chemical or biological pollutants that accumulate in sediments.

(7) Actions that would obstruct migratory pathways within and between adjacent riverine, estuarine, and marine critical habitat units, such as dams, dredging, point-source-pollutant discharges, and other physical or chemical alterations of channels and passes that restrict Gulf sturgeon movement.

Previous Section 7 Consultations

Many section 7 consultations for Federal actions affecting the Gulf sturgeon and its habitat have preceded this critical habitat designation. The action agencies have included the USACE, other DOD agencies, the U.S. Coast Guard, the National Park Service, the Federal Highway Administration, the Minerals Management Service (MMS), the Federal Energy Regulatory Commission, and others. We have also conducted intra-service section 7 consultations on our own actions.

Since listing, the FWS has conducted 320 informal and 14 formal consultations, and NMFS has conducted 70 informal and 4 formal consultations involving Gulf sturgeon. The informal consultations, all of which concluded with a finding that the Federal action would not affect or would not likely adversely affect the Gulf sturgeon, addressed a wide range of actions including navigation, beach nourishment, Gulf of Mexico fishery management planning, oil and gas leases, power plants, bridges, pipelines, breakwaters, rip-rap, levees and other flood-protection structures, piers, bulkheads, jetties, military actions, and in-stream gravel mining. The formal consultations, which followed a finding that the Federal action may affect Gulf sturgeon, have dealt exclusively with navigation projects, oil and gas leases, pipelines, review of water quality standards, and disaster recovery activities, and have resulted in biological opinions. Also, the Gulf sturgeon was mentioned in several biological opinions that were triggered by may-affect determinations for other listed species. To date, none of our opinions have concluded that a proposed Federal action would jeopardize the continued existence of the Gulf sturgeon.

Previous biological opinions for the Gulf sturgeon have included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions for the Gulf sturgeon also have included non-discretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of Gulf sturgeon. Section 3(18) of the Act defines the term take as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.''

The conservation recommendations and reasonable and prudent measures provided in previous Gulf sturgeon biological opinions have included enforcement of marine debris and trash regulations; avoidance of dredging and disposal in deeper portions of the channel; monitoring and reporting of ''take'' events during project construction; operation of equipment so as to avoid or minimize take; monitoring of post-project habitat conditions; monitoring of project-area Gulf sturgeon subpopulations; limiting of dredging to the minimum dimensions necessary; limiting of the depth of dredged material placed in disposal areas; arrangement of the sequence of areas for dredging to minimize potential harm; screening of intake structures; avoidance of riverine dredging during spawning months; limiting of tow times of trawl nets for hurricane debris cleanup; addition of specific measures for species protection to oil spill contingency plans; and funding of research useful for Gulf sturgeon conservation.

The designation of critical habitat will only impact those private landowner activities that require Federal funding or permits. Designation of critical habitat is applicable to all activities approved, funded, or carried out by Federal agencies.

Jurisdictional Responsibilities for the Management of the Gulf Sturgeon

When the Gulf sturgeon was listed on September 30, 1991 (56 FR 49653), the Services had not resolved jurisdictional responsibilities for the management of the Gulf sturgeon. Both Services signed the listing rule in agreement that the species required protection. The final listing rule stated that until the jurisdictional issue was resolved, the FWS would be responsible for the species once the listing became effective. Although the issue has never been formally resolved, we have been operating under a verbal agreement in which the FWS maintains the lead for recovery actions. Consultation responsibilities were divided, with the FWS performing consultation review for projects impacting the Gulf sturgeon in the riverine and estuarine habitats, and NMFS performing consultation review for projects affecting the species in marine habitats.

We formalize here Gulf sturgeon jurisdictional responsibilities. In order to enhance consultation coordination efficiency for the action agencies, the following structure is adopted. The FWS will maintain primary responsibility for recovery actions in fresh water and the NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, EPA, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the DOD, USACE, MMS, and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. For any Federal projects that extend into the jurisdiction of both the Services, as defined above, FWS will be the lead consulting agency, and coordinate internally with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

Exclusions Under Section 4(b)(2)

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 areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with the recent decision in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made publically available for review on August 8, 2002. We accepted comments on the draft analysis until October 7, 2002.

Our draft economic analysis evaluated the potential future section 7 effects, including indirect effects, associated with designating critical habitat for the Gulf Sturgeon. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the designation of critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) indirect economic impacts on local industries and enterprises resulting from the physical changes to habitat areas that may be associated with project modifications (*e.g.*, regional economic impacts). The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency.

Following the close of the comment period on the draft economic analysis, a final analysis was completed that incorporated public comments on the draft analysis and made other changes in the draft. Based on the draft and final economic analyses, and in consideration of all other relevant impacts of the designation, the Services are excluding under Section 4(b)(2) major shipping channels, as identified on standard navigation charts and marked by buoys, in the following three units:

(1) *Unit 2. Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi.*—The major shipping channel of this unit is the southernmost 2.4 km (1.5 mi) of the Pascagoula River. The specific area excluded extends from the river mouth (rkm 0 (rmi 0)) to the river crossing with the CSX railroad bridge, approximately 2.4 km (1.5 mi) north of the river mouth. This channel is generally marked on the USACE's Alabama-Mississippi stream mileage tables with drainage areas (USACE 1985).

(2) *Unit 8. Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.*—The major shipping channel of this unit is the GIWW and the approach channels to the Port of Pascagoula. Both channels are generally marked on USGS topographic maps and maps published for the public by the Corps of Engineers. The specific areas being excluded are marked by navigation buoys maintained by the U.S. Coast Guard.

(3) *Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.*—The major shipping channels of this unit are in the southern portion of Pensacola Bay and serve the Port of Pensacola and the Pensacola Naval Air Station. These channels are generally marked on USGS topographic maps and maps published for the public by the Corps of Engineers. The specific areas being excluded are marked by navigation buoys maintained by the U.S. Coast Guard.

The Services have decided to exclude these areas after balancing the benefits of excluding against the benefits of including such areas as critical habitat. In the absence of other relevant factors, if excluding an area from a critical habitat designation will relieve a negative economic impact, and at the same time including the area fails to confer a counter-balancing positive benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

The benefits of including these areas in the critical habitat designation is low. While Units 2, 8, and 9 are essential to the conservation of the Gulf sturgeon, the navigation channels contained within each of these units constitutes a small proportion of the individual unit. In areas that are frequently maintained by dredging (*e.g.* entrance channels to the Port of Pascagoula), the primary constituent elements for sturgeon that are still present in the channels are unlikely to be appreciably diminished from their current baseline by Federal actions in the channels.

In Unit 2, Gulf sturgeon use the West and East distributaries of the Pascagoula River during spring and fall migrations (Ross *et al.*, 2001b). Summer resting areas have been consistently documented on the Pascagoula River (Ross *et al.*, 2001a and b). The Pascagoula River Harbor is on the East Pascagoula River distributary, a small portion of this overall unit, but consistently used for migration.

Unit 8 provides juvenile, subadult and adult feeding, resting, and passage habitat for Gulf sturgeon from the Pascagoula and the Pearl River subpopulations. The Mississippi Sound is separated from the Gulf of Mexico by a chain of barrier islands, including Cat, Ship, Horn, and Petit Bois Islands. Natural depths of 3.7 to 5.5 m (12 to 18 ft) are found throughout the Sound and a channel 3.7 m (12 ft) deep has been dredged where necessary from Mobile Bay to New Orleans (USDOC, 2002). Incidental captures and recent studies confirm that both Pearl River and Pascagoula River adult Gulf sturgeon winter in the Mississippi Sound, particularly around barrier islands and barrier islands passes (Reynolds, 1993; Ross *et al.*, 2001a; and Rogillio *et al.*, 2002). Gulf sturgeon are frequently found at the mouths of the barrier island passes (Ross *et al.*, 2001a) adjacent to channels used by recreational and commercial craft entering and exiting the Gulf of Mexico. The GIWW is a small band traversing this unit from east to west.

Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The Pensacola Bay system includes five interconnected bays, including Escambia Bay, Pensacola Bay, Blackwater Bay, East Bay, and the Santa Rosa Sound. The Escambia River and its distributaries (Little White River, Dead River, and Simpson River) empty into Escambia Bay, including Bass Hole Cove, Saultsmar Cove, and Macky Bay. The Yellow River empties into Blackwater Bay. The entire system discharges into the Gulf of Mexico, primarily through a narrow pass at the mouth of Pensacola Bay. The major shipping channel in this unit is the GIWW and extends to the Port of Pensacola and Pensacola Naval Air Station.

The Pensacola Bay system provides winter feeding and migration habitat for

Gulf sturgeon from the Escambia River and Yellow River subpopulations. Sturgeon movement through this area is generally along the shoreline area of Pensacola Bay. Gulf sturgeon showed a preference for several areas in the bay, including Redfish Point, Fort Pickens, and Escribano Point, near Catfish Basin (FWS, 1998; and Craft *et al.*, 2001). Sandy shoal areas, located along the south and east side of Garcon Point, south shore of East Bay (Redfish Point area) and near Fair Point, appear to be commonly used, especially in the fall and early spring. During midwinter, sturgeon are commonly found in deep holes located north of the barrier island at Ft. Pickens, south of the Pensacola Naval Air Station, and at the entrance of Pensacola Pass. The depth in these areas ranges from 6 to 12.1 m (20 to 40 ft). Other areas where tagged fish were frequently located include Escribano Point, near Catfish Basin, and the mouth of the Yellow River. Previous incidental captures of Gulf sturgeon have been recorded in Pensacola Bay, Big Lagoon, and Bayou Grande (Reynolds, 1993; and Lorio, 2000).

In sum, the Services believe that a critical habitat designation for the Gulf sturgeon would provide a relatively low level of additional regulatory conservation benefit to the species.

(2) Benefits of Exclusion

A major economic impact identified in the draft economic analysis was on dredging projects of the USACE. USACE plans the location and timing of dredging projects to ensure that channel reliability is always maintained. Frequency of dredging varies widely, from almost annual maintenance dredging to once every ten or twenty years, depending on the level of use of the waterway for shipping and the natural rate of sediment deposition. The major navigation channels must be maintained to Congressionally authorized depths and widths to allow shippers to enter ports. Failure to maintain the navigation channels accordingly greatly affects shippers who may be forced to use smaller vessels, light load (*i.e.*, remove shipped goods to reduce weight and therefore the depth of the barge), use alternative modes of transport, such as rail or truck transport, or travel on to another port. All of these alternatives increase the cost of transporting goods. In extreme cases, commercial facilities may close and economic activities may transfer to other locations.

The major risks of dredging projects to sturgeon are entrainment in dredges, prevention of migratory passage through channels and inlets due to blockage by large dredges, elevated turbidity causing increased siltation on feeding or spawning areas, and possible removal of food prey. Numerous formal and informal consultations on dredging activities are anticipated in the proposed critical habitat units over the next ten years.

Potential project modifications specific to dredging and disposal projects, and for which we have concerns regarding their potential implications, include:

• *Minimize extent of dredging activity.* In past consultations, FWS has requested that proposed dredging projects be limited to proposed depths only. Less likely, USACE could avoid dredging in deeper portions of the channel for riverine dredging projects, limit dredging of navigation channels to the minimum dimensions necessary, avoid performing advanced maintenance activities, or use silt curtains to enclose dredging sites when dredging in shallow water. For hydraulic dredging, USACE may raise the cutter head above the bottom during pipeline clearing and keep it as close to the surface as practicable while water is being pumped from the pipeline.

• *Sequence dredging.* For example, if a dredging project includes both a river mouth and a channel into a bay, USACE may arrange the project to dredge the estuary first and dredge the river second so that areas more sensitive to turbidity and hypoxia are dredged during a cooler time frame.

• *Dredging windows.* USACE has expressed concern about the effect of dredging windows on its operations. In past informal consultations, dredging windows have been recommended to avoid entrainment in the dredge or the preclusion of movement past the dredge during migratory periods, since avoiding work during times when sturgeon are known to be in the direct vicinity of the project is the most effective way to avoid harm to the species. If USACE cannot avoid dredging within the time frames suggested in an informal consultation, USACE will likely need to initiate a formal consultation with the Services during which modifications to the project other than dredging windows would be considered.

It is possible that critical habitat could influence the Services to be more likely to impose one or more of these measures to prevent habitat modification.

If dredging windows and other measures are required in consultation, the present value of expected direct costs of implementation of section 7 for these activities that may affect the sturgeon or its habitat over the next ten years would exceed the projected $22.7 million cost of consultations on operation and maintenance of navigation projects set forth in the final economic analysis. This section 4(b)(2) analysis also considered the possibility that the greater costs projected in the draft economic analysis may be incurred. Forecast costs are associated with expected administrative requirements and project modifications that may be recommended by the Services during the consultation process. To the extent that project modifications due to a critical habitat designation may result in delays or a reduction in channel capacity, the secondary economic effects may be high.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding major shipping channels as critical habitat outweigh the benefits of including them as critical habitat for the Gulf sturgeon. This conclusion is based on the following factors: The benefits of designating critical habitat in the major shipping channels of these units is low because the areal extent of the shipping channels is a very small proportion of the entire unit. In addition the frequently maintained portions of the major shipping channels are altered to an extent that any primary constituent elements for sturgeon that are still present in the channels are unlikely to be appreciably diminished from their current baseline by Federal actions in the channels. The benefits of excluding these areas may be high if critical habitat designation were to increase the frequency of modifications to dredging practices or result in delays in maintaining channel depth. Therefore, the Services believe that the benefits of exclusion outweigh the benefits of including these areas as critical habitat.

(4) Exclusions Within These Units Will Not Cause Extinction of the Species

These exclusions will not cause the extinction of the Gulf sturgeon. Although the shipping channels may provide food resources needed in the winter months, other large areas of prey and corridors for migration are available in the remainder of the units to prevent the extinction of the species.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific 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 when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the proposed designation. The draft analysis was made publicly available for review on August 8, 2002. We accepted comments on the draft analysis until October 7, 2002. Our draft economic analysis evaluated potential future effects associated with the listing of the Gulf sturgeon as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. The categories of potential costs considered in the analysis included the costs associated with (1) conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations, reinitiated consultations, and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and perceived impacts on markets resulting from the designation of critical habitat and (4) potential offsetting beneficial costs associated with critical habitat.

The majority of consultations resulting from the critical habitat designation for Gulf sturgeon are likely to address dredging and sediment disposal activities to support navigation, shoreline stabilization, water quality standards, military actions, road and bridge construction, oil and gas leases in Federal waters and permitting of oil and gas pipelines. As described in the draft economic analysis, all areas included in the designated critical habitat are occupied, with the fish also occurring in areas not included in the critical habitat designation.

Following the close of the comment period on the draft economic analysis, a final revision was completed which incorporated public comments on the draft analysis. Based on comments, the cost of consultations was revised. Subsequently, the revised economic analysis concluded that the designation may result in approximately $3,310,000 to $4,953,000 per year in potential economic impact due to the total effects of critical habitat, including those effects resulting co-extensively from listing the species. Given the uncertainty regarding the implementation of project modifications for predicted projects concerning dredging and disposal modifications, a probability of adoption ratio was used in the final economic analysis based on the rate that the Services recommended various modifications in past formal and informal consultations where the proposed action would have impacted the sturgeon as well as its habitat.

Only those areas essential to the conservation of the Gulf sturgeon have been included in the critical habitat designation; the designation does not encompass the entire area currently occupied or utilized by the species, nor does it include any currently unoccupied areas. The economic analysis documents that the costs of including any particular unit range from $1,300 to $380,000 annually in administrative costs of consultation over 10 years (the low value represents the lowest per unit estimate of costs attributable solely to critical habitat designation and the high value represents the highest per unit estimates of costs attributable co-extensively with listing). Total co-extensive administrative cost across all units over 10 years range between $705,600 and $2,348,600 per year. Project modification costs for this analysis could not be attributed to any one unit, given the nature of the projects. However, total co-extensive costs of project modifications across all units over 10 years are estimated to be $2,604,000 annually; if the approximate one-to-one ratio of total administrative costs to total project modification costs reflects the per unit ratio of these costs, then the highest upper-bound per unit estimate of critical habitat designation would be approximately $700,000 per year over 10 years. Sixty-five percent of the total upper-bound costs estimated to be attributable to critical habitat designation are expected to consist of federal agency costs.

Required Determinations

Regulatory Planning and Review

As required by Executive Order 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to the Office of Management and Budget (OMB) for review. The OMB determined that this rule may raise novel legal or policy issues and found it to be a significant rule.

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 Fairness 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 a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the Gulf sturgeon will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). 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 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.). 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.

The vast majority of the designated critical habitat for the Gulf sturgeon, with few exceptions, is public land involving river, stream, estuary, or marine habitat. Activities with Federal involvement that may require consultation regarding Gulf sturgeon and its critical habitat include: activities regulated under the Clean Water Act, the Rivers and Harbors Act of 1899, and/or various Coast Guard authorities. Small entity economic activities that may require Federal authorization or permits include energy-related activities such as pipelines, harbors, and platforms; residential development including docks, piers, bridges, and shoreline protection; boating-related projects of small communities; private port operation including maintenance dredging and docks; small water supply or hydropower projects; and high speed marine events.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the draft analysis, we found that the future section 7 consultations resulting from the listing of the Gulf sturgeon and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $43.4 million to $57.2 million over the next 10-year period. Public comment on the draft economic analysis led to a revision of third party cost estimates that would result from section 7 consultations. The changes in cost estimates are discussed and reflected in the revised final Economic Analysis of Critical Habitat Designation for the Gulf Sturgeon (Industrial Economics, Inc. 2003), where we found that the future section 7 consultations resulting from the listing of the Gulf sturgeon and the proposed critical habitat could potentially impose total economic costs for consultations and modifications to projects in the range of between $33.1 million to $49.5 million over the next 10-year period.

In considering whether this critical habitat designation would have a significant economic impact on a substantial number of small entities, we examined the total estimated section 7 costs calculated in earlier sections of this report, including those impacts that may be ''attributable co-extensively''with the listing of the species. This results in a conservative estimate (*i.e.*, more likely to overstate impacts than understate them), because it utilizes the upper bound impact estimate from the earlier analysis. Using this approach, the economic analysis estimated that fewer than 6 small entities per year, would experience significant economic impacts. We do not believe this constitutes a substantial number of small entities. Therefore, the Services are certifying that the designation of critical habitat for the Gulf sturgeon will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the draft economic analysis and the final economic analysis, we determined that designation of critical habitat would not cause (a) any annual effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis (Industrial Economics, Inc., 2003) for a complete discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' In order to ensure that Federal agencies ''appropriately weigh and consider the effects of the Federal government's regulations on the supply, distribution, and use of energy,'' the President has directed agencies to prepare and submit to the OMB's Office of Information and Regulatory Affairs a ''Statement of Energy Effects'' for their ''significant energy actions.'' The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared with the regulatory action under consideration:

(1) Reductions in crude oil supply in excess of 10,000 barrels per day;

(2) Reductions in fuel production in excess of 4,000 barrels per day;

(3) Reductions in coal production in excess of 5 million tons per year;

(4) Reductions in natural gas production in excess of 25 million mcf;

(5) Reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity;

(6) Increases in energy use required by the regulatory action that exceed the thresholds above;

(7) Increases in the cost of energy production in excess of one percent;

(8) Increases in the cost of energy distribution in excess of one percent; or

(9) Other similarly adverse outcomes.

There is one hydropower project located upstream of critical habitat Unit 6. Accordingly, we assessed the potential for a significant effect to energy supply, distribution, or use as relevant to this analysis in the final addendum to the economic analysis, reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity.

The Gulf region derives a very small portion of its overall power supply from hydropower. Electricity supply and capacity data are collected and reported by the North American Reliability Council (NERC). Of its ten regional councils, the Southeastern Electrical Reliability Council (SERC) is the most contiguous with areas potentially affected by critical habitat for the Gulf sturgeon. The geographic area covered by the Southern section of SERC includes most of Alabama and Georgia, southeastern Mississippi, and the Florida panhandle. Another section of SERC, Entergy, covers southwestern Mississippi, the Gulf coast Louisiana, and portions of other States. Peninsular Florida is not covered by SERC, but by the Florida Reliability Coordinating Council (FRCC). Peak summer demand reached 43,736 megawatts for the Southern region and 25,747 megawatts for the Entergy region in 2001.

Only one dam located upstream and adjacent to the critical habitat Unit 6 supplies hydropower. Located near the Florida-Georgia border in Chattahoochee, Florida, the Jim Woodruff Dam is one of 23 hydropower sites operated by the USACE that generate power. The electric power and energy generated at Jim Woodruff Dam is marketed by the Federal Southeastern Power Administration for the wholesale energy market. Of the total installed

capacity of 3,092 megawatts, the Jim Woodruff Dam represented 30 megawatts, or less than one percent of Southeastern Power Administration market capacity during fiscal year 1999. In terms of actual volume marketed, the facility provided 205 gigawatt hours during fiscal year 1999, or 3.6 percent of the Southeastern Power Administration total. Based on data from 1995, USACE estimated total electricity capacity in the Apalachicola-Chattahoochee-Flint (ACF) Basin to be 6,657 megawatts. Of this total, 652 megawatts represent hydropower capacity. Compared to 2001 Southern region peak summer demand, hydropower units located in the ACF Basin contribute a small percentage of total regional electricity demand.

In 2001, Florida had a summer peak demand of 38,285 megawatts out of a total summer peak capacity of 42,609 megawatts. Coal, natural gas, oil, and nuclear sources fuel most of the State's energy needs. Electricity derived from hydropower from the Jim Woodruff Dam can account for only a small fraction of Florida's statewide capacity.

The maximum installed capacity for Jim Woodruff Dam is 30 MW (30,000 KW). Therefore, even when viewed in the context of a worst-case scenario, in which implementation of section 7 of the Act results in significant operational changes, however unlikely, to this hydropower project, the total capacity is 30 MW (30,000 KW) of hydroelectricity, so the impact on these hydropower facilities could not exceed the 500 MW (500,000 KW) threshold.

Therefore, even in the worst case scenario, implementation of section 7 for the Gulf sturgeon will not result in a ''reduction in electricity production in excess of 500 megawatts of installed capacity'' or an ''increase in the cost of energy production in excess of one percent.'' Consequently, this rule will not have a ''significant adverse effect'' on the supply, distribution, or use of energy, 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) This rule 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 Federal agencies funding, permitting, or authorizing other activities must ensure that their actions will not adversely affect the critical habitat.

(b) For the reasons described in the economic analysis and this final rule, this rule will not produce a Federal mandate on State, local, or tribal governments of $100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Since the critical habitat includes only aquatic areas that are generally held in public trust, we believe that little or no private property is included in the designation. Based on current public knowledge of the species protection and the prohibition against take of the species both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of both the listing and the proposal to designate critical habitat with, appropriate State resource agencies in Louisiana, Mississippi, Alabama, and Florida. The designation of critical habitat for the Gulf sturgeon imposes no restrictions in addition to those currently in place, and, therefore, has little additional impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation 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 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor of the Department of the Interior has determined that the rule does not unduly burden the judicial system and meets 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 that are essential for the conservation of the Gulf sturgeon. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with permits under the Act are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. Detailed information for Endangered Species Act documentation appears at 50 CFR 17. 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

The FWS has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Act. The FWS published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

The proposed rule stated that NMFS had determined that this action is categorically excluded from NEPA requirements. However, NMFS had not at that time finalized its NEPA analysis for this rule. In response to comments received on the proposed rule (see comment 16), and based on additional research and deliberation, NMFS has concluded that the FWS position is

correct, and that NEPA does not apply to designation of critical habitat under the Act.

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 Interior's manual at 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 the Gulf sturgeon. Therefore, designation of critical habitat for the Gulf sturgeon has not been designated on Tribal lands.

References Cited

A list of references is available upon request (see **ADDRESSES.**)

Authors

The primary authors of this document are Patty Kelly, FWS, (850/769–0552, extension 228); and Stephania Bolden and Jennifer Lee, NMFS, (727/570–5312) (see **ADDRESSES** section).

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 226

Endangered and threatened species.

Regulation Promulgation

For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, and part 226, subchapter C of chapter II, title 50 of the Code of Federal Regulations, as follows:

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 the ''Sturgeon, Gulf'' under ''FISHES'' in the List of Endangered and Threatened Wildlife 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						
*	*	*	*	*	*	*	
FISHES:							
*	*	*	*	*	*	*	
Sturgeon, Gulf	*Acipenser oxyrinchus (=oxyrhynchus) desotoi*.	U.S.A. (AL, FL, GA, LA, MS).	Entire	T	444	17.95(e), 226.214	17.44(v)
*	*	*	*	*	*	*	

3. Amend § 17.95(e) by adding critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes. * * *

Gulf Sturgeon (*Acipenser oxyrinchus desotoi*)

(1) Critical habitat units are depicted for Louisiana, Mississippi, Alabama, and Florida on the maps below.

(2) The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include:

(i) Abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages;

(ii) Riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay;

(iii) Riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions;

(iv) A flow regime (*i.e,.* the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, egg sheltering, resting, and larvae staging;

(v) Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;

(vi) Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and

(vii) Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (*e.g.* a river unobstructed by any permanent structure, or a dammed river that still allows for passage).

(3) Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The FWS will maintain primary responsibility for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be

responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the Department of Defense, U.S. Army Corps of Engineers, Minerals Management Service and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS with internal coordination with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

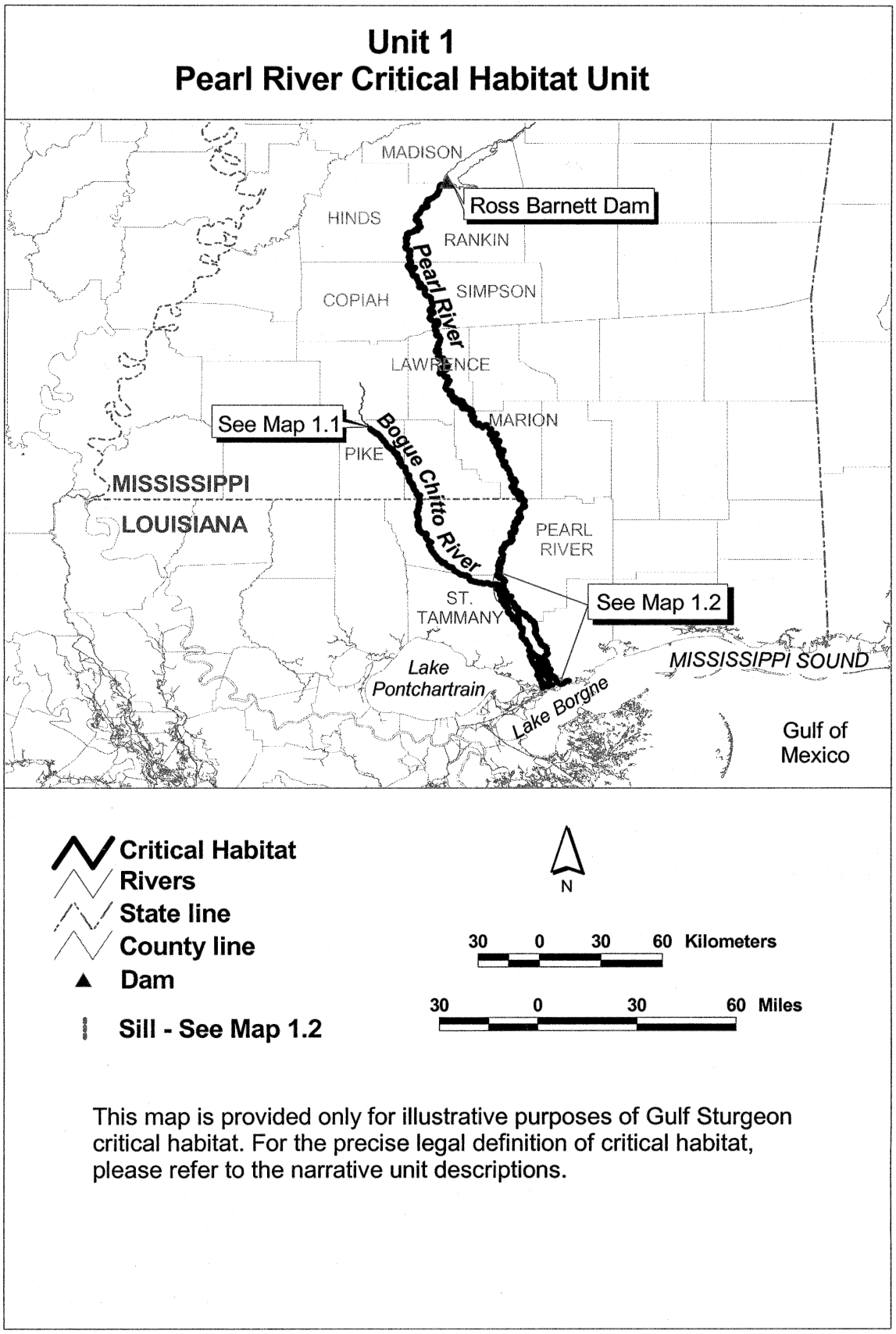
(4) The textual unit descriptions below are the definitive source for determining the critical habitat boundaries. General location maps by unit are provided at the end of each unit description and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(5) *Unit 1:* Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi.

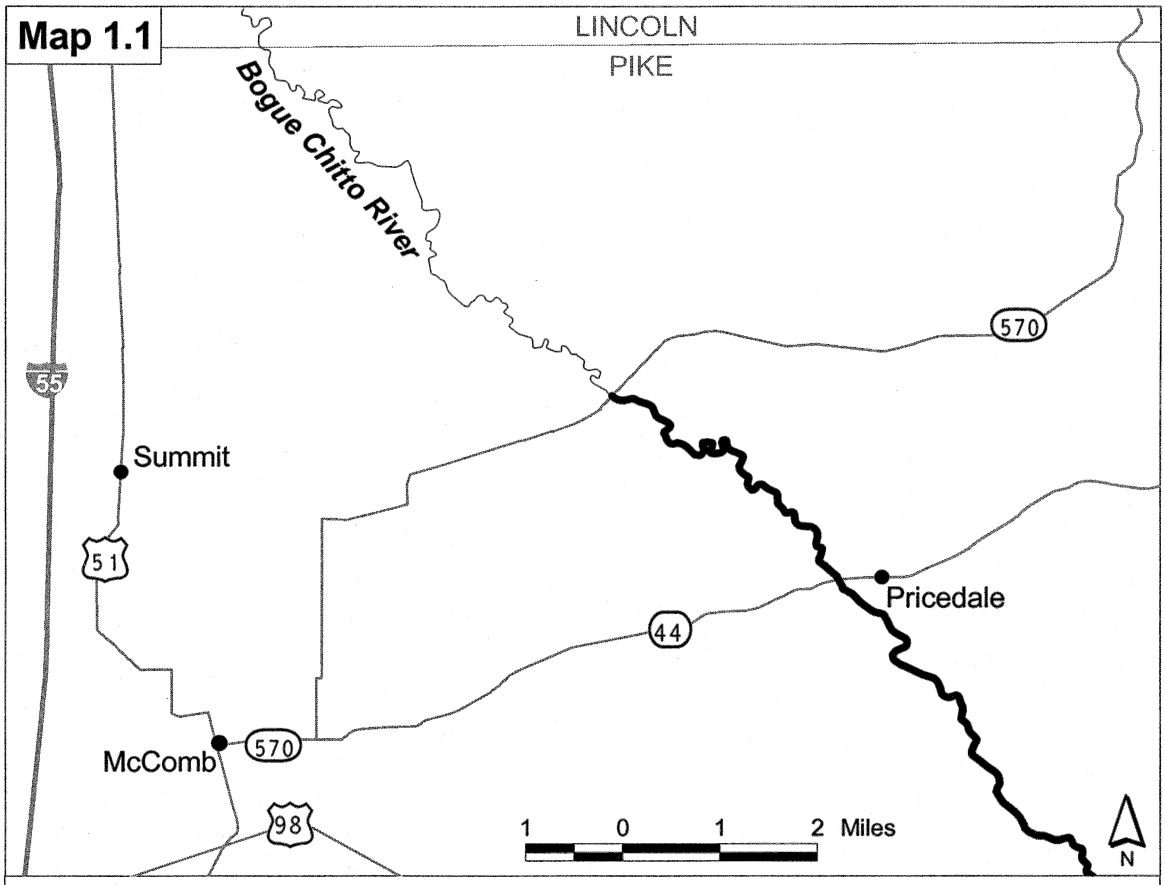
(i) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(ii) Maps of Unit 1 follow:

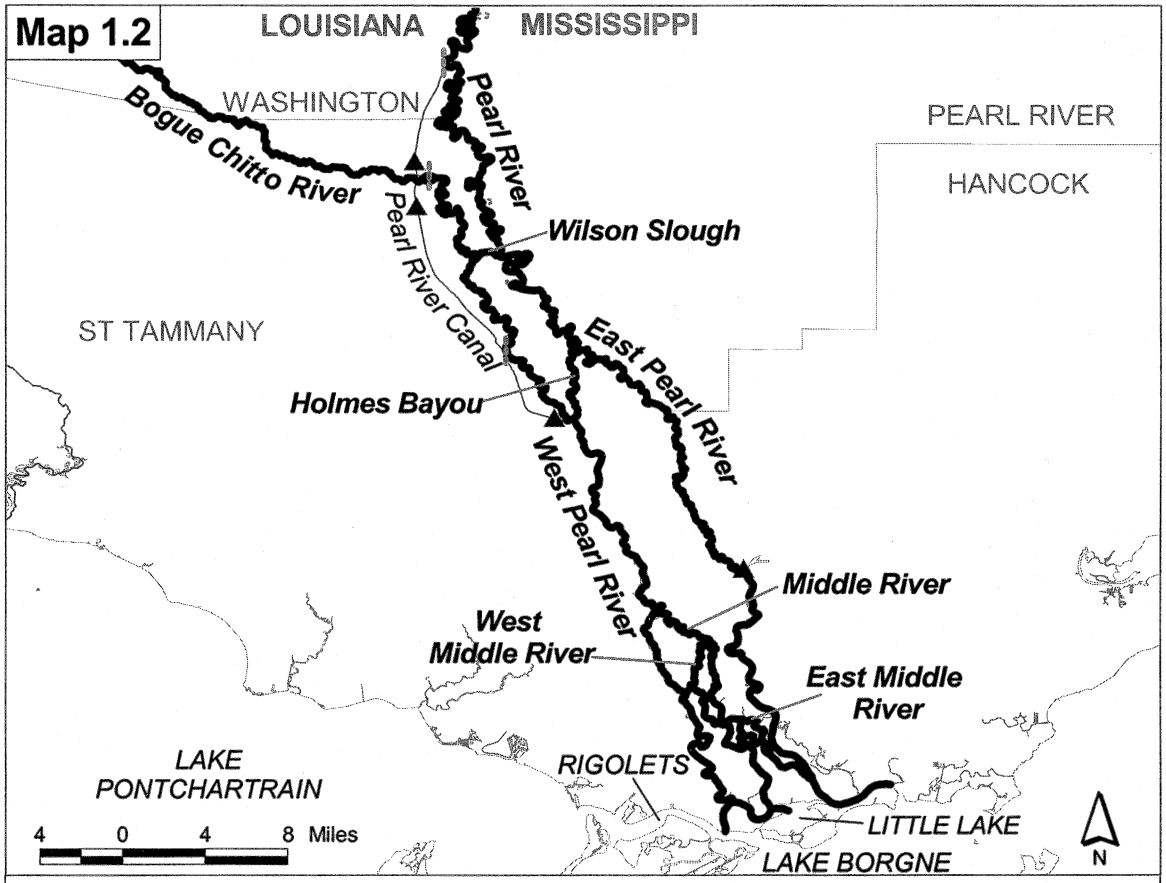
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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



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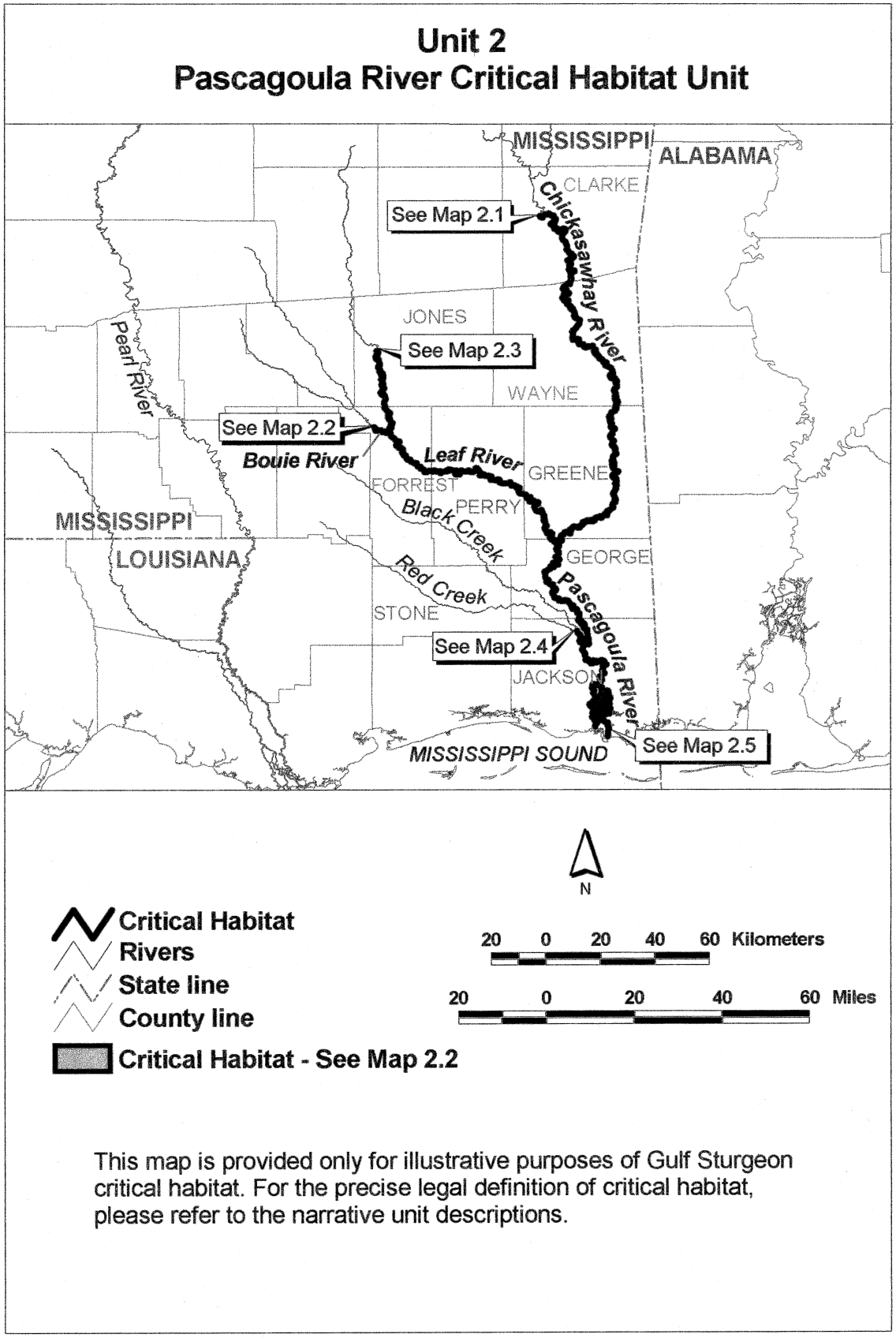
(6) *Unit 2:* Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi.

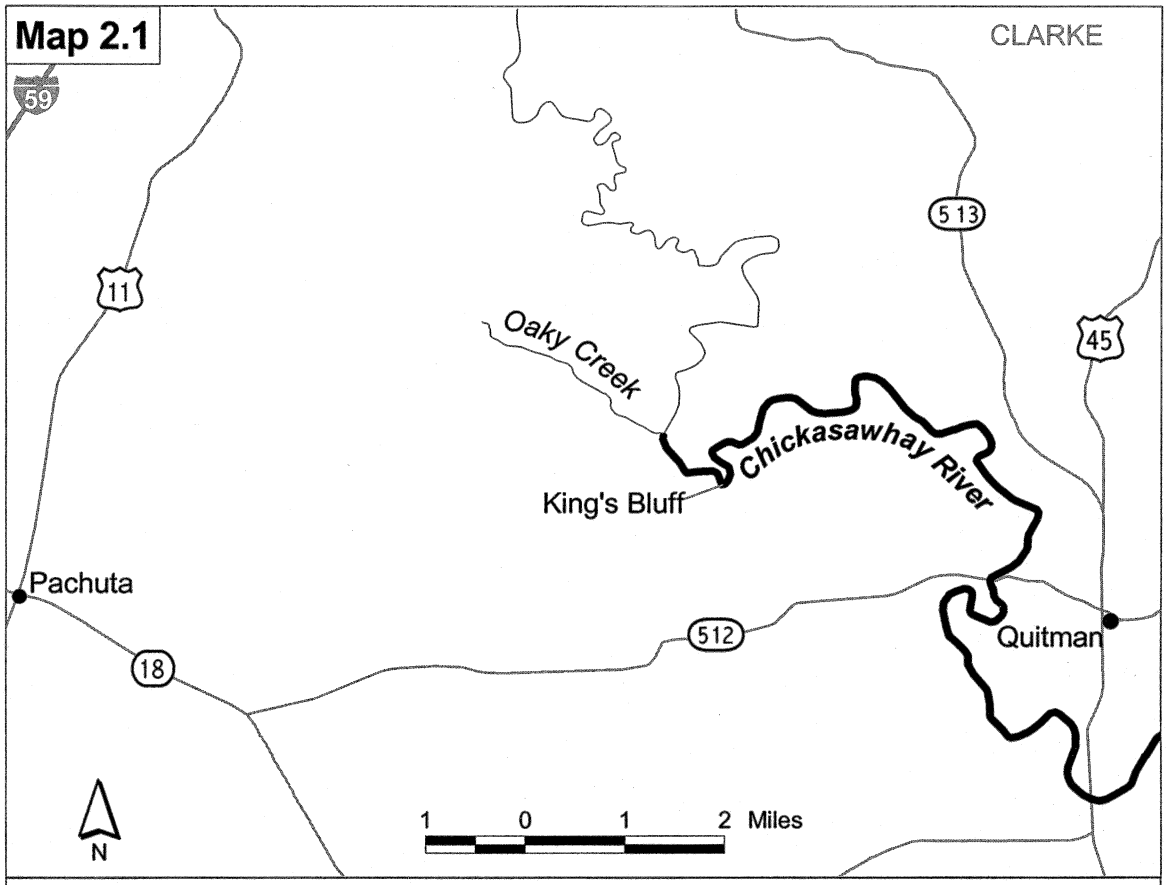
(i) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.

(ii) Major shipping channels in this unit are excluded under section 4(b)(2) of the Act.

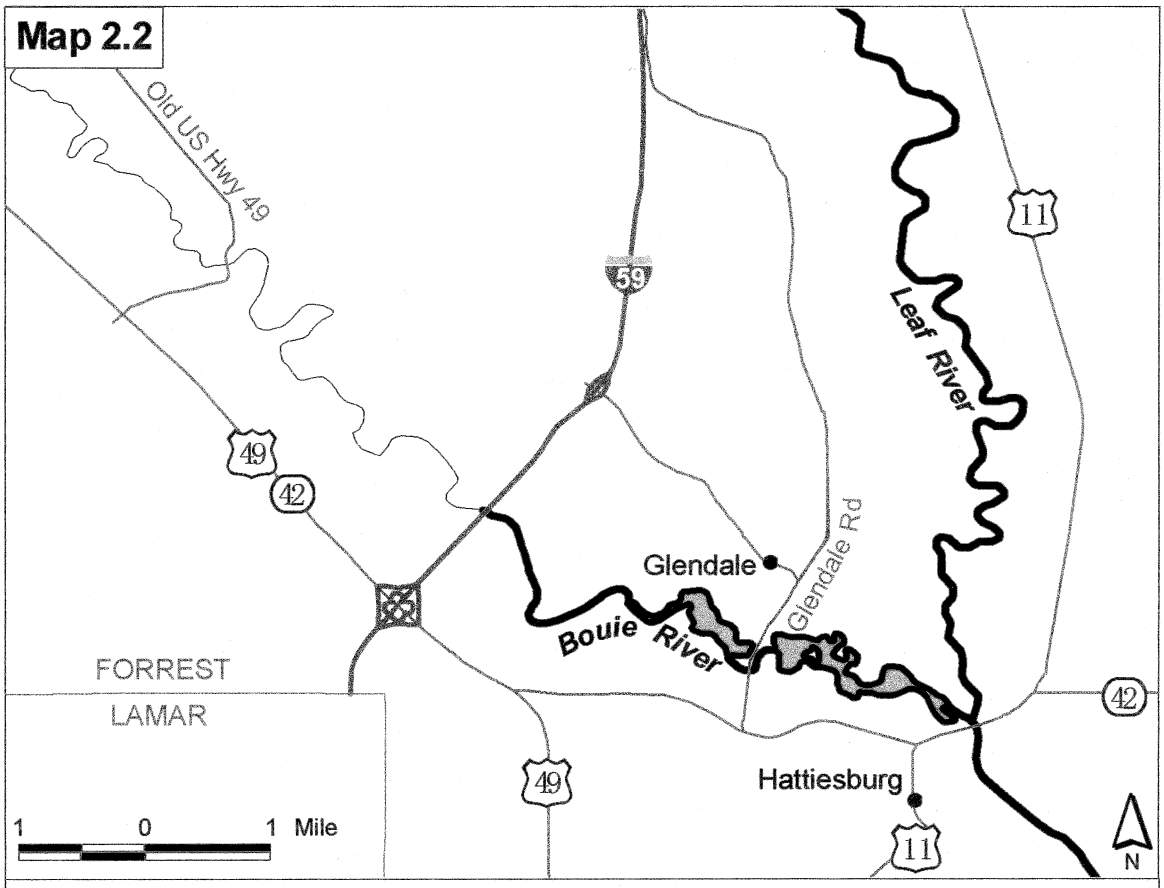
(iii) Maps of Unit 2 follow:

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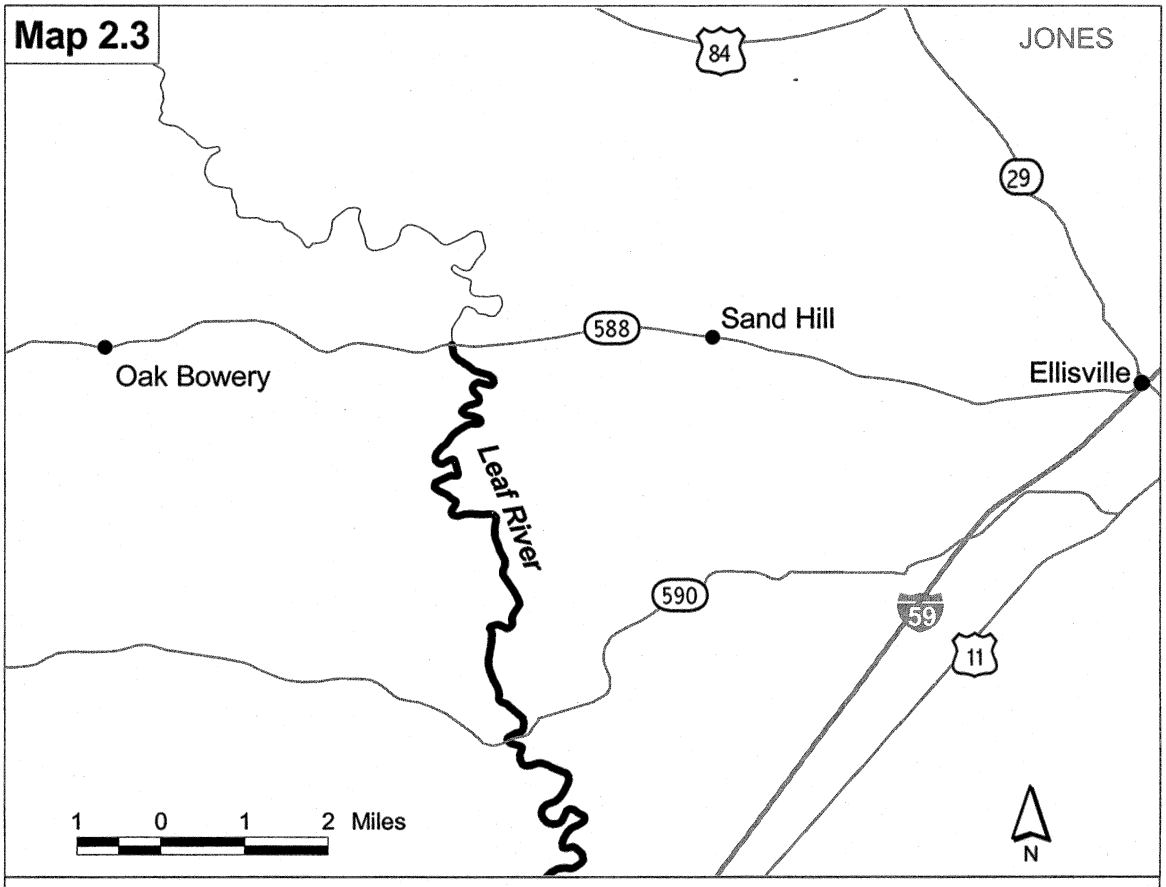

Unit 2
Pascagoula River Critical Habitat Unit
MISSISSIPPI
ALABAMA
CLARKE
See Map 2.1
Chickasawhay River
JONES
See Map 2.3
Pearl River
WAYNE
See Map 2.2
Bouie River
Leaf River
GREENE
FORREST
PERRY
Black Creek
MISSISSIPPI
LOUISIANA
GEORGE
Red Creek
Pascagoula River
STONE
See Map 2.4
JACKSON
MISSISSIPPI SOUND
See Map 2.5
N
Critical Habitat
Rivers
State line
County line
Critical Habitat - See Map 2.2
20 0 20 40 60 Kilometers
20 0 20 40 60 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



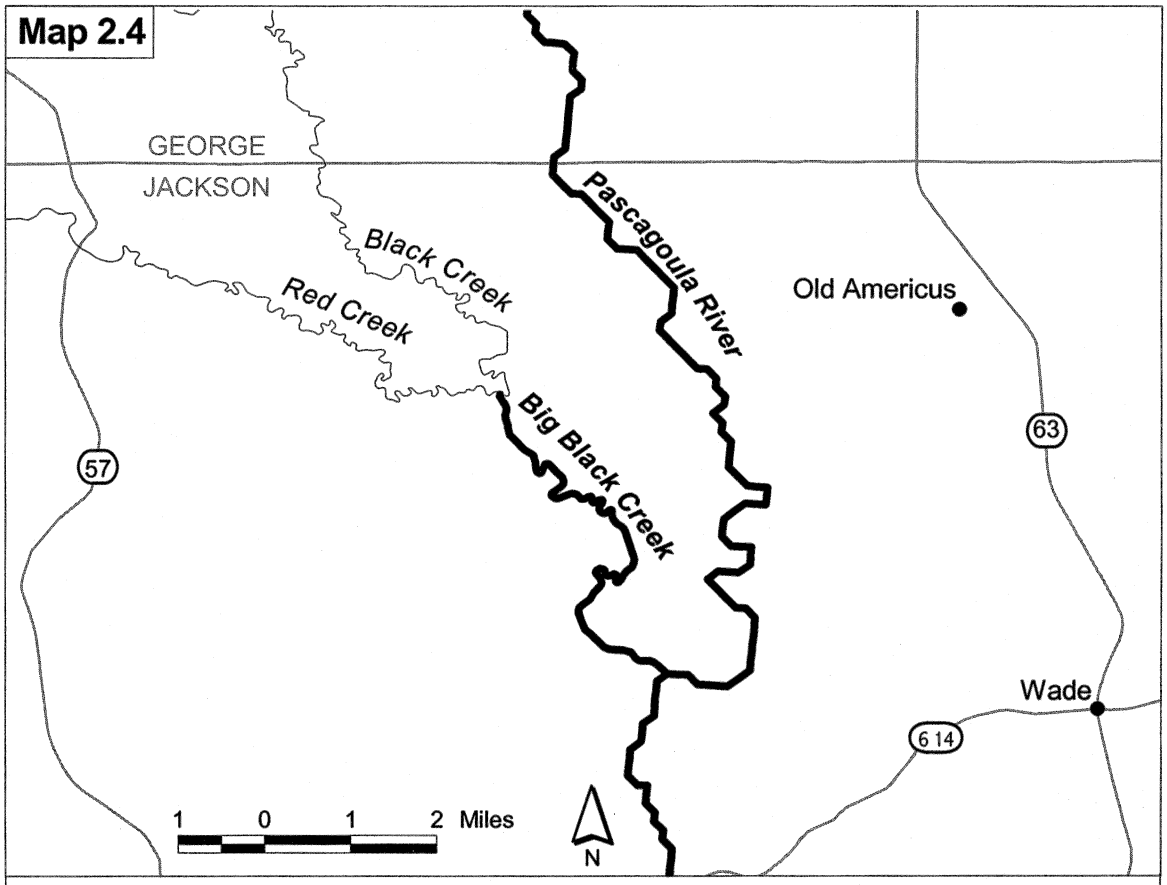
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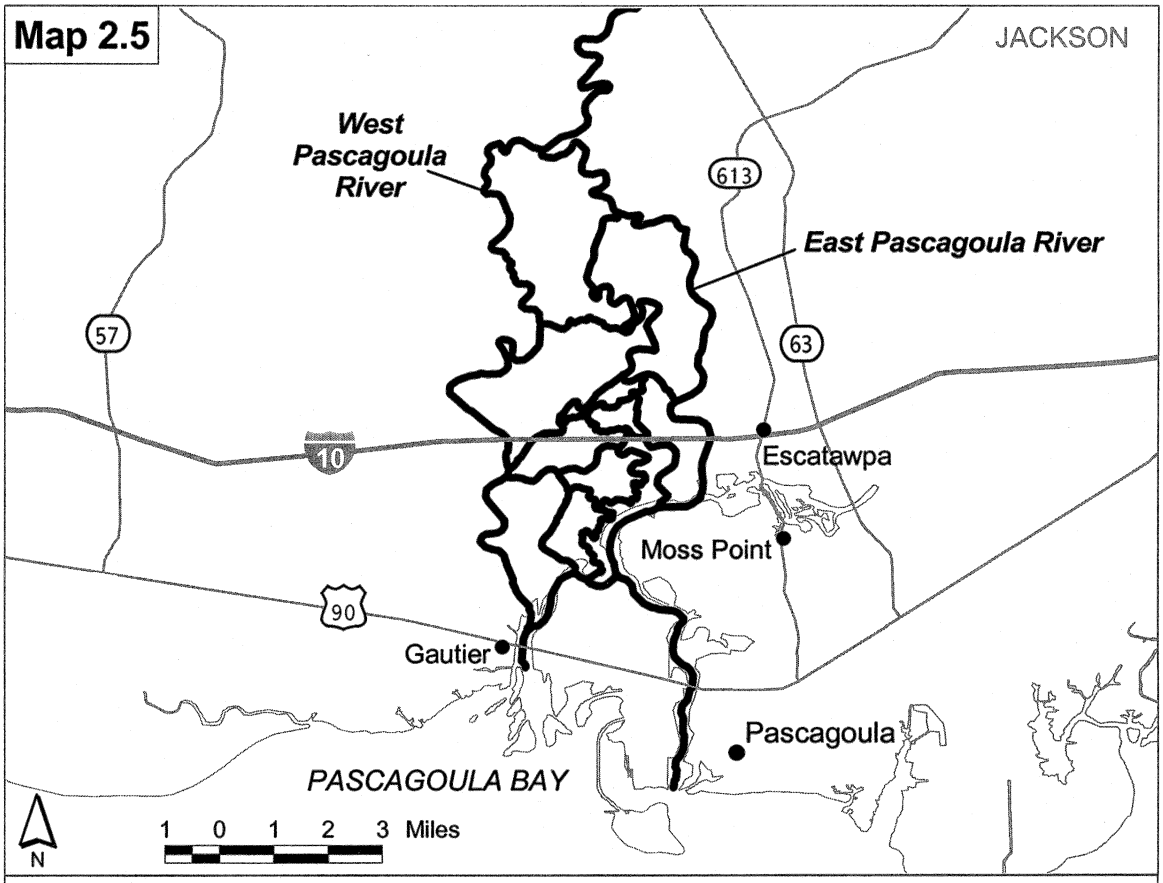
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



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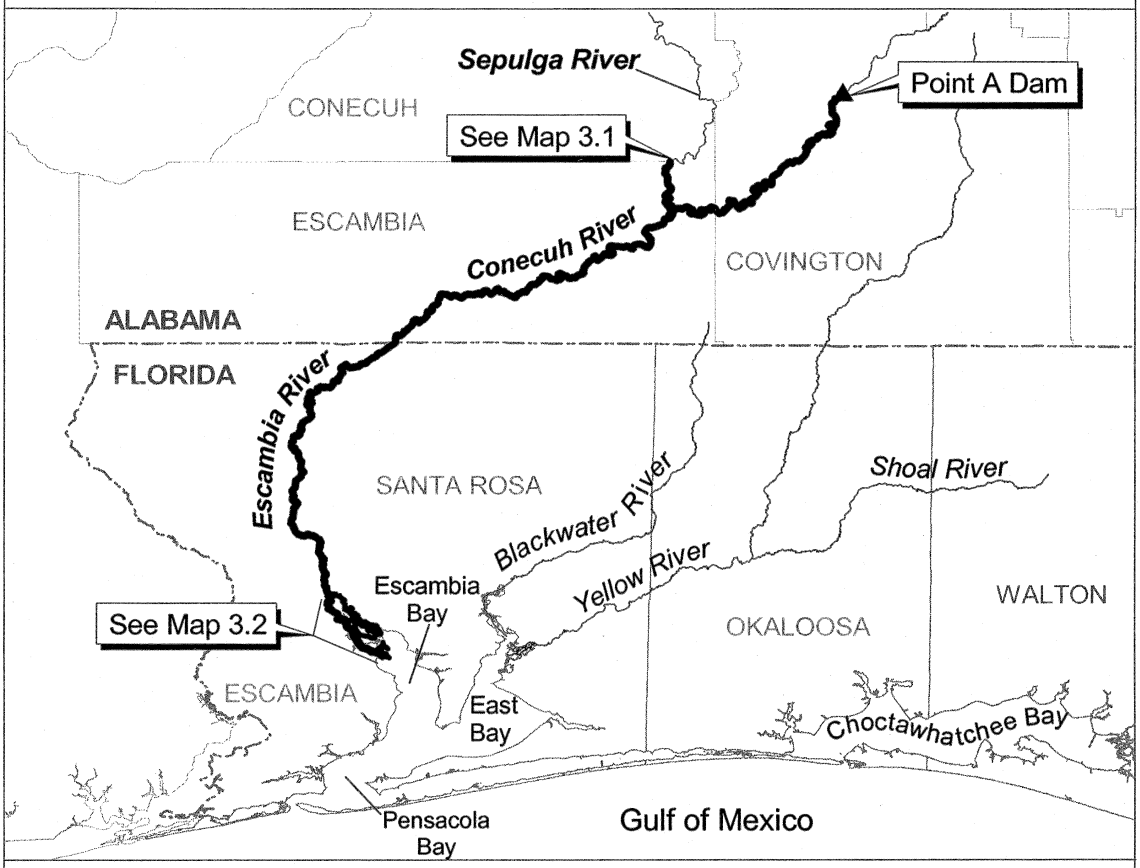
(7) *Unit 3:* Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama.

(i) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(ii) Maps of Unit 3 follow:

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Unit 3
Escambia River Critical Habitat Unit



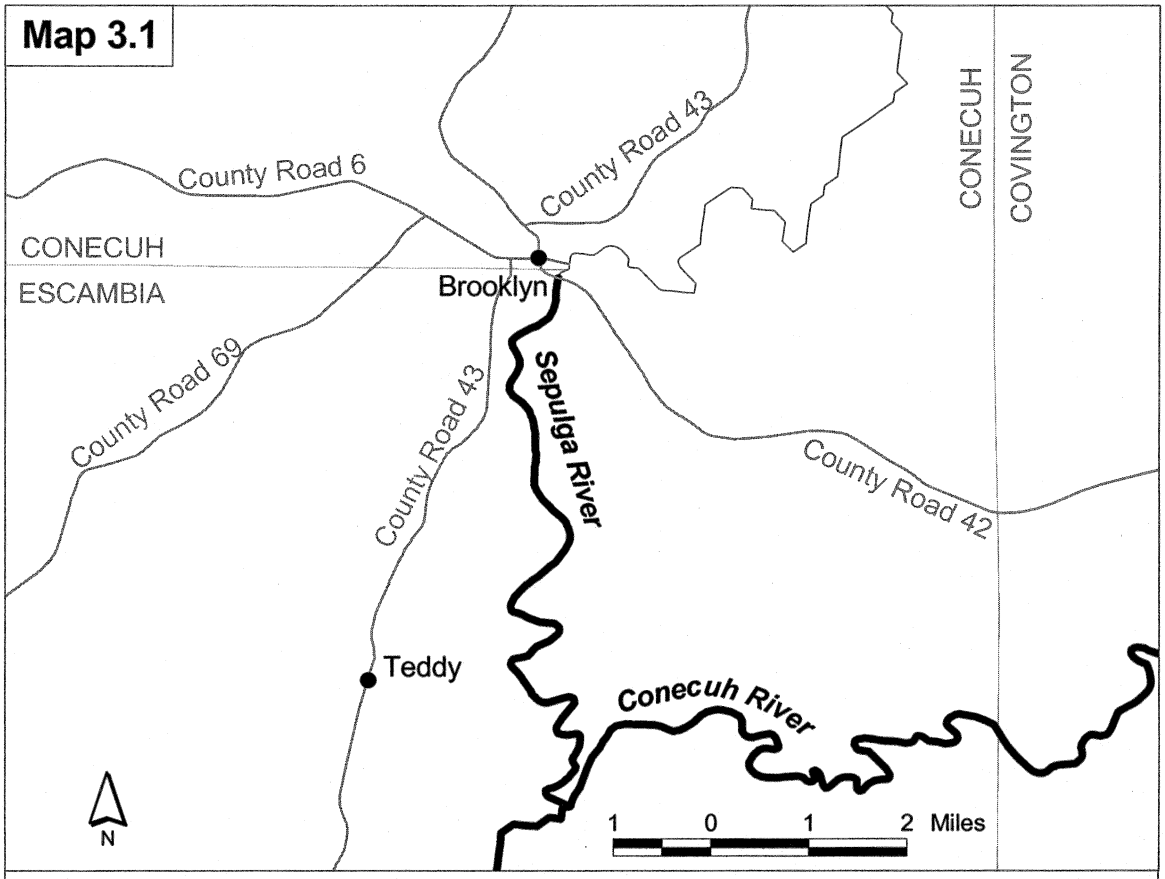
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Map 3.2

N

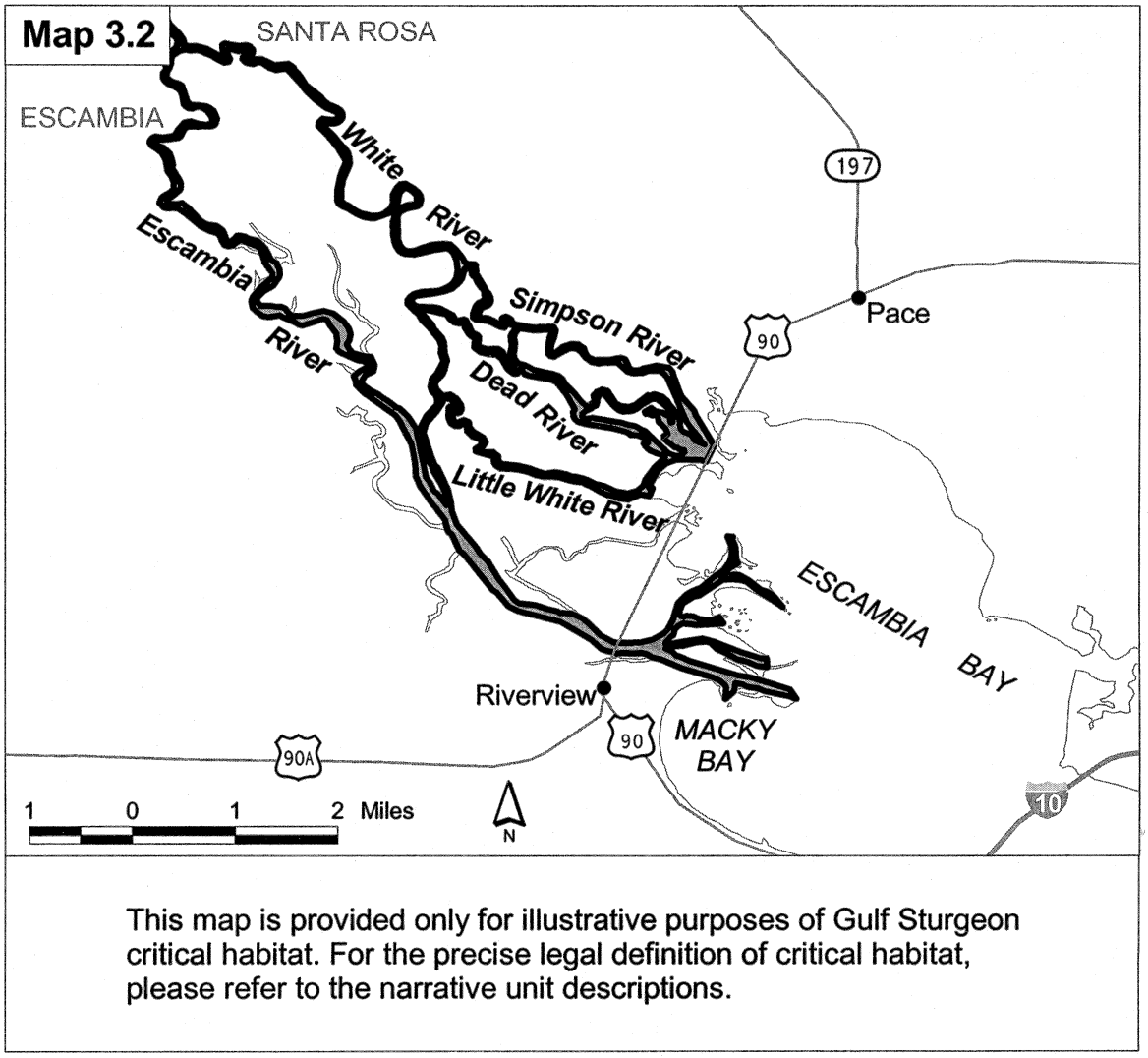
10 0 10 20 30 Kilometers

10 0 10 20 30 Miles

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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



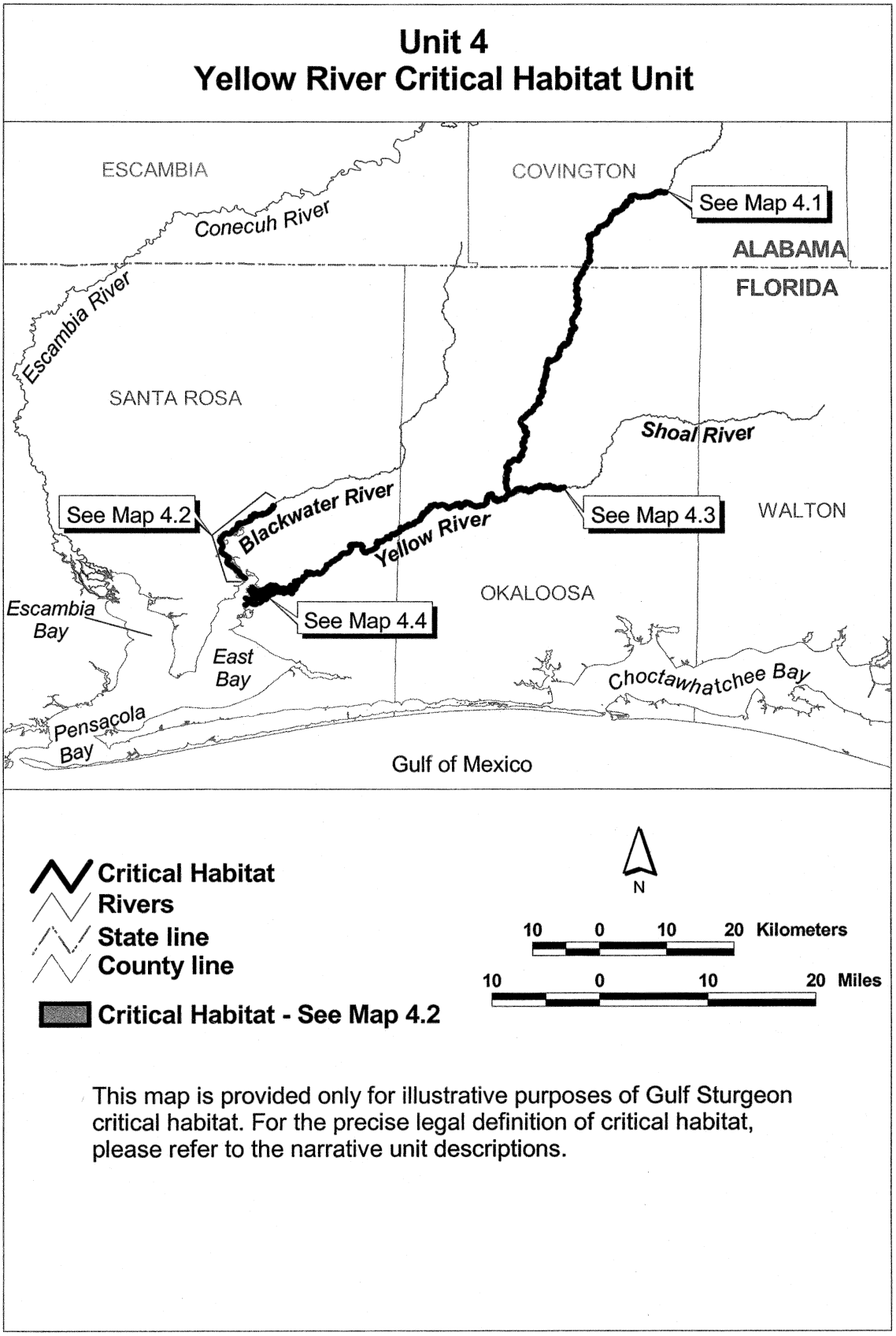
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(8) *Unit 4:* Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama.

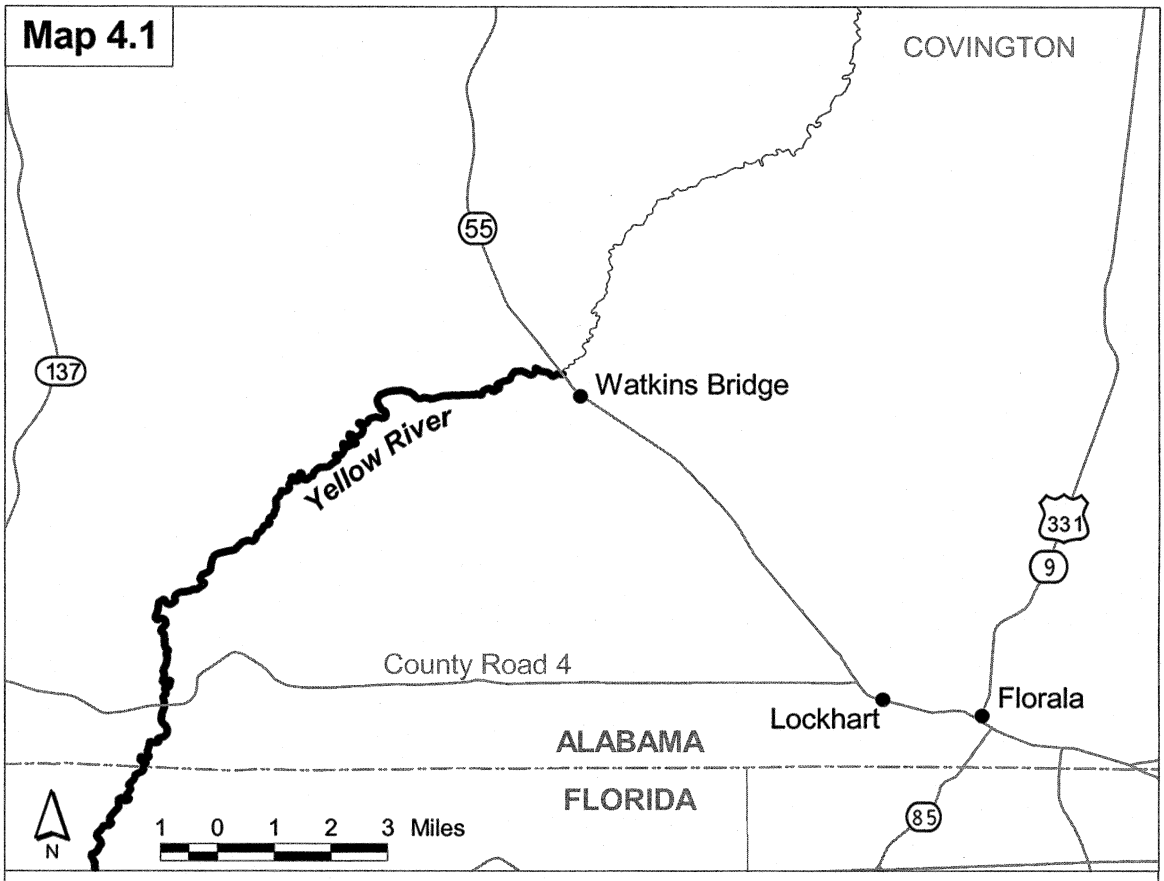
(i) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(ii) Maps of Unit 4 follow:

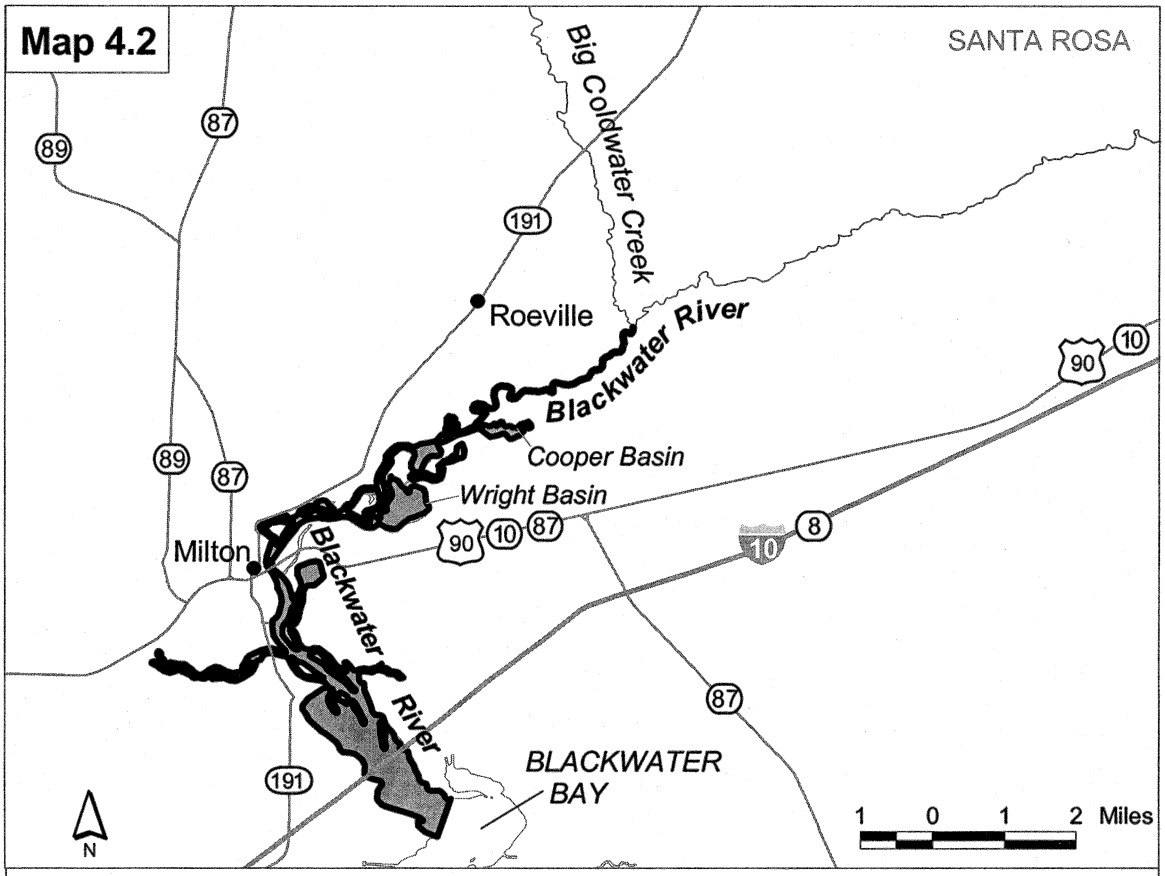
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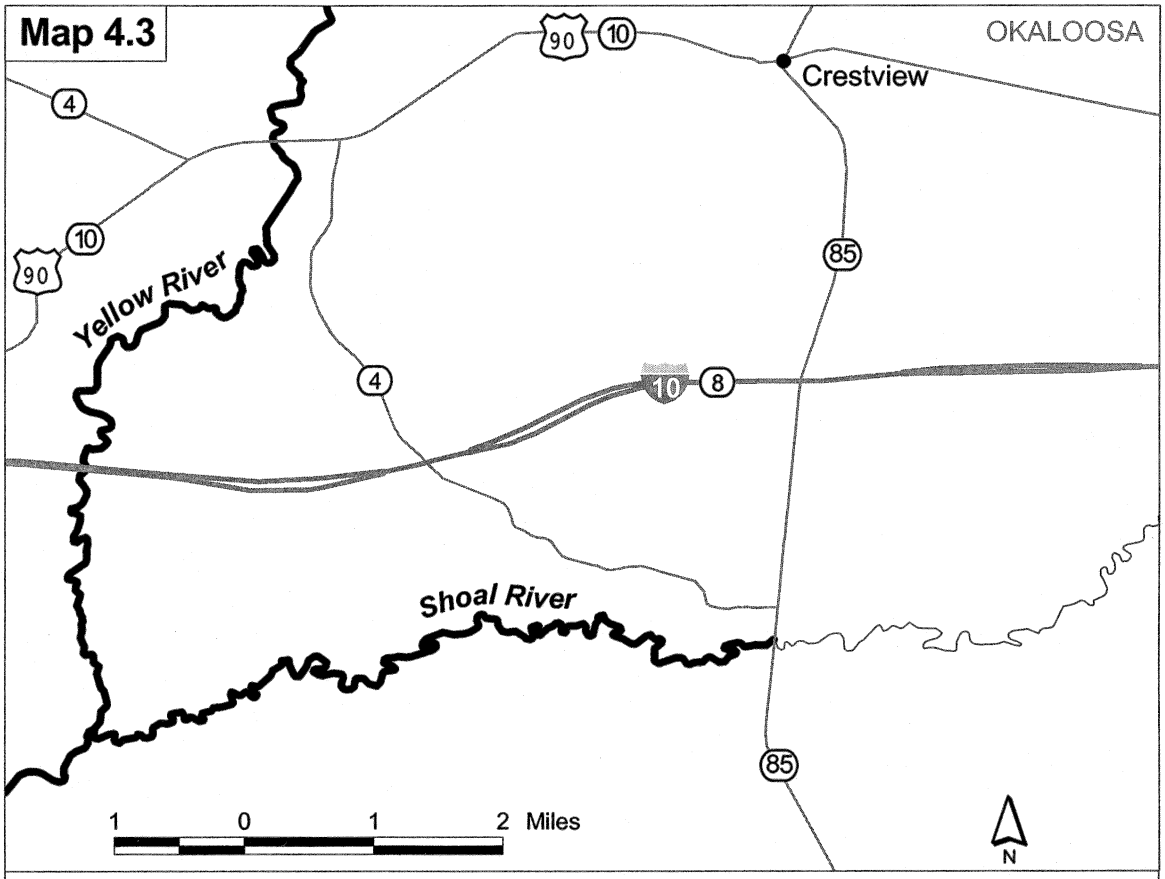
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



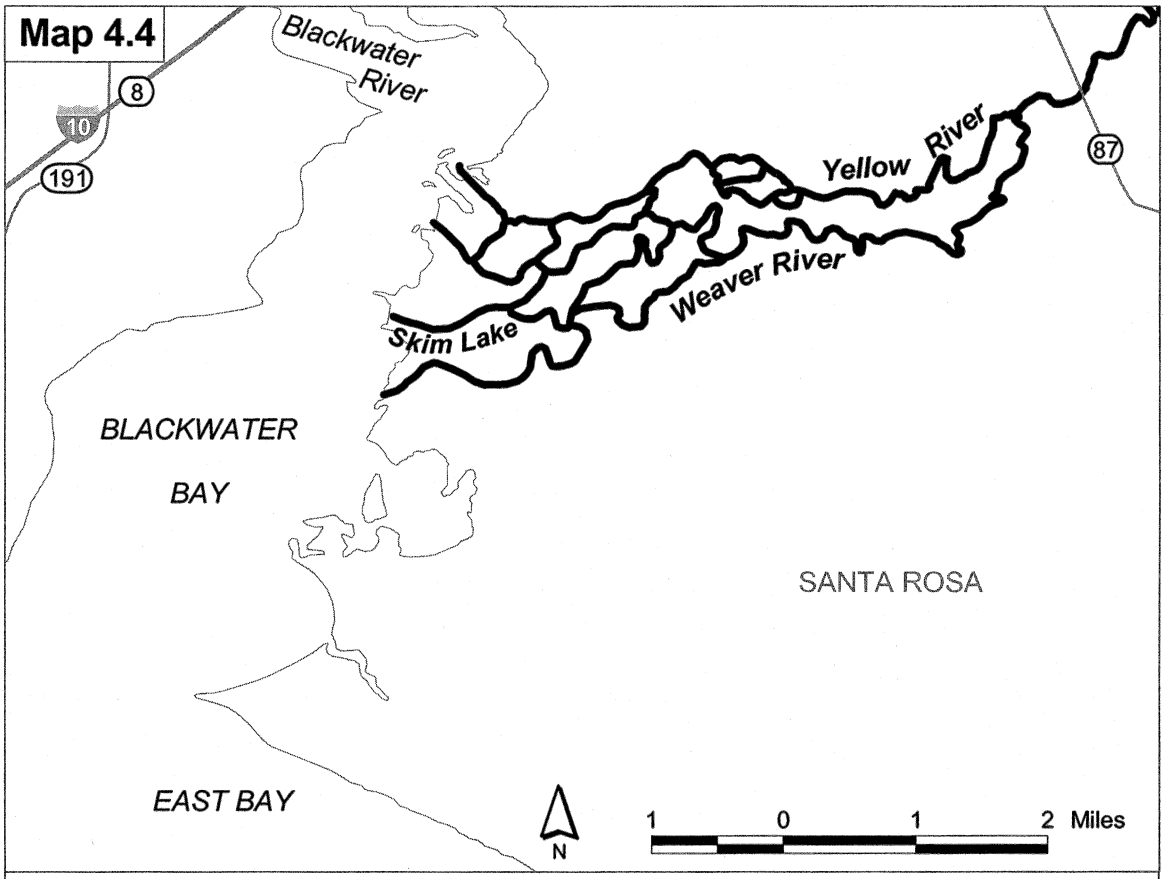
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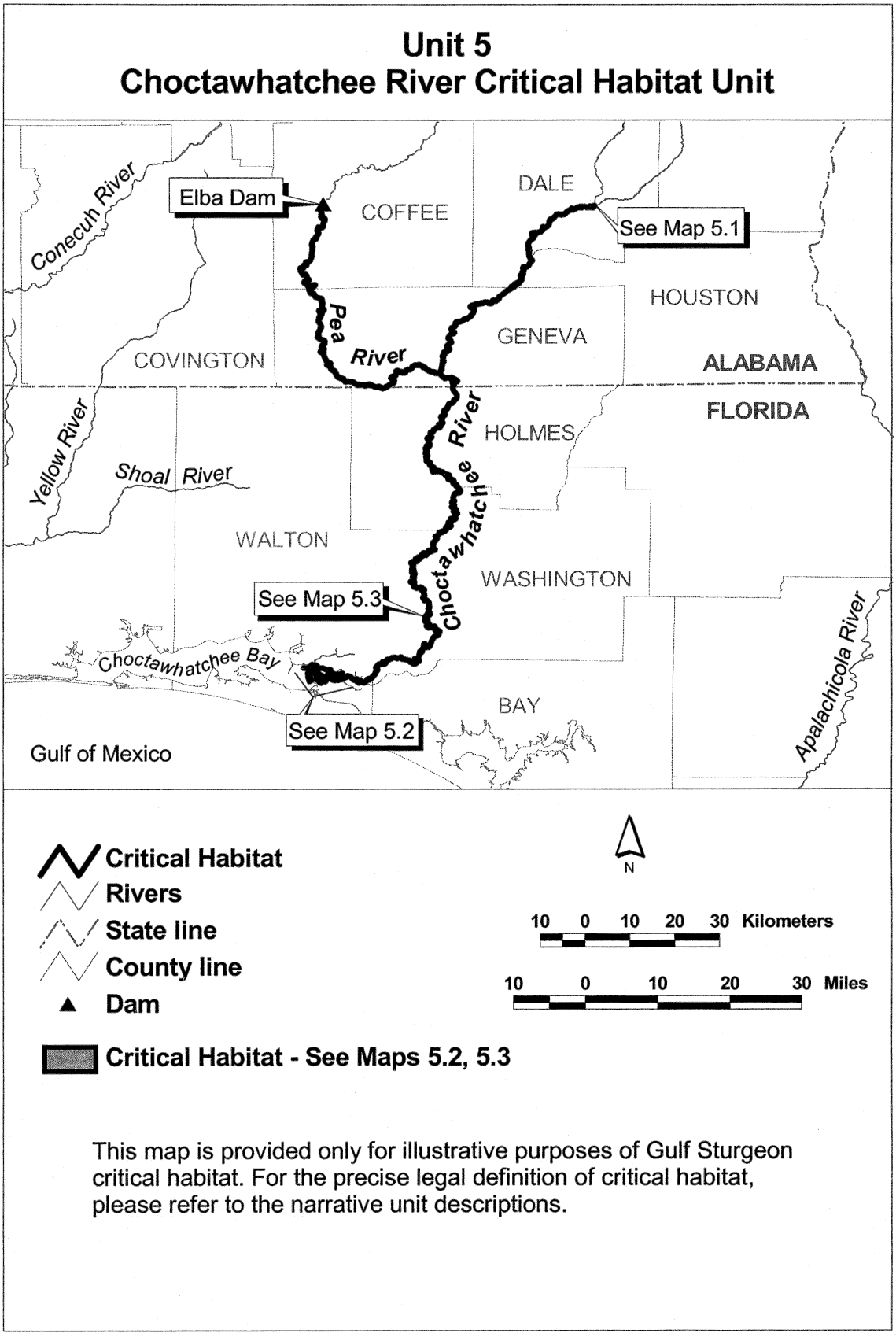
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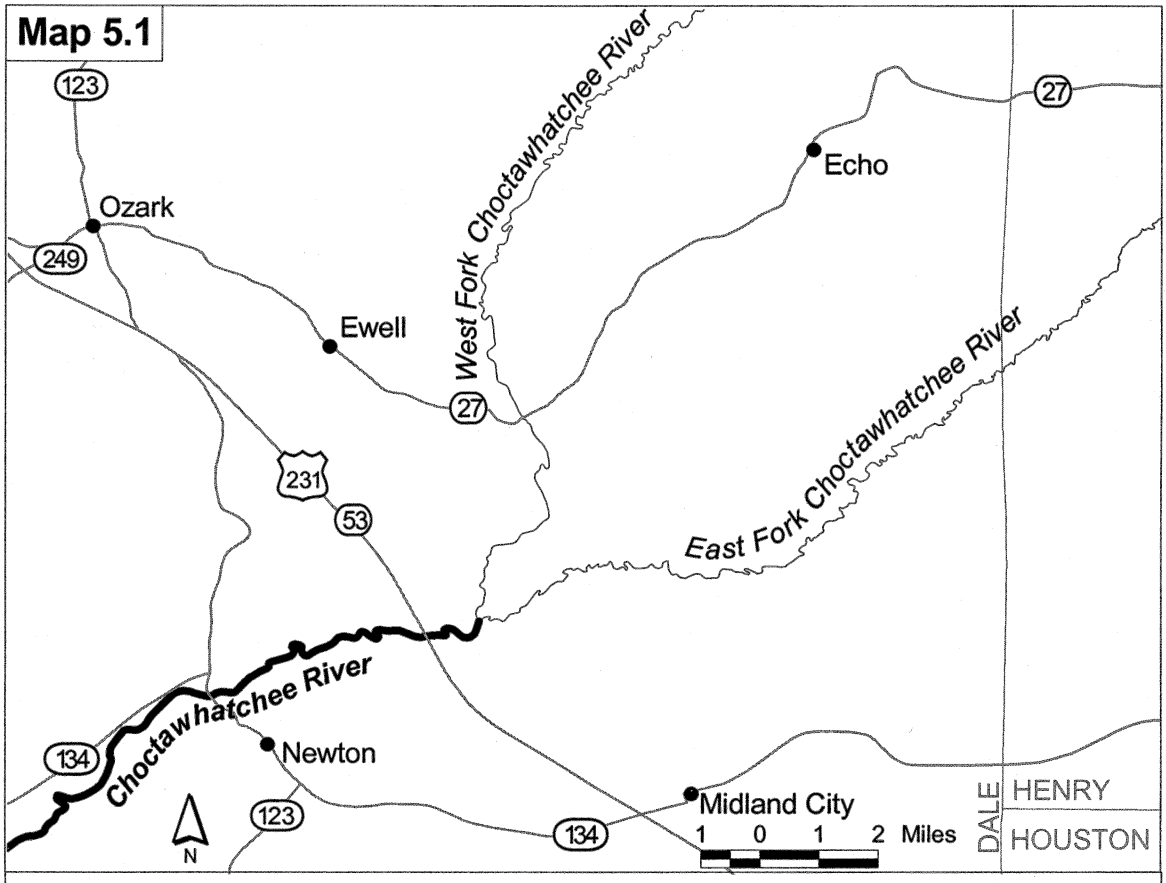
(9) *Unit 5:* Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama.

(i) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

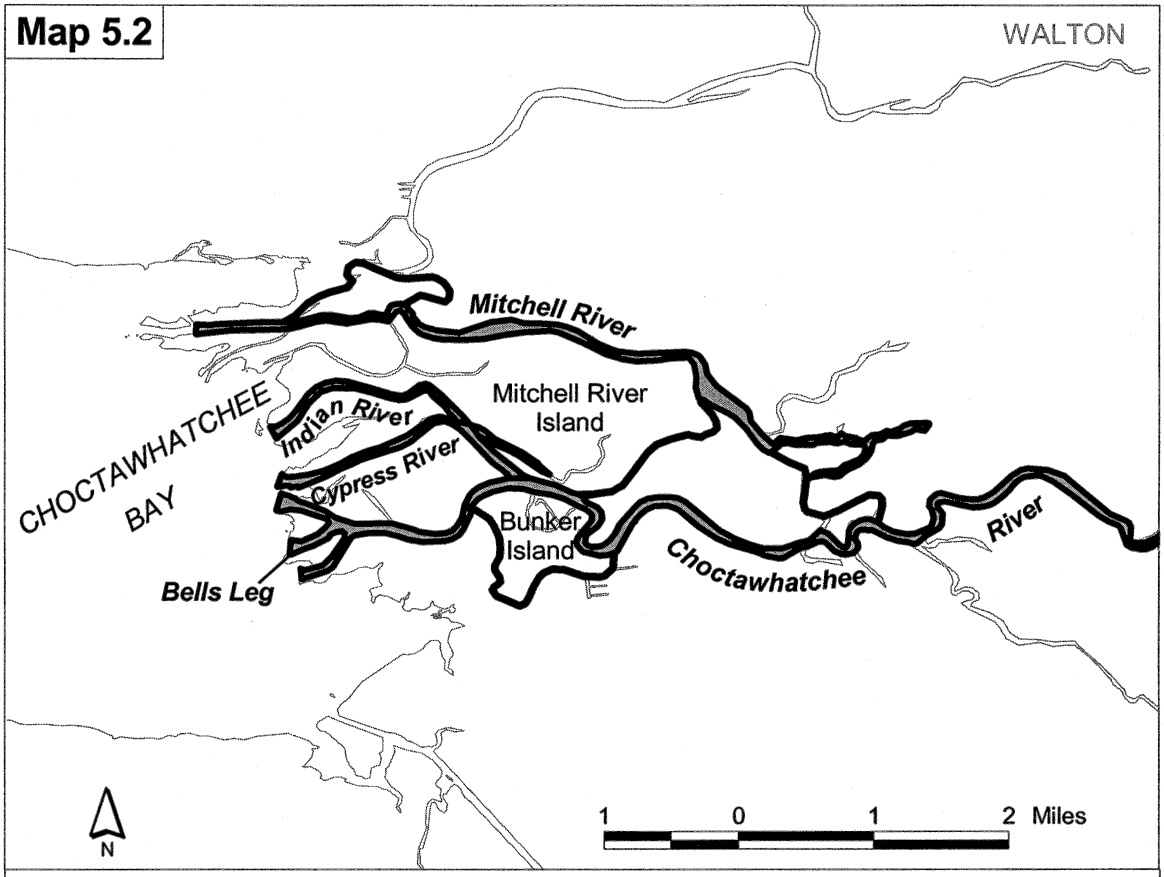
(ii) Maps of Unit 5 follow:

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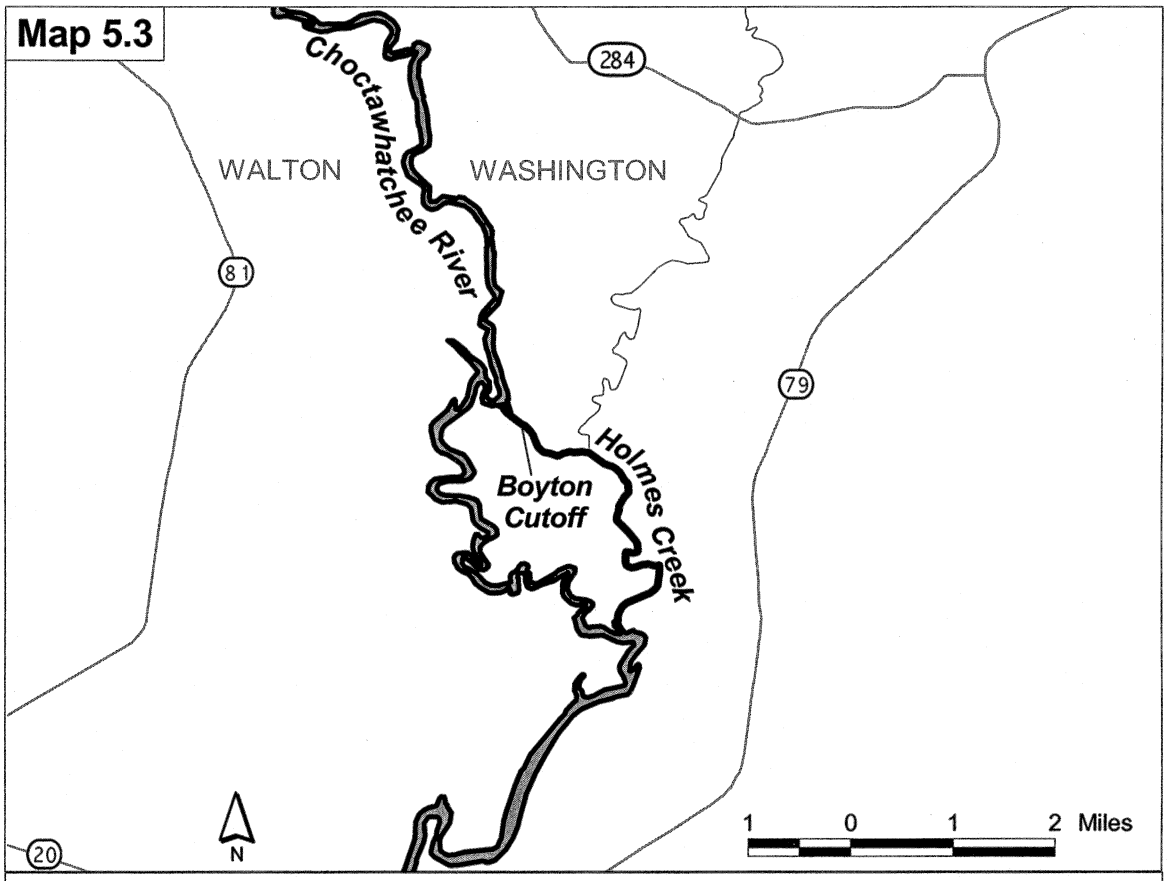

Unit 5
Choctawhatchee River Critical Habitat Unit
Conecuh River
Elba Dam
COFFEE
DALE
See Map 5.1
HOUSTON
Pea River
GENEVA
COVINGTON
ALABAMA
FLORIDA
Yellow River
Choctawhatchee River
HOLMES
Shoal River
WALTON
WASHINGTON
See Map 5.3
Choctawhatchee Bay
Apalachicola River
BAY
See Map 5.2
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Maps 5.2, 5.3
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

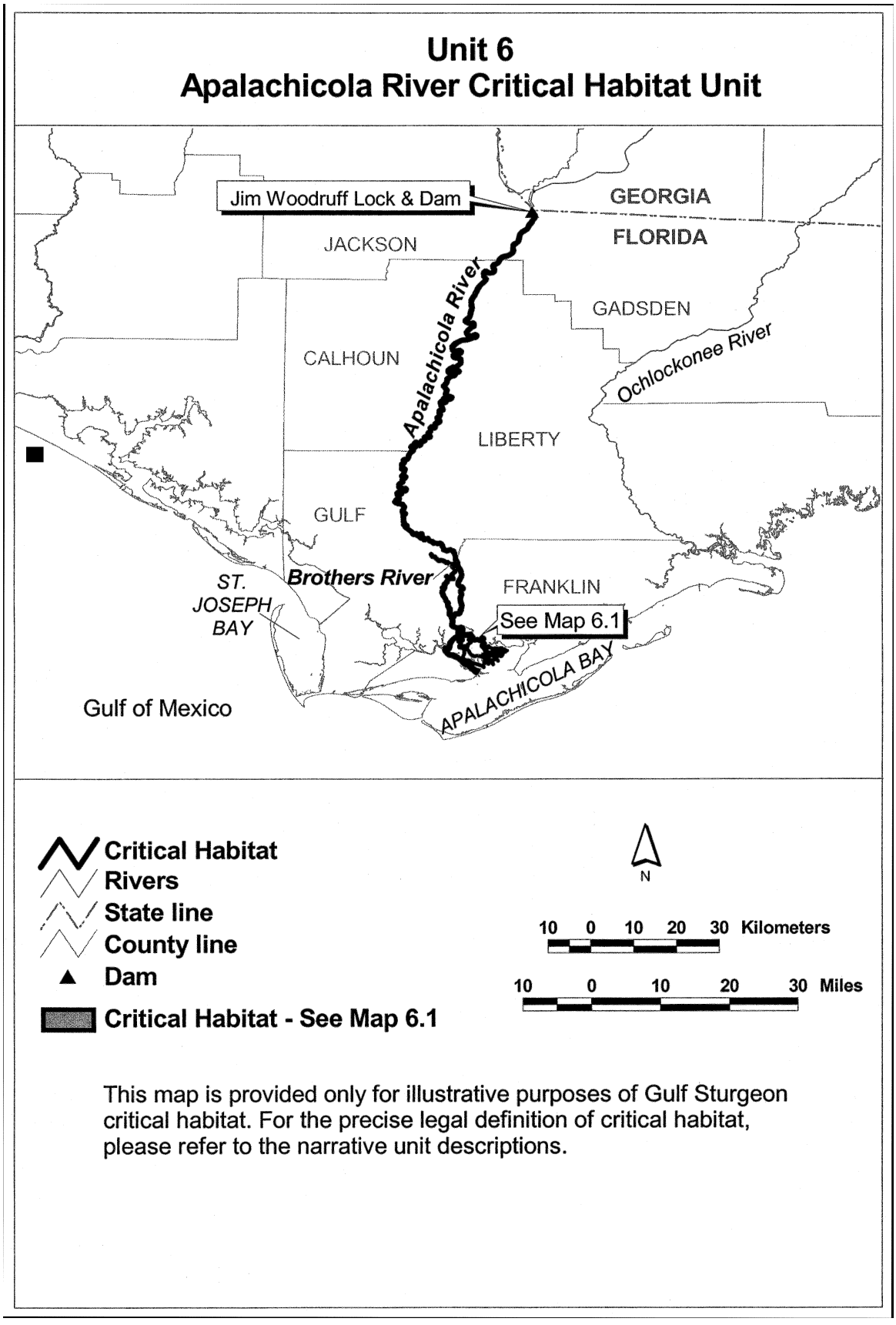
BILLING CODE 3510–22–C

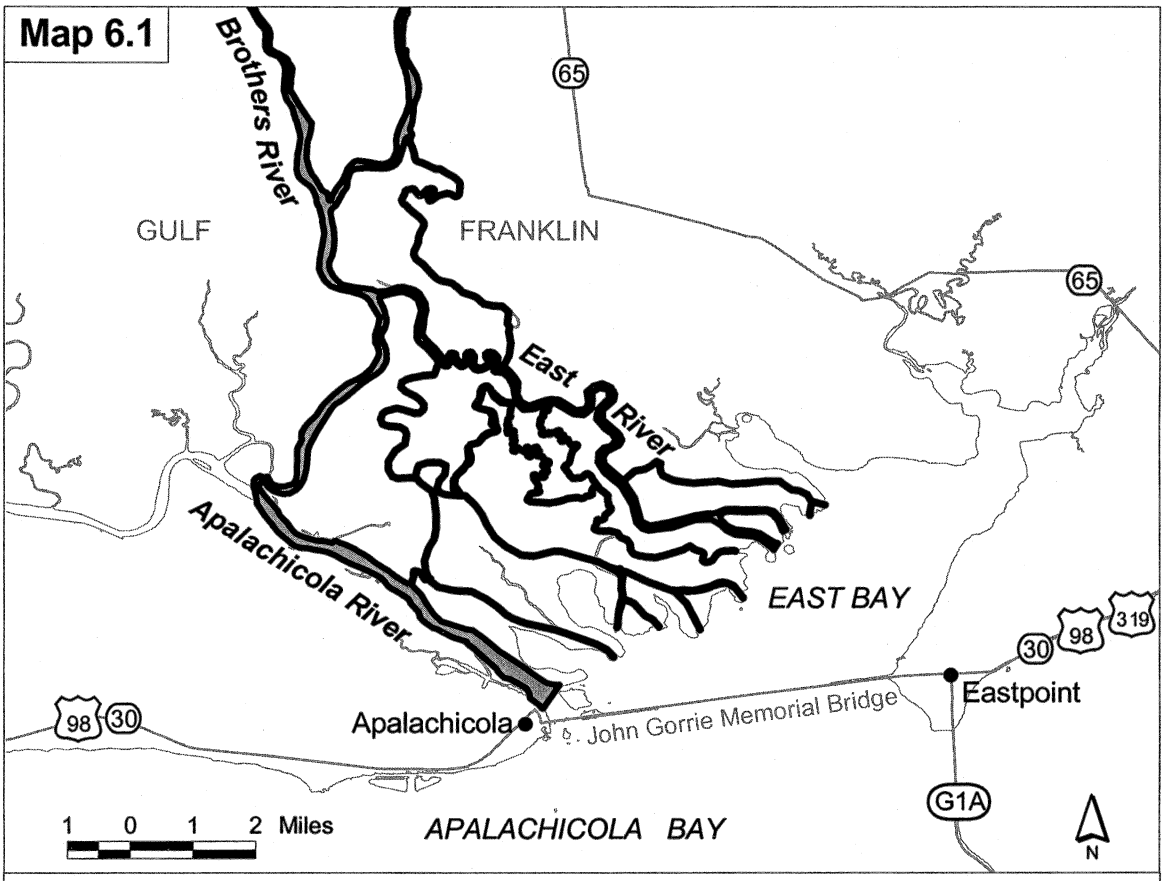
(10) *Unit 6:* Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida.

(i) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(ii) Maps of Unit 6 follow:

BILLING CODE 3510–22–P


Unit 6
Apalachicola River Critical Habitat Unit
Jim Woodruff Lock & Dam
GEORGIA
FLORIDA
JACKSON
GADSDEN
CALHOUN
Apalachicola River
Ochlockonee River
LIBERTY
GULF
Brothers River
ST. JOSEPH BAY
FRANKLIN
See Map 6.1
APALACHICOLA BAY
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Map 6.1
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

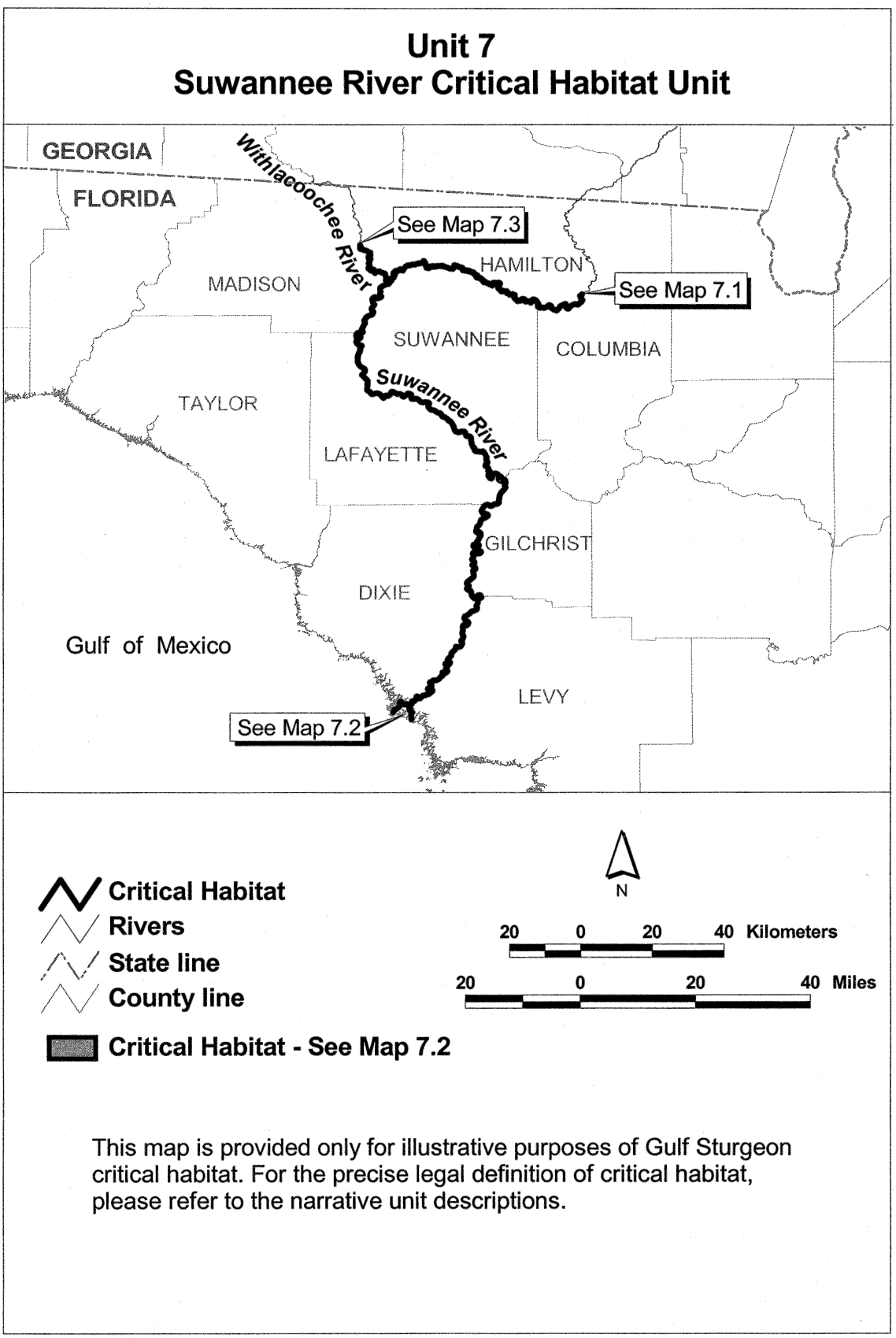
BILLING CODE 3510–22–C

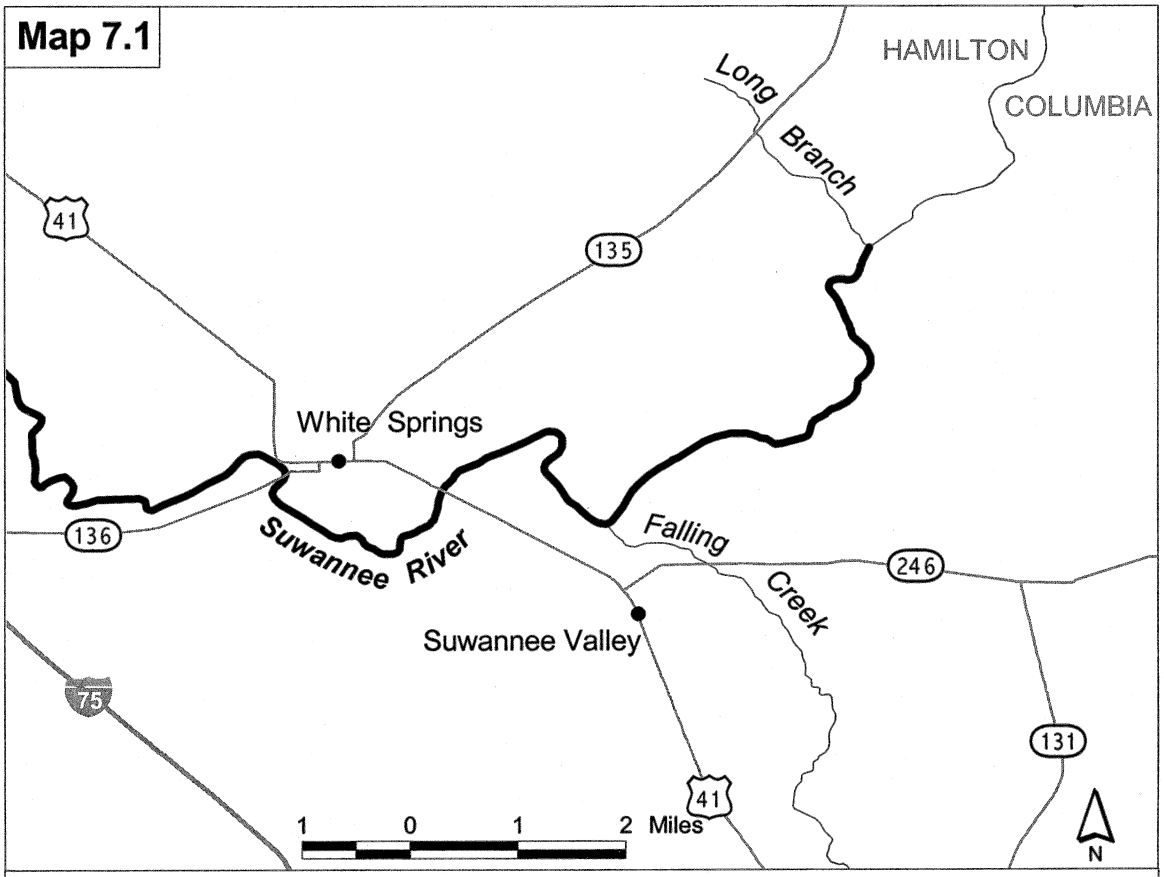
(11) *Unit 7:* Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida.

(i) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

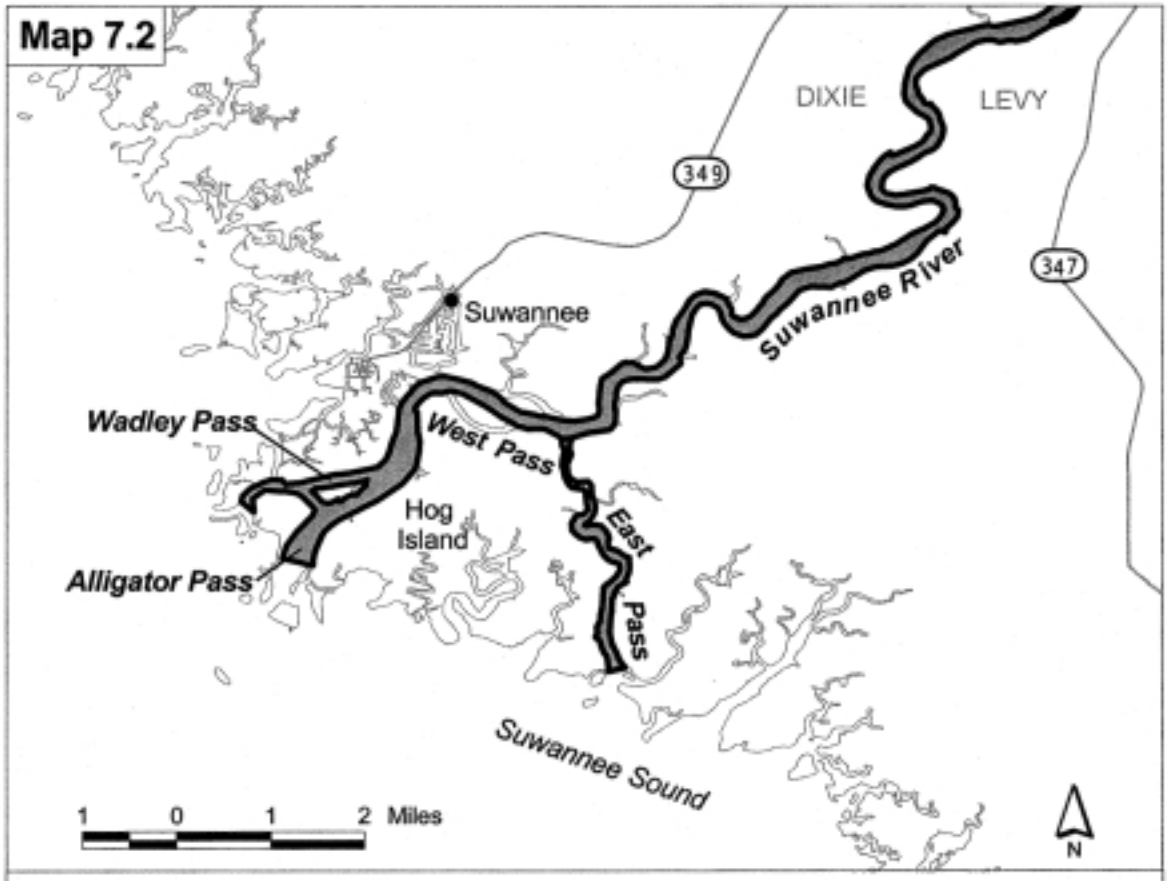
(ii) Maps of Unit 7 follow:

BILLING CODE 3510–22–P

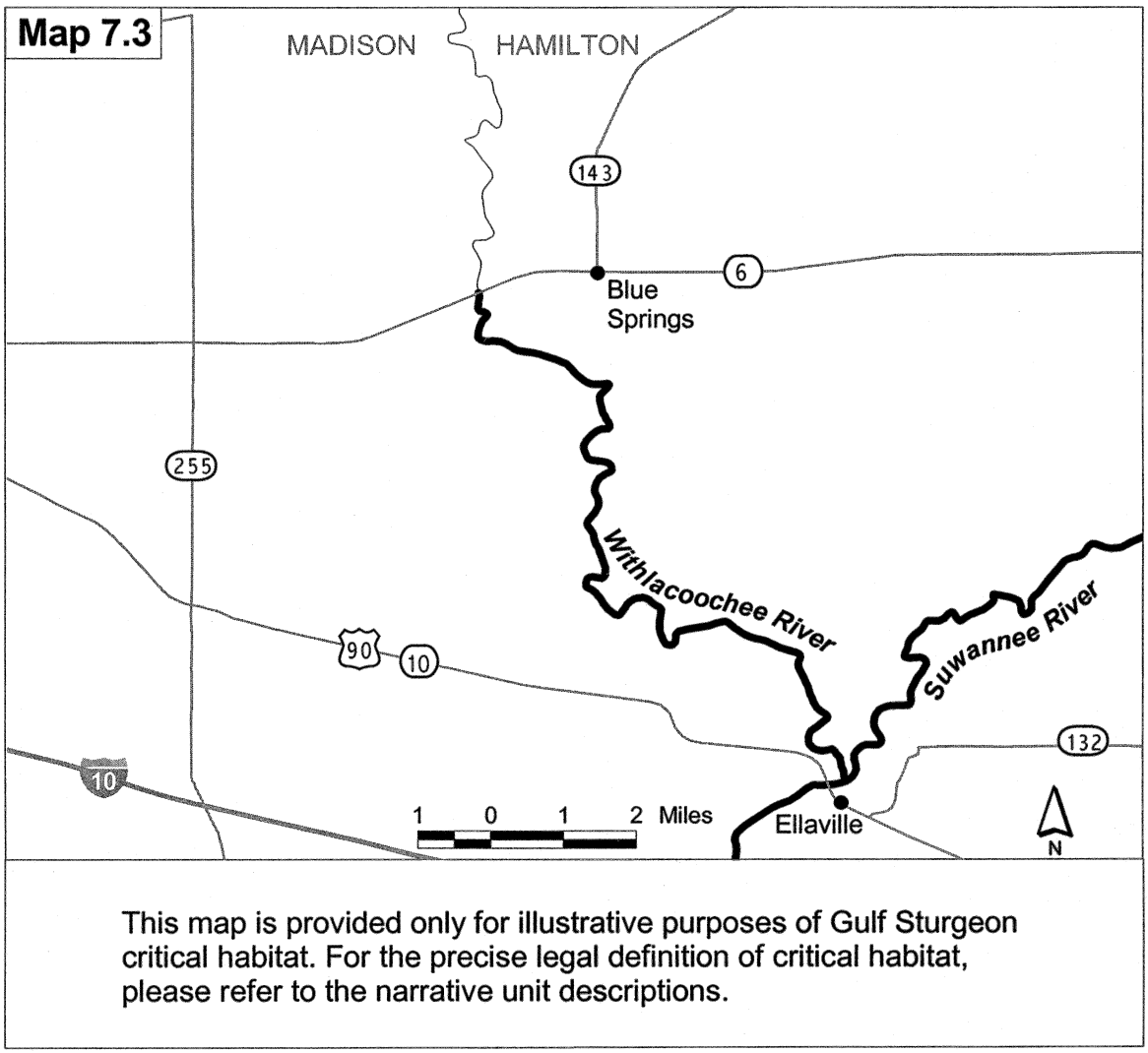

Unit 7
Suwannee River Critical Habitat Unit
GEORGIA
FLORIDA
Withlacoochee River
See Map 7.3
HAMILTON
MADISON
See Map 7.1
SUWANNEE
COLUMBIA
Suwannee River
TAYLOR
LAFAYETTE
GILCHRIST
DIXIE
Gulf of Mexico
LEVY
See Map 7.2
Critical Habitat
Rivers
State line
County line
Critical Habitat - See Map 7.2
N
20 0 20 40 Kilometers
20 0 20 40 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



BILLING CODE 3510–22–C

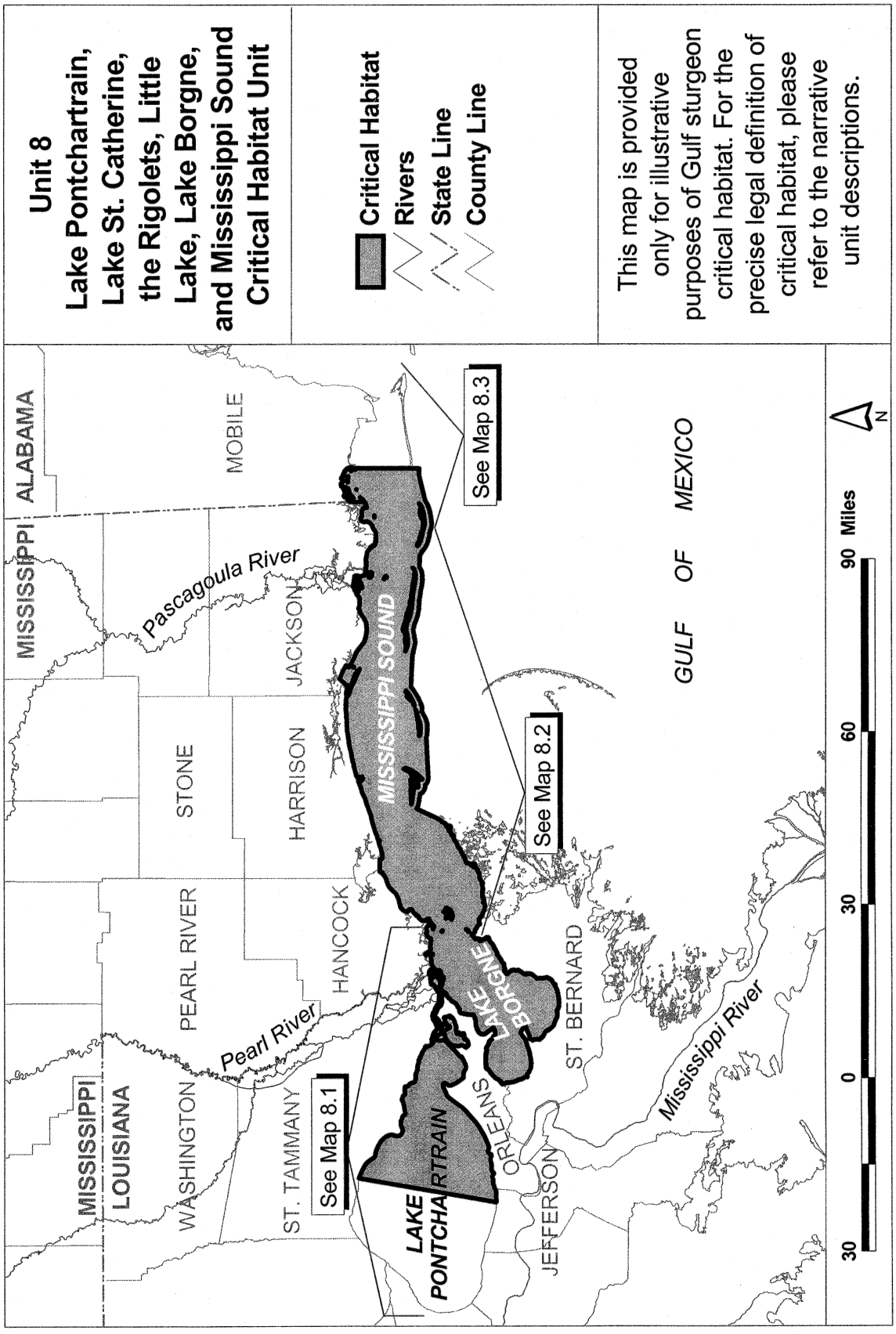
(12) *Unit 8:* Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.

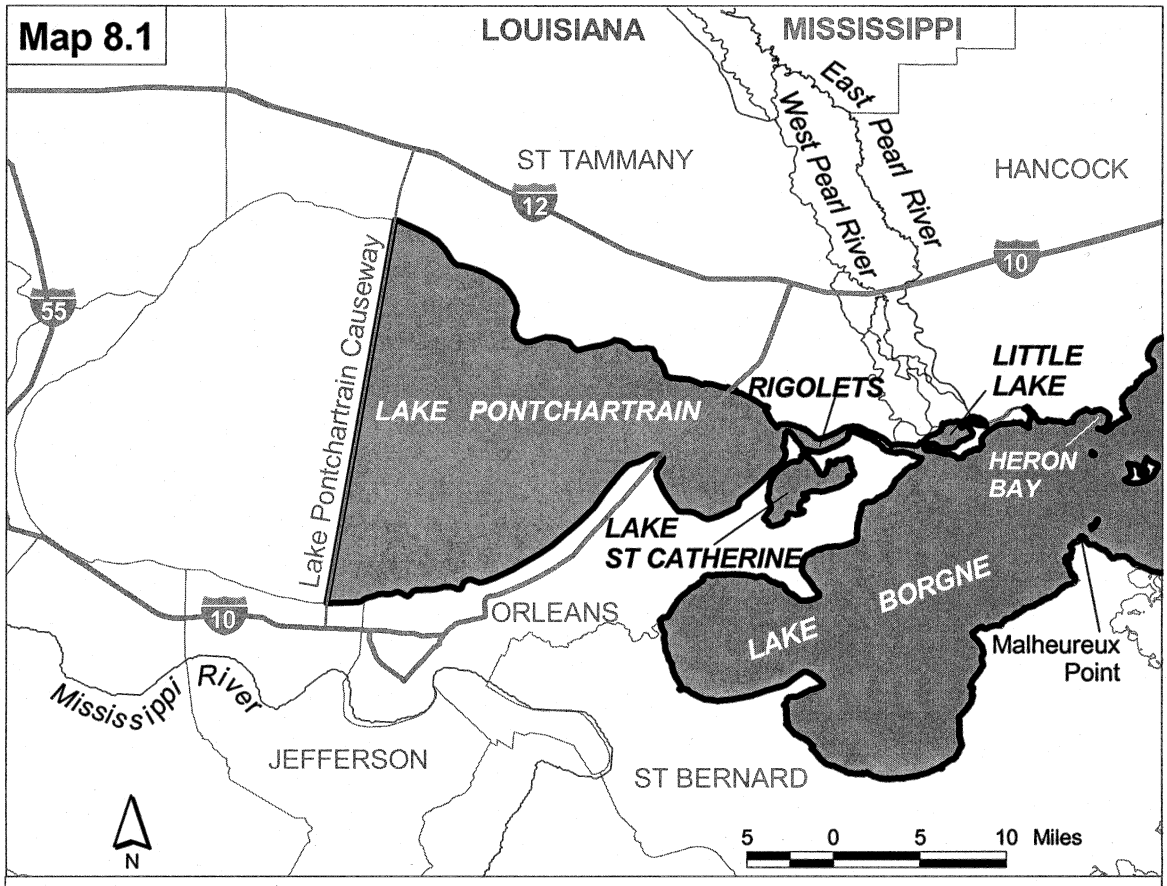
(i) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, Mississippi and Point aux Pins, Alabama. Critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nautical mile (nm) (1.9 kilometers (km)) seaward of the western most extremity of Cat Island (30°13′N, 89°10′W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 (c), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8′W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the mean (average) high water (MHW) line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

(ii) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

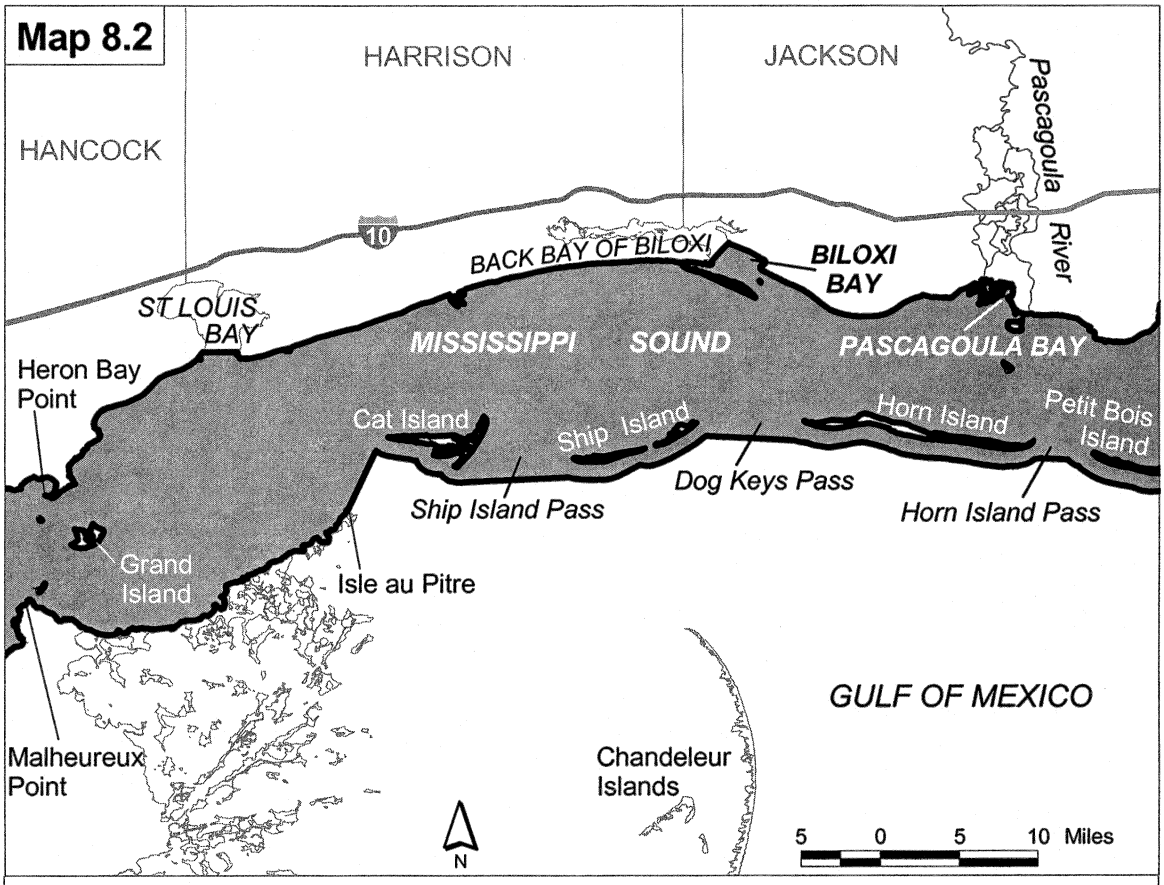
(iii) Maps of Unit 8 follow:

BILLING CODE 3510–22–P

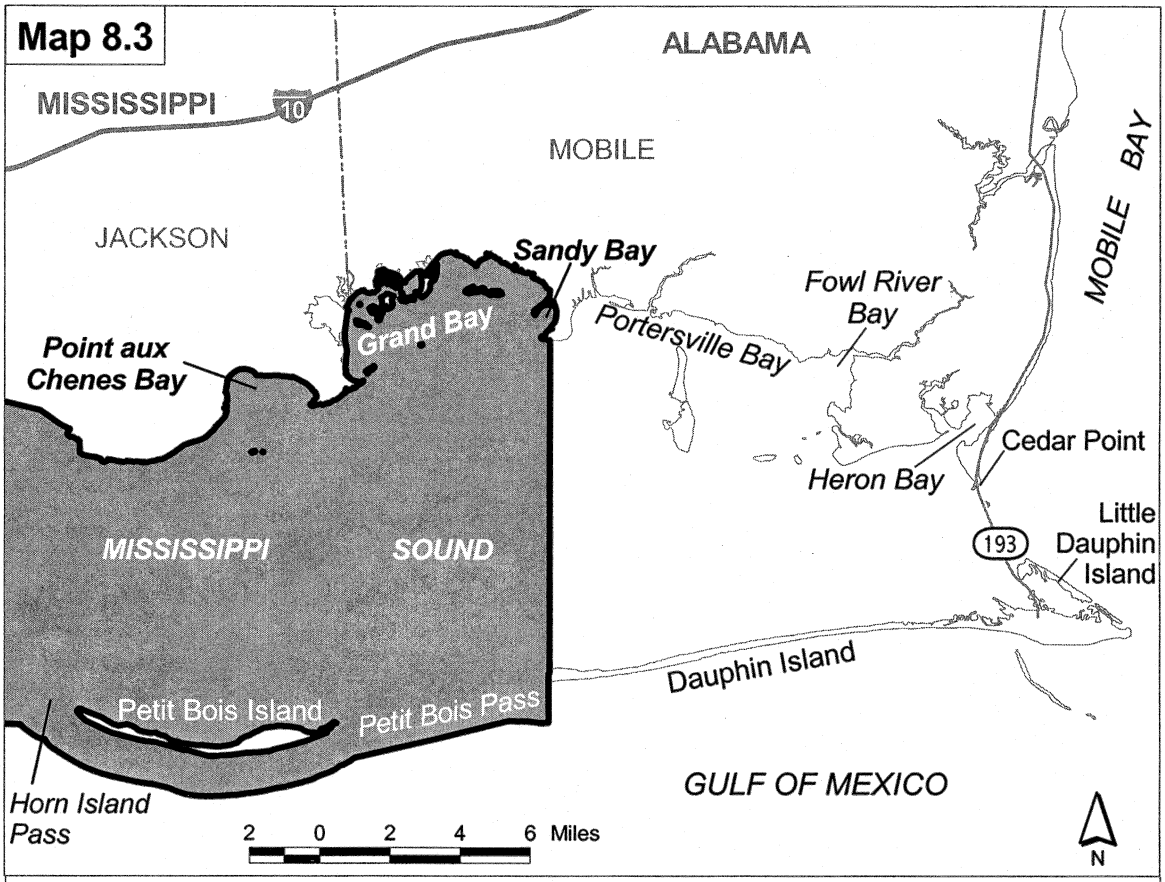

Unit 8
Lake Pontchartrain, Lake St. Catherine, the Rigolets, Little Lake, Lake Borgne, and Mississippi Sound Critical Habitat Unit
Critical Habitat
Rivers
State Line
County Line
This map is provided only for illustrative purposes of Gulf sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
ALABAMA
MISSISSIPPI
LOUISIANA
MOBILE
JACKSON
HARRISON
STONE
PEARL RIVER
WASHINGTON
HANCOCK
ST. TAMMANY
ORLEANS
JEFFERSON
ST. BERNARD
Pascagoula River
Pearl River
Mississippi River
MISSISSIPPI SOUND
LAKE PONTCHARTRAIN
LAKE BORGNE
GULF OF MEXICO
See Map 8.1
See Map 8.2
See Map 8.3
30 0 30 60 90 Miles
N



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



BILLING CODE 3510–22–C

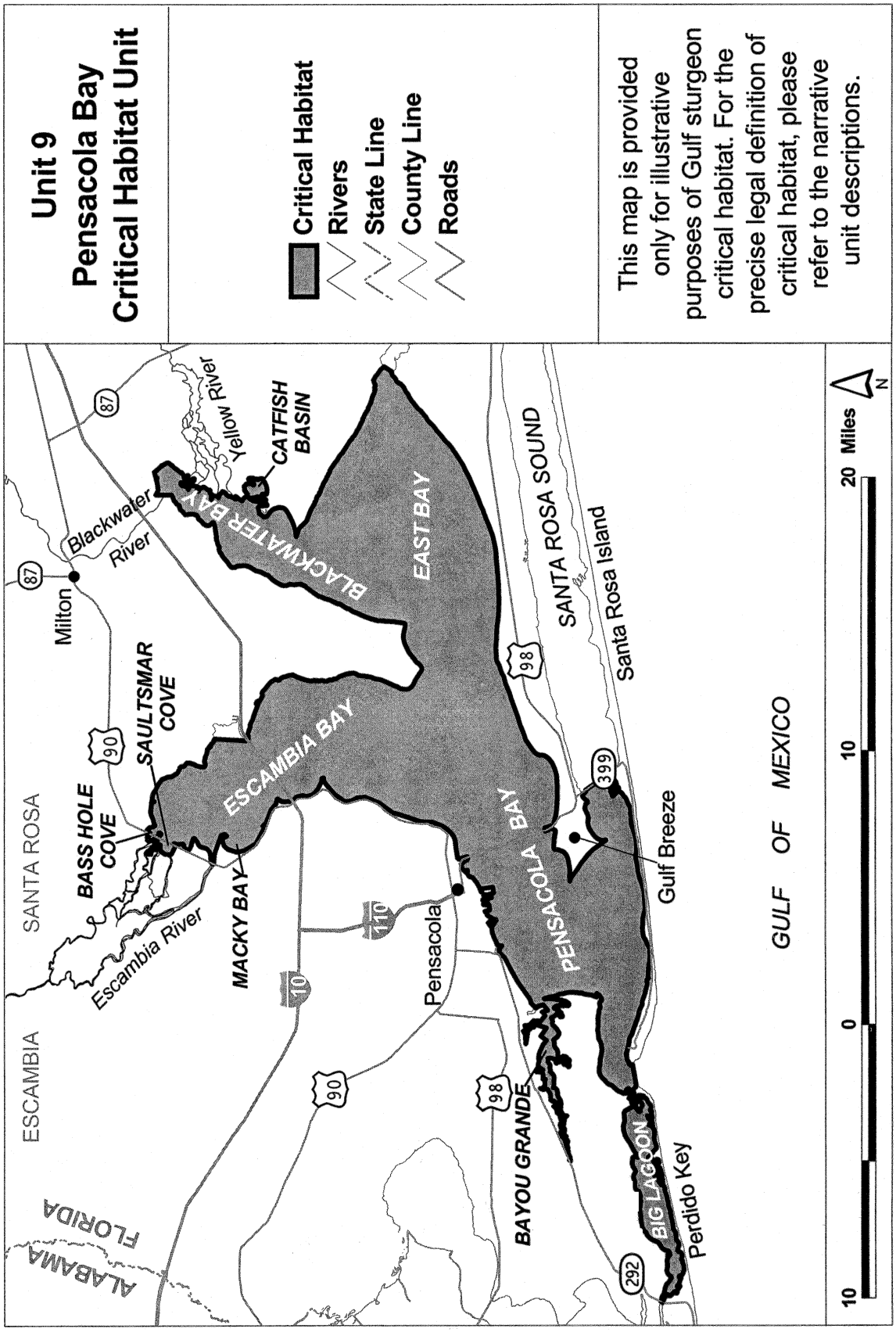
(13) *Unit 9:* Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.

(i) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810 (g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, Florida. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(ii) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(iii) A Map of Unit 9 follows:

BILLING CODE 3510–22–P



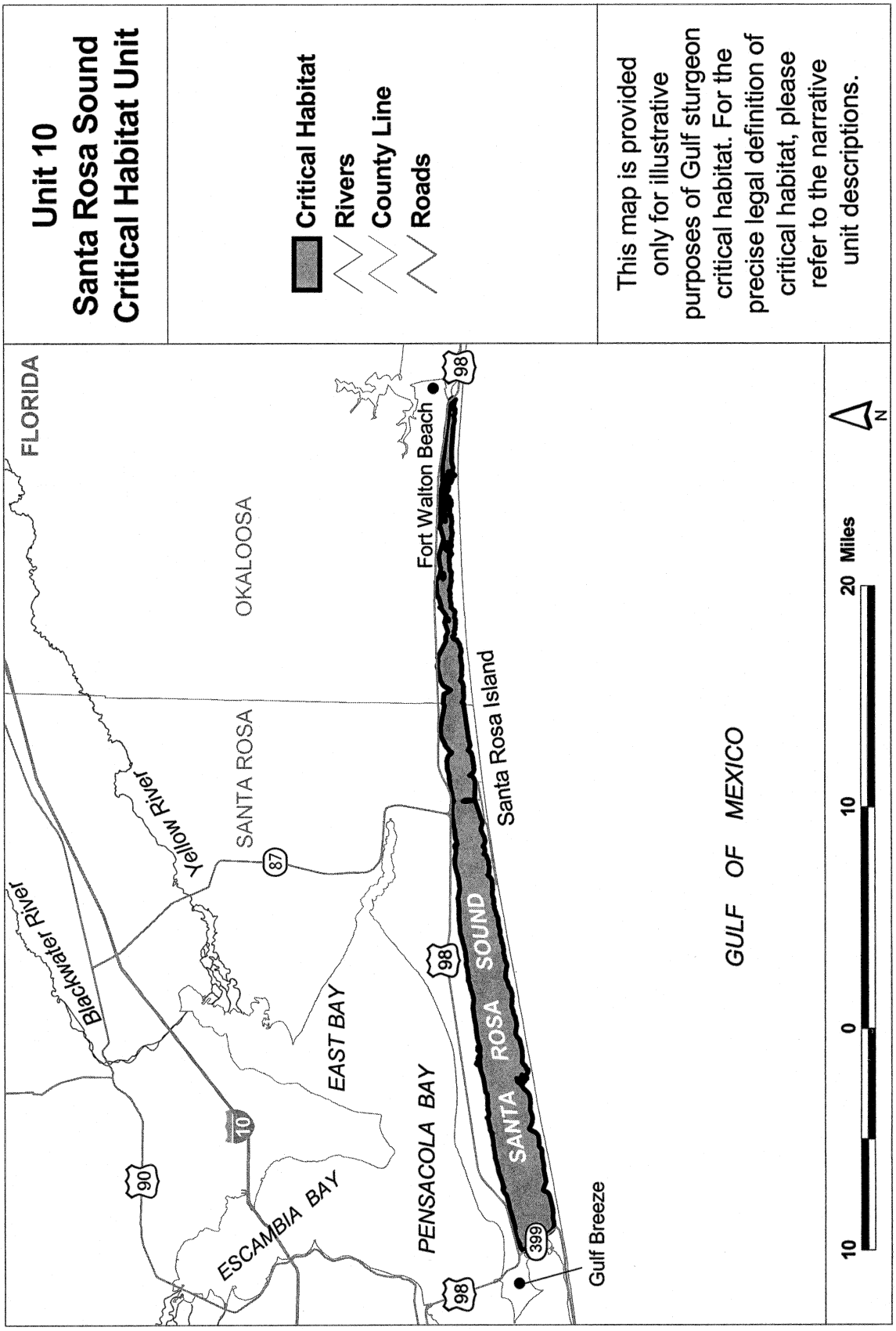
BILLING CODE 3510–22–C

(14) *Unit 10:* Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida.

(i) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, Florida. The eastern boundary is the U.S. Highway 98 bridge in Fort Walton Beach, Florida. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(ii) A Map of Unit 10 follows:

BILLING CODE 3510–22–P



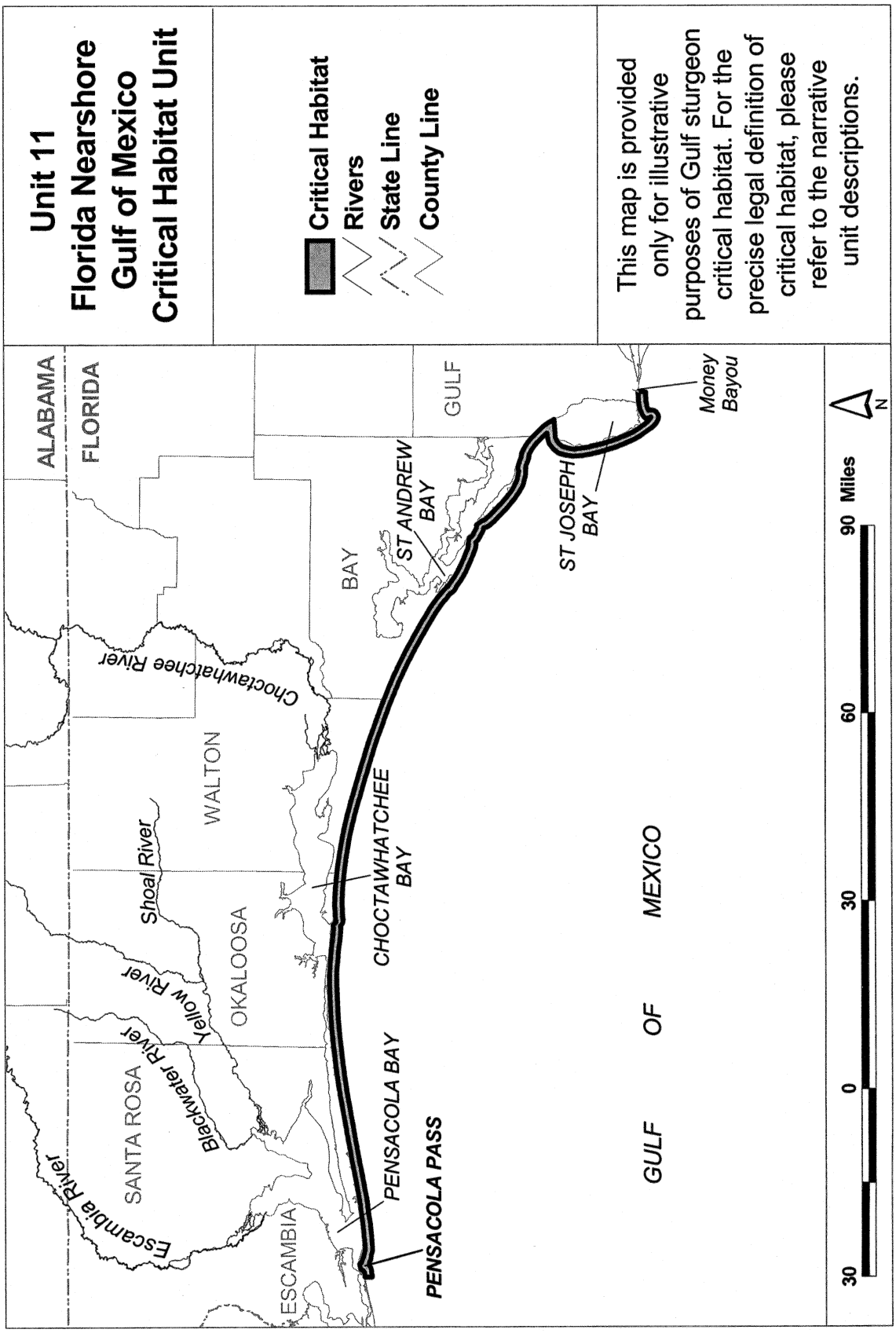
BILLING CODE 3510–22–C

(15) *Unit 11:* Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties in Florida.

(i) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(ii) A Map of Unit 11 follows:

BILLING CODE 3510–22–P

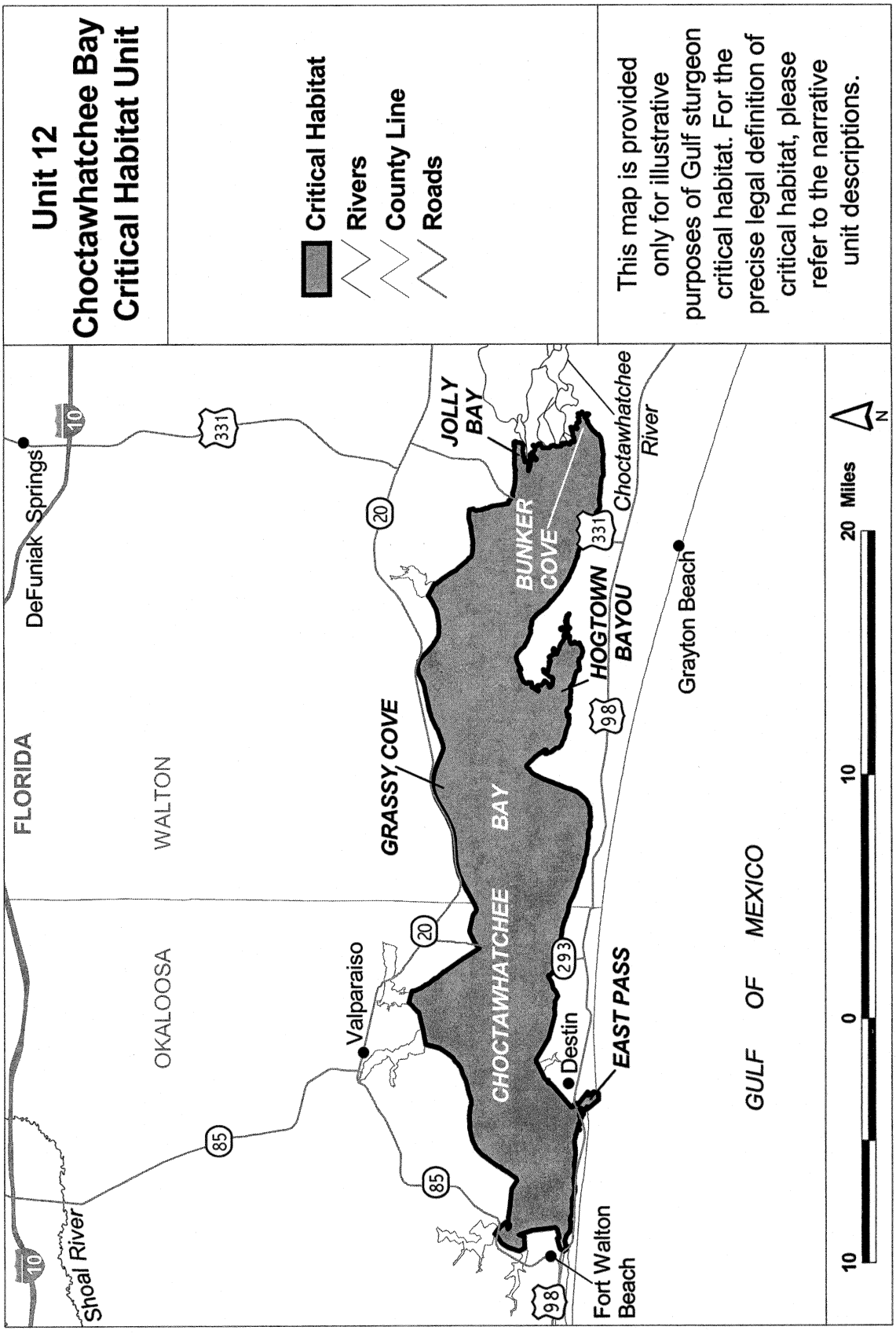


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(16) *Unit 12:* Choctawhatchee Bay in Okaloosa and Walton Counties, Florida.

(i) Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the U.S. Highway 98 bridge at Fort Walton Beach, Florida. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810 (f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(ii) A Map of Unit 12 follows:



BILLING CODE 3510–22–P

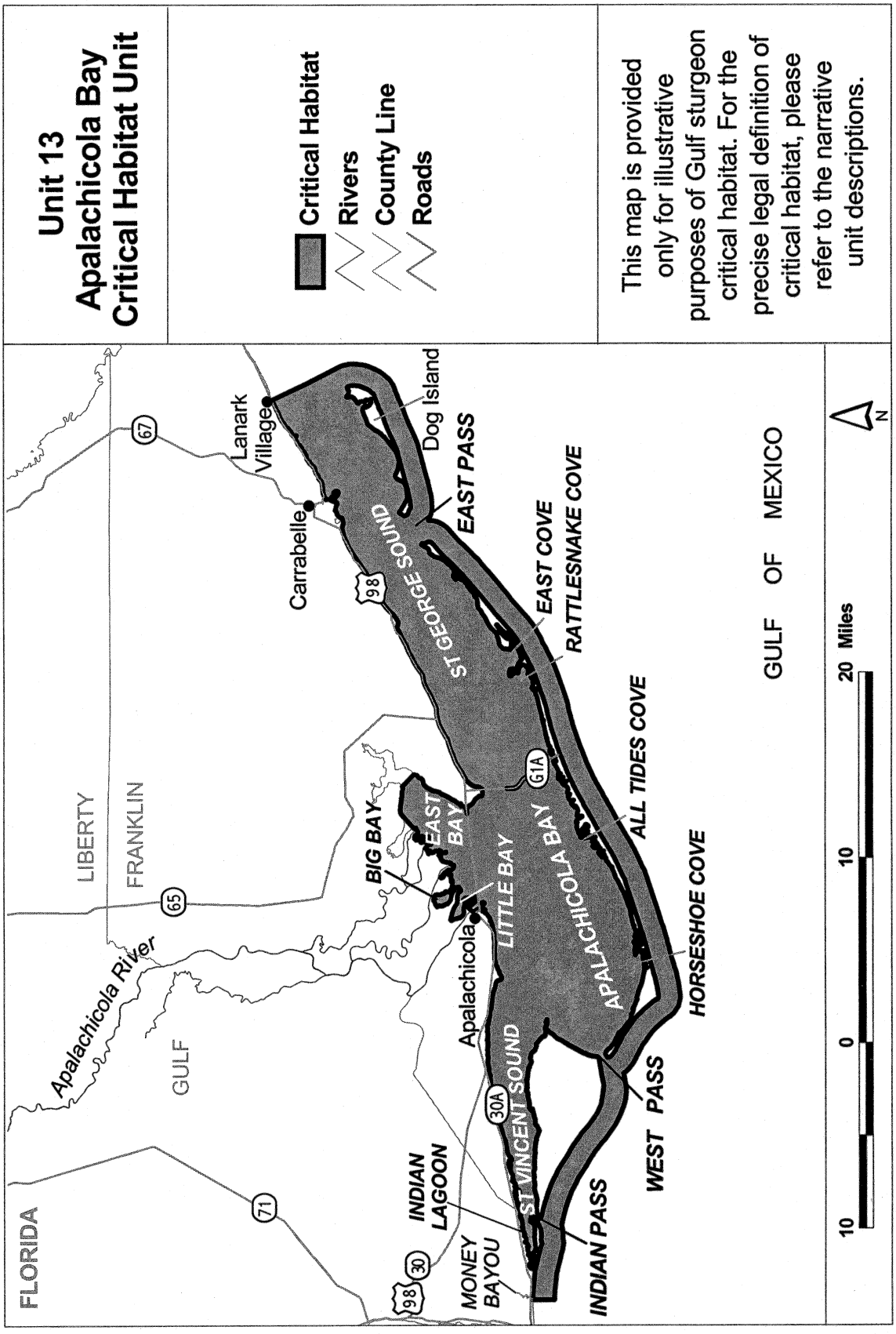
(17) *Unit 13:* Apalachicola Bay in Gulf and Franklin County, Florida.

(i) Unit 13 includes the main body of Apalachicola Bay and its adjacent

sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e)–(h)). The western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′N, 84°33.2′W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(ii) A Map of Unit 13 follows:

BILLING CODE 3510–22–P



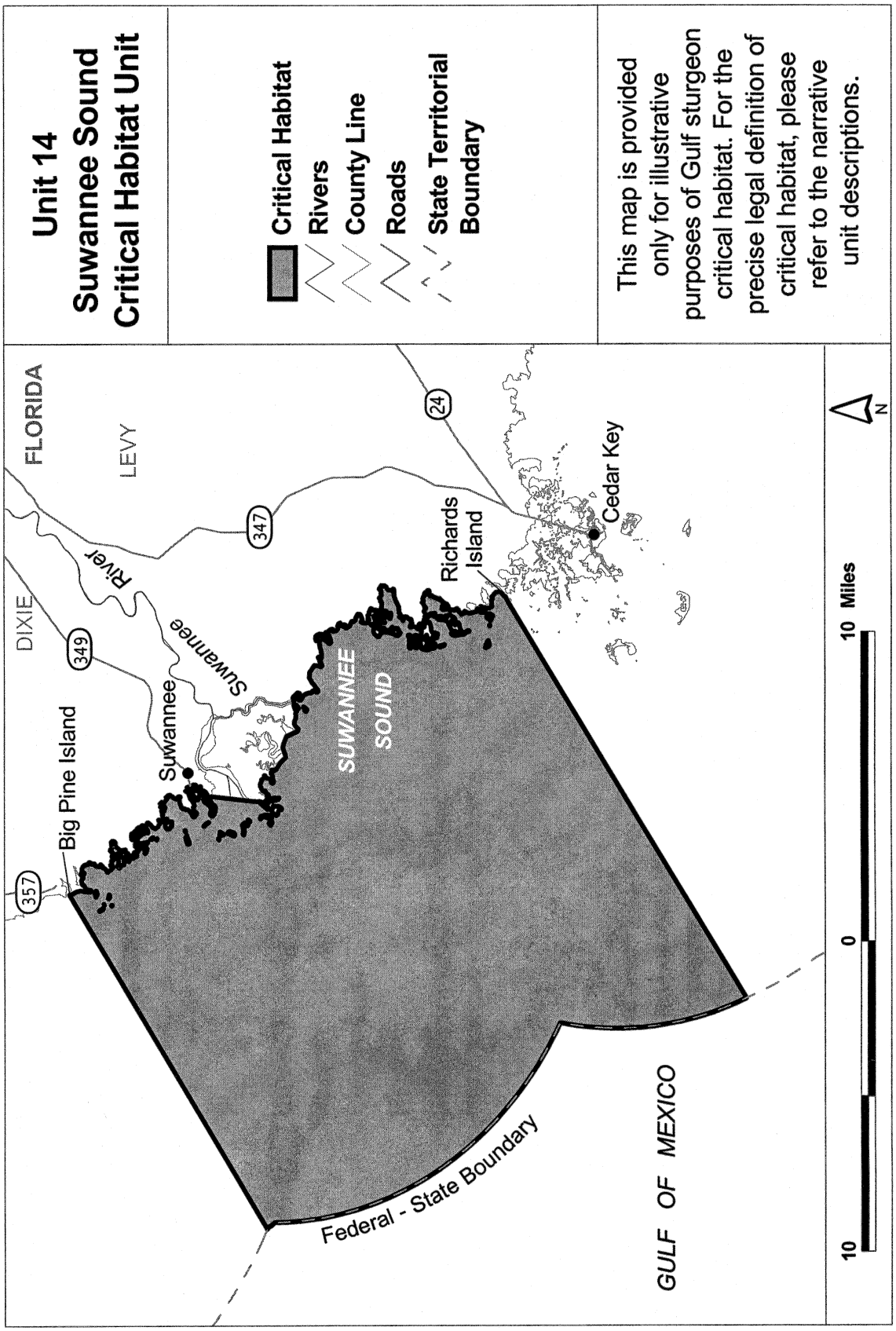
BILLING CODE 3510–22–C

(18) *Unit 14:* Suwannee Sound in Dixie and Levy Counties, Florida.

(i) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′N, 83°12′W) to the Federal-State boundary at 29°17′N, 83°21′W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04′W, 29°11′N) to the Federal-State boundary at 83°15′W, 29°04′N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(ii) A Map of Unit 14 follows:

BILLING CODE 3510–22–P



<FNP>

(19)(i) The river reaches within Units 1 to 7 as critical habitat lie within the ordinary high water line. As defined in 33 CFR 32.911, the ordinary high water

line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(ii) The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

(iii) Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14 therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(iv) The term 72 COLREGS is defined as demarcation lines which delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

(20) Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

* * * * *

PART 226—[AMENDED]

1. The authority citation for 50 CFR part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 226.214 is added to read as follows:

§ 226.214 Critical habitat for Gulf sturgeon.

Gulf sturgeon is under the joint jurisdiction of the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS). The FWS will maintain primary responsibility for recovery actions and NMFS will assist in and continue to fund recovery actions pertaining to estuarine and marine habitats. In riverine units, the FWS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. In estuarine units, we will divide responsibility based on the action agency involved. The FWS will consult with the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency. NMFS will consult with the Department of Defense, U.S. Army Corps of Engineers, Minerals Management Service and any other Federal agencies not mentioned here explicitly. In marine units, NMFS will be responsible for all consultations regarding Gulf sturgeon and critical habitat. Any Federal projects that extend into the jurisdiction of both the Services will be consulted on by the FWS with internal coordination with NMFS. Each agency will conduct its own intra-agency consultations as necessary.

The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include: abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages; riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay; riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions; a flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and necessary for maintaining spawning sites in suitable condition for egg attachment, eggs sheltering, resting, and larvae staging; water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (*e.g.* a river unobstructed by any permanent structure, or a dammed river that still allows for passage).

The river reaches within Units 1 to 7 as critical habitat lie within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

The downstream limit of the riverine units is the mouth of each river. The mouth is defined as rkm 0 (rmi 0). Although the interface of fresh and saltwater, referred to as the saltwater wedge, occurs within the lower-most reach of a river, for ease in delineating critical habitat units, we are defining the boundary between the riverine and estuarine units as rkm 0 (rmi 0).

Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water (MHW) (33 CFR 329.12(a)(2)). All bays and estuaries within Units 8 to 14, therefore, lie below the MHW lines. Where precise determination of the actual location becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline'' which is determined by reference to physical markings, lines of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

The term 72 COLREGS is defined as demarcation lines which delineate those

waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 and those waters upon which mariners shall comply with the Inland Navigation Rules (33 CFR 80.01). The waters inside of these lines are Inland Rules waters and the waters outside the lines are COLREGS waters. These lines are defined in 33 CFR part 80, and have been used for identification purposes to delineate boundary lines of the estuarine and marine habitat Units 8, 9, 11, and 12.

Critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas.

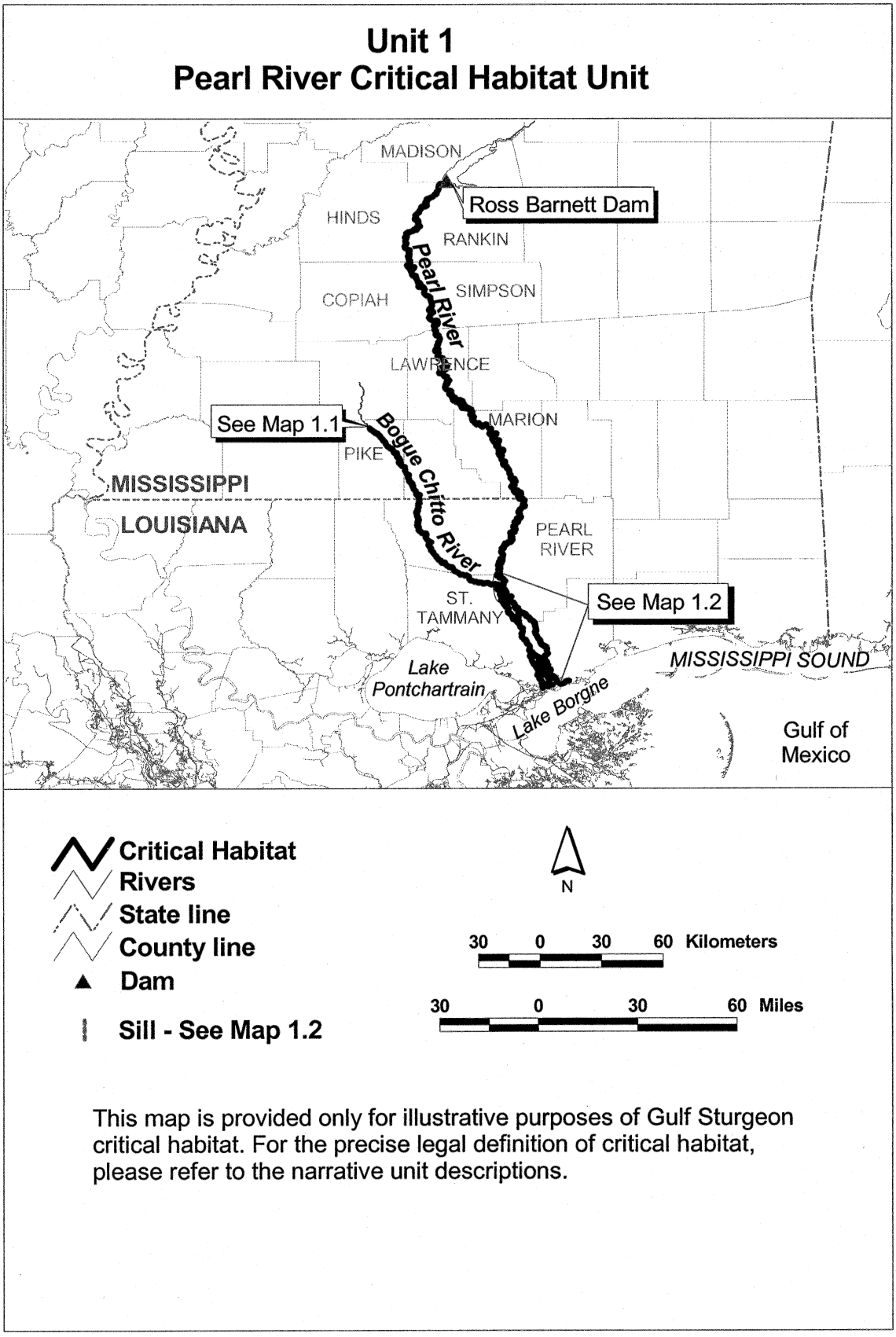
Critical habitat units are depicted for Louisiana, Mississippi, Alabama and Florida on the maps below. The textual unit descriptions below are definitive sources for determining the critical habitat boundaries. General location maps by unit are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *Unit 1: Pearl River System in St. Tammany and Washington Parishes in Louisiana and Walthall, Hancock, Pearl River, Marion, Lawrence, Simpson, Copiah, Hinds, Rankin, and Pike Counties in Mississippi.*

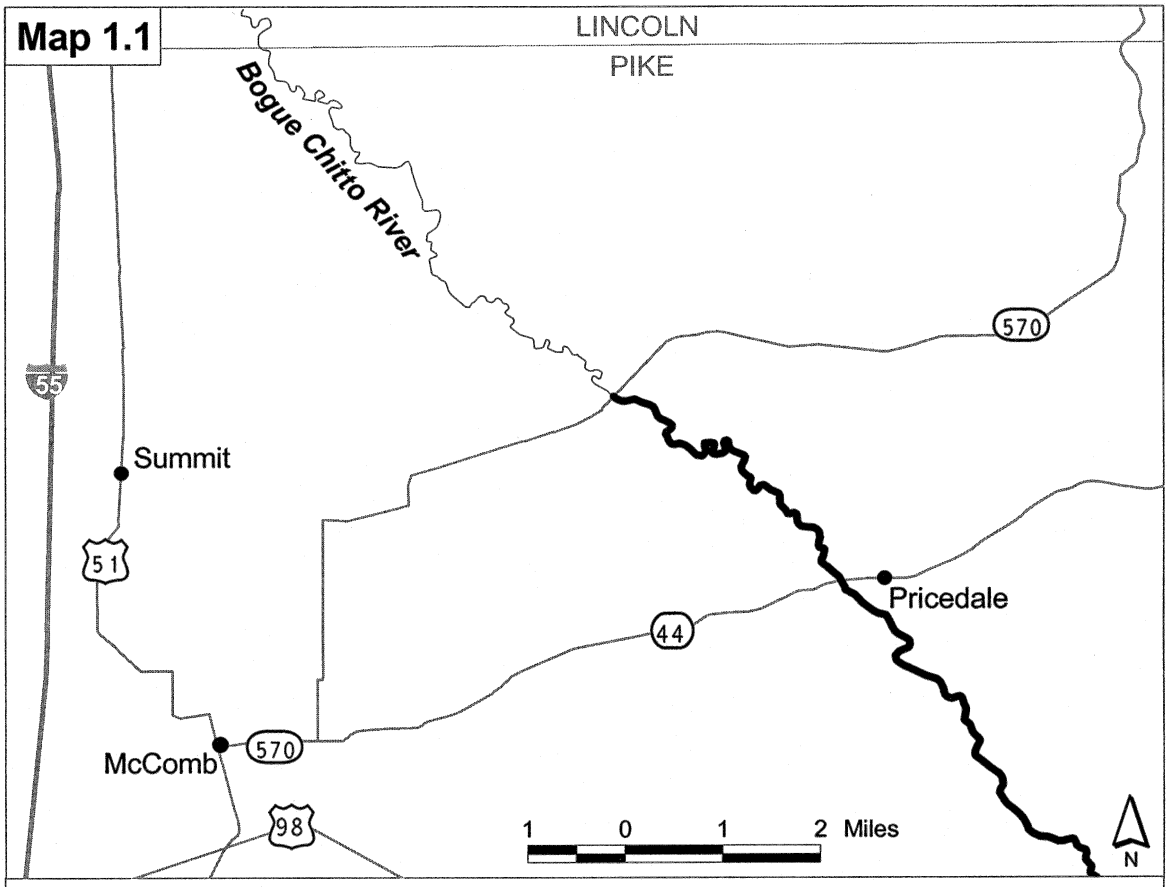
(1) Unit 1 includes the Pearl River main stem from the spillway of the Ross Barnett Dam, Hinds and Rankin Counties, Mississippi, downstream to where the main stem river drainage discharges at its mouth joining Lake Borgne, Little Lake, or The Rigolets in Hancock County, Mississippi, and St. Tammany Parish, Louisiana. It includes the main stems of the East Pearl River, West Pearl River, West Middle River, Holmes Bayou, Wilson Slough, downstream to where these main stem river drainages discharge at the mouths of Lake Borgne, Little Lake, or The Rigolets. Unit 1 also includes the Bogue Chitto River main stem, a tributary of the Pearl River, from Mississippi State Highway 570, Pike County, Mississippi, downstream to its confluence with the West Pearl River, St. Tammany Parish, Louisiana. The lateral extent of Unit 1 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 1 follow:

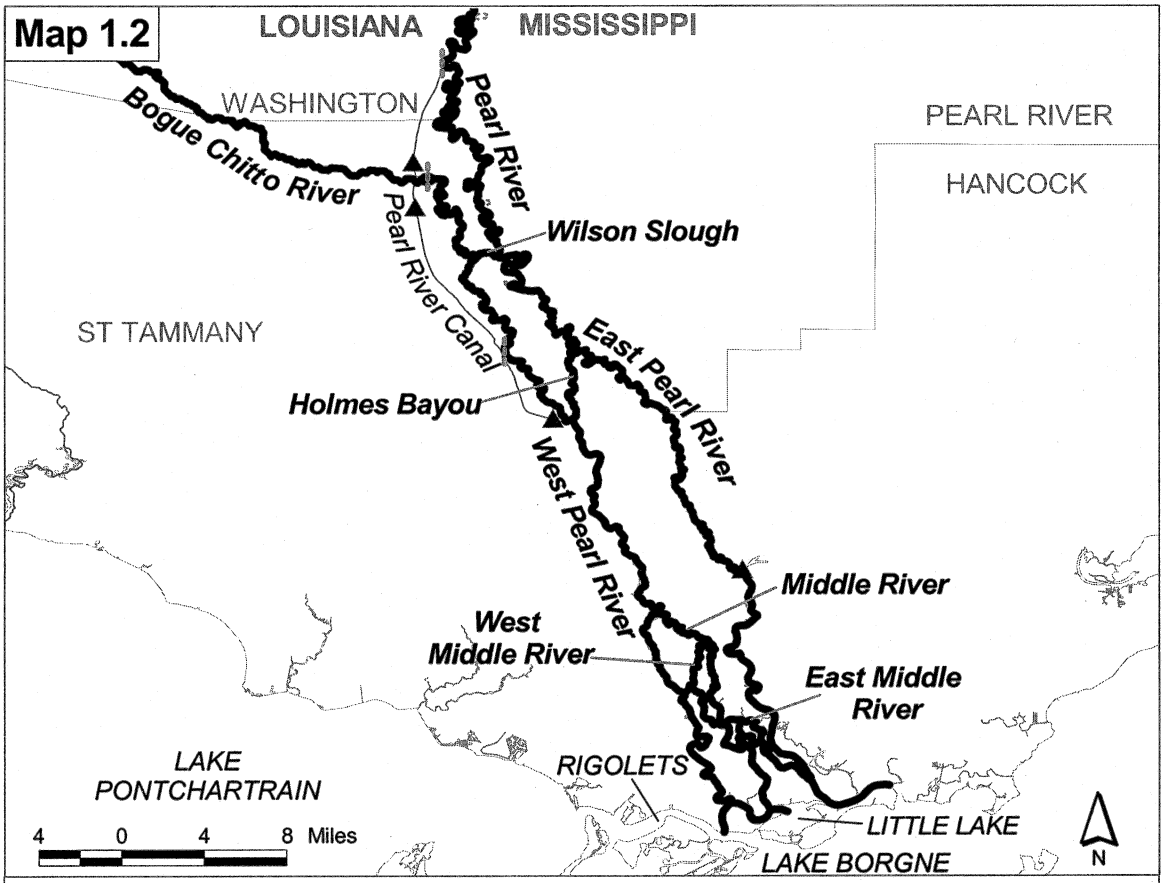
BILLING CODE 3510–22–P



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BILLING CODE 3510–22–C

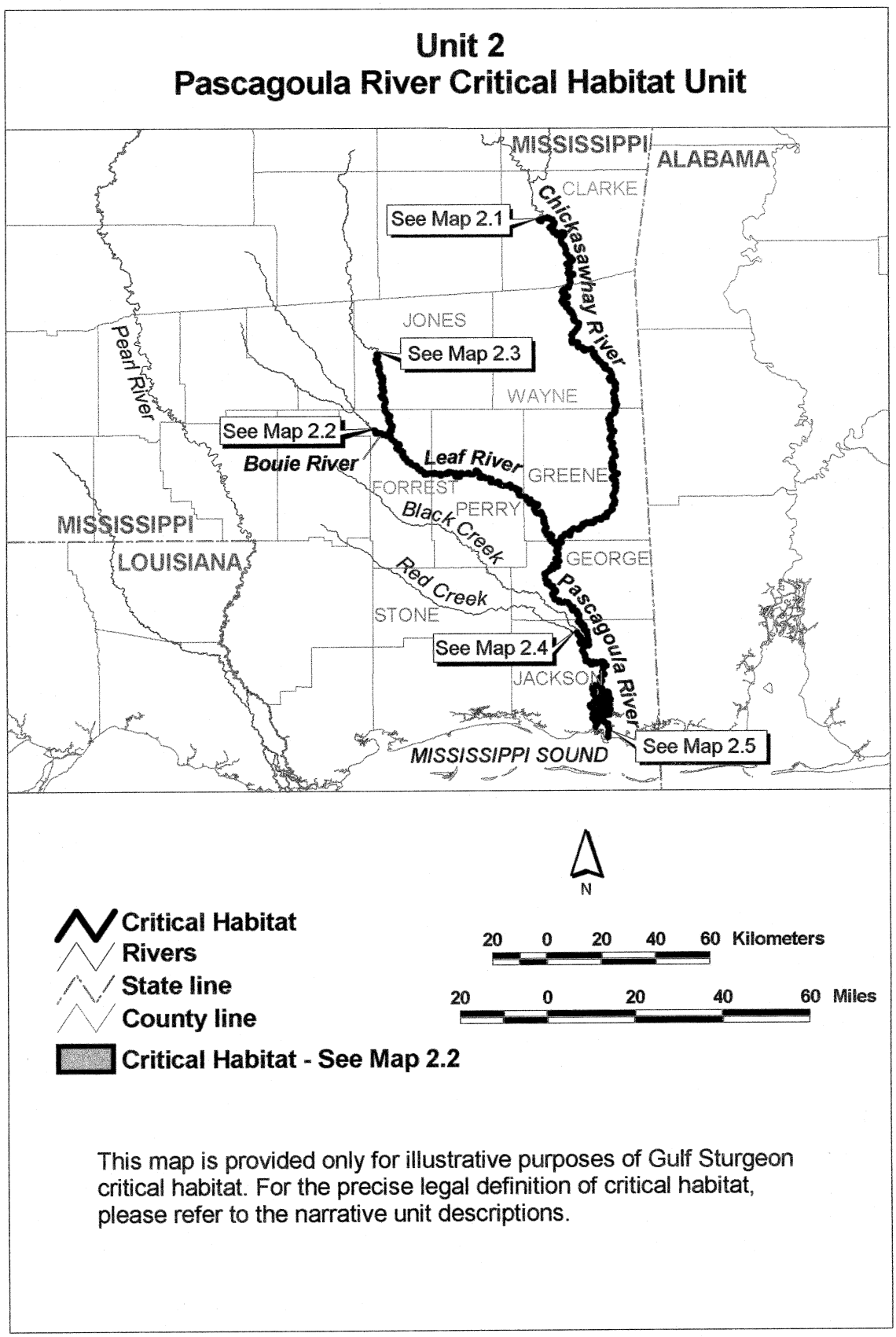
(b) *Unit 2: Pascagoula River System in Forrest, Perry, Greene, George, Jackson, Clarke, Jones, and Wayne Counties, Mississippi.*

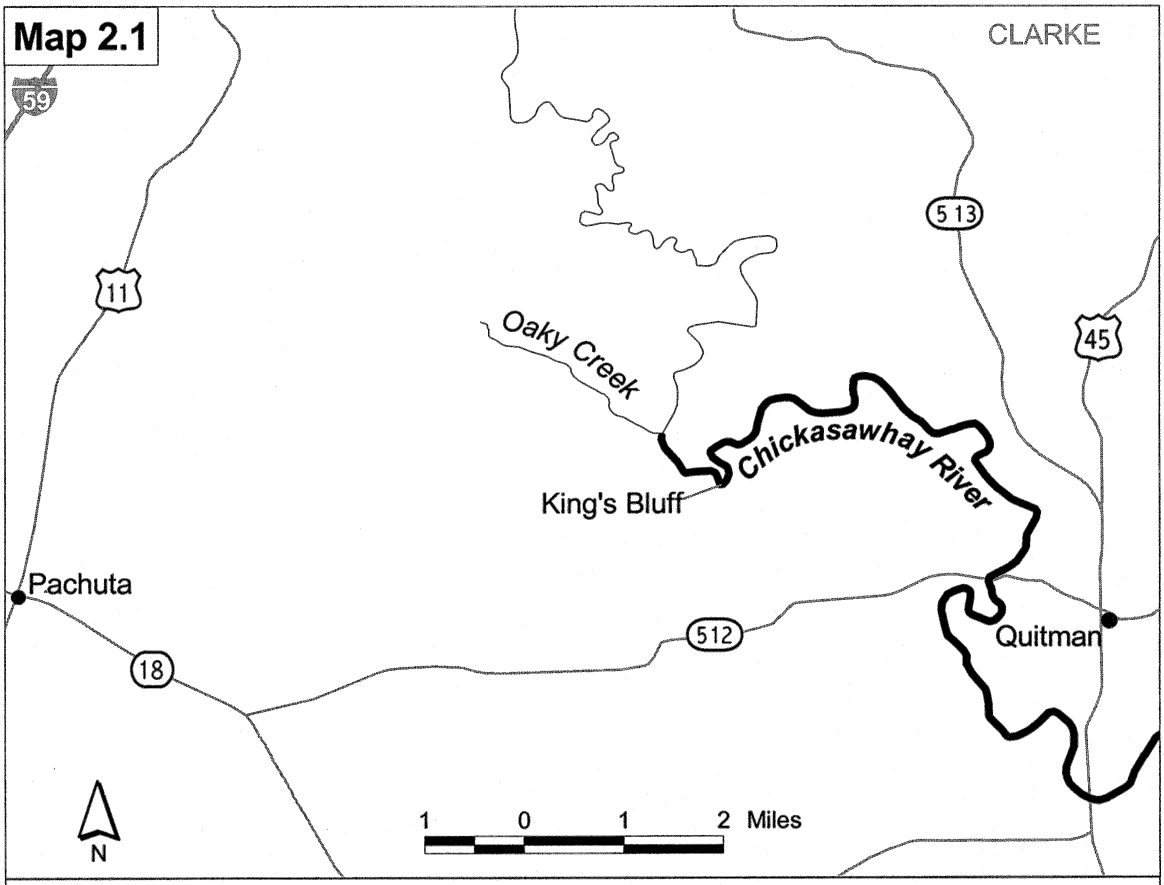
(1) Unit 2 includes all of the Pascagoula River main stem and its distributaries, portions of the Bouie, Leaf, and Chickasawhay tributaries, and all of the Big Black Creek tributary. It includes the Bouie River main stem beginning on the southern-most road crossing of Interstate 59, Forrest County, Mississippi, downstream to its confluence with the Leaf River, Forrest County, Mississippi. The Leaf River main stem beginning from Mississippi State Highway 588, Jones County, Mississippi, downstream to its confluence with the Chickasawhay River, George County, Mississippi is included. The main stem of the Chickasawhay River from the mouth of Oaky Creek, Clarke County, Mississippi, downstream to its confluence with the Leaf River, George County, Mississippi is included. Unit 2 also includes Big Black Creek main stem from its confluence with Black and Red Creeks, Jackson County, Mississippi, to its confluence with the Pascagoula River, Jackson County, Mississippi. All of the main stem of the Pascagoula River from its confluence with the Leaf and Chickasawhay Rivers, George County, Mississippi, to the discharge of the East and West Pascagoula Rivers into Pascagoula Bay, Jackson County, Mississippi, is included. The lateral extent of Unit 2 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Major shipping channels in this unit are excluded under section 4(b)(2) of the Act.

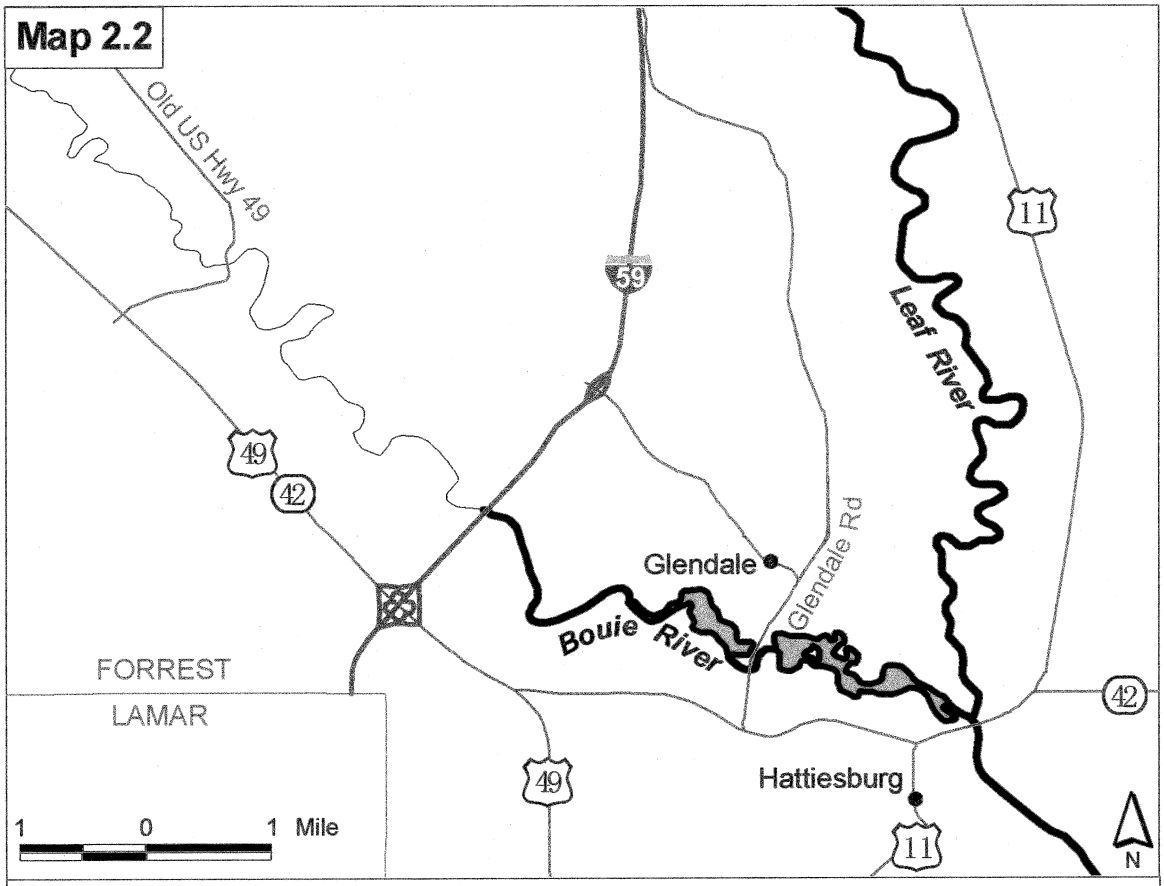
(3) Maps of Unit 2 follow:

BILLING CODE 3510–22–P

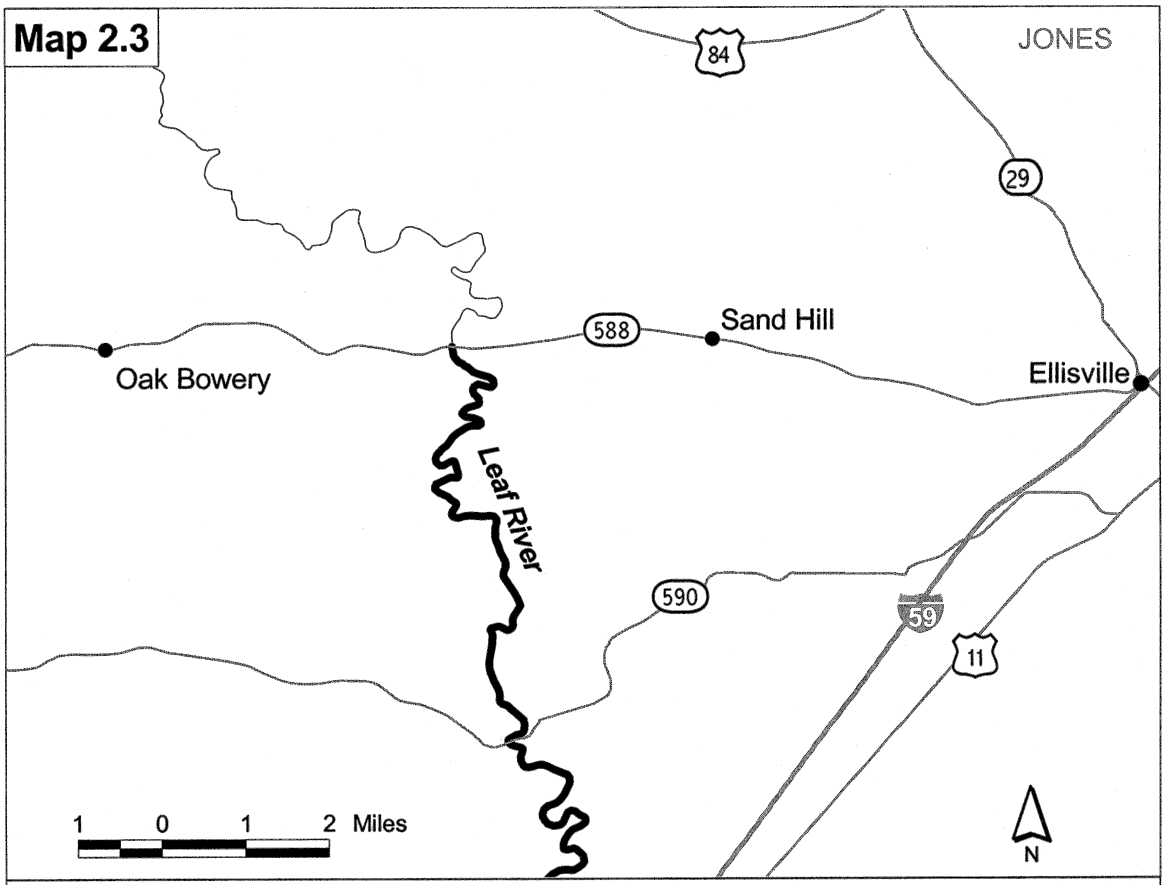

Unit 2
Pascagoula River Critical Habitat Unit
MISSISSIPPI
ALABAMA
CLARKE
See Map 2.1
Chickasawhay River
JONES
See Map 2.3
Pearl River
WAYNE
See Map 2.2
Bouie River
Leaf River
GREENE
FORREST
PERRY
Black Creek
MISSISSIPPI
LOUISIANA
GEORGE
Red Creek
Pascagoula River
STONE
See Map 2.4
JACKSON
See Map 2.5
MISSISSIPPI SOUND
N
Critical Habitat
Rivers
State line
County line
Critical Habitat - See Map 2.2
20 0 20 40 60 Kilometers
20 0 20 40 60 Miles
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



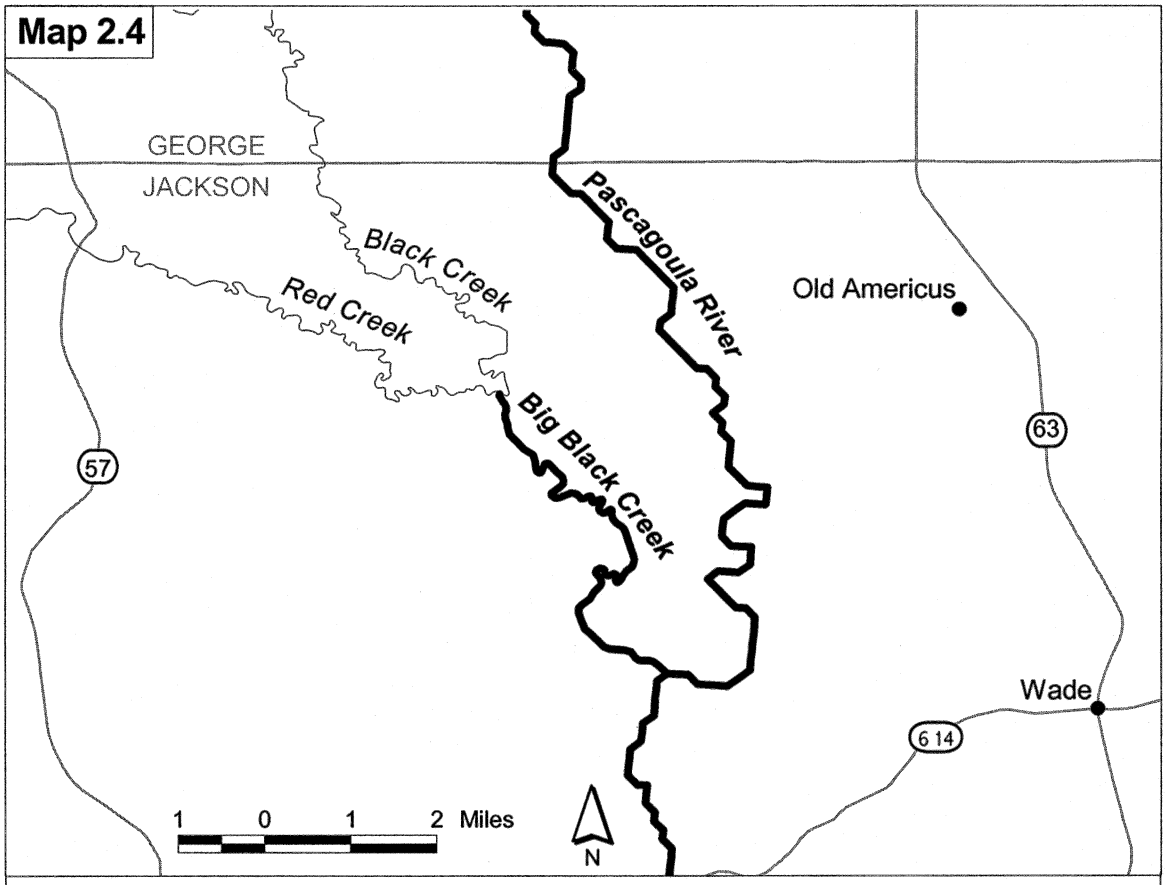
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



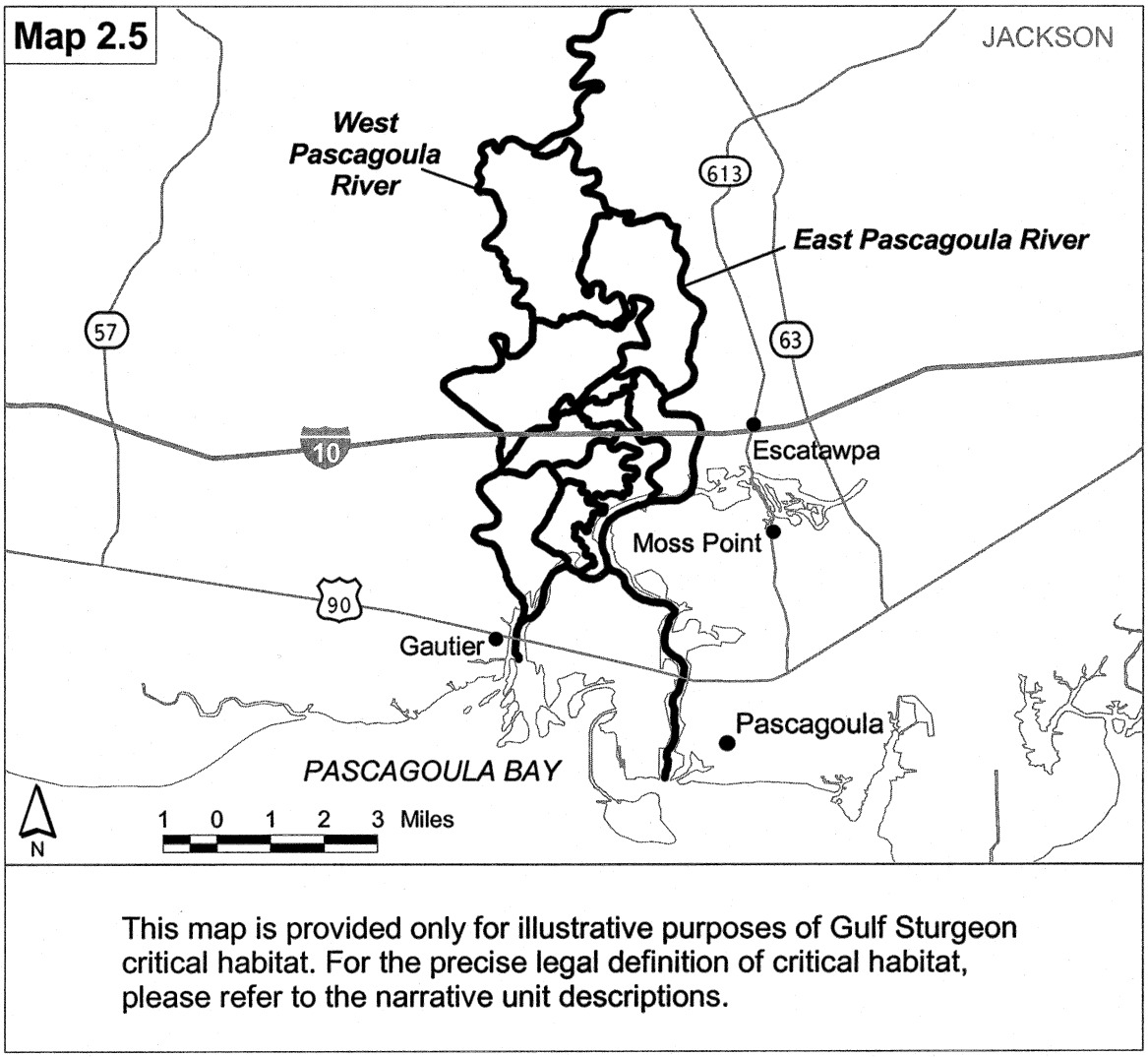
This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



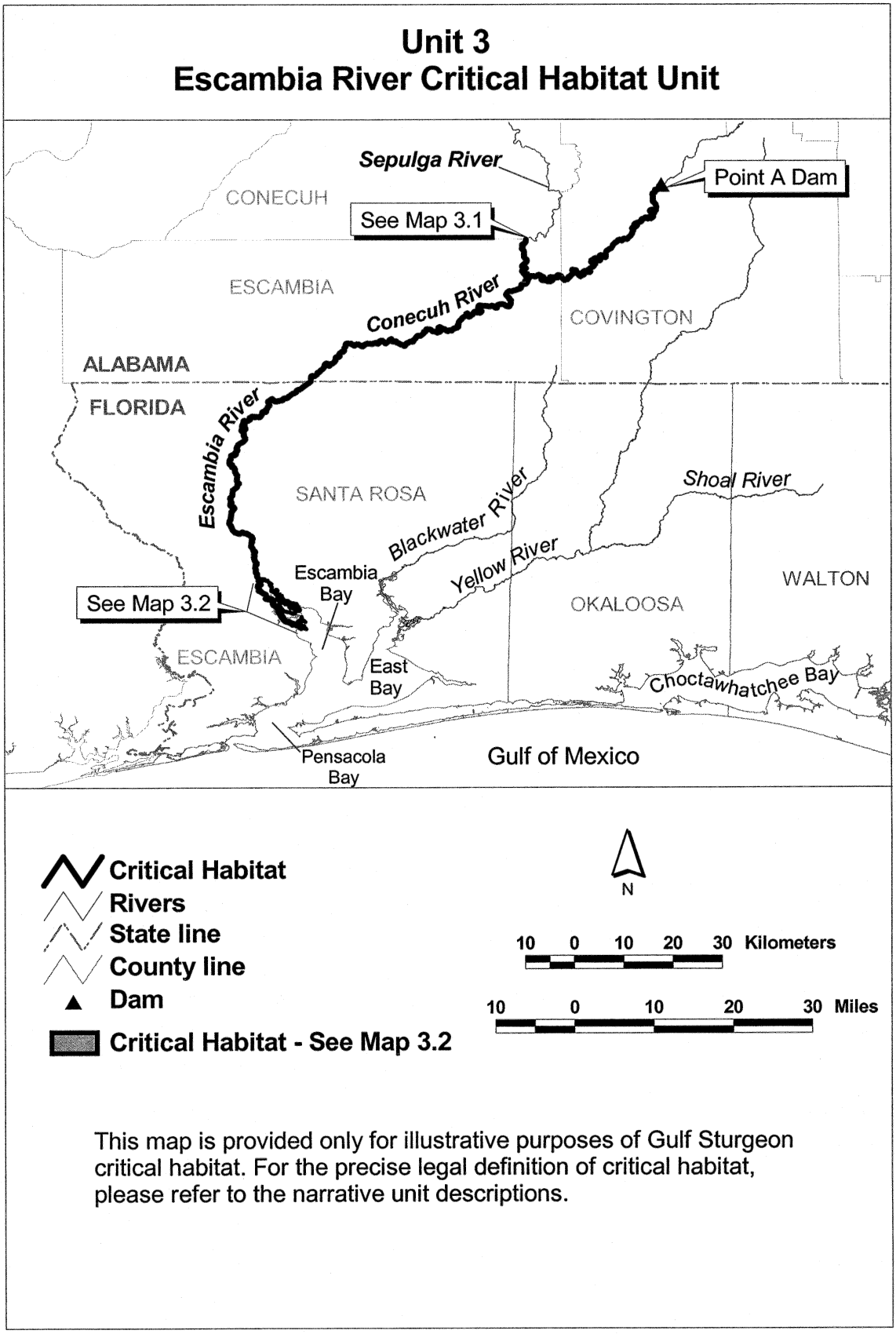
BILLING CODE 3510–22–C

(c) *Unit 3: Escambia River System in Santa Rosa and Escambia Counties, Florida and Escambia, Conecuh, and Covington Counties, Alabama.*

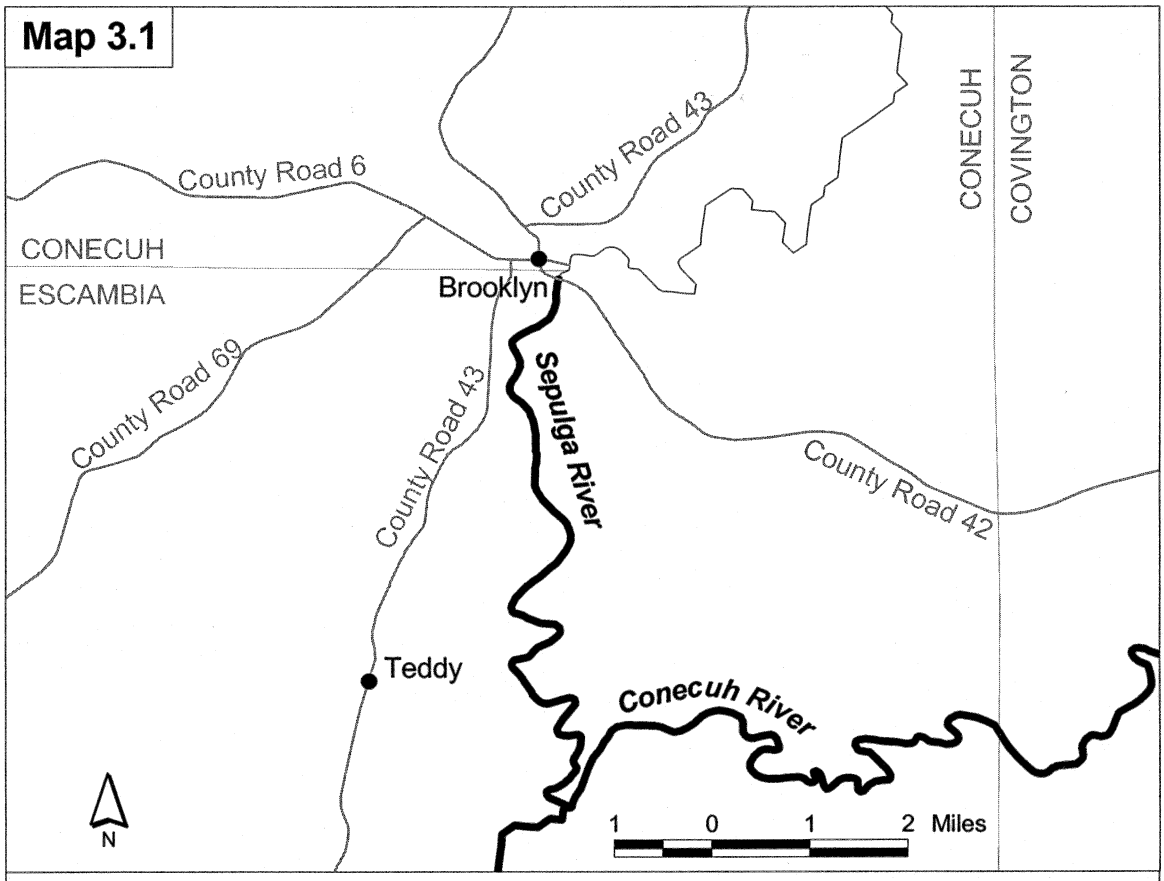
(1) Unit 3 includes the Conecuh River main stem beginning just downstream of the spillway of Point A Dam, Covington County, Alabama, downstream to the Florida State line, where its name changes to the Escambia River, Escambia County, Alabama, and Escambia and Santa Rosa Counties, Florida. It includes the entire main stem of the Escambia River downstream to its discharge into Escambia Bay and Macky Bay, Escambia and Santa Rosa Counties, Florida. All of the distributaries of the Escambia River including White River, Little White River, Simpson River, and Dead River, Santa Rosa County, Florida are included. The Sepulga River main stem from Alabama County Road 42, Conecuh and Escambia Counties, Alabama, downstream to its confluence with the Conecuh River, Escambia County, Alabama, is also included. The lateral extent of Unit 3 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

(2) Maps of Unit 3 follow:

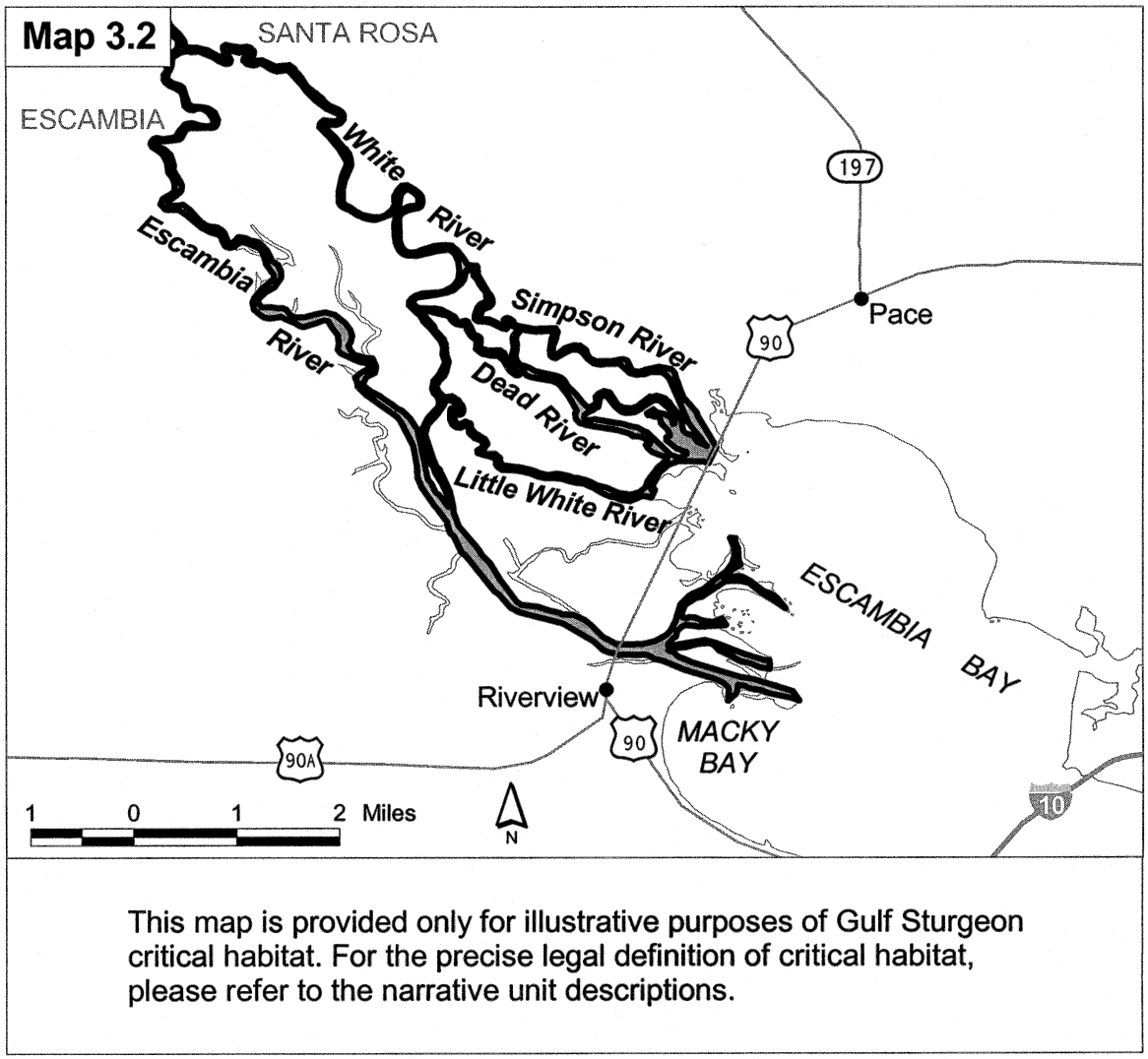
BILLING CODE 3510–22–P



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This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



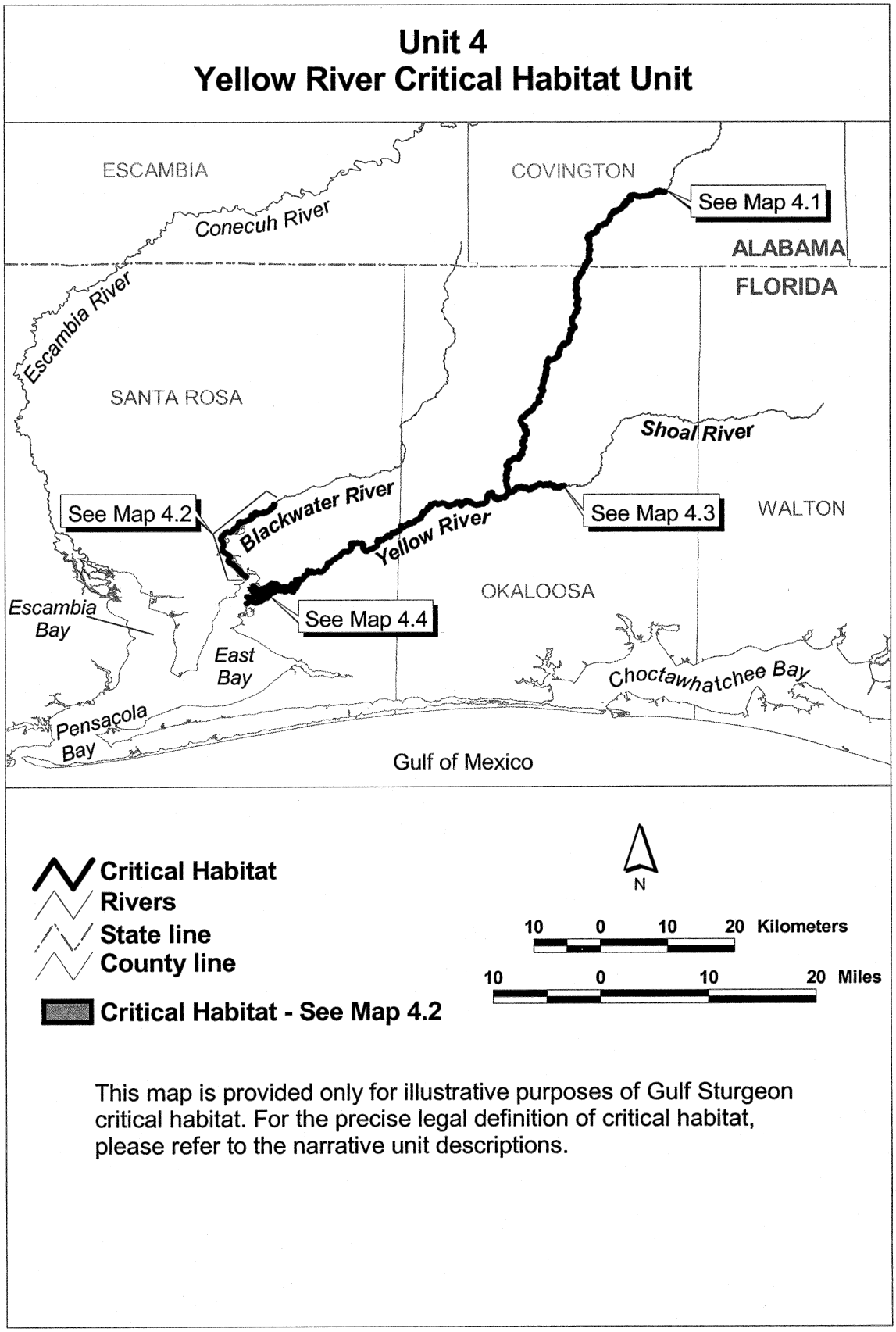
BILLING CODE 3510–22–C

(d) *Unit 4: Yellow River System in Santa Rosa and Okaloosa Counties, Florida and Covington County, Alabama.*

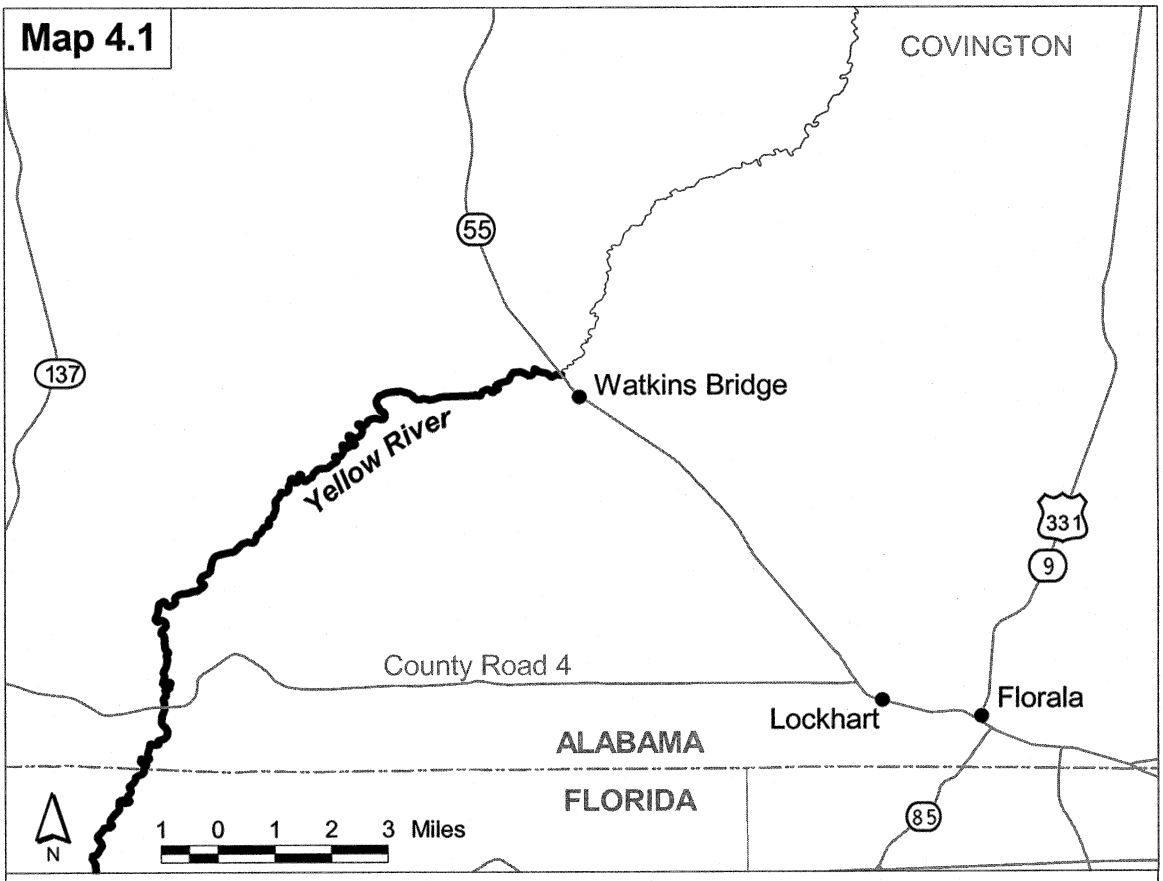
(1) Unit 4 includes the Yellow River main stem from Alabama State Highway 55, Covington County, Alabama, downstream to its discharge at Blackwater Bay, Santa Rosa County, Florida. All Yellow River distributaries (including Weaver River and Skim Lake) discharging into Blackwater Bay are included. The Shoal River main stem, a Yellow River tributary, from Florida Highway 85, Okaloosa County, Florida, to its confluence with the Yellow River, is included. The Blackwater River from its confluence with Big Coldwater Creek, Santa Rosa County, Florida, downstream to its discharge into Blackwater Bay is included. Wright Basin and Cooper Basin, Santa Rosa County, on the Blackwater River are included. The lateral extent of Unit 4 is the ordinary high water line on each bank of the associated lakes, rivers, and shorelines.

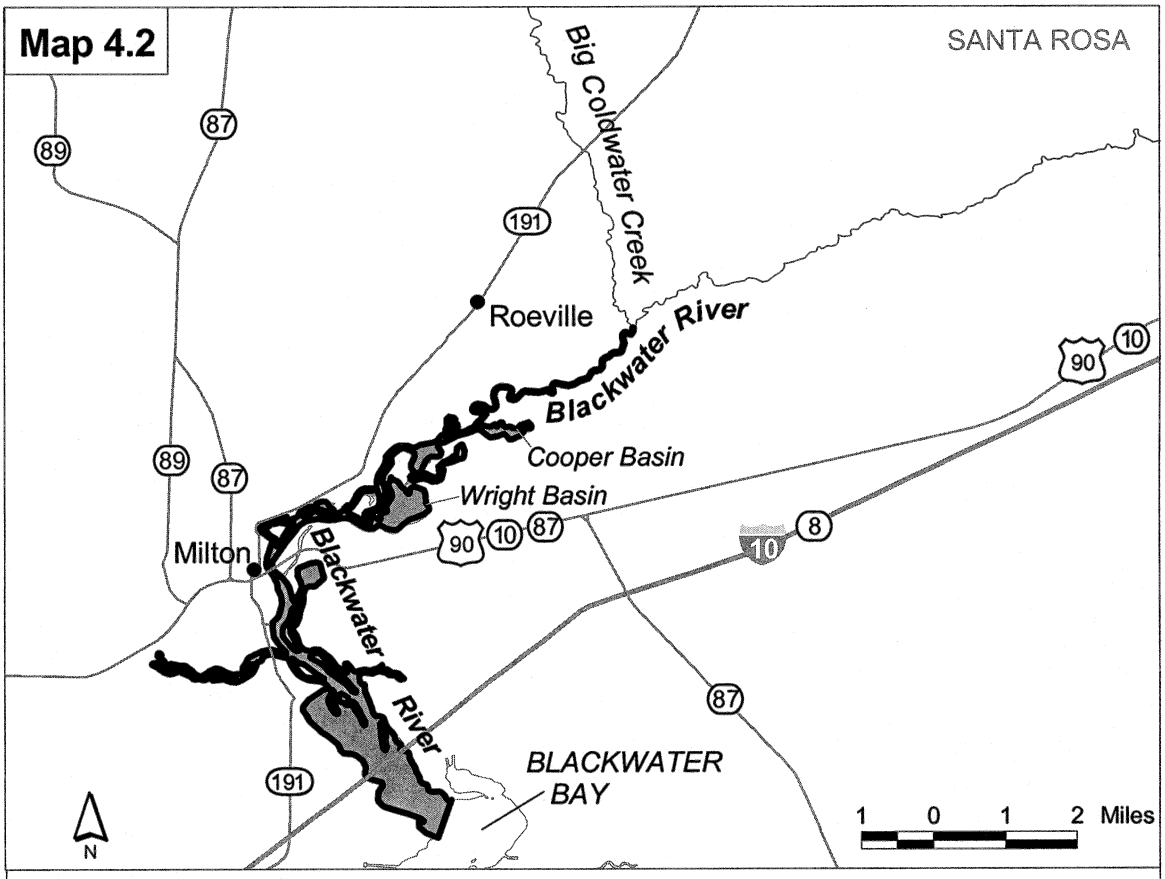
(2) Maps of Unit 4 follow:

BILLING CODE 3510–22–P

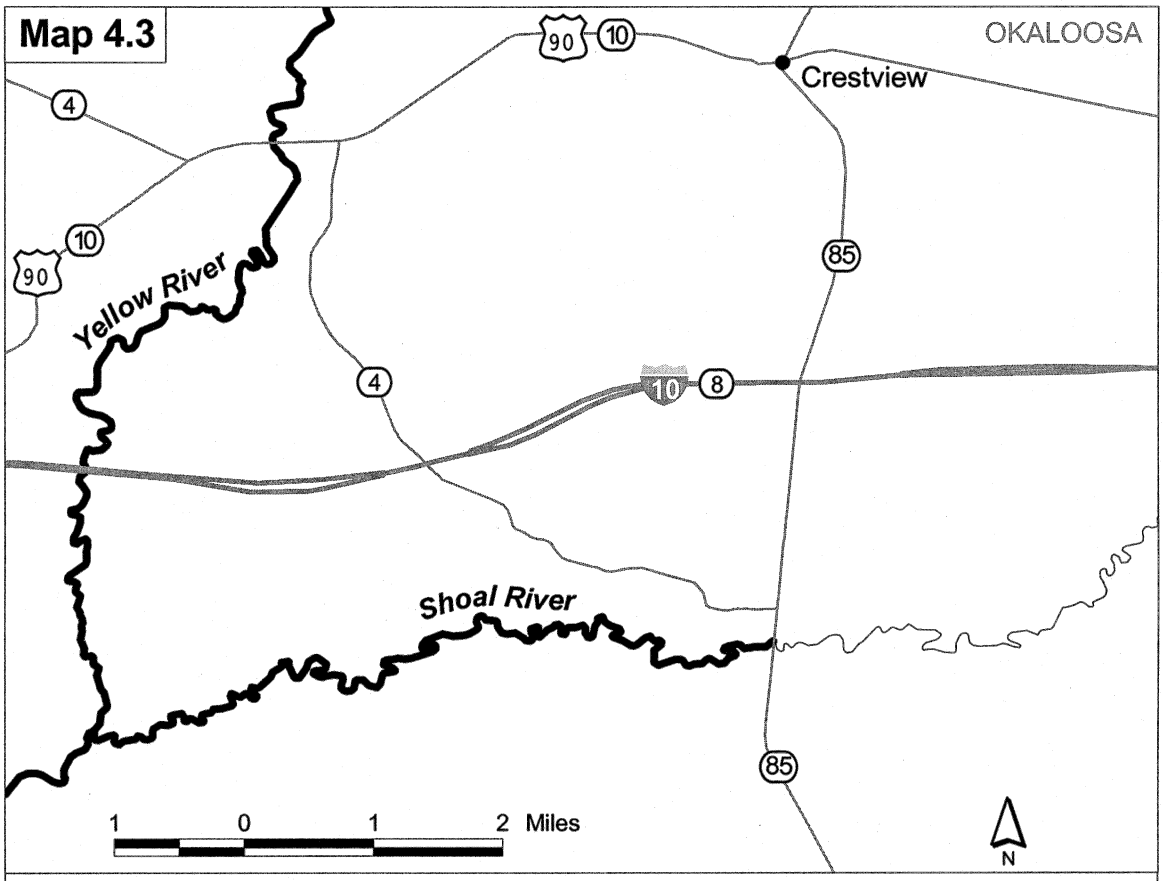


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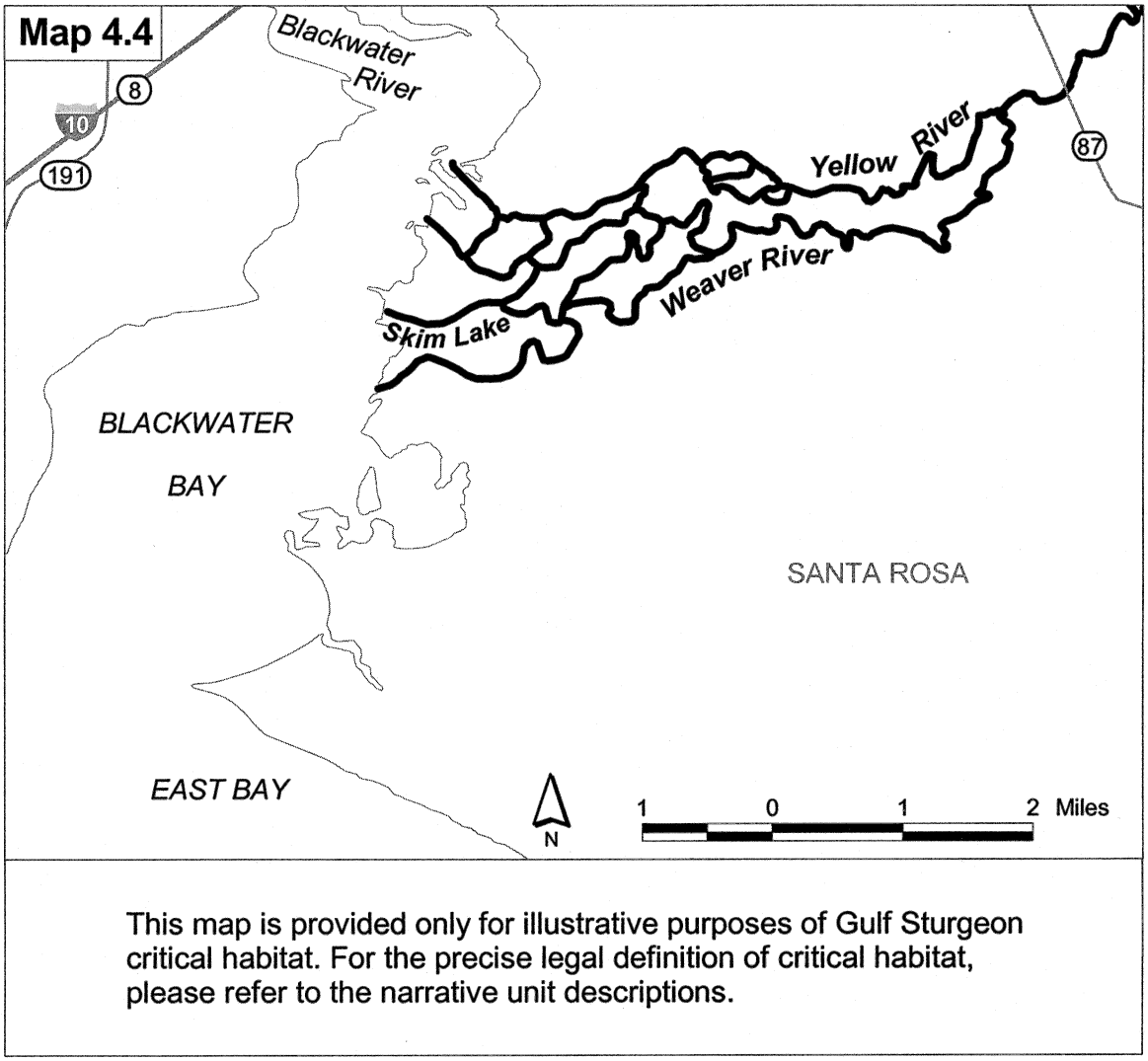

Map 4.1
COVINGTON
55
137
Watkins Bridge
Yellow River
331
9
County Road 4
Florala
Lockhart
ALABAMA
FLORIDA
85
N
1 0 1 2 3 Miles
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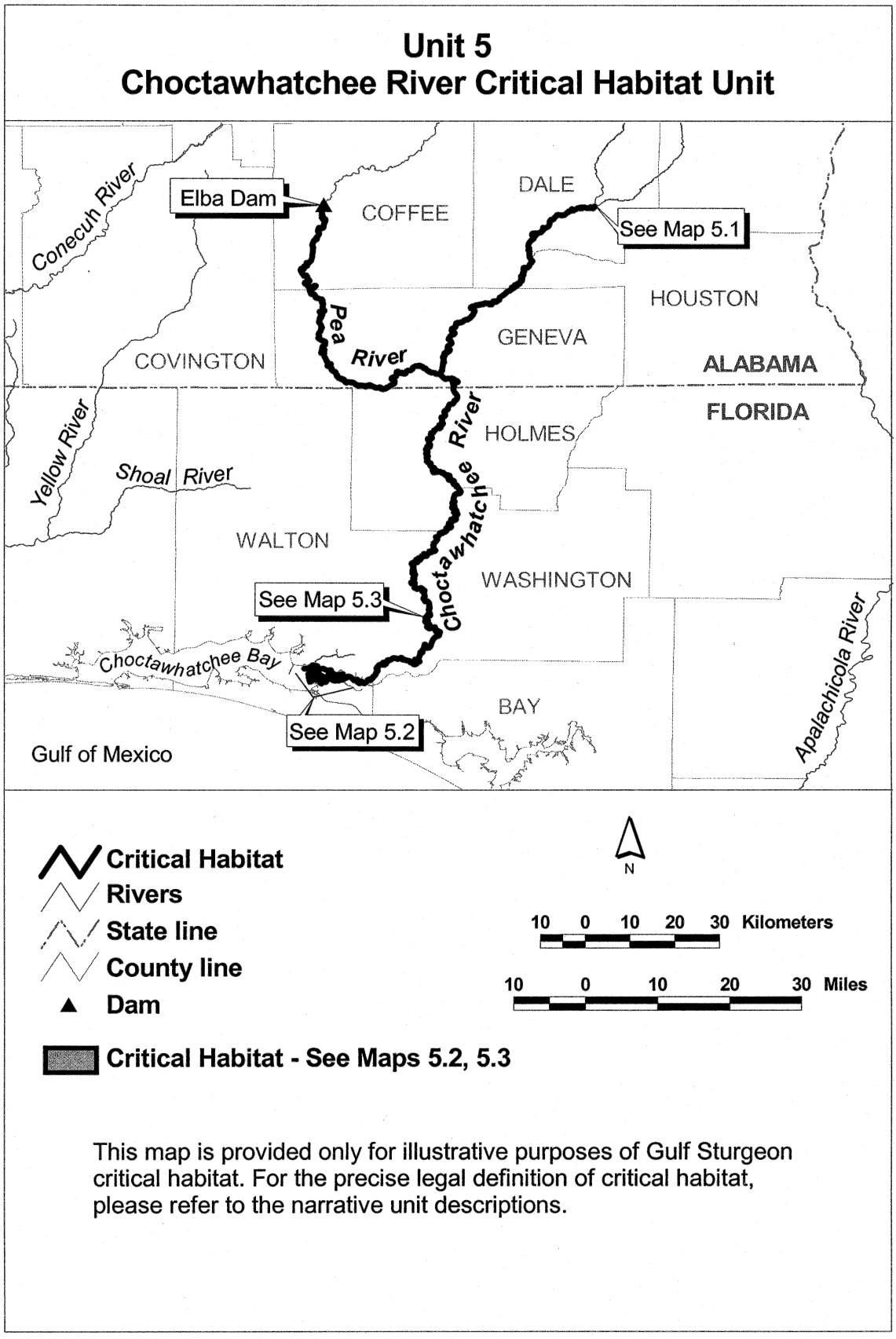
BILLING CODE 3510–22–C

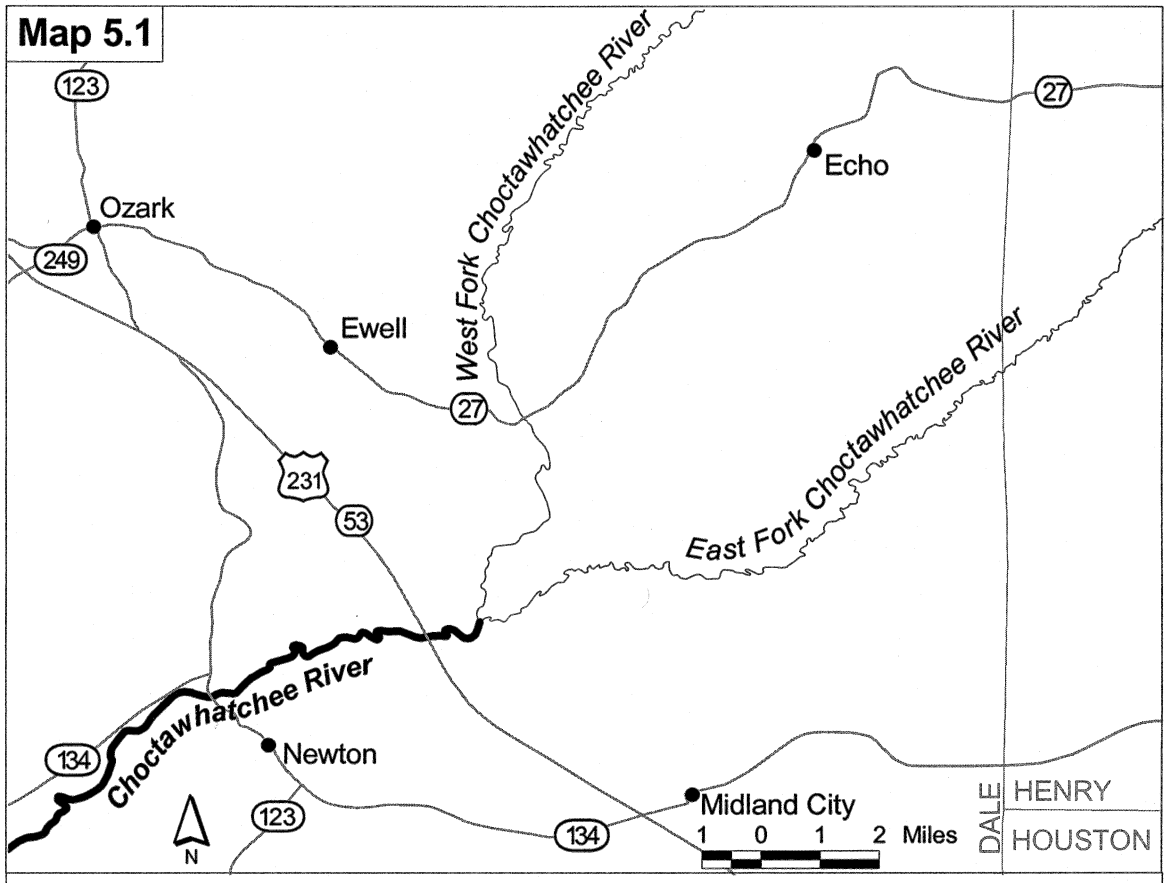
(e) *Unit 5: Choctawhatchee River System in Holmes, Washington, and Walton Counties, Florida and Dale, Coffee, Geneva, and Houston Counties, Alabama.*

(1) Unit 5 includes the Choctawhatchee River main stem from its confluence with the west and east fork of the Choctawhatchee River, Dale County, Alabama, downstream to its discharge at Choctawhatchee Bay, Walton County, Florida. The distributaries discharging into Choctawhatchee Bay known as Mitchell River, Indian River, Cypress River, and Bells Leg are included. The Boynton Cutoff, Washington County, Florida, which joins the Choctawhatchee River main stem, and Holmes Creek, Washington County, Florida, are included. The section of Holmes Creek from Boynton Cutoff to the mouth of Holmes Creek, Washington County, Florida, is included. The Pea River main stem, a Choctawhatchee River tributary, from the Elba Dam, Coffee County, Alabama, to its confluence with the Choctawhatchee River, Geneva County, Alabama, is included. The lateral extent of Unit 5 is the ordinary high water line on each bank of the associated rivers and shorelines.

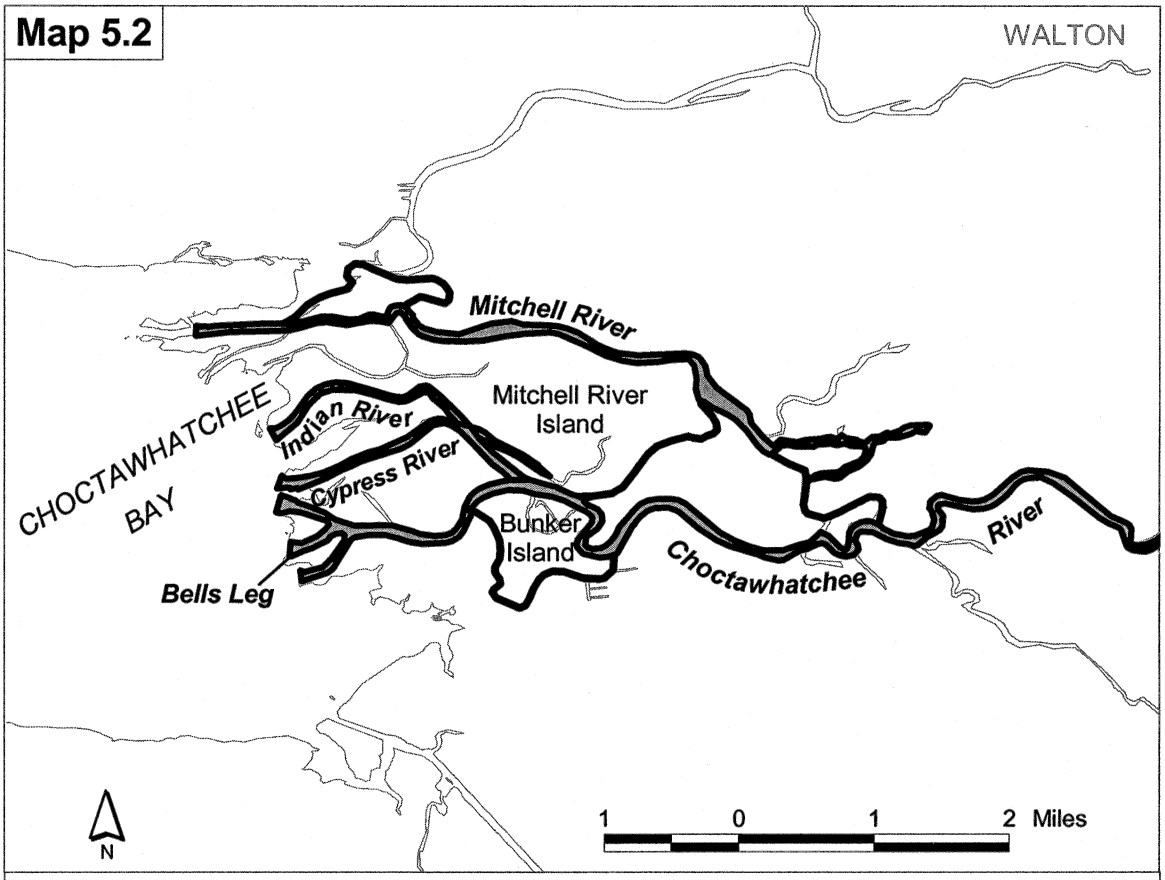
(2) Maps of Unit 5 follow:

BILLING CODE 3510–22–P

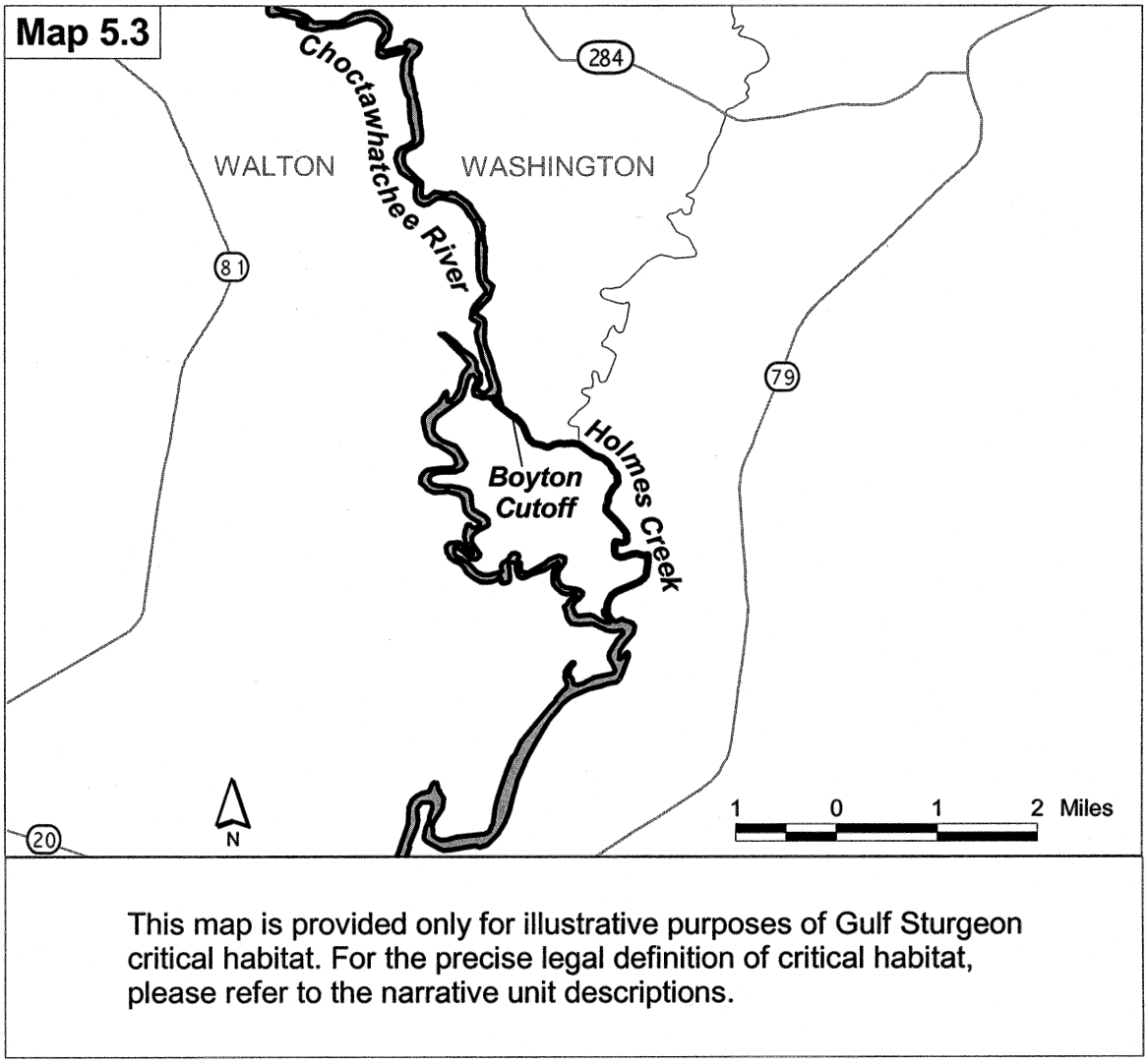

Unit 5
Choctawhatchee River Critical Habitat Unit
Conecuh River
Elba Dam
COFFEE
DALE
See Map 5.1
HOUSTON
Pea River
GENEVA
COVINGTON
ALABAMA
FLORIDA
Yellow River
Shoal River
HOLMES
Choctawhatchee River
WALTON
WASHINGTON
See Map 5.3
Choctawhatchee Bay
Apalachicola River
BAY
See Map 5.2
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Maps 5.2, 5.3
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
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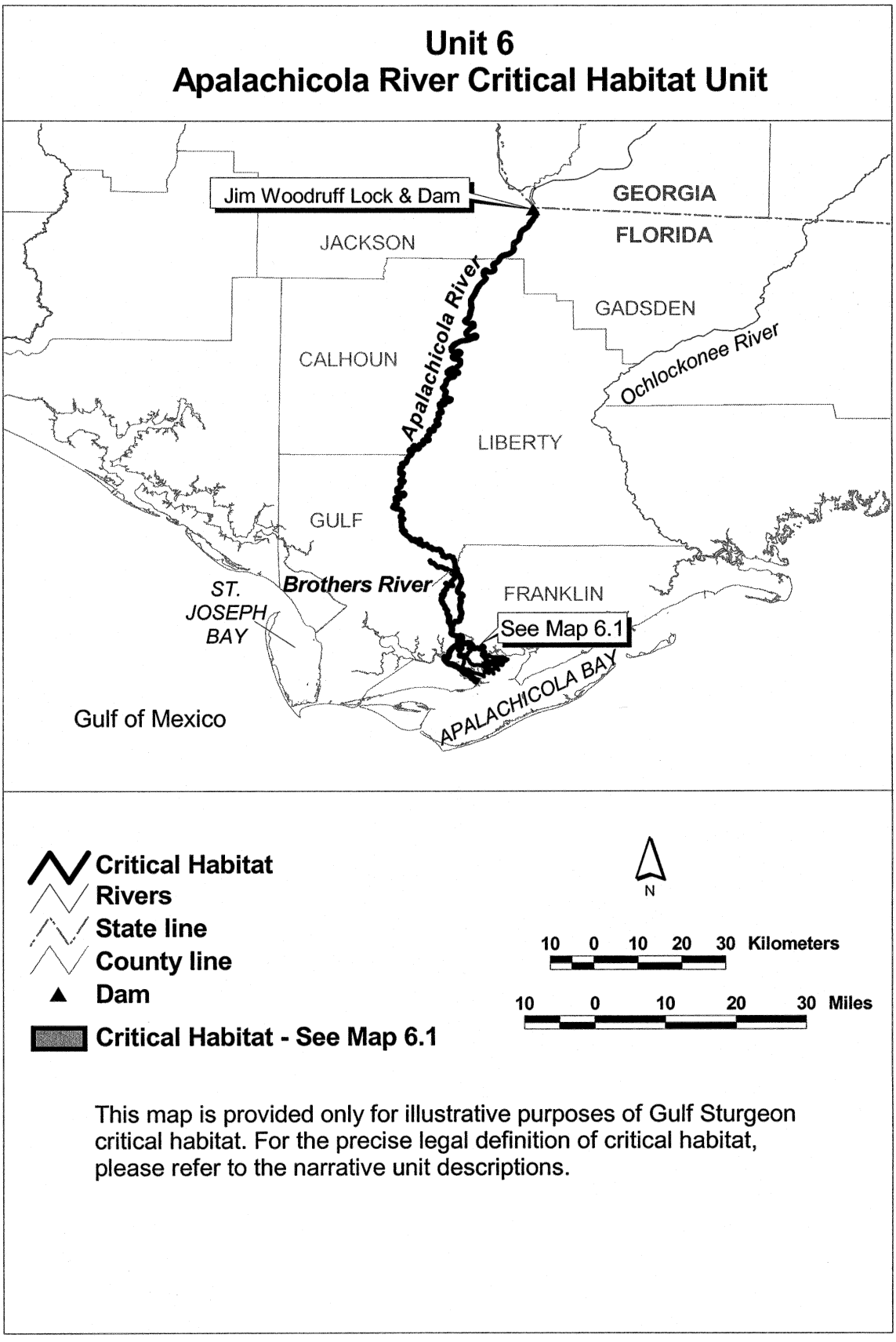
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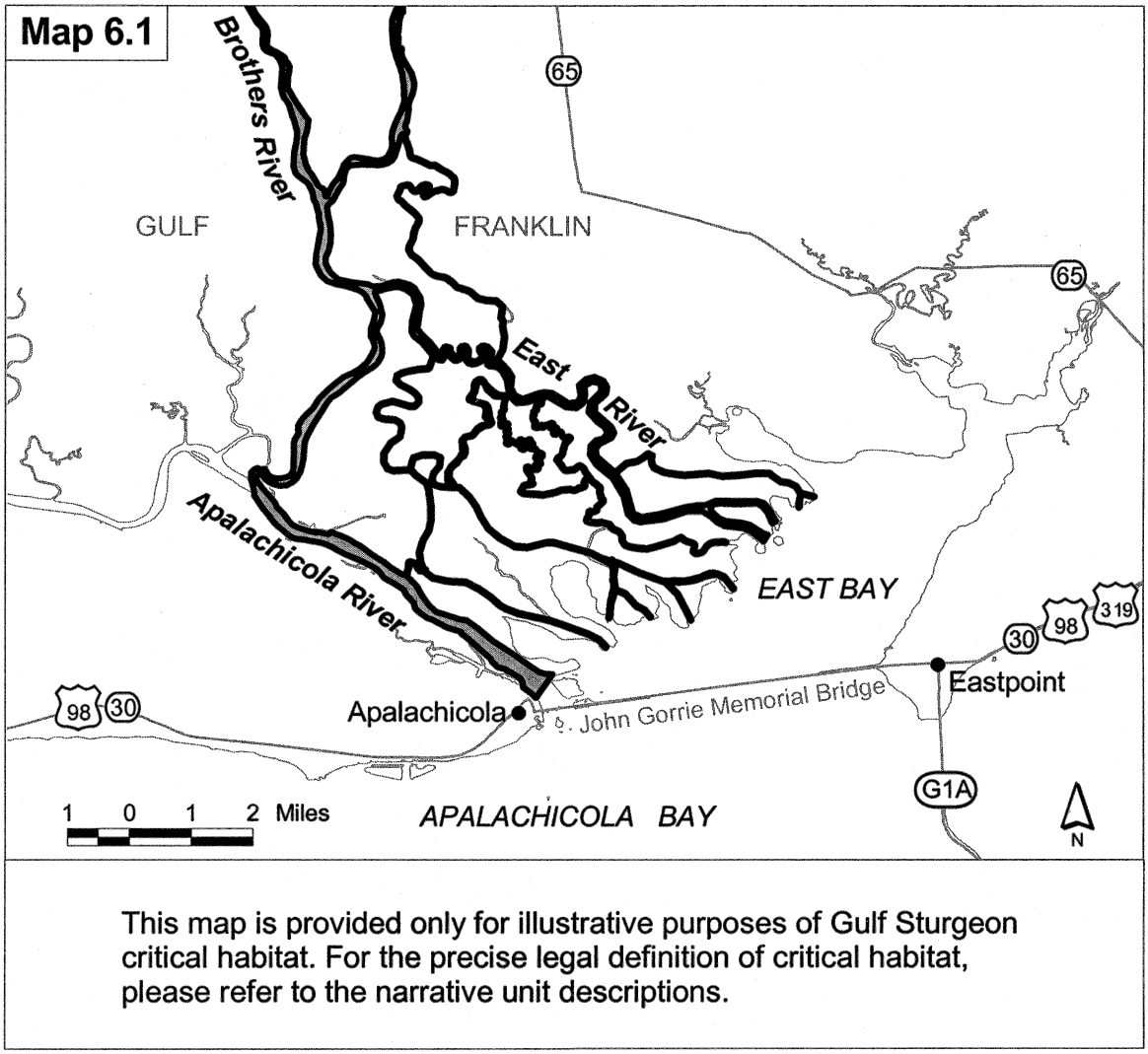
(f) *Unit 6: Apalachicola River System in Franklin, Gulf, Liberty, Calhoun, Jackson, and Gadsen Counties, Florida.*

(1) Unit 6 includes the Apalachicola River mainstem, beginning from the Jim Woodruff Lock and Dam, Gadsden and Jackson Counties, Florida, downstream to its discharge at East Bay or Apalachicola Bay, Franklin County, Florida. All Apalachicola River distributaries, including the East River, Little St. Marks River, St. Marks River, Franklin County, Florida, to their discharge into East Bay and/or Apalachicola Bay are included. The entire main stem of the Brothers River, Franklin and Gulf Counties, Florida, a tributary of the Apalachicola River, is included. The lateral extent of Unit 6 is the ordinary high water line on each bank of the associated rivers and shorelines.

(2) Maps of Unit 6 follow:

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Unit 6
Apalachicola River Critical Habitat Unit
Jim Woodruff Lock & Dam
GEORGIA
FLORIDA
JACKSON
GADSDEN
CALHOUN
Apalachicola River
Ochlockonee River
LIBERTY
GULF
Brothers River
ST. JOSEPH BAY
FRANKLIN
See Map 6.1
APALACHICOLA BAY
Gulf of Mexico
Critical Habitat
Rivers
State line
County line
Dam
Critical Habitat - See Map 6.1
N
10 0 10 20 30 Kilometers
10 0 10 20 30 Miles
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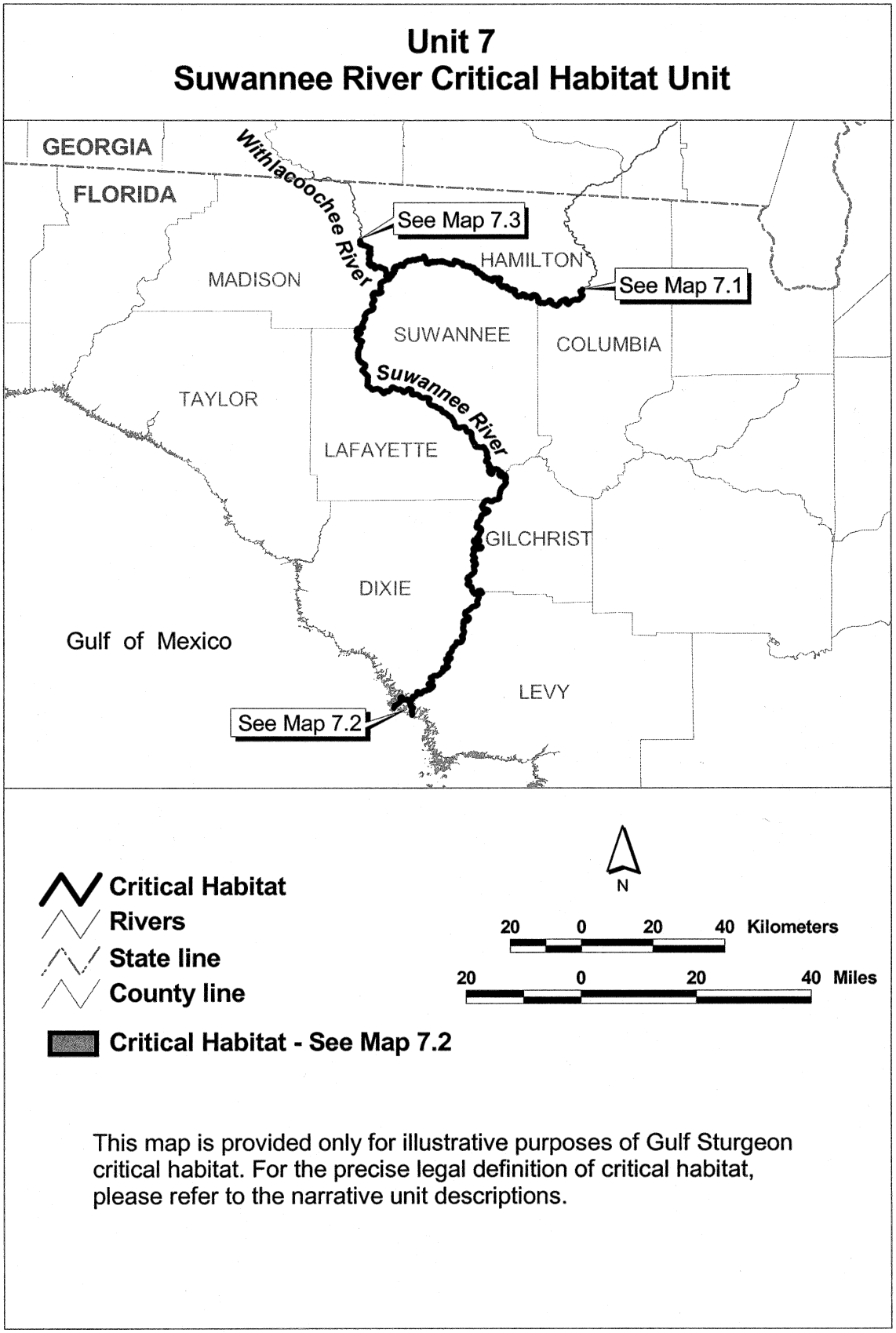
BILLING CODE 3510–22–C

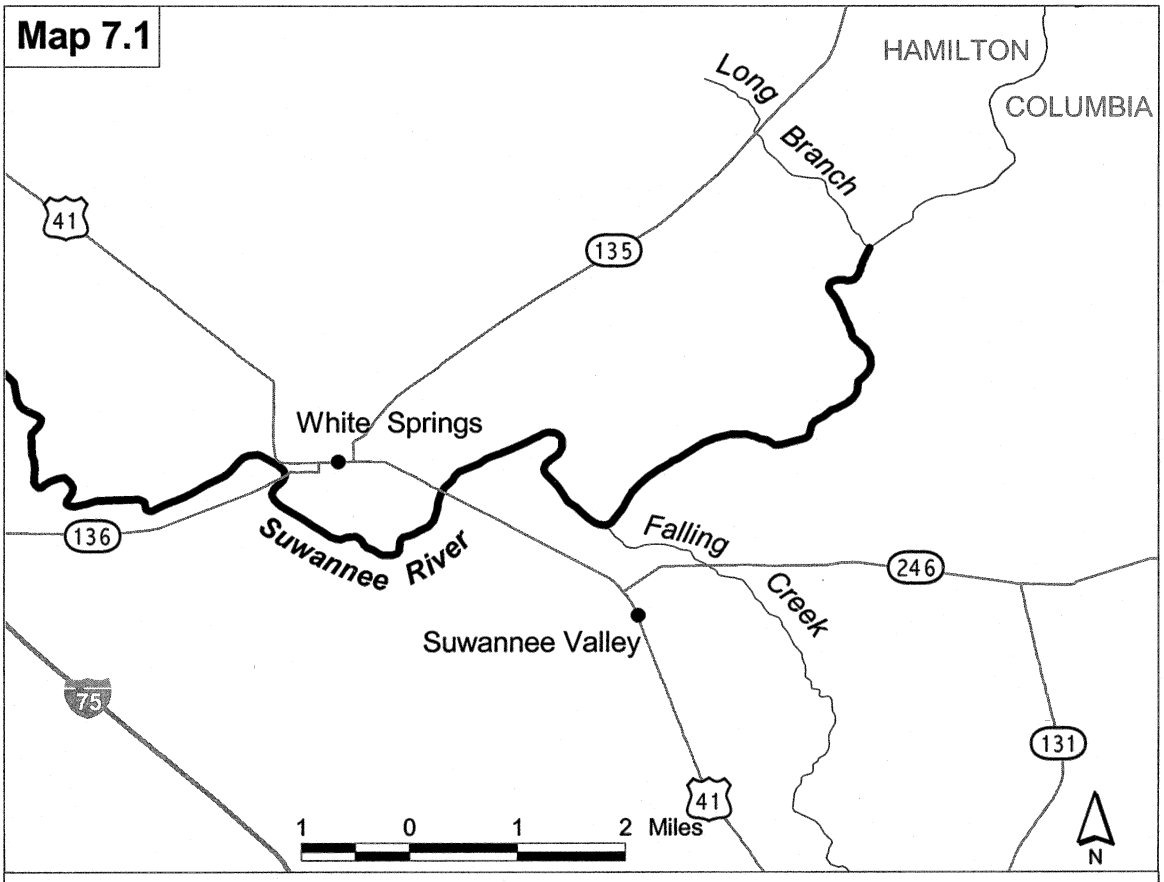
(g) *Unit 7: Suwannee River System in Hamilton, Suwannee, Madison, Lafayette, Gilchrist, Levy, Dixie, and Columbia Counties, Florida.*

(1) Unit 7 includes the Suwannee River main stem, beginning from its confluence with Long Branch Creek, Hamilton County, Florida, downstream to the mouth of the Suwannee River. It includes all the Suwannee River distributaries, including the East Pass, West Pass, Wadley Pass, and Alligator Pass, Dixie and Levy Counties, Florida, to their discharge into the Suwannee Sound or the Gulf of Mexico. The Withlacoochee River main stem from Florida State Road 6, Madison and Hamilton Counties, Florida, to its confluence with the Suwannee River is included. The lateral extent of Unit 7 is the ordinary high water line on each bank of the associated rivers and shorelines.

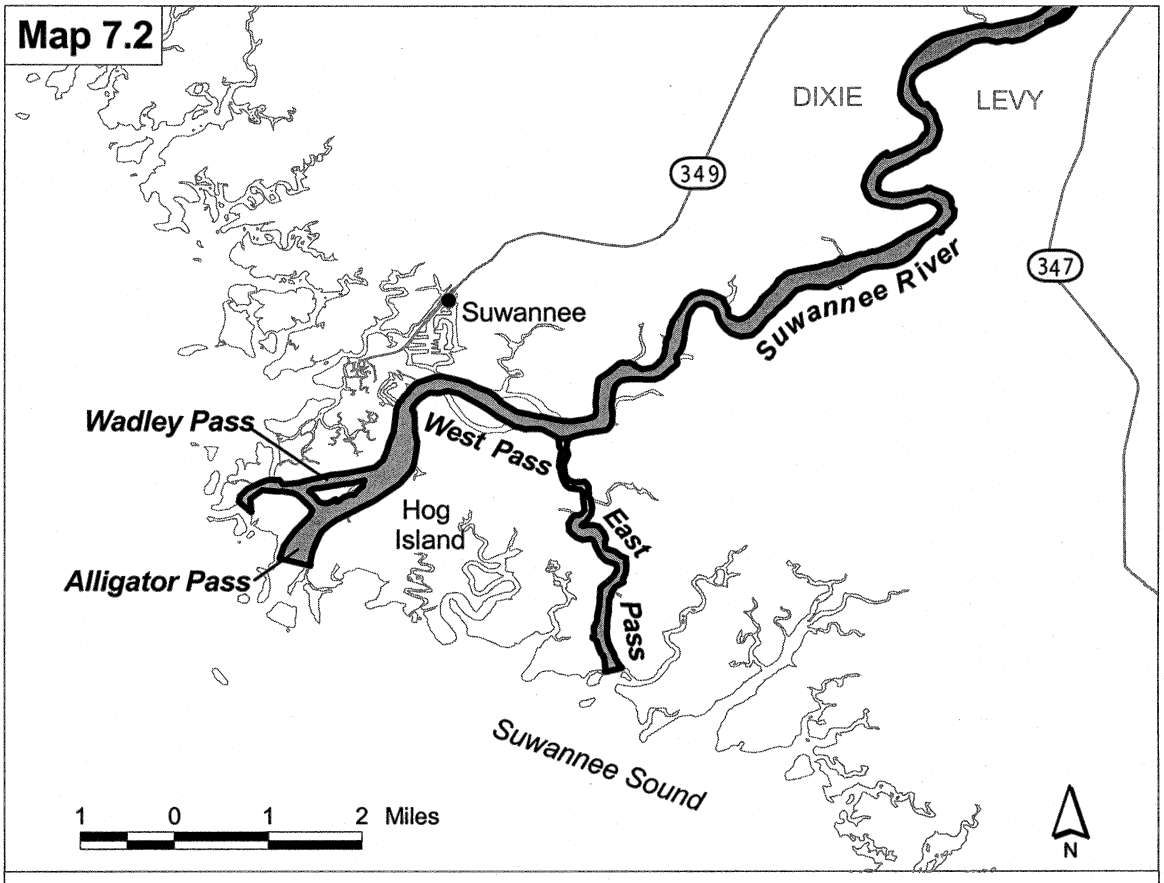
(2) Maps of Unit 7 follow:

BILLING CODE 3510–22–P

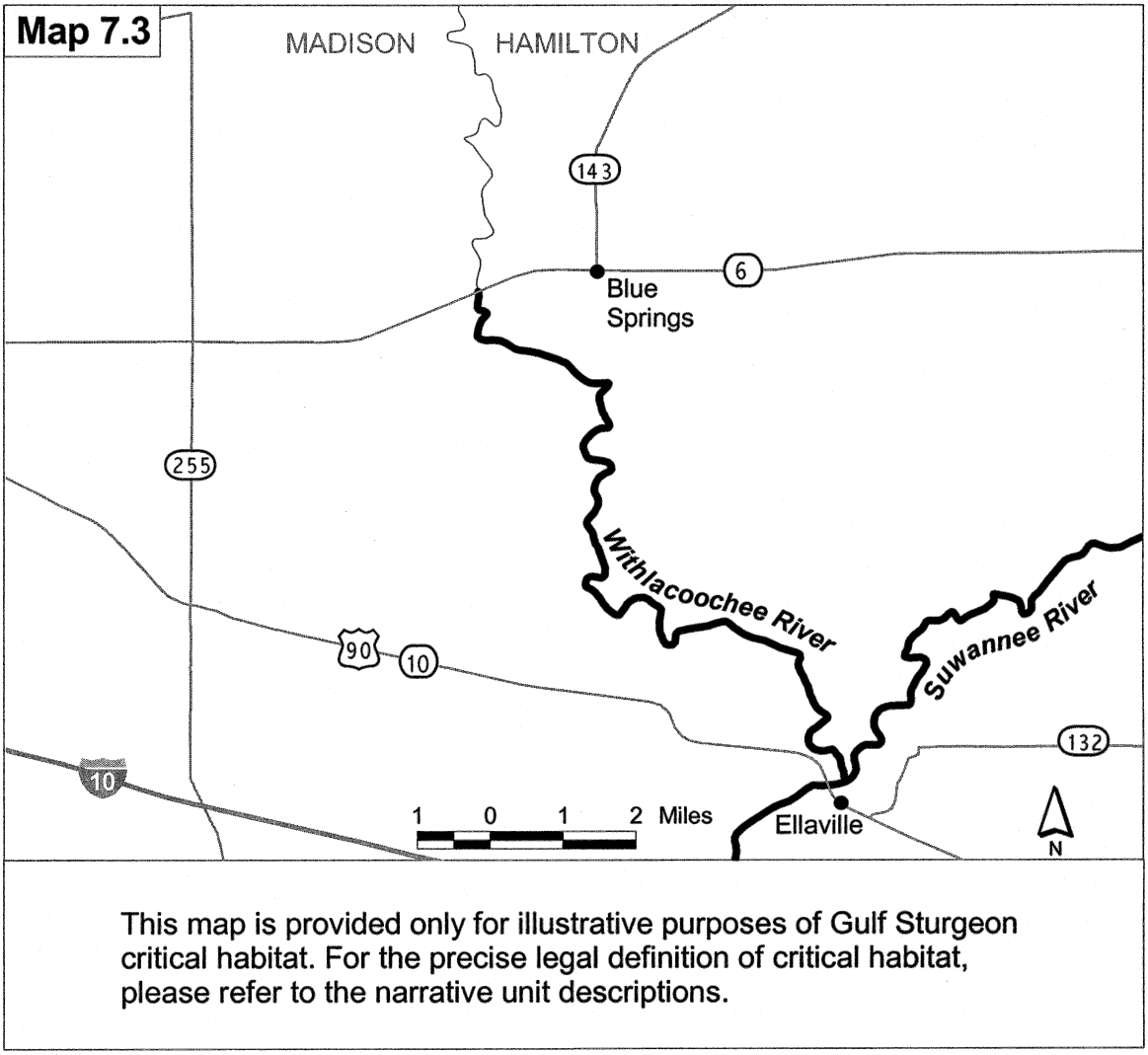

Unit 7
Suwannee River Critical Habitat Unit
GEORGIA
FLORIDA
Withlacoochee River
See Map 7.3
HAMILTON
MADISON
See Map 7.1
SUWANNEE
COLUMBIA
Suwannee River
TAYLOR
LAFAYETTE
GILCHRIST
DIXIE
Gulf of Mexico
LEVY
See Map 7.2
Critical Habitat
Rivers
State line
County line
Critical Habitat - See Map 7.2
N
20 0 20 40 Kilometers
20 0 20 40 Miles
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BILLING CODE 3510–22–C

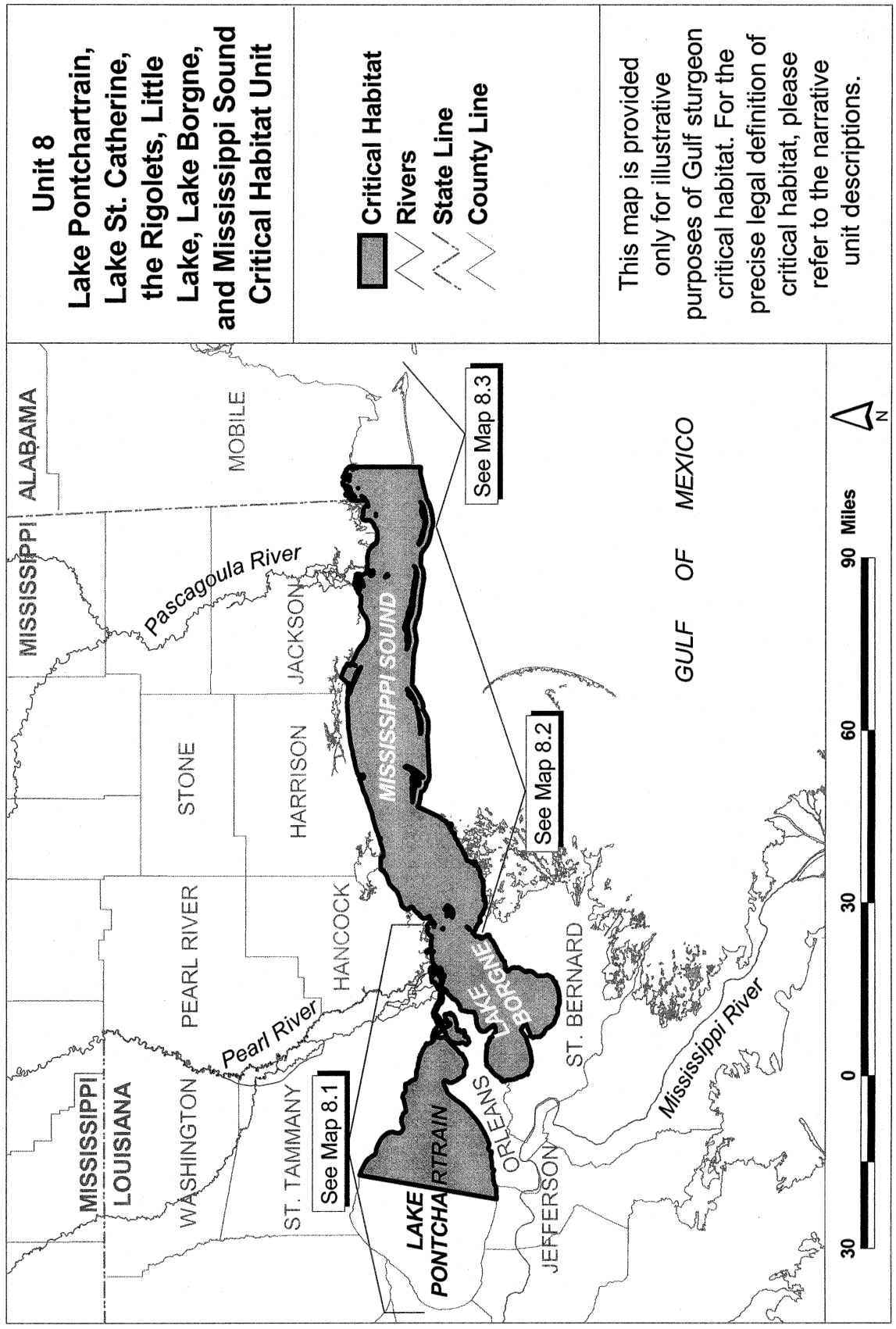
(h) *Unit 8: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.*

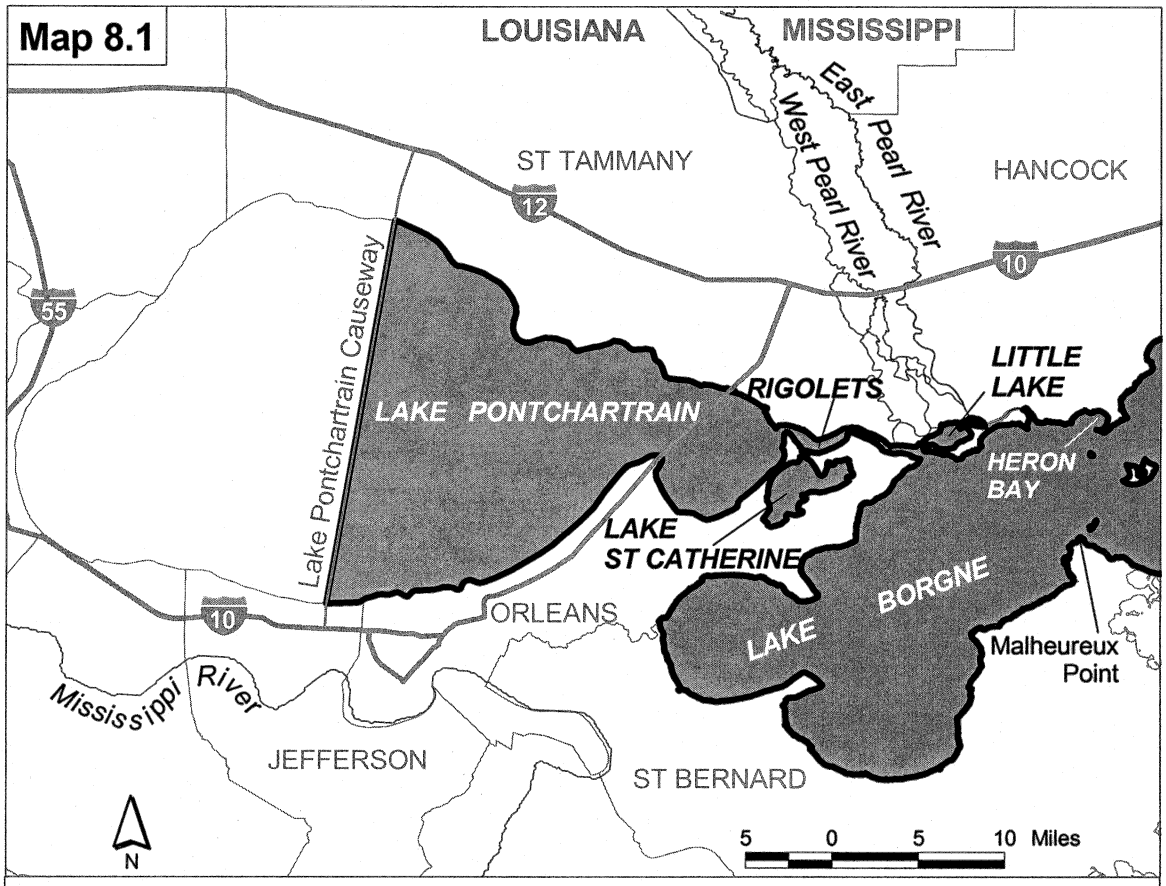
(1) Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, MS and Point aux Pins, AL. Designated critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues in a straight north-northeast line to the point 1 nm (1.9 km) seaward of the western most extremity of Cat Island (30°13″N, 89°10″W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 (c)), (d) and (e) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8″W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the MHW line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

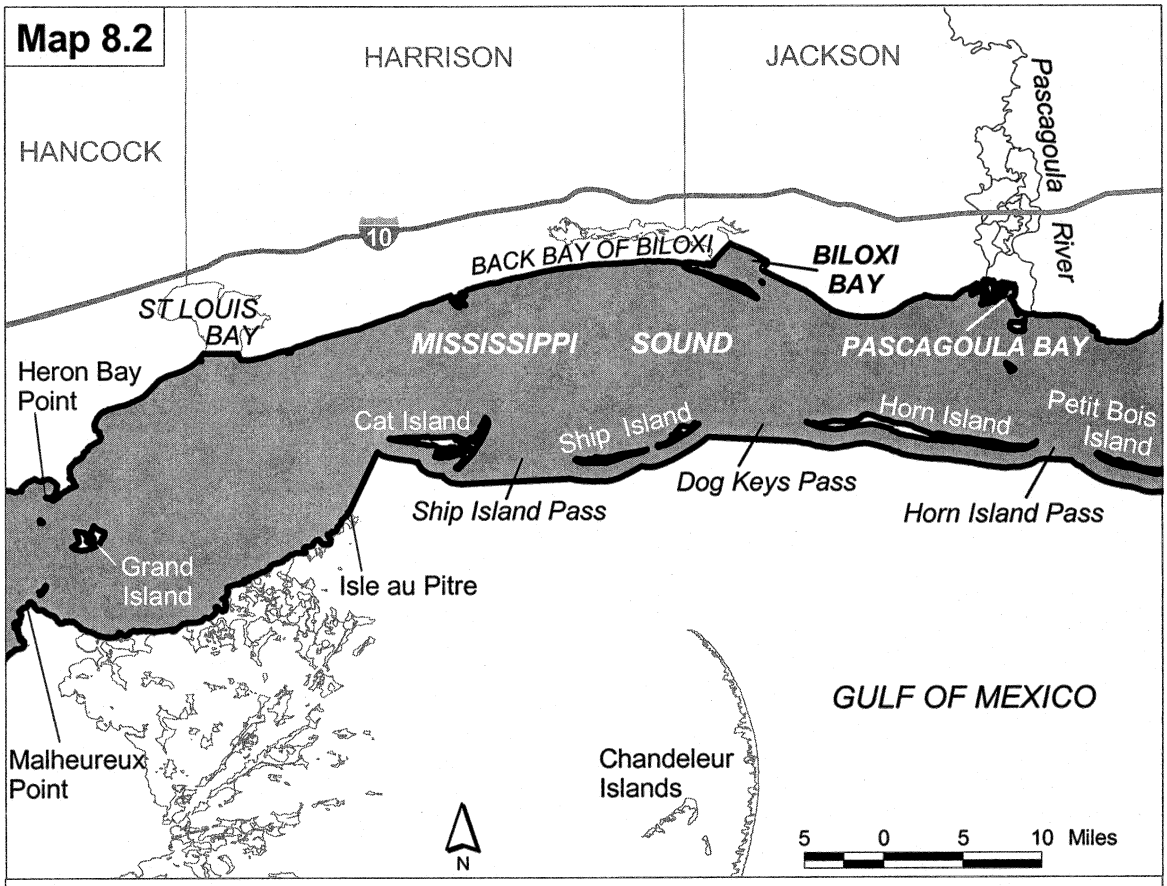
(3) Maps of Unit 8 follow:

BILLING CODE 3510–22–P

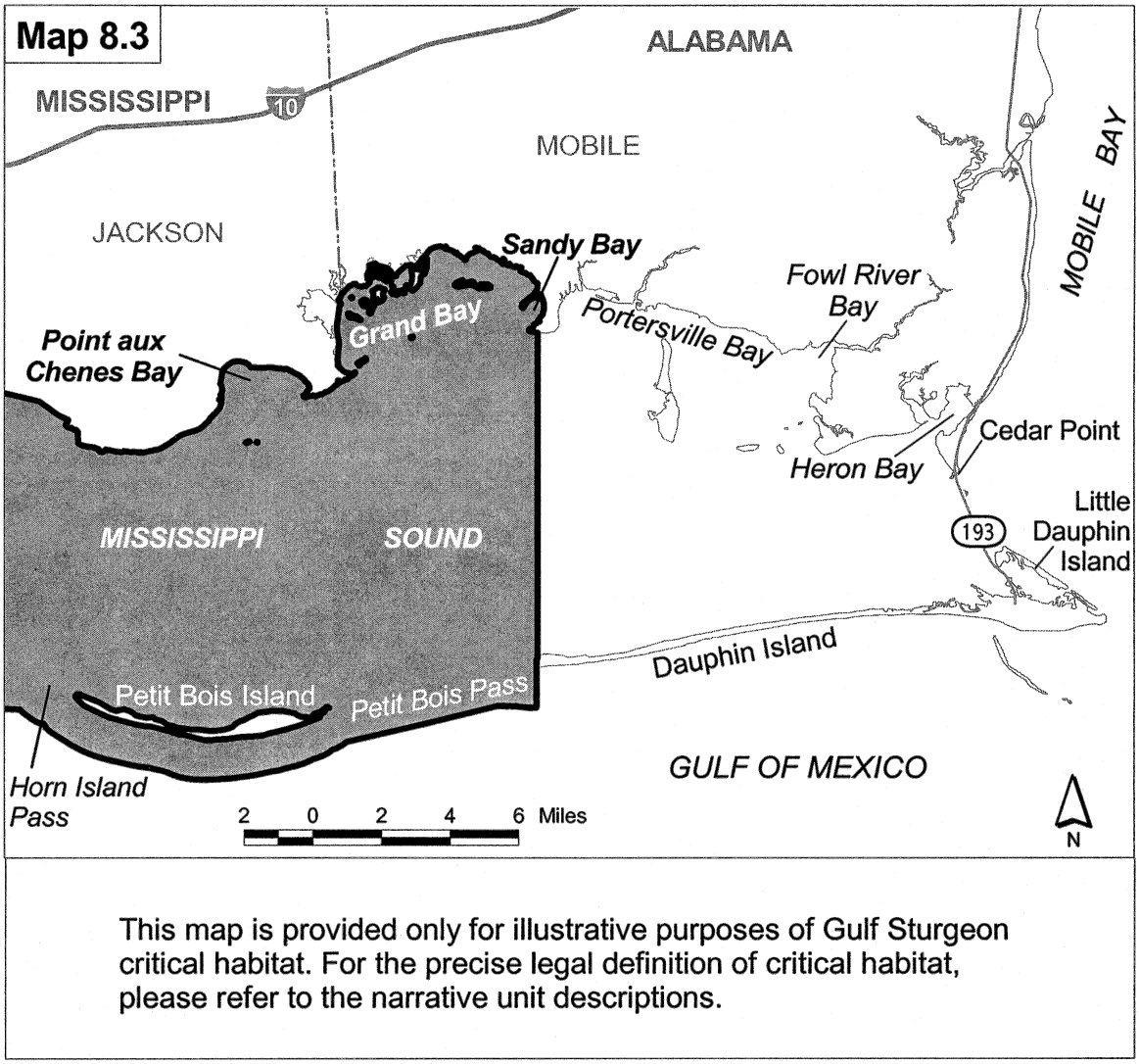

Unit 8
Lake Pontchartrain, Lake St. Catherine, the Rigolets, Little Lake, Lake Borgne, and Mississippi Sound Critical Habitat Unit
Critical Habitat
Rivers
State Line
County Line
This map is provided only for illustrative purposes of Gulf sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.
ALABAMA
MISSISSIPPI
LOUISIANA
MOBILE
JACKSON
HARRISON
STONE
PEARL RIVER
WASHINGTON
HANCOCK
ST. TAMMANY
ORLEANS
JEFFERSON
ST. BERNARD
Pascagoula River
Pearl River
Mississippi River
MISSISSIPPI SOUND
LAKE BORGNE
LAKE PONTCHARTRAIN
See Map 8.1
See Map 8.2
See Map 8.3
GULF OF MEXICO
30 0 30 60 90 Miles
N



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



This map is provided only for illustrative purposes of Gulf Sturgeon critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.



BILLING CODE 3510–22–C

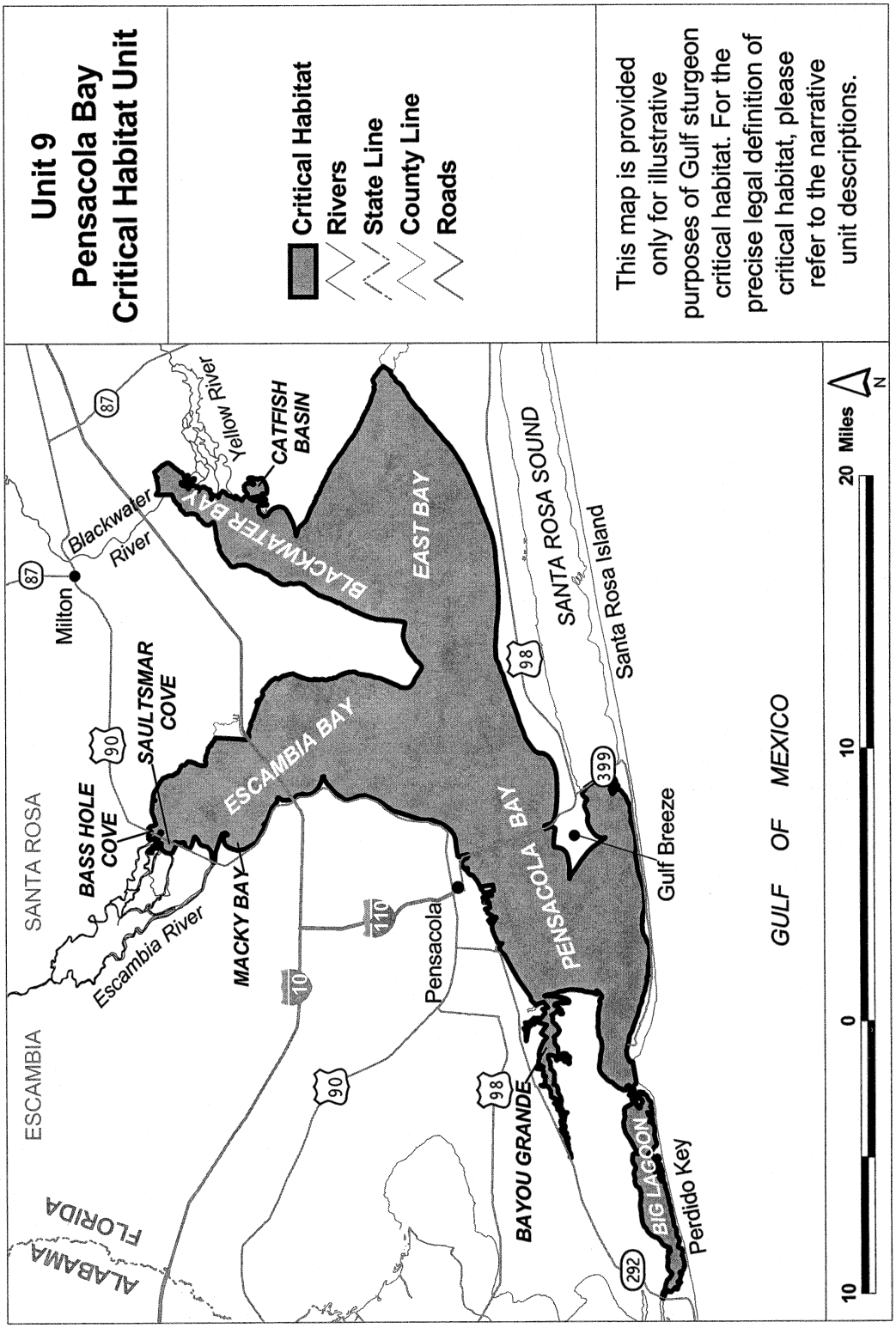
(i) *Unit 9: Pensacola Bay System in Escambia and Santa Rosa Counties, Florida.*

(1) Unit 9 includes Pensacola Bay and its adjacent main bays and coves. These include Big Lagoon, Escambia Bay, East Bay, Blackwater Bay, Bayou Grande, Macky Bay, Saultsmar Cove, Bass Hole Cove, and Catfish Basin. All other bays, bayous, creeks, and rivers are excluded at their mouths. The western boundary is the Florida State Highway 292 Bridge crossing Big Lagoon to Perdido Key. The southern boundary is the 72 COLREGS line between Perdido Key and Santa Rosa Island (defined at 33 CFR 80.810(g)). The eastern boundary is the Florida State Highway 399 Bridge at Gulf Breeze, FL. The lateral extent of Unit 9 is the MHW line on each included bay's shoreline.

(2) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

(3) A Map of Unit 9 follows:

BILLING CODE 3510–22–P



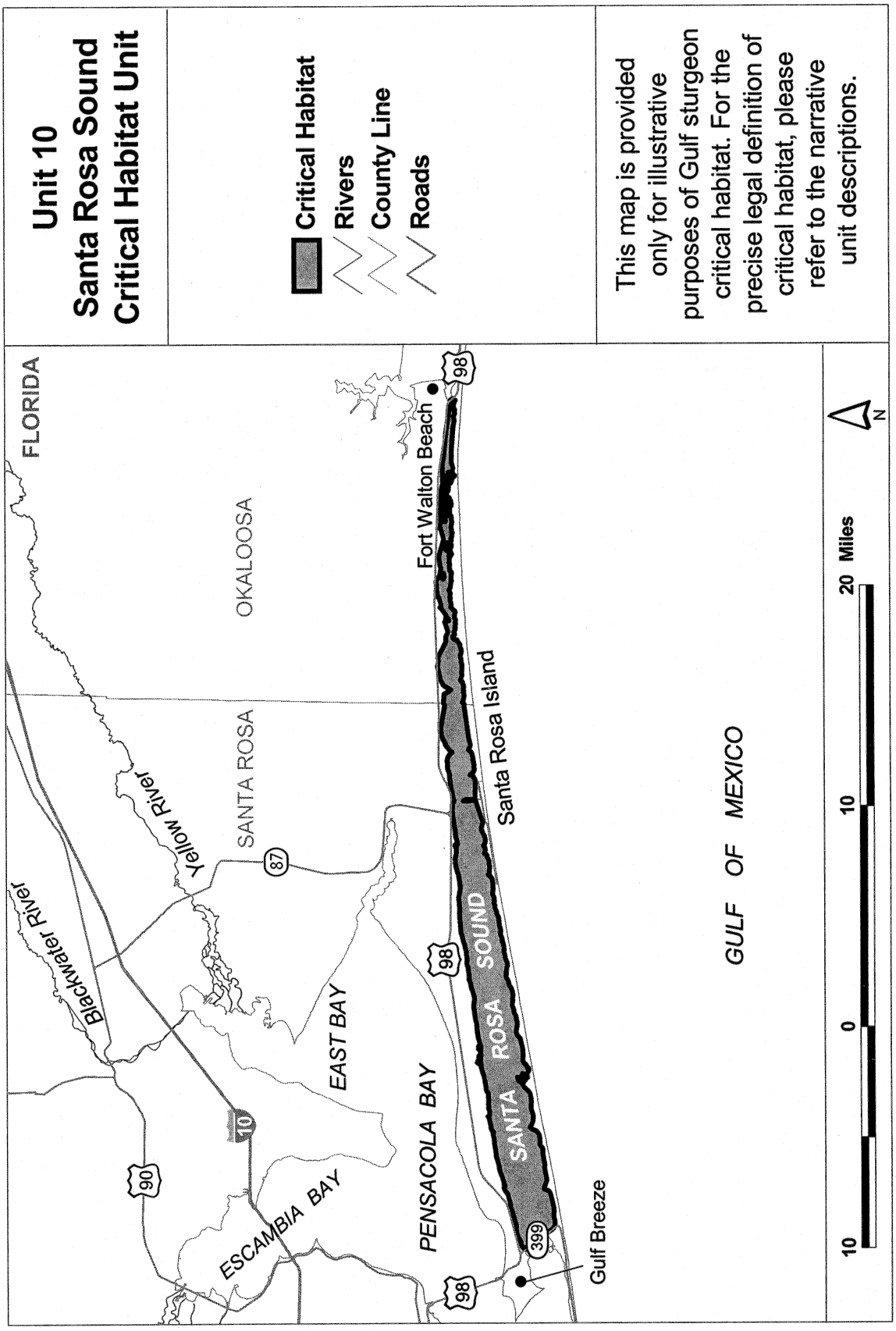
BILLING CODE 3510–22–C

(j) *Unit 10: Santa Rosa Sound in Escambia, Santa Rosa, and Okaloosa Counties, Florida.*

(1) Unit 10 includes the Santa Rosa Sound, bounded on the west by the Florida State Highway 399 bridge in Gulf Breeze, FL. The eastern boundary is the U.S. Highway 98 bridge in Fort Walton Beach, FL. The northern and southern boundaries of Unit 10 are formed by the shorelines to the MHW line or by the entrance to rivers, bayous, and creeks.

(2) A Map of Unit 10 follows:

BILLING CODE 3510–22–P



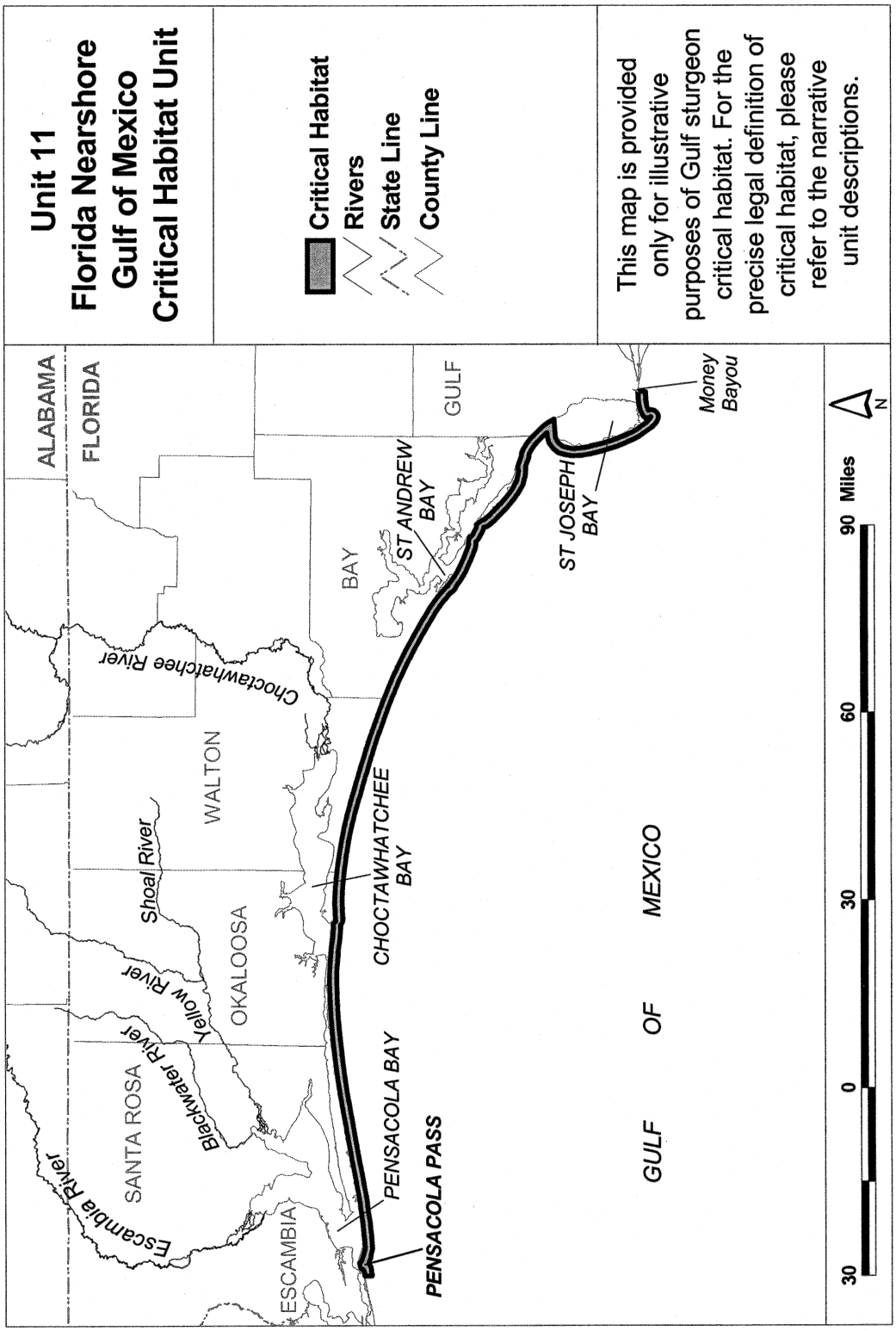
BILLING CODE 3510–22–C

(k) *Unit 11: Florida Nearshore Gulf of Mexico Unit in Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf Counties, Florida.*

(1) Unit 11 includes a portion of the Gulf of Mexico as defined by the following boundaries. The western boundary is the line of longitude 87°20.0′W (approximately 1 nm (1.9 km) west of Pensacola Pass) from its intersection with the shore to its intersection with the southern boundary. The northern boundary is the MHW of the mainland shoreline and the 72 COLREGS lines at passes as defined at 30 CFR 80.810 (a–g). The southern boundary is 1 nm (1.9 km) offshore of the northern boundary. The eastern boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary.

(2) A Map of Unit 11 follows:

BILLING CODE 3510–22–P



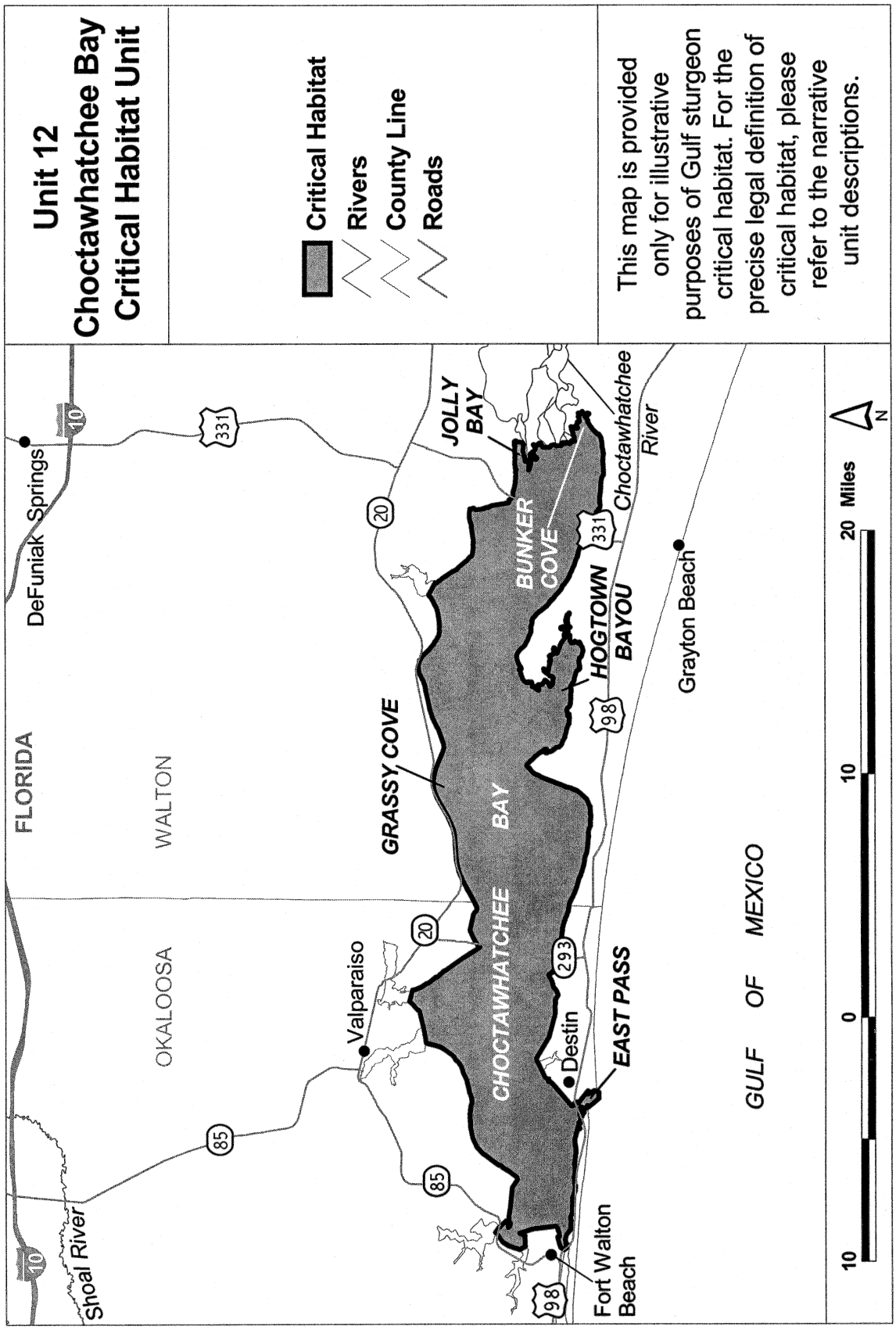
BILLING CODE 3510–22–C

(l) *Unit 12: Choctawhatchee Bay in Okaloosa and Walton Counties, Florida.*

(1) Unit 12 includes the main body of Choctawhatchee Bay, Hogtown Bayou, Jolly Bay, Bunker Cove, and Grassy Cove. All other bayous, creeks, rivers are excluded at their mouths/entrances. The western boundary is the U.S. Highway 98 bridge at Fort Walton Beach, FL. The southern boundary is the 72 COLREGS line across East (Destin) Pass as defined at 33 CFR 80.810(f). The lateral extent of Unit 12 is the MHW line on each shoreline of the included water bodies.

(2) A Map of Unit 12 follows:

BILLING CODE 3510–22–P



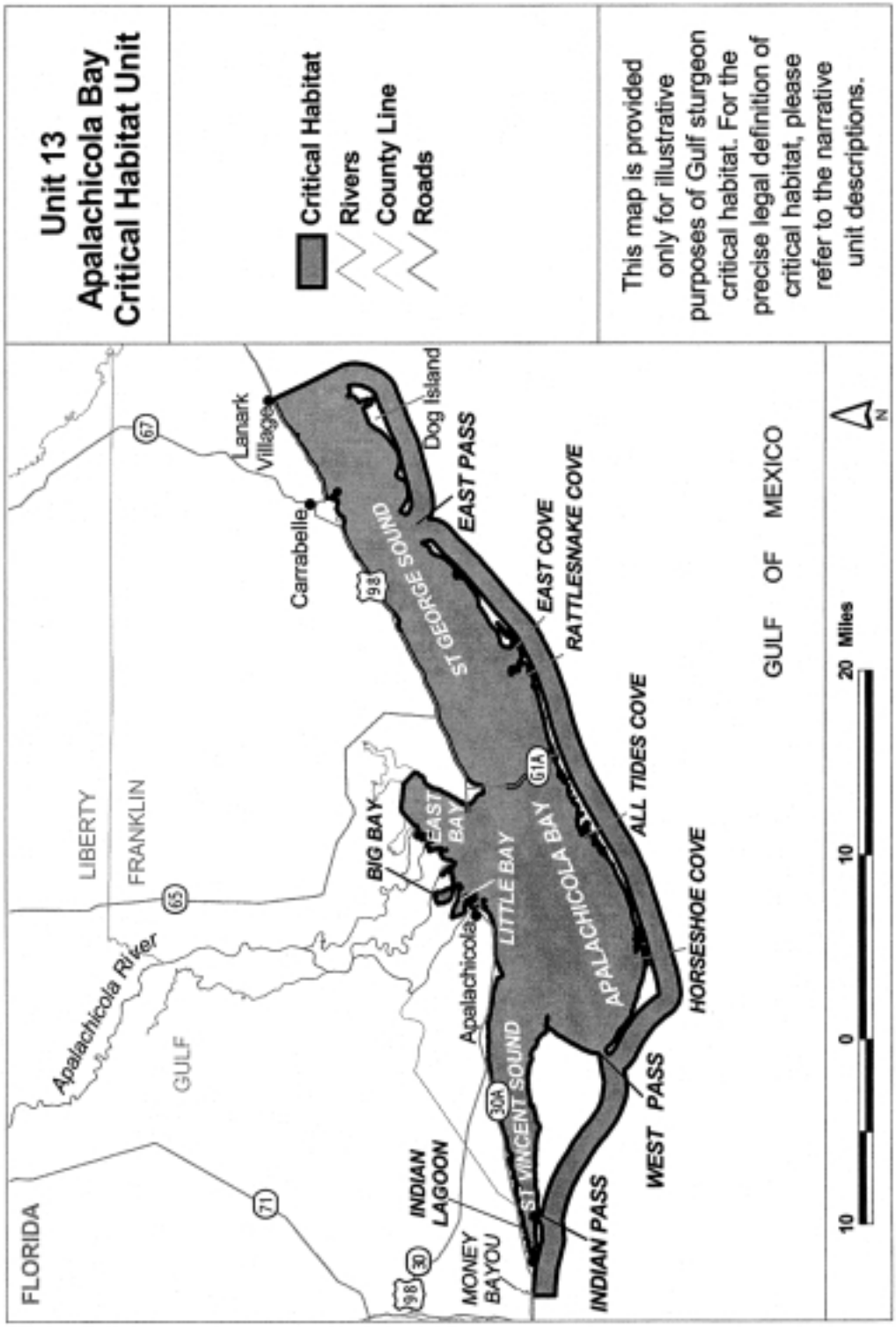
BILLING CODE 3510–22–C

(m) *Unit 13: Apalachicola Bay in Gulf and Franklin County, Florida.*

(1) Unit 13 includes the main body of Apalachicola Bay and its adjacent sounds, bays, and the nearshore waters of the Gulf of Mexico. These consist of St. Vincent Sound, including Indian Lagoon; Apalachicola Bay including Horseshoe Cove and All Tides Cove; East Bay including Little Bay and Big Bay; and St George Sound, including Rattlesnake Cove and East Cove. Barrier Island passes (Indian Pass, West Pass, and East Pass) are also included. Sike's cut is excluded from the lighted buoys on the Gulf of Mexico side to the day boards on the bay side. The southern boundary includes water extending into the Gulf of Mexico 1 nm (1.9 km) from the MHW line of the barrier islands and from 72 COLREGS lines between the barrier islands (defined at 33 CFR 80.805 (e–h)). The western boundary is the line of longitude 85°17.0′W from its intersection with the shore (near Money Bayou between Cape San Blas and Indian Peninsula) to its intersection with the southern boundary. The eastern boundary is formed by a straight line drawn from the shoreline of Lanark Village at 29°53.1′N, 84°35.0′W to a point that is 1 nm (1.9 km) offshore from the northeastern extremity of Dog Island at 29°49.6′N, 84°33.2′W. The lateral extent of Unit 13 is the MHW line on each shoreline of the included water bodies or the entrance of excluded rivers, bayous, and creeks.

(2) A Map of Unit 13 follows:

BILLING CODE 3510–22–P



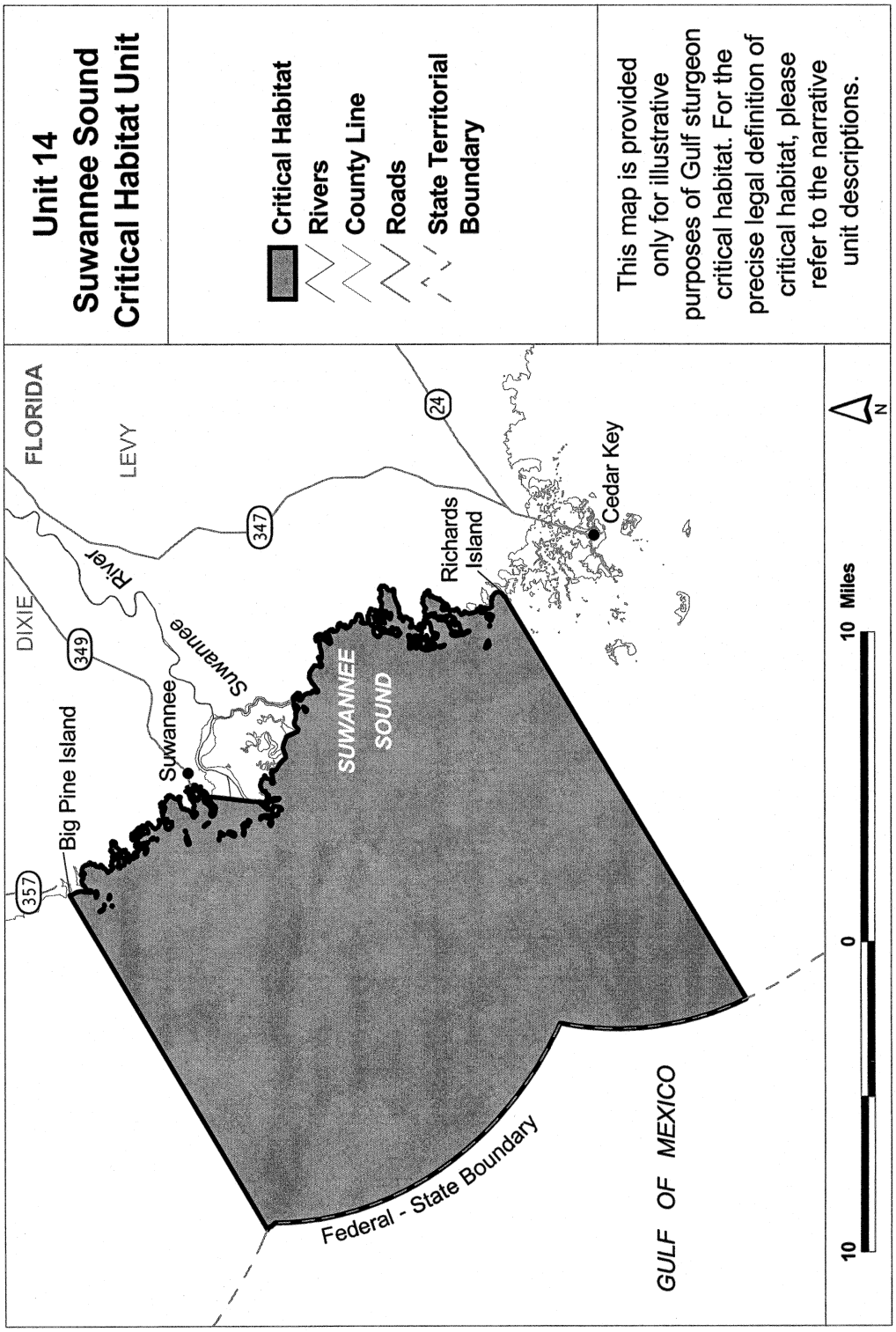
BILLING CODE 3510–22–C

(n) *Unit 14: Suwannee Sound in Dixie and Levy Counties, Florida.*

(1) Unit 14 includes Suwannee Sound and a portion of adjacent Gulf of Mexico waters extending 9 nm from shore (16.7 km) out to the State territorial water boundary. Its northern boundary is formed by a straight line from the northern tip of Big Pine Island (at approximately 29°23′N, 83°12′W) to the Federal-State boundary at 29°17′N, 83°21′W. The southern boundary is formed by a straight line from the southern tip of Richards Island (at approximately 83°04′W, 29°11′N) to the Federal-State boundary at 83°15′W, 29°04′N. The lateral extent of Unit 14 is the MHW line along the shorelines and the mouths of the Suwannee River (East and West Pass), its distributaries, and other rivers, creeks, or water bodies.

(2) A Map of Unit 14 follows:

BILLING CODE 3510–22–P



BILLING CODE 3510–22–C

Dated: February 27, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: February 28, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–5208 Filed 3–18–03; 8:45 am]

BILLING CODE 3510–22–P



Federal Register

Wednesday,
March 19, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Sonoma County Distinct Population Segment of the California Tiger Salamander; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI61

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Sonoma County Distinct Population Segment of the California Tiger Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for the Sonoma County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*), under the Endangered Species Act of 1973, as amended (Act). In Sonoma County, the California tiger salamander is imperiled by a variety of factors including habitat destruction, degradation, and fragmentation due to urban development, hybridization with non-native salamanders, inadequate regulatory mechanisms, disease, and pesticide drift. We listed this DPS on an emergency basis on July 22, 2002. The emergency designation expires on March 19, 2003. This rule is effective upon publication in the **Federal Register,** and implements the Federal protection and recovery provisions afforded by the Act for the Sonoma County DPS of the California tiger salamander. This final rule is being issued as a result of a settlement agreement and consent decree.

DATES: This rule is effective on March 19, 2003.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: David E. Wooten, Susan Moore, or Chris Nagano, Sacramento Fish and Wildlife Office, at the address listed above (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The California tiger salamander was first described as *Ambystoma californiense* by Gray in 1853, based on specimens that had been collected in Monterey, California (Grinnell and Camp 1917). Storer (1925) and Bishop (1943) also considered the California tiger salamander to be a distinct species. Dunn (1940), Gehlbach (1967), and Frost (1985) stated that the California tiger salamander was a subspecies of the more widespread tiger salamander (*Ambystoma tigrinum*). However, based on recent studies of the genetics, geographic distribution, and ecological differences among the members of the *A. tigrinum* complex, the California tiger salamander is now considered to be a distinct species (Shaffer and Stanley 1991; Shaffer *et al.* 1993; Jones 1993; Shaffer and McKnight 1996; Irschick and Shaffer 1997; Petranka 1998). The range of this animal does not naturally overlap with any other species of tiger salamander (Stebbins 1985; Petranka 1998).

The California tiger salamander is a large, stocky, terrestrial salamander with small eyes and a broad, rounded snout. Adults may reach a total length of 208 millimeters (mm) (8.2 inches (in)), with males generally averaging about 203 mm (8 in) in total length and females averaging about 173 mm (6.8 in) in total length. For both sexes, the average snout-vent length is approximately 91 mm (3.6 in). The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background on the back and sides. The belly varies from almost uniform white or pale yellow to a variegated pattern of white or pale yellow and black. Males can be distinguished from females, especially during the breeding season, by their swollen cloacae (a common chamber into which the intestinal, urinary, and reproductive canals discharge), more developed tail fins, and larger overall size (Stebbins 1962; Loredo and Van Vuren 1996).

California tiger salamanders are restricted to vernal pools and seasonal ponds in grassland and oak savannah plant communities from sea level to about 460 meters (m) (1,500 feet (ft)) (Stebbins 1989; Shaffer *et al.* 1993; Jennings and Hayes 1994; Petranka 1998; California Natural Diversity Data Base (CNDDB) 2002). Genetic studies of the California tiger salamander suggest that levels of interchange among populations are very low, and that populations or groups of subpopulations (metapopulations) are genetically isolated from one another (Shaffer *et al.* 1993; Shaffer and Trenham 2002). Studies of mitochondrial DNA and allozymes (proteins) indicate that there are six populations of *Ambystoma californiense,* which are found in: (1) The Santa Rosa area of Sonoma County; (2) the Bay Area (central and southern Alameda, Santa Clara, western Stanislaus, western Merced, and the majority of San Benito counties); (3) the Central Valley (Yolo, Sacramento, Solano, eastern Contra Costa, northeast Alameda, San Joaquin, Stanislaus, Merced, and northwestern Madera counties); (4) southern San Joaquin Valley (portions of Madera, central Fresno, and northern Tulare and Kings counties); (5) the Central Coast Range (southern Santa Cruz, Monterey, northern San Luis Obispo, and portions of western San Benito, Fresno, and Kern counties); and (6) Santa Barbara County (Shaffer and Trenham 2002).

The California tiger salamander in Sonoma County inhabits low-elevation (below 60 m (200 ft)) vernal pools and seasonal ponds, associated grassland, and oak savannah plant communities. The historic range of the species also may have included the Petaluma River watershed, as there is one historic record of a specimen from the vicinity of Petaluma from the mid-1800s (Borland 1856, as cited in Storer 1925).

California tiger salamanders found in the Santa Rosa Plain in Sonoma County are geographically separated from other California tiger salamander populations. The closest California tiger salamander populations to Sonoma County are located in Contra Costa, Yolo, and Solano counties, which are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 kilometers (km) (45 miles (mi)).

Subadult and adult California tiger salamanders spend the dry summer and fall months of the year estivating (a state of dormancy or inactivity in response to hot, dry weather) in the burrows of small mammals, such as California ground squirrels (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thomomys bottae*) (Storer 1925; Loredo and Van Vuren 1996; Petranka 1998; Trenham 1998a). During estivation, California tiger salamanders eat very little (Shaffer *et al.* 1993). Once fall or winter rains begin, they emerge from these retreats on rainy nights to feed and to migrate to the breeding ponds (Stebbins 1985, 1989; Shaffer, *et al.* 1993). The salamanders breeding in, and living around, a seasonal pool or pools, and associated uplands where estivation can occur are said to occupy a breeding site. A breeding site is defined as a location where the animals are able to successfully breed in years of ''normal'' rainfall and complete their estivation (derived from Trenham 1998b and 2001). Normal rainfall in Santa Rosa is 76 centimeters (cm) (30 in) per year (National Weather Service 2002).

Occurrence of California tiger salamanders in Sonoma County is significantly associated with occurrence

of gophers (D. Cook, The Wildlife Society, pers. comm., 2002). Active gopher burrows probably are needed to sustain California tiger salamanders because inactive burrow systems become progressively unsuitable over time. California tiger salamanders cannot persist without estivation habitat.

Adult California tiger salamanders may migrate up to 2 km (1 mi) from their estivation sites to the breeding ponds (S. Sweet, University of California, Santa Barbara, *in litt.,* 1998), which may be vernal pools, stockponds, or other seasonal water bodies. The distance between the estivation sites and breeding pools depends on local topography and vegetation, and the distribution of ground squirrel or other rodent burrows (Stebbins 1989; Lawrence Hunt, consultant, *in litt.,* 1998). Males migrate before females (Twitty 1941; Shaffer *et al.* 1993; Loredo and Van Vuren 1996; Trenham 1998b). Males usually remain in the ponds for an average of about 6 to 8 weeks, while females stay for approximately 1 to 2 weeks. In dry years, both sexes may stay for shorter periods (Loredo and Van Vuren 1996; Trenham 1998b). Most marked salamanders have been recaptured at the pond where they were initially captured; in one study approximately 80 percent were recaptured at the same pond (Trenham 1998b). The rate of natural movement of salamanders among breeding sites depends on the distance between the ponds or complexes of ponds and on the intervening habitat (*e.g.,* salamanders may move more quickly through sparsely covered and more open grassland than densely vegetated lands) (Trenham 1998a). As with migration distances, the number of ponds used by an individual over its lifetime will be dependent on landscape features and environmental factors.

The adults mate in the ponds and the females lay their eggs in the water (Twitty 1941; Shaffer *et al.* 1993; Petranka 1998). Females attach their eggs singly, or in rare circumstances, in groups of two to four, to twigs, grass stems, vegetation, or debris (Storer 1925; Twitty 1941). In ponds with no or limited vegetation, they may be attached to objects, such as rocks and boards on the bottom (Jennings and Hayes 1994). After breeding, adults leave the pool and return to the small mammal burrows (Loredo *et al.* 1996; Trenham 1998a), although they may continue to come out nightly for approximately the next 2 weeks to feed (Shaffer *et al.* 1993). In drought years, the seasonal pools may not form and the adults can not breed (Barry and Shaffer 1994).

Salamander eggs hatch in 10 to 14 days with newly hatched salamanders (larvae) ranging from 11.5 to 14.2 mm (0.45 to 0.55 in) in total length (Petranka 1998). The larvae are aquatic. They are yellowish gray in color and have broad fat heads, possess large, feathery external gills, and broad dorsal fins that extend well onto their back. The larvae feed on zooplankton, small crustaceans, and aquatic insects for about 6 weeks after hatching, after which they switch to larger prey (J. Anderson 1968). Larger larvae have been known to consume smaller tadpoles of Pacific treefrogs (*Pseudacris regilla*) and California red-legged frogs (*Rana aurora*) (J. Anderson 1968; P. Anderson 1968). The larvae are among the top aquatic predators in the seasonal pool ecosystems. They often rest on the bottom in shallow water, but also may be found at different layers in the water column in deeper water. The young salamanders are wary and when approached by potential predators will dart into vegetation on the bottom of the pool (Storer 1925).

The larval stage of the California tiger salamander usually lasts 3 to 6 months, as most seasonal ponds and pools dry up during the summer (Petranka 1998). Amphibian larvae must grow to a critical minimum body size before they can metamorphose (change into a different physical form) to the terrestrial stage (Wilbur and Collins 1973). Individuals collected near Stockton in the Central Valley during April varied from 47 to 58 mm (1.85 to 2.3 in) in length (Storer 1925). Feaver (1971) found that larvae metamorphosed and left the breeding pools 60 to 94 days after the eggs had been laid, with larvae developing faster in smaller, more rapidly drying pools. The longer the ponding duration, the larger the larvae and metamorphosed juveniles are able to grow, and the more likely they are to survive and reproduce (Pechmann *et al.* 1989; Semlitsch *et al.* 1988; Morey 1998; Trenham 1998b). The larvae will perish if a site dries before they complete metamorphosis (P. Anderson 1968; Feaver 1971). Pechmann *et al.* (1989) found a strong positive correlation between ponding duration and total number of metamorphosing juveniles in five salamander species. In Madera County, Feaver (1971) found that only 11 of 30 pools sampled supported larval California tiger salamanders, and five of these dried before metamorphosis could occur. Therefore, out of the original 30 pools, only six (20 percent) provided suitable conditions for successful reproduction that year. Size at metamorphosis is positively correlated with stored body fat and survival of juvenile amphibians, and negatively correlated with age at first reproduction (Semlitsch *et al.* 1988; Scott 1994; Morey 1998).

When the metamorphosed juveniles leave their ponds in the late spring or early summer, before the ponds dry completely, they settle in small mammal burrows at the end of their nightly movements (Zeiner *et al.* 1988; Shaffer *et al.* 1993; Loredo *et al.* 1996). Like the adults, juveniles may emerge from these retreats to feed during nights of high relative humidity (Storer 1925; Shaffer *et al.* 1993) before settling in their selected estivation sites for the dry, hot summer months. Juveniles have been observed to migrate up to 1.6 km (1 mi) from breeding ponds to estivation areas (Austin and Shaffer 1992).

An estimated 83 percent of the salamanders rely on rodent burrows for shelter (Petranka 1998). Mortality of juveniles during their first summer exceeds 50 percent (Trenham 1998b). Emergence from estivation in hot dry weather occasionally results in mass mortality of juveniles (Holland *et al.* 1990). Juveniles do not typically return to the breeding pools until they reach sexual maturity at several years of age (Trenham 1998b; L. Hunt, *in litt.,* 1998). Trenham (1998b) estimated survival from metamorphosis to maturity at his study site at less than 5 percent, well below the estimated replacement level of 18 percent that would maintain the population. Adult survivorship varies greatly between years, but is a crucial determinant of whether a population is a source or sink (*i.e.,* whether net productivity exceeds the level necessary to maintain the population).

Lifetime reproductive success for California and other tiger salamanders is low. Trenham *et al.* (2000) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This resulted in roughly 11 metamorphic offspring over the lifetime of a female. Preliminary data suggest that most individuals of the California tiger salamanders require 2 years to become sexually mature, but some individuals may be slower to mature (Shaffer *et al.* 1993). Some animals do not breed until they are 4 to 6 years old. While individuals may survive for more than 10 years, many breed only once, and in some populations, less than 5 percent of marked juveniles survive to become breeding adults (Trenham 1998b). With such low recruitment, isolated populations can decline greatly from unusual, randomly occurring natural events as well as from human caused factors that reduce breeding success and individual survival. Factors

that repeatedly lower breeding success in isolated ponds that are too far from other ponds for migrating individuals to replenish the population can quickly extirpate a population.

The total number of individual California tiger salamanders in Sonoma County is not known. The difficulty of estimating total California tiger salamander population size has been discussed by a number of biologists (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, estimates have been made for a few populations in Monterey (Barry and Shaffer 1994; Trenham *et al.* 1998b). Because data on numbers of individual California tiger salamanders are lacking since these amphibians spend much of their lives underground, and because only a portion of the total number of animals migrate to pools to breed each year, the availability of suitable habitat and documentation of its loss is thus an appropriate method for assessing the status of the species.

The life history and ecology of the California tiger salamander on the Santa Rosa Plain in Sonoma County make it likely that this population has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable habitat (*i.e.,* dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat. Because many of the areas of suitable habitat may be small, and support small numbers of salamanders, local extinction of these small units may be common. A metapopulation's persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas by dispersal (Hanski and Gilpin 1991, 1997; McCullough 1996; Hanski 1999).

We believe habitat loss has reduced the sizes and connectivity between patches of suitable and occupied salamander habitat on the Santa Rosa Plain. The reduction in the extent and amount of suitable water bodies, grasslands, and other suitable upland habitats likely has eliminated connectivity among most of the known breeding sites, making recolonization of some sites more difficult following local extinction. In addition, the reduction of habitat below a certain size threshold has the effect of reducing the quality of the remaining habitat by reducing the size of habitat boundaries, and making effects of other factors such as amount of food, availability of rodent burrows, pesticide use, mortality from vehicles, and predators more pronounced given the smaller area now exposed to such impacts. We do not have enough data to determine what the size threshold for habitat might be, whereby any further reduction would lower the quality of the remaining habitat. The acreage is probably dependent on factors such as the type of building occurring along habitat boundaries (*i.e.,* residential, industrial, community park), number of roads bordering the habitat and the amount of traffic those roads experience, amount of pesticide use within the breeding pool watershed, or whether domestic animals or people have access to the site during periods when salamanders are vulnerable, such as migrating to or from estivation sites. We believe there is a size threshold for habitat below which the combination of various impacts will result in the loss of more salamanders than the Sonoma County California tiger salamander population can produce, and thus local extinction will occur.

Distinct Vertebrate Population Segment

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, a DPS of these taxa, if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we, along with the National Marine Fisheries Service, developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures. Under our DPS policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) The population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing represents a DPS, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

Discreteness

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

The Sonoma County California tiger salamander is discrete in relation to the remainder of the species. The population is geographically isolated and separate from other California tiger salamanders. The Sonoma County population is widely separated geographically from the closest populations, which are located in Contra Costa, Yolo, and Solano counties. These populations are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, at a minimum distance of about 72 km (45 mi). There are no known records of the California tiger salamander in the intervening areas (D. Warenycia, CDFG, pers. comm., 2002). We have no evidence of natural interchange of individuals between the Sonoma County population and other California tiger salamander populations. As detailed below, this finding is supported by an evaluation of the genetic variability of the species.

Dr. H. Bradley Shaffer has analyzed the population genetics of the California tiger salamander (Shaffer *et al.* 1993; Shaffer and Trenham 2002). The most recently available and most comprehensive mitochondrial DNA (mtDNA) sequence data indicate that there are six populations of California tiger salamander; these six populations are distinguished from one another by their mtDNA characteristics (Shaffer and Trenham 2002). Shaffer *et al.* 1993 reported that the sequence divergence (a percentage indicating the difference among DNA sequences studied) between the Sonoma County population was found to diverge on the order of 2 percent from other populations of this species. This high level of genetic divergence indicates that there has been little, if any, gene flow for a significant period of time between the Sonoma County population and other California tiger salamander populations. These results are supported by additional sampling and mtDNA work of Shaffer and Trenham (2002). The ''first, deepest and most significant phylogenetic split within California tiger salamander samples is between Sonoma County and all others'' (H.B. Shaffer, University of

California, Davis, *in litt,* 2002). This is illustrated by the phylogenetic tree based on mtDNA in which Sonoma County California tiger salamander is the first branch after the outgroup (groups known from independent evidence to have branched off earlier than the groups under study; Avise 1994, Weir 1996) (Shaffer and Trenham 2002). This branch is strongly supported statistically (with bootstrap probability of 100 percent) on a phylogenetic tree constructed by the neighbor joining method (a method used to construct phylogenetic trees; NJ, Avise 1994, Weir 1996). Bootstrapping is a method of statistically testing the significance of particular patterns; it involves resampling (with replacement) from the existing data sets and then reassessing the frequency with which particular groups appear in trees generated from the resampled data (Avise 1994, Weir 1996). For the Sonoma County California tiger salamander branch a bootstrap probability of 100 percent means that 100 percent of the trees generated from the resampled data had the same configuration. A bootstrap probability of seventy percent is the normal criterion for statistical significance in the systematic literature (Hillis and Bull 1993 as cited in Shaffer and McKnight 1996). In addition to being strongly supported using the NJ method, the branch pattern indicating that the Sonoma County population is distinct is supported by maximum likelihood and parsimony (Shaffer and Trenham 2002), two other methods of constructing phylogenetic trees (Avise 1994, Weir 1996). In addition, Shaffer and Trenham (2002) report preliminary results of analyses of two nuclear genes. These preliminary results also show that Sonoma County California tiger salamanders are genetically distinct from other California tiger salamanders. Shaffer *et al.* (1993) suggest that the differences are so large that the Sonoma County population may warrant separate taxonomic recognition (Shaffer *et al.* 1993).

In the proposed rule we relied on the 2 percent divergence value as evidence that the Sonoma County California tiger salamander population is discrete. At the time, we were using the best available information (Shaffer *et al.* 1993). We note that systematists typically identify species boundaries by using phylogenetic analysis rather than absolute levels of sequence divergence (Avise 1994, Weir 1996, Hedrick 2000). As noted above, the phylogenetic tree (which indicates relationships among populations or groups) constructed from the more comprehensive mtDNA data of Shaffer and Trenham (2002) indicates that Sonoma County California tiger salamanders are very distinct relative to other California tiger salamanders, and separated from them on a branch that is strongly supported statistically. Therefore, the most comprehensive available genetic data (Shaffer and Trenham 2002) for California tiger salamanders strongly indicate that Sonoma County California tiger salamanders are distinct from other populations of the species.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to, evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; evidence that loss of the population segment would result in a significant gap in the range of the taxon; evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We have found substantial evidence that two of these significance factors are met by the population of the California tiger salamander that occurs on the Santa Rosa Plain in Sonoma County.

The extinction of the Sonoma County population would result in the loss of a significant genetic entity and the curtailment of the range of the species. As discussed above, the Sonoma County population is genetically distinct from other populations of California tiger salamanders. Loss of the Sonoma County population would also eliminate the most northern coastal extent of the range of the species. The Sonoma County population is geographically isolated. Genetic analysis of the species supports the hypothesis that no natural interchange of the Sonoma County population occurs with other California tiger salamander populations.

Conclusion

We evaluated the Sonoma County population, addressing the two elements which our policy requires us to consider in deciding whether a vertebrate population may be recognized as a DPS and considered for listing under the Act. We conclude that the Sonoma County population is discrete, as per our policy, based on its geographic separation and genetic divergence from the rest of the California tiger salamander populations. We conclude that the Sonoma County population of the California tiger salamander is significant because the loss of the species from the Santa Rosa Plain in Sonoma County would result in a significant reduction in the species' range and would constitute loss of a genetically divergent portion of the species. Because the population segment meets both the discreteness and significance criteria of our DPS policy, the Sonoma County population of the California tiger salamander constitutes a DPS which qualifies for consideration for listing. An evaluation of the level of threat to the DPS based on the five listing factors established by the Act follows.

Previous Federal Action

On September 18, 1985, we published the Vertebrate Notice of Review (NOR) (50 FR 37958), which included the California tiger salamander as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. The January 6, 1989, and November 21, 1991, NORs (54 FR 554 and 56 FR 58804, respectively) also included the California tiger salamander as a category 2 candidate, soliciting information on the status of the species.

On February 21, 1992, we received a petition from Dr. H. Bradley Shaffer of the University of California, Davis (UCD), to list the California tiger salamander as an endangered species. We published a 90-day petition finding on November 19, 1992 (57 FR 54545), concluding that the petition presented substantial information indicating that listing may be warranted. On April 18, 1994, we published a 12-month petition finding (59 FR 18353) that the listing of the California tiger salamander was warranted but precluded by higher priority listing actions. We elevated the species to category 1 status at that time, which was reflected in the November 15, 1994, NOR (59 FR 58982). Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals.

We discontinued the use of different categories of candidates in the February 28, 1996, NOR (61 FR 7596), and defined ''candidate species'' as those meeting the definition of former category 1. We maintained the California tiger salamander as a candidate species in that NOR, as well

as subsequent NORs published September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57533), and October 30, 2001 (66 FR 54808).

On June 12, 2001, we received a petition dated June 11, 2001, from the Center for Biological Diversity (CBD) and Citizens for a Sustainable Cotati to emergency list the Sonoma County population of the California tiger salamander as an endangered species and to designate critical habitat. On February 27, 2002, CBD filed a complaint for our failure to emergency list the Sonoma County population of the California tiger salamander as endangered (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service* (N.D.Cal.) (Case No. C–02–0558 WHA)). On June 6, 2002, based on a settlement agreement with the CBD, the court signed an order requiring us to submit for publication in the **Federal Register**, a proposed and/or emergency rule to list the species by July 15, 2002.

On July 22, 2002, we published in the **Federal Register** an emergency rule listing the Sonoma County distinct population segment (DPS) of the California tiger salamander (Sonoma County California tiger salamander) on an emergency basis because we found that a number of threats constituted immediate and significant risk to the species (67 FR 47726). We concurrently published a proposed rule to list this taxon as endangered (67 FR 47758). The proposed rule opened a 60-day comment period which closed on September 20, 2002. On August 26, 2002, we published a notice in the **Federal Register** notifying the public of a hearing to be held on October 1, 2002, and extending the comment period until October 21, 2002 (67 FR 54761). On October 31, 2002, we re-opened the comment period for 45 days (67 FR 66377). The re-opened public comment period closed on December 16, 2002. This final rule to designate the Sonoma County California tiger salamander as an endangered species complies with the June 6, 2002, settlement agreement.

As required by section 4(b)(1) of the Act, our decision to list the Sonoma County population of the California tiger salamander is based upon the best available information at this time. We note that the petition and subsequent emergency listing of this population has led to increased interest in this population by a variety of parties, and thus to an acceleration of the rate at which new information is becoming available. We expect this trend to continue subsequent to this final listing determination. The settlement agreement discussed above requires that we submit to the **Federal Register** a proposed rule to list the California tiger salamander range wide by May 15, 2003, and make a final listing determination on that proposal by May 15, 2004. As a part of that rulemaking we intend to review all then-current information regarding both the Sonoma County and Santa Barbara County populations, including whether they constitute valid distinct population segments, and render a final determination on the California tiger salamander accordingly.

Summary of Comments and Recommendations

In the July 22, 2002, proposed rule (67 FR 47758), we requested all interested parties submit factual reports, information, and comments that might contribute to development of a final determination. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, affected landowners and other interested parties requesting comments. We published legal notices in the Santa Rosa Press Democrat on July 29, 2002, and September 3, 2002, and the Sonoma Index-Tribune on July 30, 2002, and September 27, 2002, notifying the public of the comment period on the proposed and emergency rule and the public hearing, respectively. We requested 12 peer reviewers to comment on the proposed rule in compliance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34270).

During both public comment periods, we received 111 comment letters from public agencies, individuals, businesses, and organizations, with several commenters submitting more than one set of comments during the subsequent extensions of the comment period. We received oral comments from 49 people at the public hearing. Ninety-nine commenters opposed the listing, 60 supported the listing, and one was neutral. The breakdown of the comments included none from Federal agencies, 2 from State agencies, 8 from Sonoma County and city agencies, 49 from organizations or corporations, and 99 from individuals. One hundred and twenty people attended the hearing, with 31 individuals and 18 representatives of organizations providing oral comments. In total, 39 commenters at the hearing were opposed to the listing, 9 supported the listing, and 1 was neutral. Several comments were received after the comment period closed.

We updated the final rule to reflect comments and information we received during the comment periods. We address substantive comments concerning the rule below. Comments of a similar nature are grouped together (referred to as ''Issues'' for the purpose of this summary).

Issue 1: Some commenters questioned the validity of our DPS determination for Sonoma County California tiger salamander, suggesting that the genetic data do not support a DPS. One commenter specifically suggested that the evidence that Sonoma County California tiger salamander is a separate species or subspecies and use of this as a criterion for a DPS is less clear than we indicated in our emergency rule. The commenter also suggests that there is little evidence that California tiger salamander populations in different parts of California represent separate species or subspecies. The commenter also noted that, while the unpublished Shaffer *et al.* (1993) suggest Sonoma County may warrant species status, Shaffer and McKnight (1996) make no such claim in their published paper.

Response: Genetic distinctness or the presence of genetically determined traits may be important in recognizing some DPS's, but this kind of evidence is not specifically required in order for a DPS to be recognized. Genetic information can play two different roles in the evaluation of whether a population should be recognized as a distinct vertebrate population segment for the purposes of listing under the Act. First, quantitative genetic information may, but is not required in order to provide evidence that the population is markedly separated from other populations and thus meets the DPS policy's criterion of being discrete. The DPS policy's standard for discreteness is meant to allow an entity given DPS status under the Act to be adequately defined and described. The standard adopted is believed to allow entities recognized under the Act to be identified without requiring an unreasonably rigid test for distinctness. At the same time, the standard does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms. Second, genetic characteristics that differ markedly from other populations may be one consideration in evaluating the discrete population segments biological and ecological significance to the taxon to which it belongs.

Restricting listings to full taxonomic species would render the Act's definition of species, which explicitly includes subspecies and DPS's of vertebrates, superfluous.

We did note in our emergency rule that Dr. Shaffer and his colleagues believe the divergence of Sonoma County California tiger salamanders justifies separate species recognition (Shaffer *et al.* 1993). Our DPS policy (61 FR 4722), however, does not require that levels of differentiation warranting taxonomic revision be identified for the DPS criteria to be met. In fact, our DPS policy is used for identifying groups *within* species or subspecies that may warrant listing under the ESA. Therefore, our DPS determination for Sonoma County California tiger salamander is not based on whether the divergence observed warrants separate taxonomic recognition, but rather on the relatively high divergence of the Sonoma County population from other populations of California tiger salamanders.

The Sonoma County population of California tiger salamanders is the most divergent of any population of the species. This finding is supported by the original mitochondrial DNA (mtDNA) work of Shaffer *et al.* (1993) and by additional sampling and mtDNA work of Shaffer and Trenham (2002). The ''first, deepest and most significant phylogenetic split within California tiger salamander samples is between Sonoma County and all others'' (H.B. Shaffer, *in litt.*, 2002). This is illustrated by the phylogenetic tree based on mtDNA in which Sonoma County California tiger salamander is the first branch after the outgroup (Shaffer and Trenham 2002). This branch is strongly supported statistically (with bootstrap probability of 100 percent) on a phylogenetic tree constructed by the neighbor joining (NJ) method. Seventy percent is the normal criterion for statistical significance of bootstrap proportions in the systematic literature (Hillis and Bull 1993 as cited in Shaffer and McKnight 1996). In addition, the branch pattern indicating that the Sonoma County population is distinct is supported by maximum likelihood and parsimony (Shaffer and Trenham 2002), two other methods of constructing phylogenetic trees (Avise 1994, Weir 1996). In addition, Shaffer and Trenham (2002) report preliminary results of analyses of two nuclear genes. These preliminary results also show that Sonoma County California tiger salamanders are genetically distinct from other California tiger salamanders. Therefore, we believe that the levels of divergence observed in Sonoma County California tiger salamanders provide substantial evidence of the significance of the population.

Shaffer and McKnight (1996) do not mention whether the divergence of Sonoma County California tiger salamanders justifies separate species recognition. They make no statements about the taxonomic status of Sonoma County California tiger salamanders in their paper. In the Discreteness section of the emergency rule, we incorrectly attributed the statement that Sonoma County California tiger salamanders warrant separate taxonomic recognition to the 1996 publication. In fact, no Sonoma County California tiger salamanders were sampled in the study (Appendix 1 of Shaffer and McKnight 1996). The paper examined evolutionary relationships among tiger salamander species and subspecies and did not include a formal taxonomic treatment of the tiger salamander complex. Therefore, it is not surprising that the authors did not specifically note whether or not the divergence of Sonoma County California tiger salamanders justifies species status.

Issue 2: One commenter also implied that the discreteness criterion of our DPS policy was only met by genetic data.

Response: Two professional biologists who commented reported that the Sonoma County population is geographically isolated from other populations of the California tiger salamander. We note that the proposed rule discussed the geographic separation of the Sonoma County population from other populations of California tiger salamander. The Sonoma County population is separated from other California tiger salamander populations by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 km (45 mi).

Issue 3: Some commenters felt that 2 percent divergence of the Sonoma population of the California tiger salamander from the remainder of the California tiger salamander population is not meaningful or worthy of recognition as a DPS.

Response: We note that species boundaries are typically identified by systematists using phylogenetic analysis rather than absolute levels of sequence divergence. The intraspecific sequence divergence value of 2 percent depends on the total number of nucleotides sequenced for each gene region. This can differ significantly from species to species or from study to study and is therefore a relative value (Avise 1994, Weir 1996, Hedrick 2000). Comparisons need to be made from the same baseline. From a DPS perspective, percent sequence divergence is less important than the phylogenetic relationships depicted with strong statistical support in the neighbor joining (NJ) tree that indicate the distinctive genetic character of Sonoma County California tiger salamanders. The phylogenetic tree (which indicates relationships among populations or groups) constructed from the mtDNA data of Shaffer and Trenham (2002) indicates that Sonoma County California tiger salamanders are very distinct relative to other California tiger salamanders, and separated from them on a branch that is strongly supported statistically. Therefore, the most comprehensive available genetic data (Shaffer and Trenham 2002) for California tiger salamanders strongly indicate that Sonoma County California tiger salamanders are distinct from other populations of the species.

Issue 4: One commenter analyzed Shaffer and McKnight's (1996) divergence values for various *Ambystoma tigrinum* subspecies and for California tiger salamander, finding that divergence between populations in different groups (*e.g.*, between California tiger salamander and *A. tigrinum* subspecies and other such combinations among species and subspecies versus within a species or subspecies) had a mean of 6.37 percent and a range of 5.08 percent to 7.41 percent. The commenter states that these statistics show the 2 percent divergence of the Sonoma County California tiger salamander population is unremarkable.

Response: As noted above, one way to meet the significance criterion of our DPS policy (61 FR 4722) is for a population to ''differ markedly *from other populations of the species* in its genetic characteristics'' (emphasis added). We note again that our DPS policy focuses on differentiation within species (*i.e.*, the population ''differs markedly from other populations of the species''). The commenter's analysis is of differences among taxonomic groups of tiger salamanders, not of within-species or subspecies differences, which are the focus of the DPS policy.

As explained above, we believe the available mtDNA data (Shaffer *et al.* 1993, Shaffer and Trenham 2002) show that the Sonoma County population of California tiger salamander is markedly genetically divergent from other populations of the California tiger salamander. That the sequence divergence value is 2 percent is less important than the configuration of the phylogenetic tree, which strongly supports the distinctness of Sonoma County California tiger salamanders.

Issue 5: One commenter stated that one would expect broadly similar conclusions from allozyme and mtDNA studies and that for Sonoma County California tiger salamanders this was not the case. The commenter noted that

Shaffer *et al.*'s (1993) allozyme work did not reveal much variation (only 9 of 26 loci were variable) and indicate that Sonoma County California tiger salamanders are not distinct from other western populations of California tiger salamander from Yolo County to San Luis Obispo County.

Response: A variety of genetic tools are available to assess genetic variation. These tools are often referred to as ''genetic markers.'' All are indicators of genetic variation, but none is considered determinative. Which genetic marker is most useful depends on the question being asked and the organism being studied (Haig 1998, Parker *et al.* 1998).

Allozymes are proteins which are used as genetic markers because DNA contains information that is used by cells to build protein. Allozymes have been used to assess genetic variation for many years. Allozyme studies have the advantage of being relatively inexpensive and straightforward, once the basic technique is developed for a group. However, drawbacks of using allozymes include the limited number of proteins that can be screened (Parker *et al.* 1998) and the fact that they often detect little variability (Haig 1998). On average across taxa, less than half of all loci are variable. It is not uncommon for population biologists to encounter species for which allozymes cannot be used as genetic markers because they lack variation (Parker *et al.* 1998).

Molecular techniques, such as mtDNA, allow biologists to examine variation in DNA directly, rather than looking at the product derived from DNA (*i.e.*, proteins) (Parker *et al.* 1998). Analysis of animal mtDNA is the most commonly used technique for examining phylogenetic relationships among populations of the same species and among closely related species (Taberlet 1996). One advantage of mtDNA in particular is its high rate of evolution (*i.e.*, rate of nucleotide substitution) compared to other DNA (Taberlet 1996, Parker *et al.* 1998). The D-loop (which Shaffer and colleagues examined for their tiger salamander studies) is especially variable, making it useful to study recently divergent populations or species. Different genetic techniques are expected to resolve different amounts of variation because the genetic markers used have different evolutionary characteristics (Parker *et al.* 1998). The observation that some characters (in this case, allozymes) are not variable does not diminish the utility of other data (in this case mtDNA) in describing relationships among groups.

Issue 6: Several commenters felt that our finding that California tiger salamanders in Sonoma County qualified as a DPS was based on an isolated, and dated, report (*i.e.*, Shaffer *et al.* (1993). One commenter noted several times that Shaffer *et al.* (1993), the source of mtDNA data for California tiger salamanders, is an unpublished report.

Response: We are required to use the best available scientific data. In this case, the data were in an unpublished report. During the comment period, we received a second report (Shaffer and Trenham 2002) that contained findings similar to Shaffer *et al.* 1993 but which was based on more extensive data collection. The publication of Shaffer and McKnight (1996) using mtDNA techniques for California and other tiger salamanders and the publication of mtDNA work by Shaffer *et al.* (2000) on Yosemite toad (*Bufo canorus*) gives us confidence that Shaffer's work is scientifically defensible.

Issue 7: Several commenters noted that recent aerial photos and a map that is based on the photos show 515 or more pools located within, or in the vicinity of, the Santa Rosa Plain. They believe these could potentially provide habitat for the Sonoma County California tiger salamander. They stated that many of the pools have not been surveyed and, therefore, the species could be more widespread in Sonoma County than is currently known.

Our Response: The map submitted displayed 515 water bodies and was based on interpretation of aerial photography with little on-the-ground verification. We compared the map of potential habitat for the California tiger salamander to information and data we obtained and have determined 360 water bodies can be eliminated as potential habitat for the California tiger salamander due to a variety of factors including: unsuitable soils, unsuitable vegetation, high elevation, presence of aquatic predators, agricultural development (row crops, vineyards, etc.), urbanization, and unsuitable hydrology. One hundred and fifty-five water bodies remained within the suitable habitat area.

Of the 155 remaining water bodies, 53 were characterized as ''man-made long'' and ''natural long'' ponds/wetlands, which hold water for too long and /or harbor aquatic predators, and were eliminated as potential habitat for the California tiger salamander. Another set of water bodies were ''man-made short'' and ''natural short'' ponds/wetland (12 in total) which do not hold water long enough to be a source of potential habitat for the California tiger salamander. Consequently only ''man-made moderate'' and ''natural moderate'' mapped water bodies were considered potential suitable habitat (90 in total).

Of the ''man-made moderate'' and ''natural moderate'' mapped water bodies, four were formerly known breeding sites that have been eliminated and eight are currently identified as existing breeding sites. Some of the mapped water bodies are anticipated to have aquatic predators given their location on the Laguna de Santa Rosa floodplain, which would limit California tiger salamander utilization. Others contain habitat with sightings near the ponds, but these ponds have been repeatedly surveyed by experts, with results indicating they do not support breeding populations of California tiger salamanders.

The determination that some of the mapped water bodies contain potential habitat is solely based on aerial photographs; however, the majority of these are on private property and inaccessible to surveying without landowner permission. Several recognized salamander biologists have conducted repeated road surveys in Sonoma County along areas where the California tiger salamander is known to exist or where suitable habitat appears to exist (D. Cook, The Wildlife Society, pers. comm., 2002; P. Northen, California State University, Sonoma, pers. comm., 2002; J. Seifers, Santa Rosa, California, per. comm., 2002; H. B. Shaffer, pers. comm., 2002; P. C. Trenham, UCD, pers. comm., 2002). Night driving is a standard technique for surveying for reptiles and amphibians (Shaffer and Juterbock 1994; Parris 1999). The locations where these biologists found breeding sites, migrating adult salamanders, subadults, larvae, and egg masses in roadside ditches were entered into the CNDDB. This data is considered essential (D. McGriff, CDFG, pers. comm., 2002) and the data was utilized in our analysis of the status of the California tiger salamander in Sonoma County. Several of the experts indicated that there are likely to be a few small breeding sites or potential habitat for California tiger salamanders on private lands containing grassland areas and suitable soils on the Santa Rosa Plain, including stock ponds (P. Northen, pers. comm., 2002; H. B. Shaffer, pers. comm., 2002; P. C. Trenham, pers. comm., 2002); however, these private lands were inaccessible during their survey efforts.

Issue 8: One commenter believed that two sites not specifically mentioned in the proposed rule should be included as breeding sites for California tiger salamanders.

Our Response: We evaluated the two sites mentioned by the commenter. They are the Hartunian (Scenic Avenue) Preserve and the Southwestern Santa Rosa Vernal Pool Preservation Bank (Engel Bank).

The Hartunian Preserve is approximately 14 hectares (ha) (34 acres (ac)) in size and has one shallow swale that could support successful breeding during a rainy season of above-average rainfall. This preserve was not listed in the emergency rule and has not been included in the final rule because breeding by the species is not likely to occur during years of low to average rainfall.

Upon review of all information available, we have concluded that the Engel Bank does meet the biological requirements for California tiger salamander breeding and we have included this site as an eighth breeding site. Engel Bank is a 16-ha (40-ac) preserve that contains approximately 7-ha (18-ac) of wetlands and has documented records of the species. However, California tiger salamanders require a fairly large upland component. Approximately 9 ha (22 ac) of protected uplands are available at this site. Therefore, due to the limited upland habitat protected within the Engel Bank, a sustainable population at this site is dependent on the activities occurring on the surrounding private property.

Issue 9: Many commenters stated that the California tiger salamander is adequately protected by current regulations. Examples of current regulations cited include the application of the Porter-Cologne Water Quality Control Act and the California Environmental Quality Act (CEQA) by CDFG. Both of these require one-to-one mitigation for projects impacting the species. Commenters also mentioned strict local land use controls enacted by Sonoma County and cities within the Santa Rosa Plain. In addition, commenters noted that the Sonoma County Agricultural and Open Space District has acquired potential California tiger salamander habitat that is set aside as open space through a county-wide sales tax. They felt these preserves are adequate for the animal. Several other commenters stated that current legal protections have been inadequate for the species, and losses of breeding sites have occurred.

Our Response: CDFG lists the California tiger salamander as a species of special concern and has no specific regulatory mechanism to require mitigation for impacts to this species. In some instances, the CDFG has obtained one-to-one mitigation for destruction of California tiger salamander breeding sites. However, five breeding sites have been eliminated in Sonoma County during the past 2 years without new breeding sites being created. The use of CEQA and the Porter-Cologne Water Quality Control Act have not halted the loss of habitat for this species in Sonoma County. The land use controls enacted by the County and cities have not required adequate compensation for the loss of breeding sites. The Sonoma County Agricultural and Open Space District has acquired acreage through a one-quarter of a cent county sales tax. However, the acreage purchased does not overlap with areas known to contain California tiger salamander breeding sites. A majority of their purchased lands lie outside of the Santa Rosa Plain. Of the lands they have purchased within the Santa Rosa Plain, the majority fall within the floodplain of the Laguna de Santa Rosa River. There are no known records of the California tiger salamander within this 100 year floodplain.

Issue 10: Many commenters stated that the comment period did not allow sufficient time for meaningful public input. A number of them said that more time was needed to complete surveys that currently are underway.

Our Response: The comment period for the proposed rule was initially open for 60 days, closing on September 20, 2002. On August 26, 2002, the comment period was extended until October 21, 2002. The comment period was re-opened on October 31, 2002, for an additional 45 days. In total, the comment period was open for 145 days.

At least 12 surveys are ongoing in Sonoma County in three areas not previously known to have California tiger salamander occurrences, and to date, there have been no detections of the animal. We agree that additional survey information is valuable. However, the Service has not had the flexibility to wait until surveys are finished because an order, issued by the district court in *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service*, required us to complete this rule before the expiration of the protection afforded the DPS by the emergency rule.

Issue 11: One commenter stated that we should extend the comment period because we had not made available to the public documents on which the emergency listing and permanent listing was based.

Our Response: As stated in the emergency rule, the complete file for the rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office. In addition, the proposed rule stated that all comments received during the comment period were available for public review. The complete file for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office.

Issue 12: Several commenters felt we should complete peer review and incorporate that analysis into a proposed rule.

Our Response: In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited review from 12 experts in the fields of ecology, conservation, genetics, taxonomy and management. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. The five peer reviewers who sent comments supported listing of the Sonoma County California tiger salamander. They provided additional documentation on the distribution, genetics, and threats to the species. This information has been incorporated into this final rule.

Issue 13: Numerous commenters felt the proposal to list the Sonoma County California tiger salamander was based on one study conducted by a group with a very specific agenda against property rights and development. They said listing decisions should be based on specific studies by non-partisan professionals. Two commenters felt that the proposed rule was based on inaccurate or incomplete data. Numerous commenters felt the data we utilized on the California tiger salamander was at least 10 years old and was thus not current or accurate. One recognized herpetologist provided additional peer-reviewed articles on the California tiger salamander from scientific journals. Another professional biologist noted the proposed rule was based on research conducted as recently as 2001 by knowledgeable herpetologists.

Our Response: We used the best scientific and commercial information available during the status review process and preparation of the emergency and final rules to make our listing determination. We utilized museum records; CNDDB information; aerial photographs documenting the land use changes over the last 60 years; reports produced by the Sonoma County Agricultural Commissioners and the Sonoma County Planning and Development Department; unpublished reports by biologists; and peer-reviewed articles from scientific journals in making that determination.

Out of 126 citations appearing in the emergency rule, 52 have been published within the past 5 years (41 percent) and 83 citations have been published within the past 10 years (66 percent). The initial report on the population genetics of the California tiger salamander by Shaffer *et al.* (1993) has been substantiated by additional research (Barry and Shaffer 1994; Fisher and Shaffer 1996; Shaffer and McKnight 1996; Cook and Northen 2001; Shaffer and Trenham 2002).

Issue 14: Some commenters felt we had not quantified the magnitude of loss of the California tiger salamander in Sonoma County. One herpetologist said we had presented accurate information on the status of the species in Sonoma County.

Our Response: Based on the best available scientific and commercial information, five breeding sites for the California tiger salamander in Sonoma County have been destroyed in the past 2 years, and there are only eight known breeding sites remaining. Five of these sites are on private lands with no effective regulatory protection. Only one of the three protected sites is over 32 ha (80 ac) in size. All known breeding sites in the Cotati area have now been destroyed. The remaining sites in the Cotati area where the animals can mate and develop are roadside ditches and other suboptimal habitat during years of above average rainfall.

Issue 15: According to some commenters, there has been no study to determine population trends or ways to improve breeding at the known preserves containing the California tiger salamander.

Our Response: All of the three protected sites known to contain salamanders have been surveyed for the past 4 years. All surveys at these sites have resulted in the detection of very low numbers of salamander larvae during years that they were found at all. The largest preserve is approximately 81 ha (200 ac) in size, yet continues to exhibit very low numbers of larvae as indicated by yearly surveys. It is probable that salamander populations are limited by the lack of uplands for estivation during the dry season.

Issue 16: A number of commenters asked us to delay a final listing decision until a full review of the scientific evidence supporting or disputing the status of the Sonoma County California tiger salamander had been presented in a public forum.

Our Response: The purpose of publishing a proposed rule and soliciting public input during the comment period is to fully involve the public in the listing process. We also held a workshop and public hearing in Santa Rosa, California, to encourage agency and public input into the review of the proposed rule. We solicited 12 recognized experts and specialists to review the proposed rule. We utilized this information in making the final determination.

Issue 17: Numerous commenters said the listing of the California tiger salamander would have a severe economic impact on Sonoma County. They said we should complete an analysis of the economic effects of listing and include it in the final rule.

Our Response: Under section 4(b)(1)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must base a listing decision solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are ''* * * based solely on biological criteria and to prevent non-biological criteria from affecting such decisions* * * '' (House of Representatives Report Number 97–835, 97th Congress, Second Session 19 (1982)). As further stated in the legislative history, ''* * * economic considerations have no relevance to determinations regarding the status of species * * *''(Id. at 20). Therefore, we did not consider the economic impacts of listing the Sonoma County California tiger salamander.

Issue 18: Two commenters stated that critical habitat has not been proposed and, therefore, the listing is in violation of the Act.

Our Response: Pursuant to section 4(a)(3) of the Act, we have determined that designation of critical habitat is prudent for the Sonoma County California tiger salamander (see the ''Critical Habitat'' section). However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing the DPS without designating critical habitat at this time allows us to provide protections needed for the conservation of the species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future when our available resources allow.

Issue 19: One commenter said the 1995 Santa Rosa Plain Vernal Pool Ecosystem Preservation Plan indicated the Sonoma County California tiger salamander is potentially less vulnerable than stated in our proposed rule.

Our Response: The Santa Rosa Plain has experienced rapid urban growth since the vernal pool ecosystem preservation plan was issued in 1995. From 1995 until 2001, the population of Sonoma County increased by approximately 10% with an average annual growth rate of approximately 1.6 percent. (U.S. Census Bureau; California Department of Finance; California Association of Realtors website 2002). Increases in housing, traffic, industry, and office buildings have occurred concurrent with the increase in population growth. In the past 2 years, five breeding sites for the Sonoma County California tiger salamander have been destroyed. Loss of real and potential salamander breeding sites and estivation habitat continues to occur in the Santa Rosa Plain. Given the amount of habitat loss, inadequate regulatory mechanisms, and other threats, we believe the remaining California tiger salamanders in Sonoma County are endangered.

Issue 20: Several commenters stated that we should compensate private landowners for the loss of revenue that occurs when California tiger salamanders are found on their land. Another commenter said the ''Cattle Growers'' ruling prohibits us from imposing land use restrictions predicated upon listing except through a designation of critical habitat, and not doing so constitutes unlawful taking of property without compensation.

Our Response: The presence of an endangered or threatened species does not prevent all uses of public or private lands. The listing of a species does not impose land use restrictions and, therefore, does not result in unlawful taking of property. In addition, we will assist landowners in the identification of proposed activities that could result in take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct), develop measures to minimize the potential for take, and work with them to obtain authorizations for incidental take through sections 7 and 10 of the Act. Recovery planning for this species may include recommendations for land acquisition or easements involving private landowners. Any such efforts will be undertaken with the full cooperation of the landowners.

A recent case pertinent to this issue, *Arizona Cattle Growers* v. *Fish and Wildlife and Bureau of Land Management* (9th Circuit Court of Appeals 99–16102), provides that, in

biological opinions issued pursuant to section 7 of the Act, the terms and conditions in a biological opinion must have an articulated, rational connection to the take of a listed species. The court stated that the Act provides for the designation of critical habitat outside the geographic range currently occupied by a listed species when ''such areas are essential for the conservation of the species.'' Absent this procedure, the court stated that there is no evidence that Congress intended to allow the Service to regulate any parcel of land that is merely capable of supporting a listed species. Therefore, the mere listing of species, such as the Sonoma County California tiger salamander, will not result in land use restrictions.

Issue 21: One commenter was concerned that existing vineyards and wineries would be burdened by excessive costs when water permits are required or changed, or when planting or replanting permits are requested.

Our Response: Once a species becomes listed, section 9 of the Act sets forth a series of general prohibitions that apply to that species. The Sonoma County California tiger salamander is protected from ''take'' by any person subject to the jurisdiction of the United States. The definition of take under the Act includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to the listed wildlife by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is further defined to include actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Therefore, if the action by a party, such as water use by a vineyard or winery, planting or replanting of vineyards, could result in ''take'' of a listed species, then authorization for incidental take should be obtained pursuant to either sections 7 or 10 of the Act.

Issue 22: One commenter felt that the CDFG considered the emergency listing inappropriate due to a lack of proper information and sufficient scientific support.

Our Response: Only species or subspecies, and not distinct population segments, of vertebrates can be listed as endangered or threatened under the California Endangered Species Act (California Department of Fish and Game internet web site 2003). However, the California Department of Fish and Game has expressed concern for adverse impacts to the salamander and its habitat (R. Floerke, CDFG, *in litt.,* 2002).

Issue 23: One commenter stated that the breeding sites identified in the emergency rule for the Sonoma County California tiger salamander are not threatened, and the sites around the old airfield would not be destroyed because construction will avoid them and be limited to the runway. The commenter also felt the degree of threat, isolation of habitats, and barriers to movement were overstated and not based in reality. This same commenter believed that the Roseland Creek channel and asphalt run-way already constitute a significant barrier to migrating salamanders at the old airfield. Several other commenters noted the vernal pools at the Southwest Air Center (Air Center) have been damaged, destroyed, or are currently on the verge of being lost.

Our Response: Other than approximately 28 ha (70 ac) designated as open space, the remainder of the Air Center has been designated for development in the Southwest Santa Rosa Area Development Plan. One of the breeding sites could be destroyed by development and two others could be isolated and imperiled by a loss of estivation habitat. Upon development of this area, not enough upland will likely remain to support a viable salamander population even if two of the three breeding sites are not destroyed. Proposed development could also isolate the Federal Emergency Management Agency (FEMA)/ Broadmore North Preserves.

Burrowing mammals also could be increasingly subject to control actions given the proximity of developed areas to any remaining estivation habitats. One proposed development project at the Air Center could fill two wetlands that make up one of the eight known breeding sites. Surveys of this site over the past 2 years have found breeding California tiger salamanders. Construction on the runway itself and extension of Fresno Avenue could result in total isolation of the FEMA/ Broadmore North Preserves, a known Sonoma County California tiger salamander breeding site. We have determined that Roseland Creek Channel is not likely to be a barrier to salamander migration. Flows in the channel are minimal, except during the heaviest of rain events.

Issue 24: One commenter felt that the emergency rule overstated the effects of development at the Air Center because the runways are too hot for salamanders to cross.

Our Response: Hot runways are not a concern for this species because California tiger salamanders are in estivation during the dry, hot, summer months. The nocturnal adult animals concentrate their movements during rain events in the cooler fall, winter, and spring months. Researchers conducting night-time road surveys for California tiger salamanders during the fall, winter, and spring have documented this species crossing roads on many occasions.

Issue 25: One commenter stated that California tiger salamanders exist in the Central Valley and coastal areas of California and, therefore, they could not be endangered.

Our Response: Research has indicated there are six populations of California tiger salamanders occurring in California. These include the Santa Rosa area of Sonoma County; the Bay Area (central and southern Alameda, Santa Clara western Stanislaus, western Merced, and the majority of San Benito counties); Central Valley (Yolo, Sacramento, Solano, eastern Contra Costa, northeast Alameda, San Joaquin, Stanislaus, Merced, and northwestern Madera counties); southern San Joaquin Valley (portions of Madera, central Fresno, and northern Tulare and Kings counties); Central Coast Range (southern Santa Cruz, Monterey, northern San Luis Obispo, and portions of western San Benito, Fresno, and Kern counties); and Santa Barbara County (Shaffer and Trenham 2002). The Sonoma County population meets the requirements of our Distinct Population Segment policy and therefore can be separated from the remainder of the population in making this determination.

Issue 26: One commenter stated that much of the area defined as potential range of the Sonoma County California tiger salamander was based on soil types.

Our Response: The distribution of the Sonoma County California tiger salamander corresponds to the distribution of specific soil types. The known breeding sites of the animal in Sonoma County are restricted to Huichica-Wright-Zamora and Clear Lake-Reyes soils series/associations as defined by the USDA (1972, 1990). The poorly drained soils in the Huichica-Wright-Zamora association are considered prime soils for containing wetlands, and more specifically, prime soils for habitat containing California tiger salamander (P. Northen, pers. comm., 2002). The Huichica-Wright-Zamora association is restricted to the Santa Rosa Plain and the vicinity of the town of Sonoma (USDA 1972, 1990). The poorly drained soils in the Clear

Lake-Reyes association are considered suitable to marginal soils for containing wetlands or habitat for California tiger salamander (P. Northen, pers. comm., 2002). The Clear Lake-Reyes association is found from the Cotati region south and east of Petaluma to the tidelands of northern San Francisco Bay where the salt marsh habitat is unsuitable for the California tiger salamander. There are also scattered areas of the Clear Lake-Reyes association found south and southwest of the town of Sonoma (USDA 1972, 1990). There are no known records of the California tiger salamander from the area around the town of Sonoma (D. McGriff, pers. comm., 2002), and there is now extensive urban and agricultural development in this portion of the county.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of 12 independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the California tiger salamander in Sonoma County. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Information and suggestions provided by the reviewers were incorporated or addressed as applicable.

We received peer reviews from five of the experts. All of them agreed the Sonoma County California tiger salamander is imperiled throughout all or a portion of its range. One reviewer provided references on threats from disease the reviewer believed relevant to our final rule decision. This peer reviewer also stated that threats from disease are much more severe for small populations. Another peer reviewer recommended a number of editorial clarifications in the emergency and proposed rules. The third peer reviewer stated that the California tiger salamander should be listed throughout its range. A fourth peer reviewer provided additional information on the California tiger salamander, and the fifth peer reviewer, based on years of field work, agreed that the Sonoma County California tiger salamander is endangered.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal list. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the Sonoma County California tiger salamander, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Sonoma County California tiger salamander population, as well as the population in Santa Barbara County, which we listed as endangered (65 FR 57242, September 21, 2000), are considered to be the most vulnerable of the six populations of the California tiger salamander (LSA Associates, Inc. 2001; Shaffer and Trenham 2002). Urban development is the primary threat to the Sonoma County California tiger salamander. The DPS now occurs in scattered, and increasingly isolated, breeding sites within a small portion of its historic range on the Santa Rosa Plain in Sonoma County. Five known breeding sites of this DPS have been destroyed in the last 2 years. All of the eight known remaining breeding sites are distributed in the City of Santa Rosa and immediate associated unincorporated areas, an area approximately 8 km (5 mi) long by 6 km (4 mi) wide. Within this area and south to the Cotati area, there are scattered records of adult salamanders crossing roads during the fall and winter rains, and also sporadic instances of breeding in roadside ditches and low-quality pools. However, these roadside ditches and low-quality pools likely do not represent viable breeding sites because they either do not have sufficient ponding duration and/or associated uplands for estivation.

The eight known breeding sites are imperiled by the construction of high-density housing, office buildings, roads, and other development. The survival and viability of the Sonoma County California tiger salamander is directly related to availability of breeding pools with hydrological and other factors conducive to the salamander's reproduction. There also must be adequate upland acreage, with associated small mammal burrows, in the vicinity of the Sonoma County California tiger salamander breeding pools to accommodate estivation. The Santa Rosa Plain once contained extensive valley oak woods, native grasslands, riparian, and vernal pools (1942 aerial photographs on file with Dr. Phil Northen at California State University at Sonoma). Vernal pools and seasonal wetlands likely were extensive, due to the flat terrain, clay soils, and relatively high rainfall (CH2M Hill 1995). Based on the topography and habitat type of the lands that have been converted to urban development and agriculture on the Santa Rosa Plain, the number of breeding ponds, the extent of upland habitats, and the quality of the remaining habitats has been greatly reduced since Europeans first settled the region.

The extent of the historic range of the California tiger salamander within the Santa Rosa Plain in Sonoma County is uncertain due to limited information collected on this population prior to the 1990s (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, based on the habitat requirements of the species for low elevation, seasonally filled breeding ponds and small rodent burrows, the ecology of the taxon, the general trend of urban development into suitable and occupied habitat, and other adverse factors affecting the species, we believe that it once occupied a more extensive, but still limited area within the Santa Rosa Plain.

A 1990 study of the Santa Rosa Plain found that 25 percent of an 11,300-ha (28,000-ac) study area had been converted to subdivisions, ''ranchettes,'' golf courses, and commercial buildings (Waaland *et al.* 1990). An additional 17 percent of the study area had been converted to agricultural uses. Since 1990, many more acres have been urbanized and converted to intensive agriculture, particularly vineyards. Even relatively minor habitat modifications, such as construction of roads, storm drains, and road curbs that traverse the area between breeding and estivation sites, increase habitat fragmentation, impede or prevent migration, and result in direct and indirect mortality of California tiger salamanders (Mader 1984; S. Sweet, *in litt.* 1993, 1998; Findlay and Houlahan 1996; Launer and Fee 1996; Gibbs 1998). All of the remaining known Sonoma County California tiger salamander breeding pools are within 450 m (1,476 ft) of roads and residential development, and five of the eight remaining viable breeding locations are within 100 m (328 ft) of major development activities.

Urban Development

Urban development poses a significant threat to all of the known breeding sites of the Sonoma County California tiger salamander. Six of these

sites are found in and around the former Air Center that is located in southwest Santa Rosa. This area contains one of the largest undeveloped blocks of land within the city limits of Santa Rosa. Urban development is proposed on or near locations containing four of the eight known breeding sites in the Santa Rosa area (EIP Associates 1994, 2000). The airport was closed and the property sold to the City of Santa Rosa in the mid-1980s. The City of Santa Rosa is proposing the majority of the area be developed as part of their Southwest Area Plan (EIP Associates 1994, 2000).

Urban development of the Santa Rosa area is proceeding rapidly. Demographic data obtained from the City of Santa Rosa Housing and Community Development Commission indicate that, since 1980, Santa Rosa has experienced a greater than 53 percent increase in its population. From 1980 until 1997, the number of housing units grew by 66 percent from 35,403 units in 1980 to 53,558 units by January 1, 1997 (M. Enright, pers. comm., 2001).

Five known breeding sites were lost within the past 2 years, two of which were lost due to commercial development with another lost to urban development/housing. In June 2002, a fourth breeding site near Cotati was destroyed when the pond was filled for unknown reasons (D. Cook, *in litt.,* 2002; L. Davis, pers. comm., 2002). The Cotati location was considered highly productive for salamanders (D. Cook, *in litt.,* 2002). A fifth, and previously unknown, breeding site near Cotati was destroyed shortly after the emergency listing went into effect (67 FR 47726) (D. Wooten, Service, pers. comm., 2002). We were not aware of this occurrence at the time the emergency rule was published. Salamander larvae were found in a roadside ditch that backed up onto a large pool on private property (CNDDB 2002). It is likely this pool served as the breeding site for salamanders in this area. This site was located in an area where road sightings of tiger salamanders commonly occurred in absence of a known breeding site. The pool was drained without appropriate authorizations under County of Sonoma ordinances (P. Shannin, U.S. Army Corps of Engineers (Corps), pers. comm., 2002; P. Stamp, Sonoma County Planning Department, pers. comm., 2002).

Roads and Highways

California tiger salamanders require a large amount of barrier-free landscape for successful migration (Shaffer *et al.* 1993; Loredo *et al.* 1996). Roads and highways are permanent physical obstacles that can block the animals from moving to new breeding habitat, or prevent them from returning to their breeding ponds or estivation sites. Road construction can reduce or completely eliminate the viability of a breeding site, and in some cases, larger portions of a metapopulation.

All the pools at the known extant Sonoma County California tiger salamander breeding sites are within 450 m (1,476 ft) of roads of various sizes. Findlay and Houlahan (1996) found that roads within 2,000 m (1.2 mi) of wetlands adversely affected the number of amphibian species. At this time, it is still possible for salamanders at breeding sites associated with the Air Center to migrate to the FEMA/Broadmore North Preserves. A proposed through-street and high-density housing will eliminate this migration corridor, leading to fragmentation and further isolation of remaining breeding sites. If this planned through-street and accompanying high-density housing are completed, only three breeding sites will remain where salamanders can access more than one breeding pool without crossing roads.

Large numbers of California tiger salamanders at some locations in the Central Valley, up to 15 or 20 per mile of road (J. Medeiros, Sierra College, pers. comm., 1993), have been killed as they crossed roads on breeding migrations (Hansen and Tremper 1993; S. Sweet, *in litt.,* 1993). Estimates of losses to automobile traffic range from 25 to 72 percent of the breeding population for several different populations of the species (Twitty 1941; S. Sweet, *in litt.,* 1993; Launer and Fee 1996). Curbs and berms as low as 9 to 13 cm (3 to 5 in), which allow salamanders to climb onto the road but can restrict or prevent their movements off the roads, can turn the roads into sources of high mortality (Launer and Fee 1996; S. Sweet, *in litt.,* 1998). Automobile traffic along Stony Point Road in western Santa Rosa has probably quadrupled in the past 5 years (D. Cook, pers. comm., 2002). This was once a moderately used rural road which is now a major route for commuter traffic. Between November 21, 2001, and December 5, 2001, 26 California tiger salamanders were found killed by cars on this road between Santa Rosa and Cotati. Fourteen of these dead California tiger salamanders were found along Stoney Point Road near Meachum Road (D. Cook, pers. comm., 2002). The Engel Preserve is adjacent and north of Todd Road. A proposed road widening project along Todd Road would likely increase traffic and result in an increased threat of roadkill for salamanders migrating between the Engel Preserve and salamander estivation habitat south of Todd Road.

Description of the Breeding Sites

(1) *Hall Road Preserve:* This 74-ha (183-ac) site is owned by CDFG. It is the largest preserved area where the Sonoma County California tiger salamander is currently known to occur. It contains two pools with ponding levels adequate for successful breeding during drought years. This preserve contains seven additional breeding pools that are relatively shallow and do not pond water long enough for successful breeding in years of moderate to low rainfall. Surveys conducted over the past 2 years indicate this preserve does not function as a highly productive breeding site (Cook and Northern 2001). The land surrounding the preserve is privately owned, and the City of Santa Rosa has issued permits for urban development. Urban development has occurred on adjacent lands to the east and west, and agriculture to the north of the preserve. Exotic predators of the salamander, such as Louisiana crayfish (*Procrambus clarkii*), stickleback fish (*Gasterosteus aculeatus*), and possibly bullfrogs (*Rana catesbeiana*) are present at the Hall Road Preserve.

(2) *FEMA/Broadmore North Preserves:* This breeding site consists of two properties, the FEMA Preserve and the Broadmore North Preserve. The 24-ha (59-ac) FEMA Preserve is owned by CDFG and contains one of the most productive Sonoma County California tiger salamander breeding sites. The 6.5-ha (16-ac) Broadmore North Preserve is a conservation area that was set aside as mitigation by the Bellvue School District. It is also managed by CDFG. The two breeding sites are contiguous and encompass 30 ha (75 ac) containing three breeding pools. The FEMA Preserve has two large, deep pools that remain ponded late in the season. Salamanders probably breed there during most years. The one breeding pool on Broadmore North is shallow and does not contribute salamanders to the population in dry years (*i.e.*, there is no recruitment) (D. Cook, pers. comm., 2001). While there is no hydrological connection between this site and the deeper pools contained on the FEMA Preserve, the FEMA Preserve probably allows the salamanders at the Broadmore North Preserve the opportunity to breed during dry years. Urban development has occurred to the north and east sides of the preserves. Although these breeding sites are protected, urbanization imperils upland habitats on private land to the east and west of them. A new road and housing development on lands adjacent to the

preserves' western boundaries have been permitted by the City of Santa Rosa and are now partially constructed. This new road and construction has partially blocked the western migration route between breeding pools at the Air Center and the pools at the FEMA and Broadmore North preserves. Planned future phases of this project, also permitted by the City of Santa Rosa, will totally block migration between the FEMA/Broadmore North Preserves and the Air Center.

(3) *Engel Preserve:* This is a 16-ha (40-ac) privately owned preserve that contains approximately 7 ha (18 ac) of wetlands. Three pools appear to have ponding levels adequate for salamander breeding in normal to dry rainfall years. Sonoma County California tiger salamanders were not documented at this site prior to the 2001/2002 rainy season. Based on the small number of larvae found at this site, however, it is likely that there are low numbers of salamanders inhabiting this site. Todd Road runs along the southern boundary of this site and automobile traffic poses a threat to salamanders migrating between the Engel Preserve and estivation sites to the south.

(4) *Northwest Air Center:* This breeding site contains one breeding pond and is located on private land. Much of the associated upland has recently been developed. This site is bordered on the west and north by roads subject to heavy traffic from housing developments that have been constructed under the City of Santa Rosa's Southwest Area Development Plan. Housing has eliminated migration routes to the east and south, thus leaving this site as an isolated breeding site with less than 22 ha (55 ac) of remaining undeveloped upland area and pool with private lands surrounding it to the south and east (M. Enright, pers. comm., 2001).

(5) *Southwest Air Center:* This breeding site is located on private land and contains one breeding pool. The City of Santa Rosa has issued permits for a residential development that likely will result in the elimination of salamanders at this location. Preparation of this site for construction was initiated, but further development has been delayed as a result of the emergency listing of this species. The salamanders at this location also may utilize the breeding ponds at the FEMA/ Broadmore North preserves by an existing migration corridor to the east. The destruction of this breeding site likely will further isolate the animals inhabiting this location. Loss of this breeding site will contribute to the overall isolation of the remaining breeding sites.

(6) *North Air Center:* There is one breeding pool on this privately owned site. Recent residential and commercial developments that border the breeding site on three sides severely restrict the potential for migration. The City of Santa Rosa has approved residential and road projects for this location that will adversely affect the salamanders. This site is bordered by houses to the west, a road with high levels of automobile traffic to the north, and a corporate park to the east. There is a small tract of undeveloped private land to the south. No protection exists for the uplands or breeding pool which is located directly south of Sebastopol Road. The upland area is about 15 ha (37 ac). Portions of Sebastopol Road have been widened to four traffic lanes, including the construction of storm drains and curbs. The curbs likely funnel migrating salamanders into storm drains where they perish after being washed into the sewer system. Residential and commercial projects currently are under construction in this area. The City of Santa Rosa has issued permits for the development of this site, and the Corps has requested formal consultation from us for the fill of this breeding site. Development plans will also result in the loss of estivation habitat. Preparation of this site for construction was initiated, but further development has been delayed as a result of the emergency listing of this species.

(7) *Wright Avenue:* This breeding site is located on private land. Approved development described in the City of Santa Rosa's Southwest Area Development Plan will isolate this breeding site through increased automobile traffic and residential development along Wright and Ludwig Avenues. No construction is specifically proposed for this property, but no protection exists to prevent the breeding site and associated uplands from being developed. This site is on agricultural lands, and access has not been allowed for several years. Thus, the condition, or even the continued existence of this pool, cannot be confirmed.

(8) *South Ludwig Avenue:* This breeding site is located on private land, and current threats to the salamanders include increased traffic along Ludwig Avenue due to increasing residential development. The breeding site and associated uplands are currently not protected from potential development. This site is on agricultural lands, and access has not been allowed for several years. Thus, the condition, or even the continued existence of this pool cannot be confirmed.

Conclusion for Factor A

Except for the Hall Road Preserve, all of the known breeding sites of the Sonoma County California tiger salamander are found on small locations in areas being rapidly converted from low-intensity farming, cattle grazing, and low-density housing, to high-density housing and office buildings. Only three breeding sites (the Hall Road Preserve, FEMA/Broadmore North Preserve, and Engel Preserve) have hydrologic regimes adequate to provide recruitment for Sonoma County California tiger salamanders in normal to dry years. Five of the breeding sites are on private property. Two of the breeding sites on private lands are on agricultural lands where access for salamander surveys has not been allowed in recent years. Thus, it is unknown if these two breeding sites still have Sonoma County California tiger salamanders, or if they retain hydrological features required for successful salamander breeding. Four of the breeding locations associated with the old airfield in southwest Santa Rosa are slated for development, which will disrupt the hydrology of the surrounding uplands by altering natural runoff. If plans for the development of the area in the vicinity of these four breeding sites are completed, there will be no migratory corridors remaining between any of the currently extant breeding locales.

Maintenance of tracts of habitat between breeding sites will likely play a pivotal role in maintenance of the Sonoma County California tiger salamander metapopulation dynamics. If breeding sites are eliminated and the metapopulation becomes so fragmented that individuals are unable to disperse between suitable patches of habitat, the probability of natural recolonization will not offset the probability of extinction. Some of the salamander breeding sites, such as the FEMA Preserve/ Broadmore North Preserve and the pools associated with the Air Center, are linked to each other by suitable habitat. If movements through these linkages are disrupted or precluded (*e.g.*, by urban development), then the stability of the metapopulation (*i.e.*, the exchange of individuals between breeding sites) will be affected. Isolation, whether by geographic distance or ecological factors, will prevent the influx of new genetic material, and likely to result in inbreeding and eventual extinction (Levin 2002). We believe that the Sonoma County California tiger salamander is at risk from increasing

fragmentation and isolation caused by urban development.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the past, the larvae of non-native tiger salamanders could legally be used as bait by fishermen in California. The extent of the use of the Sonoma County California tiger salamander is unknown. The California Code of Regulations (2002) now specifies that no salamander may be used as bait and excludes the California tiger salamander from a list of salamanders, newts, toads, and frogs that may legally be taken and possessed under authority of a sportfishing license. The success of these present regulations in avoiding or reducing recreational harvest of the California tiger salamander is unknown.

Tiger salamanders are generally thought to make good pets by amateur herpetologists (Porras 2002). The Sonoma County California tiger salamander does not appear to be particularly popular among amphibian and reptile collectors. However, Federal listing could raise the value of the species within wildlife trade markets, and increase the threat of unauthorized collections above current levels (K. McCloud, Special Agent, Service, pers. comm., 2002). Even limited interest in the species could pose a serious threat to the DPS.

C. Disease or Predation

Disease

Relatively little is known about the diseases of wild amphibians (Alford and Richards 1999). The specific effects of disease on the Sonoma County California tiger salamander are not known and the risks to the animal have not been determined. However, it is known that mass mortalities of amphibians from disease are not uncommon, and may be either a natural phenomenon of the biology of species or induced by anthropogenic agents (Corn 1994). In California, large numbers of dead and dying California tiger salamanders were observed in a pond in the Los Alamos Valley in Santa Barbara County, but the cause was not determined (S. Sweet, pers. comm., 1998).

Worthylake and Hovingh (1989) described repeated die-offs of tiger salamanders (*A. tigrinum*) at Desolation Lake in the Wasatch Mountains of Utah. Affected salamanders had red, swollen hind legs and vents, and widespread hemorrhage of the skin and internal organs. The researchers determined that the die-offs were due to infection from the bacterium *Acinetobacter,* or redleg disease. The number of *Acinetobacter* in the lake increased with increasing nitrogen levels as the lake dried. The nitrogen was believed to come from both atmospheric deposition and waste from sheep grazing in the watershed (Worthylake and Hovingh 1989). *Acinetobacter,* which appears to affect amphibians whose immune systems have been weakened by stress (Corn 1994) or another bacterial infection, was also the suspected cause of larval tiger salamanders deaths in Arizona (Collins *et al.* 1988, as cited in Corn 1994). *Acinetobacter* is common in soil and animal feces.

Lefcort *et al.* (1997) found that tiger salamanders raised in natural and artificial ponds contaminated with silt were susceptible to infection by the water mold *Saprolegnia parasitica* at a location in Georgia. This fungus first appeared on the feet, spread to the entire leg, and then infected animals died. Die-offs of western toads (*Bufo boreas*), Cascades frogs (*Rana cascadae*), and Pacific treefrogs also have been associated with *Saprolegnia* infections (Kiesecker and Blaustein 1997). *Saprolegnia* is widespread in natural waters and commonly grows on dead organic material (Wise *et al.* 1995). *Saprolegnia ferax* outbreaks have been identified as a cause of high amphibian embryo mortalities in the Pacific Northwest (Kiesecker *et al.* 2001).

Viruses associated with die-offs of tiger and spotted salamanders in Maine and North Dakota have been isolated (B. McLean, National Wildlife Health Center, *in litt.,* 1998). Also, Jancovich *et al.* (1997) isolated a virus, believed to be an iridovirus, as the primary pathogen responsible for a decimating epizootic event affecting the federally endangered Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*) in Arizona. Iridoviruses have recently been implicated as the cause of amphibian mass deaths worldwide, with novel iridoviruses identified from a number of regions.

Ranaviruses are often highly virulent and cause systemic infections in amphibians. Epizootiology (science that deals with the character, ecology, and causes of outbreaks of animal diseases) of ranaviral disease in amphibians is poorly understood, but dissemination may be partly due to the virus's ability to remain infectious under adverse conditions and for prolonged periods. Likely modes of spread of amphibian ranaviruses may include use of fishing gear, including boats, and through artificial stocking of ponds for recreational fishing. Also, water birds have the potential to mechanically transfer the virus on their feathers, feet, or bills, or by regurgitation of ingested infected material. Some outbreaks of ranaviral disease in tiger salamanders have been associated with altered habitats and artificial ponds. Due to their highly virulent nature, ranaviruses should be considered a potential threat to amphibian populations, especially those isolated from previous disease outbreaks (and thus lacking specific immunity) and species with low fecundity (Daszak *et al.* 1999).

Kiesecker *et al.* (2001) reported that pathogen outbreaks in amphibian populations in the western U.S. may be linked to climate-induced changes in UV–B light exposure. Their findings indicate that climate-induced reductions in water depth at oviposition (laying of eggs) sites have caused high mortality of embryos by increasing their exposure to UV–B radiation and, consequently, their vulnerability to infection. Furthermore, they speculate that climate changes since the mid-1970s related to El Niño/Southern Oscillation cycles and elevated sea-surface temperatures could be the precursor for pathogen-mediated amphibian declines in many regions.

Pathogen outbreaks have not been documented in Sonoma County California tiger salamanders. Nevertheless, disease must be considered a potential future population threat because of the relatively small, fragmented remaining Sonoma County California tiger salamander breeding sites, the many stresses on these sites due to habitat losses and alterations, and the many other potential disease-enhancing anthropogenic changes which have occurred both inside and outside of the range of this DPS. An amphibian pathogen could eliminate one or more breeding sites of this animal.

Predation

Predation and competition by introduced or non-native species potentially affect all of the known Sonoma County California tiger salamander breeding sites. Bullfrogs prey on California tiger salamanders (P. Anderson 1968; Lawler *et al.* 1999). Morey and Guinn (1992) documented a shift in amphibian community composition at a vernal pool complex, with California tiger salamanders becoming proportionally less abundant as bullfrogs increased in number. Lawler *et al.* (1999) found that less than 5 percent of California red-legged frog (*Rana aurora draytonii*) tadpoles survived to metamorphosis when raised with bullfrog tadpoles. Moyle (1973) attributed disappearance of both

California red-legged frogs and foothill yellow-legged frogs (*Rana mucosa*) within the San Joaquin Valley of California to habitat alteration coupled with predation and competition from bullfrogs. Although bullfrogs are unable to establish permanent breeding populations in unaltered vernal pools and seasonal ponds, dispersing immature bullfrogs take up residence in such water bodies during winter and spring where they prey on native amphibians, including larval salamanders (Morey and Guinn 1992; Seymour and Westphal 1994).

Because bullfrogs are known to travel at least 2.6 km (1.6 mi) from one pond to another (Bury and Whelan 1984), they have the potential to naturally colonize new areas where they do not currently exist, including ponds where Sonoma County California tiger salamanders occur. In one study of the eastern San Joaquin Valley, 22 of 23 (96 percent) ponds with California tiger salamanders were within the bullfrogs' potential dispersal range (Seymour and Westphal 1994). In addition, because bullfrogs are still sought within California for sport and food, and may be taken without limit under a fishing license, the threat of transport for intentional establishment in new locations where California tiger salamanders exist or could exist is significant.

One of the pools at the Hall Road breeding site, and two of the pools contained at the FEMA/Broadmore North preserves, are located within 46 m (150 ft) of ditches or creek channels known to contain bullfrogs or crayfish. Bullfrogs likely occur in Roseland Creek, which is near the FEMA/Broadmore North preserve and breeding sites associated with the Air Center (D. Cook, pers. comm., 2002). Bullfrogs are likely present in ditches that cross the Hall Road Preserve (D. Cook, pers. comm., 2002). The direct and indirect evidence thus indicates that non-native bullfrogs represent a continuing significant threat to the persistence of the Sonoma County California tiger salamander.

Western mosquitofish (*Gambusia affinis*) are native to central North America (watersheds tributary to the Gulf of Mexico) and have been introduced throughout the world for mosquito control, including in California beginning in 1922. Western mosquitofish now occur throughout California wherever the water does not get too cold for extended periods, and they are still widely planted throughout the State (Boyce, UCD, *in litt.,* 1994) by about 50 local mosquito abatement districts.

Salamanders may be especially vulnerable to western mosquitofish predation due to their fluttering external gills, which may attract these visual predators (Graf and Allen-Diaz 1993). Loredo-Prendeville *et al.* (1994) found no California tiger salamanders inhabiting ponds containing western mosquitofish. Western mosquitofish prey on other amphibian species, such as the California newt (*Taricha torosa*) (Gamradt and Kats 1996) and Pacific treefrog (Goodsell and Kats 1999) tadpoles in both field and laboratory experiments, even given the optional prey of mosquito larvae (Goodsell and Kats 1999; L. Kats, Pepperdine University, pers. comm., 1999). Mosquitofish have also been observed ingesting and then spitting out California newt larvae, causing severe damage to the newts in the process (Graf and Allen-Diaz 1993). Given the effects of western mosquito fish on other amphibian species, they are likely to have similar effects on California tiger salamanders. If they have the same effects, the use of mosquito fish in California tiger salamander habitat threatens the persistence of the species, especially in the isolated Sonoma County California tiger salamander population.

Other non-native fish have either been directly implicated in predation of California tiger salamanders or appear to have the potential for such. For example, introductions of sunfish species (*e.g.*, largemouth bass (*Micropterus salmoides*) and bluegill (*Lepomis macrochirus*)), catfish (*Ictalurus* spp.), and fathead minnows (*Pimephales promelas*) are believed to have eliminated California tiger salamanders from several breeding sites in Santa Barbara County (Service 2000). Non-native sunfish species, catfish, and bullheads (*Ameiurus* spp.) have been, and still are, widely planted in ponds in California to provide for sportfishing. By 1984, the California fish fauna included about 50 such transplanted and exotic species, mostly from eastern North America origin (Hayes and Jennings 1986). More recently, Moyle (2002) estimated that, on average, California is losing about one native species or subspecies of fish every 5 to 6 years, and gaining an average of one alien species about every 2 years.

Non-native fish introductions may be responsible for the declines of frog species in western North America (Hayes and Jennings 1986). Such introduced fish may be a problem for California raids because of their specialization for preying on aquatic life (including eggs and larvae), and because the affected amphibians may have evolved under conditions of limited fish predation, which now increases the impacts of such introductions (Hayes and Jennings 1986). We believe the same threat applies to the California tiger salamander. Thus, potential introduction of such non-native fish species in Sonoma County California tiger salamander breeding habitat should be considered a threat to the persistence of this DPS.

The degree to which predation from native fish have affected the Sonoma County California tiger salamanders is unknown. For example, sticklebacks (*Gasterosteus* spp.), which have been present in California for at least 16 million years, were believed to be the factor preventing the Sonoma County California tiger salamander from establishing at a site in Sonoma County (Cook and Northen 2001). One pool at the Hall Road Preserve appears to have all of the biological components for successful California tiger salamander breeding, but has a small connector to a drainage ditch containing stickleback. Sonoma County California tiger salamanders have never been found at this site, and it is suspected that predation of their eggs and larvae by this fish is the limiting factor (D. Cook, pers. comm., 2002).

Non-native and native crayfish (*Pacifastacus, Orconectes,* and *Procambarus* spp.) apparently prey on California tiger salamanders (Shaffer *et al.* 1993) and may have eliminated some populations (Jennings and Hayes 1994). Crayfish prey on California newt eggs and larvae, despite toxins produced by these amphibians, and they may be a significant factor in the loss of newts from several streams in southern California (Gamradt and Kats 1996). These crayfish have been found at both the FEMA/Broadmore North and Hall Road Preserves. At the FEMA property, crayfish were found in the pool (D. Cook, pers. comm., 2002). The crayfish likely came from the adjacent Roseland Creek Channel. Louisiana crayfish have been found in the ditches that cross the Hall Road Preserve, but not at any of the pools known to support Sonoma County California tiger salamander populations (D. Cook, pers. comm., 2002). The presence of both stickleback and crayfish, along with the suspected presence of bullfrogs, could negatively affect Sonoma County California tiger salamanders within the Hall Road Preserve.

California tiger salamanders are also likely preyed on by many native species of fish and wildlife. In healthy salamander populations, such predation is probably not a significant threat. But when combined with other impacts,

such as predation by non-native species, contaminants, migration barriers, or habitat alteration, it may cause a significant decrease in population viability. Native predators include herons and egrets, western pond turtles (*Clemmys marmorata*), various garter snakes (*Thamnophis* spp.), larger California tiger salamanders, larger spadefoot toads (*Scaphiopus hammondii*), and California red-legged frogs (M. Peters, Service, *in litt.,* 1993; Hansen and Tremper 1993). In Arizona, larval tiger salamanders are preyed upon by adult predaceous diving beetles (*Dytiscus dauricus*) (Holomuzki 1986), and turkey vultures (*Carthartes aura*) have been observed feeding on larval or adult tiger salamanders (Duncan 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline of the Sonoma County California tiger salamander is the loss, degradation, and fragmentation of habitat due to human activities. Federal, State, and local laws have been insufficient to prevent past and ongoing losses of the limited habitat of the Sonoma County California tiger salamander.

Federal

Clean Water Act. Under section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344 *et seq.*), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. However, normal farming activities are exempt under the CWA and do not require a permit (53 FR 20764; Robert Wayland III, Environmental Protection Agency (EPA), *in litt.,* 1996). Projects that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. No activity that is likely to jeopardize the continued existence of a threatened or endangered species, or that is likely to destroy or adversely modify designated critical habitat of such species, is authorized under any nationwide permit. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts.

Recent court cases may further limit the Corps' ability to utilize the CWA to regulate the fill or discharge of fill or dredged material into the aquatic environment within the current range of the Sonoma County California tiger salamander (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (SWANCC)). The effect of SWANCC on Federal regulation of activities in wetlands in the area of the Sonoma County California tiger salamander has recently become clear by the Corps' failure to assert its jurisdiction over fill of several wetlands within the range of the Sonoma County California tiger salamander. In a letter from the Corps dated March 8, 2002, concerning the fill of 0.18 ha (0.45 ac) of seasonal wetlands southwest of the intersection of Piner and Marlow Roads (Corp File Number 19736N), the Corps referenced the SWANCC decision and reiterated that the subject wetlands were not ''waters of the United States'' because they were: (1) Not navigable waters; (2) not interstate waters; (3) not part of a tributary system to 1 or 2; (4) not wetlands adjacent to any of the foregoing; and (5) not an impoundment of any of the above. The letter further stated that the interstate commerce nexus to these particular waters is insufficient to establish CWA jurisdiction and, therefore, not subject to regulation by the Corps under section 404 of the CWA. The Corps also cited the SWANCC decision as their reasoning for not taking jurisdiction over fill of Sonoma County California tiger salamander breeding pools at the recently constructed South Sonoma Business Park.

When on- or off-site mitigation is required by the Corps as a condition of a section 404 permit to fill certain wetlands, there is often low probability that affected Sonoma County California tiger salamander habitat values, if any, would actually be compensated and replaced by the ensuing mitigation action(s). A 1994 Service study of selected wetlands re-creation projects in California authorized through the section 404 program found deficiencies in both compliance and performance of the re-created wetlands (Santa Rosa Plain Vernal Pool Ecosystem Preservation Plan 1995). There was evidence that, of all the proposed mitigation, half of the sites were meeting less than 75 percent of the mitigation conditions and our goal for ''in-kind'' replacement was not being met (DeWeese 1994). Other recent studies have produced similar results. In addition, most wetland re-creation efforts in California to date have been directed at the wetlands themselves and have not adequately addressed the upland and other related needs of California tiger salamanders.

Semlitsch (1998) examined published literature for six species of pond-breeding ambystomatid salamanders from five States and concluded that a buffer zone encompassing 95 percent of a given population would need to extend 263 m (534 ft) from a wetland's edge into surrounding terrestrial habitat in order to give adequate protection. More recently, Trenham (2001), although cautioning that essential terrestrial habitats and buffer requirements are still relatively poorly understood, concluded that plans to maintain local populations of California tiger salamanders should include pond(s) surrounded by buffers at least 173 m (567 ft) wide of terrestrial habitat occupied by burrowing mammals. Management plans that focus only on preserving ponds or wetlands—without consideration for associated terrestrial habitat—are likely to fail to maintain viable amphibian populations (Marsh and Trenham 2001). However, even with inclusion of terrestrial habitat buffers, recent studies have demonstrated that restored wetlands are often still only partially successful in recolonization by the full amphibian assemblages being targeted for restoration (Lehtinen and Galatowitsch 2001; Pechmann *et al.* 2001). Successful compensatory mitigation for losses of California tiger salamander pool and pond habitat due to filling would also require the connectivity of the restoration site to other pools and ponds (Gibbs 1998; Lehtinen *et al.* 1999; Trenham *et al.* 2001; Marsh and Trenham 2001). Pond isolation may be an important consideration in disturbed environments where inter-pond dispersal is impeded by barriers such as roads and urban development (Marsh and Trenham 2001). The California tiger salamander may also require large preserves to maintain viable breeding populations and to allow recolonizations from natural and anthropogenic local extirpations (P. Northen, *in litt.,* 2001).

Three federally endangered plants, Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Burke's goldfields (*Lasthenia burkei*) occur on the Santa Rosa Plain of Sonoma County in the vicinity of the Sonoma County California tiger salamander. However, little overlap occurs between the viable breeding sites of this species and these federally listed vernal pool species. Any Corps consultation requirement for fill

of pools on the Santa Rosa Plain would be triggered by the listed plants. Since the salamander and the federally listed plants do not substantially overlap, salamander breeding pools are unlikely to be protected by presence of the plants or their habitat. Furthermore, even if breeding pools of this animal are avoided due to the presence of a federally listed plant species, this protection may only extend to the pool itself with a small upland buffer. Since Sonoma County California tiger salamanders spend up to 80 percent of their life in small mammal burrows in upland habitats surrounding breeding pools, the protection of the pool itself, with concurrent loss of uplands surrounding the pool, would still result in the loss of local Sonoma County California tiger salamander breeding sites.

We conclude that regulation of wetlands filling by the Corps under section 404 of the CWA is inadequate to protect the Sonoma County California tiger salamander from further decline. Section 404 implementation fails to prevent losses of numerous small wetlands in California that may support California tiger salamander breeding. Section 404 does not regulate the continuing losses of California tiger salamander terrestrial habitat (except to the extent certain agricultural activities may be regulated). When authorized fills under section 404 do result in compensatory mitigation for wetlands losses, it is unlikely that California tiger salamander habitat losses at specific fill sites can, and will be, fully and successfully mitigated.

State

Since 1994, the CDFG recognizes the California tiger salamander as a ''species of special concern'' by the CDFG. More recently, the California tiger salamander has been placed on the State's list of protected amphibians, which means that it cannot be taken without a special permit issued for scientific collecting or research. Also, as stated earlier, the California Code of Regulations (2002) specifies California tiger salamanders can no longer be taken, possessed, or used for fishing bait. However, any more stringent protection of California tiger salamanders or their habitat, as would be provided under a CESA listing or designation as a Fully Protected species by CDFG, is lacking.

CDFG recognizes the importance of California tiger salamander conservation at the local population level, and routinely considers and recommends actions to mitigate potential adverse effects to the species during its review of development proposals. However, CDFG's primary regulatory venue is under CEQA (Public Resources Code Sec. 21000–21177). CEQA has been a variable, and apparently inadequate, regulatory mechanism for providing protection to the California tiger salamander and its habitat.

The California Environmental Quality Act (CEQA) (Public Resources Code Sec. 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project for which it has discretion is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved, although ''overriding considerations'' are infrequently found.

However, neither CEQA nor CDFG provide completely effective regulatory mechanisms for reducing or eliminating the introduction of non-native fish into Sonoma County California tiger salamander habitat. For example, there is no State regulation of non-native fish stocking into ponds and waters occupied by Sonoma County California tiger salamanders. Agencies and individuals may purchase fish from CDFG-licensed breeders and stock into such waters an array of non-native sunfish, catfish, and other fish for recreational fishing. Similarly, there is no State regulation of western mosquitofish stocking into Sonoma County California tiger salamander breeding ponds and waters. In addition, lethal control of small mammals in places where small mammal burrows occur may affect the survival of the California tiger salamander because the practice is not State-regulated, and is still widely and commonly practiced throughout the California tiger salamander's range. The burrows of these small mammals are used by California tiger salamanders to estivate during the summer and fall months of the year.

Local

We are not aware of any specific county or city ordinances or regulations that provide protection for the Sonoma County California tiger salamander. Sonoma County recently has begun applying regulatory oversight to conversions to vineyards, which may indirectly benefit the species. This oversight is resulting in requirements for full-scale environmental analyses, restrictions on the steepness of slopes onto which vineyards may be established, and requirements for erosion control plans and measures. However, it is unclear if the restriction on planting vineyards on steep slopes will result in more pressures to cultivate flat areas that contain habitat for the Sonoma tiger salamander.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Several other factors, including contaminants, ground squirrel and gopher control, mosquito control, hybridization with non-native salamanders, competition with introduced species, and decreased population viability may have negative effects on California tiger salamanders and their aquatic and upland habitats.

Contaminants

Like most amphibians, California tiger salamanders inhabit both aquatic and terrestrial habitats at different stages in their life cycle, and are likely exposed to a variety of pesticides and other chemicals throughout their range. They are extremely sensitive to these pollutants due to their highly permeable skin, which can rapidly absorb pollutant substances (Blaustein and Wake 1990). Toxins at lower than lethal levels may still have adverse effects, such as causing abnormalities in larva and behavioral anomalies in adults, both of which could eventually lead to lethal effects (Hall and Henry 1992; Blaustein and Johnson 2003).

California tiger salamanders also could die from starvation by the loss of their prey-base. Hydrocarbon and other contaminants from oil production and road runoff; the application of numerous chemicals for agricultural production; roadside maintenance activities; urban/suburban landscaping applications; and rodent and vector control programs may all have negative effects on tiger salamander populations, as detailed below.

Road mortality is not the only risk factor associated with roads, as oil and other contaminants in runoff have been

detected in adjacent ponds and linked to die-offs and deformities in California tiger salamanders and spadefoot toads, and die-offs of invertebrates that form most of both species' prey base (S. Sweet, *in litt,.* 1993). Lefcort *et al.* (1997) found that oil had limited direct effects on 5-week-old marbled (*Ambystoma opacum*) and tiger salamanders (*A. t. tigrinum*). However, salamanders from oil-contaminated natural ponds metamorphosed earlier at smaller sizes, and those from oil-contaminated artificial ponds had slower growth rates, than larvae raised in non-contaminated ponds. Their studies did not address effects on eggs and early larval stages, where the effects may be more pronounced.

Hatch and Burton (1998) and Monson *et al.* (1999) investigated the effects of one component of petroleum products and urban runoff (fluoranthene, a polycyclic aromatic hydrocarbon) on spotted salamanders (*A. maculatum*), northern leopard frogs (*Rana pipiens*), and African clawed frogs (*Xenopus laevis*). In laboratory and outdoor experiments, using levels of the contaminant comparable to those found in service stations and other urban runoff, the researchers found reduced survival and growth abnormalities in all species. The effects were worse when the larvae were exposed to the contaminant under natural levels of sunlight, rather than in the laboratory under artificial light.

In Sonoma County, there are a number of records of California tiger salamanders using roadside ditches. Many are in areas where there are no known breeding ponds, and these animals are utilizing the only marginal habitat remaining. Also, many pools in these areas have likely been destroyed, leaving these marginal sites as the only option for breeding. In light of this increased urbanization occurring in Sonoma County, along with concurrent increases in traffic, the risk factor associated with contaminants in runoff likely will increase in both roadside ditches and across the general landscape.

Agricultural and Landscaping Contaminants

In Sonoma County, over 1.4 million kilograms (3.1 million pounds) of agricultural chemicals were used in 2000 on grapes, apples, rights of way, structural pest control, and landscape maintenance (California Department of Pesticide Regulation 2000, Internet Website). Chemical use occurring on or near tiger salamander breeding sites in Sonoma County is primarily associated with rights of way, structural pest control, and landscape maintenance. These chemicals included metam-sodium, methyl bromide, mancozeb, petroleum oil, phosmet, chlorpyrifos, pendimethalin, parathion, paraquat dichloride, fosetyl-aluminum, acephate, cryolite, and malathion, some of which are extremely toxic to aquatic organisms, such as amphibians and the organisms on which they prey.

Even if toxic or detectable amounts of pesticides are not found in breeding ponds or groundwater, salamanders may still be affected, particularly when chemicals are applied during the migration and dispersal seasons. All but one of the remaining eight documented salamander breeding sites in Sonoma County may be directly or indirectly affected by toxic landscaping chemicals due to the presence of housing developments within their drainage basins. Sparling *et al.* (2001) examined pesticide usage and amphibian (*Rana* and *Bufo* spp.) population declines in California and found that pesticides have been instrumental in declines of these species. Davidson *et al.* (2001, 2002) also found a strong relationship between the declines in four California native ranid species and upwind agriculture, specifically the use of agrochemicals upwind of ranid populations that are not directly impacted by habitat destruction. However, Davidson *et al.* (2002) were unable to find a significant overall relationship between upwind agriculture and the California tiger salamander's decline.

Rodent Control

California tiger salamanders spend much of their lives estivating in underground retreats, typically in the burrows of ground squirrels and gophers (Loredo *et al.* 1996; Trenham 1998a). Dave Cook (pers. comm., 2001) found that pocket gopher burrows are most often used by California tiger salamanders in Sonoma County. Both of these species are classified as non-game mammals by CDFG, which means that if pocket gophers or ground squirrels are found to be injuring growing crops or other property, including garden and landscape plants, they may be controlled at any time and in any legal manner by the owner or the tenant of the premises (University of California Integrated Pest Management (UCIPM) internet website 2002).

Legal methods of pocket gopher control include trapping, strychnine-treated grain bait, and anticoagulant baits. Poisoned grains (anticoagulant baits) are the most common method used to control ground squirrels around homes and other areas where children, pets, and poultry are present (UCIPM internet website 2002; Jon Shelgrin, California Department of Pesticide Regulation, pers. comm., 2002). Zinc phosphide is highly toxic to freshwater fish and to non-target mammals (Extension Toxicology Network (EXOTONET) 1996). Zinc phosphide, a rodenticide and restricted material, turns into phosgene gas, which is toxic to the rodents once ingested. There is little risk of California tiger salamanders ingesting any of these baits; however, the use of these grains may impact the California tiger salamanders indirectly if washed into burrows or ponds used by the species.

Two of the most commonly used rodenticides, chlorophacinone and diphacinone, are anticoagulants that cause animals to bleed to death. These chemicals can be absorbed through the skin and are considered toxic to fish and wildlife (U. S. Environmental Protection Agency 1985; EXOTONET 1996). These two chemicals, along with strychnine, are used in Sonoma County to control rodents (R. Thompson, Science Applications International Corporation, *in litt.*, 1998). Although the effects of these poisons on California tiger salamander have not been assessed, any uses in close proximity to occupied California tiger salamander habitat could have various direct and indirect toxic effects. Gases, including aluminum phosphide, carbon monoxide, and methyl bromide, are used in rodent fumigation operations and are introduced into burrows by either using cartridges or by pumping. When such fumigants are used, animals inhabiting the fumigated burrow are killed (Salmon and Schmidt 1984).

In addition to possible direct effects of rodent control chemicals, control programs probably have an adverse indirect effect on California tiger salamander populations. Control of ground-burrowing rodents could significantly reduce the number of burrows available for use by the Sonoma County California tiger salamander (Loredo-Prendeville *et al.* 1994). All but one of the remaining Sonoma County California tiger salamander breeding locations exist in areas that are likely to experience a heightened degree of rodent control due to landscaping concerns surrounding residential developments. Because the burrow density required to support Sonoma County California tiger salamanders in an area is not known, the loss of burrows as a result of control programs cannot be quantified at this time. However, Shaffer *et al.* (1993) stated that rodent control programs may be responsible for the lack of California

tiger salamanders in some areas. Active ground squirrel colonies probably are needed to sustain tiger salamanders because inactive burrow systems become progressively unsuitable over time. Loredo *et al.* (1996) found that burrow systems collapsed within 18 months following abandonment by or loss of the ground squirrels. Although the researchers found that California tiger salamanders used both occupied and unoccupied burrows, they did not indicate that the salamanders used collapsed burrows. Rodent control programs must be analyzed and implemented carefully in California tiger salamander habitat so the persistence of the animals is not threatened. One of the remaining Sonoma County California tiger salamander sites is currently occupied by cattle. Most owners of livestock seek to eliminate ground squirrel burrows because of the threat of cows (*Bos bos*) breaking their legs if they accidentally step into a burrow.

Mosquito Control

In addition to the use of western mosquitofish, a common chemical method of mosquito control in California involves the use of methoprene. Methoprene is an insect hormone mimic that increases the level of juvenile hormone in insect larvae and disrupts the molting process. Lawrenz (1984, 1985) found that methoprene (Altosoid SR–10) retarded the development of selected crustacea that had the same molting hormones (*i.e.*, juvenile hormone) as insects, and anticipated that the same hormone may control metamorphosis in other arthropods. Because the success of many aquatic vertebrates relies on an abundance of invertebrates in temporary wetlands, any delay in insect growth could reduce the numbers and density of prey available (Lawrenz 1984, 1985). The use of methoprene could have an indirect adverse effect on California tiger salamanders by reducing the availability of prey.

In more recent studies, methoprene did not cause increased mortality of gray treefrog (*Hyla versicolor*) tadpoles (Sparling and Lowe 1998). However, it caused reduced survival rates and increased malformations in northern leopard frogs (*Rana pipiens*) (Ankley *et al.* 1998) and increased malformations in southern leopard frogs (*R. utricularia*) (Sparling 1998). Blumberg *et al.* (1998) correlated exposure to methoprene with delayed metamorphosis and high mortality rates in northern leopard and mink (*R. septentrionalis*) frogs. Methoprene appears to have both direct and indirect effects on the growth and survival of larval amphibians.

Road-Crossing Mortality

Although no systematic studies road-crossing mortality of the Sonoma County California tiger salamander have been conducted, it is known that significant numbers of California tiger salamanders in other portions of the species' range are killed by vehicular traffic while crossing roads (Hansen and Tremper 1993; S. Sweet, *in litt.*, 1993; J. Medeiros, pers. comm., 1993). For example, during a 1-hour period on a road bordering Lake Lagunita on the Stanford University campus, 45 California tiger salamanders were collected, 28 of which had been killed by cars (Twitty 1941). More recently, during one 15-day period in 2001 at a Sonoma County location, 26 road-killed California tiger salamanders were found (D. Cook, pers. comm., 2002). Overall breeding population losses of California tiger salamanders due to road kills have been estimated to be between 25 and 72 percent (Twitty 1941; S. Sweet, *in litt.*, 1993; Launer and Fee 1996). Mortality may be increased by associated roadway curbs and berms as low as 9 to 12 cm (3 to 5 in), which allow California tiger salamanders access to roadways but prevent their exit from them (Launer and Fee 1996; S. Sweet, *in litt.*, 1998). In a recent study along a 1.1 km (0.7 mi) high-vehicular-use (21,450 vehicles per day) section of the Trans-Canadian Highway in Alberta, Canada, Clevenger *et al.* (2001) recorded 183 road-killed tiger salamanders (*Ambystoma* species) in 30 days and concluded it was likely that very few of the local population had survived.

Hybridization With Non-native Salamanders

Hybrids between the California tiger salamander and the non-native tiger salamander (*Ambystoma tigrinum*) have been documented elsewhere in the range of *Ambystoma californiese* (Shaffer and Trenham 2002). Introduced salamanders may out-compete the California tiger salamander, or interbreed with the natives to produce hybrids that may be less fit and adapted to the California climate, or are not reproductively viable past the first or second generations (Bury and Lukenbach 1976; Shaffer *et al.* 1993). More recent evidence suggests that the hybrids are viable, and that they breed with California tiger salamanders (Shaffer and Trenham 2002). Over time, a population of a species could become genetically indistinguishable from a larger population of an introgressing species such that the true genotype (the genetic constitution of an individual or group) of the lesser species no longer exists (Levin 2002). The loss of any breeding sites of the Sonoma County California tiger salamander due to hybridization with, or competition from, introduced species is of serious concern.

Livestock Grazing

Light-to-moderate livestock grazing is generally thought to be compatible with California tiger salamanders, provided the grazed areas do not also have intensive burrowing rodent control efforts (T. Jones, University of Michigan, *in litt.*, 1993, S. Sweet, pers. comm. 1998). By keeping vegetation shorter, grazing may make areas more suitable for ground burrowing rodents whose burrows are essential to Sonoma County California tiger salamanders. However, heavy grazing, or heavy use of certain pools and ponds for livestock watering, can clearly have adverse effects on the species. Melanson (*in litt.*, 1993) noted that, although vernal pool species continued to reproduce under a November-to-April grazing regime, California tiger salamanders were either absent or found in low numbers in portions of pools heavily trampled by cattle. Repeated trampling of pond edges by cattle can increase the surface area of a pond, and may increase water temperature and evaporation rate, thus reducing the amount of time the pond contains water (S. Sweet, pers. comm., 1998).

Reduction in water quality caused by livestock excrement may negatively affect the California tiger salamander by increasing nitrogen and silt levels. High nitrogen levels associated with bacterial blooms, lowered dissolved oxygen (Worthylake and Hovingh 1989), and silt have been associated with fatal fungal infections (Lefcort *et al.* 1997), as discussed earlier under Factor C.

However, grazing generally is compatible with the continued use of rangelands by the California tiger salamander as long as intensive control programs for burrowing rodents are not implemented on such areas, and grazing is not excessive (T. Jones, *in litt.*, 1993).

Population Size

The low numbers of Sonoma County California tiger salamander make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low birth rates; (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); and (3) deterioration in environmental quality

(Gilpin and Soulé 1986). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.*, reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994; Primack 1998).

Conclusion for the Five Factors

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Sonoma County California tiger salamander. As discussed in the Summary of Factors Affecting the Species above, this DPS faces a number of threats. The most overwhelming threat is from continuing habitat destruction, degradation, and fragmentation. Secondary threats exist from predation and competition from introduced exotic species; possible commercial overutilization; disease; hybridization with non-native salamanders; various chemical contaminants; road-crossing mortality; rodent control operations, and the species' small remaining population. The various primary and secondary threats are not currently being offset by existing Federal, State, or local regulatory mechanisms. The Sonoma County California tiger salamander also is vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable. The combination of its biology and specific habitat requirements makes the animal highly susceptible to random events, such as drought, disease, and other occurrences. Such events are not usually a concern until the number of breeding/estivation sites or geographic distribution become severely limited, as is the case with the Sonoma County California tiger salamander.

Because the Sonoma County DPS of the California tiger salamander has been reduced to only eight known breeding sites, and all of them are subject to various immediate, ongoing, and future threats as outlined above, we find that the species is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act. The survival of this DPS now depends on protecting as many breeding sites and their associated upland habitats from further degradation and destruction as possible. The remaining breeding sites are vulnerable to loss from random natural or human-caused events unless sufficient habitat can be protected and the metapopulations increased in size.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) specific areas within the geographical 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 geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits.

The primary regulatory effect of critical habitat is the section 7 requirement that agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because 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 is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat for the Sonoma County California tiger salamander is prudent.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Not designating critical habitat at this time allows us to provide the necessary protections needed for the conservation of the species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: ''The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat * * * . The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete'' (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future when our available resources allow.

We will protect the Sonoma County California tiger salamander and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing encourages conservation actions by Federal, State, and local agencies. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for listed species. We discuss the protection of Federal agencies, considerations for protection and conservation actions, and the prohibitions against taking and harm for the Sonoma County California tiger salamander, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally 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. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may affect the Sonoma County California tiger salamanders and may require consultation with us include, but are not limited to, those within the jurisdiction of the Corps, and Federal Highway Administration (FHA).

We believe that protection and recovery of the Sonoma County California tiger salamander will require reduction of the threats from destruction and degradation of wetland and associated upland habitats due to urban development, exotic predators, unnecessary ground squirrel and gopher control, and road construction. Threats from collection and pesticide drift also must be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Sonoma County California tiger salamander, and areas deemed important for dispersal and connectivity or corridors between known locations of this species. Monitoring also should be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Sonoma County California tiger salamander provides for the development and implementation of a recovery plan for the DPS. This plan will bring together Federal, State, and regional agency efforts for the conservation of the DPS. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It also will describe the site-specific actions necessary to achieve conservation and survival of the DPS.

Listing also will require us to review any actions that may affect the Sonoma County California tiger salamander for lands and activities under Federal jurisdiction, State plans developed pursuant to section 6 of the Act, scientific investigations of efforts to enhance the propagation or survival of the animal, pursuant to section 10(a)(1)(A) of the Act, and habitat conservation plans prepared for non-Federal lands and activities pursuant to section 10(a)(1)(B) of the Act.

Federal agencies with management responsibility for the Sonoma County California tiger salamander include the Service, in relation to the issuance of section 10(a)(1)(A and B) permits for habitat conservation plans and other programs. Occurrences of this species could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult with us on applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHA would be subject to review under section 7 of the Act. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import, export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no commercial activity, of Sonoma County California tiger salamanders that were collected prior to the date of publication of the emergency listing rule in the **Federal Register**;

(2) Any actions that may affect the Sonoma County California tiger salamander that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by us pursuant to section 10(a)(1)(A) of the Act;

(4) Land actions or management carried out under a habitat conservation plan approved by us pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement; and

(5) Grazing management practices that do not result in the degradation or elimination of suitable California tiger salamander habitat.

Activities that we believe could potentially result in a violation of section 9 of the Act include, but are not limited to:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including intrastate, interstate, and foreign commerce, or harming, or attempting any of these actions, of Sonoma County California tiger salamanders. Research activities where

salamanders are trapped or captured will require a permit under section 10(a)(1)(A) of the Act;

(2) Activities authorized, funded, or carried out by Federal agencies that may affect the Sonoma County California tiger salamander, or its habitat, when such activities are not conducted in accordance with the consultation for listed species under section 7 of the Act;

(3) Discharges or dumping of toxic chemicals, silt, or other pollutants into, or other alteration of the quality of waters supporting Sonoma County California tiger salamanders that results in death or injury of the species or that results in degradation of their occupied habitat;

(4) Release of exotic species (including, but not limited to, bullfrogs, tiger salamanders, mosquito fish, bass, sunfish, bullhead, catfish, crayfish) into Sonoma County California tiger salamander breeding habitat;

(5) Destruction or alteration of uplands associated with seasonal pools used by Sonoma County California tiger salamanders during estivation and dispersal, or modification of migration routes such that migration and dispersal are reduced or precluded; and

(6) Activities (*e.g.*, habitat conversion, excessive livestock grazing, road and trail construction, recreation, development, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of larvae, sub-adult, or adult Sonoma County California tiger salamanders, or modify Sonoma County California tiger salamander habitat in such a way that it adversely affects their essential behavioral patterns including breeding, foraging, sheltering, or other life functions. Otherwise lawful activities that incidentally take Sonoma County California tiger salamanders, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–2063; facsimile 503/231–6243).

Effective Date

We published the emergency rule listing the Sonoma County DPS of the California tiger salamander as endangered on July 22, 2002 (67 FR 47726). The emergency rule set forth a 240-day period temporarily adding this species to the List of Threatened and Endangered Wildlife, and that period expires on March 19, 2003. This final rule must be published on or before this date to prevent Federal protection for the Sonoma County California tiger salamander from expiring. In addition, as part of the June 6, 2002, settlement with the CBD, we are required to make a final determination on this listing action on or before March 19, 2003. Because of these reasons, we find that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned control number 1018–0094, which is valid through July 31, 2004. This rule will not impose record keeping 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 control number.

Executive Order 13211

On May 18, 2001, the President issued an 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. This rule 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.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this rule is David E. Wooten, U.S. Fish and Wildlife Service, Sacramento 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.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for ''California tiger salamander'' under AMPHIBIANS, in the List of Endangered and Threatened Wildlife, 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						
*	*	*	*	*	*		*
AMPHIBIANS							
Salamander, California tiger.	*Ambystoma californiense*.	U.S.A. (CA)	U.S.A. (CA—Santa Barbara County).	E	677E, 702	NA	NA.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (CA—Sonoma County).	.....do	729E, 734	.....do	do.
*	*	*	*	*	*		*

Dated: March 12, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–6454 Filed 3–18–03; 8:45 am]

BILLING CODE 4310–55–P



Federal Register

Wednesday,
March 19, 2003

Part IV

Environmental Protection Agency

40 CFR Part 125

National Pollutant Discharge Elimination System—Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities; Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–7468–6]

RIN 2040–AD62

National Pollutant Discharge Elimination System—Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of data availability.

SUMMARY: On April 9, 2002, EPA published proposed standards for cooling water intake structures at Phase II existing facilities as part of implementing section 316(b) of the Clean Water Act (CWA). This notice presents a summary of significant data EPA received or collected since proposal, a discussion of how EPA is considering using these data in revised analyses supporting the rule, a discussion of some refinements that EPA is considering for the proposed regulatory requirements, and additional information regarding data quality. This notice also provides new information on a broader suite of technology options that may be appropriate for compliance at specific sites. EPA solicits public comment on the information presented in this notice and the record supporting this notice.

DATES: Comments on this notice of data availability and all aspects of the April 9, 2002, proposal must be received or postmarked on or before midnight June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Mail comments to the Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0049. Follow the detailed instructions as provided in Section I.B. of the **SUPPLEMENTARY INFORMATION** section for additional ways to submit comments.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Debra D. Hart at (202) 566–6379. For additional economic information contact Lynne Tudor, Ph.D. at (202) 566–1043. For additional biological information contact Dana A. Thomas, Ph.D. at (202) 566–1046. The e-mail address for the above contacts is *rule.316b@epa.gov.*

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XII. General Solicitation of Comments

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and

without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please submit with your comments any references cited in your comments. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, however, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0049. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2002–0049. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments to the Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0049.

3. *By Hand Delivery or Courier.* Deliver copies of your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0049. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information claimed as CBI by mail only to the following address, Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Debbi Hart/Docket ID No. OW–2002–0049. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Purpose of This Notice

On April 9, 2002, EPA published proposed standards for cooling water intake structures at Phase II existing facilities (67 FR 17122). EPA received voluminous comments and data submissions during the 120-day public comment period on the proposal. However, many commenters, including both industry and environmental groups, requested additional time to review the proposal and the supporting record and to prepare further comments. Therefore, EPA is reopening the comment period on all aspects of the April 9, 2002, proposal. In addition, following publication of the proposal, EPA collected more data and revised several methodologies related to costing and benefits estimations. This notice makes these new data available for comment and discusses the relevance of these data to the analyses conducted by EPA. Thus, EPA also solicits public comment on the information presented

in this notice and the record supporting this notice.

EPA notes that all options and issues discussed in its proposal are still under consideration for the final rule. This notice merely makes new information available for public review that the Agency will consider in making decisions for the final rule.

Summary of Proposed Rule for Existing Facilities

The proposed rule would implement section 316(b) of the Clean Water Act (CWA) for certain existing power producing facilities that employ a cooling water intake structure and that withdraw 50 million gallons per day (MGD) or more of water from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the U.S. for cooling purposes. The proposed rule constitutes Phase II in EPA's development of section 316(b) regulations and would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would minimize the adverse environmental impact associated with the use of these structures.

The proposed rule would establish location, design, construction, and capacity requirements that reflect the best technology available for minimizing adverse environmental impact from the cooling water intake structure based on waterbody type and the amount of water withdrawn by a facility. The Environmental Protection Agency (EPA) proposed to group surface water into five categories—freshwater rivers and streams, lakes and reservoirs, Great Lakes, estuaries and tidal rivers, and oceans—and establish requirements for cooling water intake structures located in distinct waterbody types. In general, the more sensitive or biologically productive the waterbody type, the more stringent the requirements proposed as reflecting the best technology available for minimizing adverse environmental impact. Proposed requirements also vary according to the percentage of the source waterbody withdrawn and facility utilization rate.

A facility may choose one of three options for meeting best technology available requirements under the proposed rule. These options are (1) demonstrating that the facility's existing design and construction technology, operational measures, and/or restoration currently meets specified performance standards; (2) selecting and implementing design and construction technologies, operational measures, or restoration measures that meet specified performance standards; or (3) demonstrating that the facility qualifies for a site-specific determination of best technology available because its costs of compliance are significantly greater than either (1) the costs considered by the Agency during the development of the rule, or (2) a site-specific determination of the benefits of compliance with the proposed performance standards. The proposed rule also provides that facilities may use restoration measures in addition to or in lieu of other technology measures to meet the performance standards established in the rule or on a site-specific basis.

EPA expects that the proposed regulation would minimize adverse environmental impact, including substantially reducing the harmful effects of impingement (organisms trapped against intake screens or other barriers at the entrance of cooling water intake structures) and entrainment (organisms drawn into a cooling water intake structure), at existing facilities over the next 20 years. As a result, the Agency anticipates that the proposed rule would help protect ecosystems in proximity to cooling water intake structures. The proposal would help preserve aquatic organisms, including threatened and endangered species, and the ecosystems they inhabit in waters used for cooling purposes by existing power producing facilities. EPA considered the potential benefits of the proposed rule and discussed these benefits in both quantitative and non-quantitative terms. Benefits, among other factors, are based on a decrease in expected mortality or injury to aquatic organisms that would otherwise be subject to entrainment into cooling water systems or impingement against screens or other devices at the entrance of cooling water intake structures. Benefits may also accrue at multiple ecological scales including population, community, or ecosystem levels.

In addition to the proposed regulatory requirements, EPA also invited comments on a number of other regulatory alternatives. The Agency will continue to consider all of these regulatory alternatives when making decisions on a final rule.

III. Major Changes to Assumptions Used in EPA's Analyses

Based on comments received, additional information made available, and the results of subsequent analyses, EPA is considering a number of revisions to the assumptions that were used in developing the engineering costs, the information collection costs, the economic analyses, and the benefits analyses. These new assumptions are presented below and were used in the current analyses, the results of which are presented in this Notice of Data Availability (NODA). EPA requests comment on each of these revised assumptions.

1. Number of Phase II Facilities

Since proposal, EPA verified design flow information for facilities that had been classified as either Phase II or Phase III facilities. This verification resulted in the following changes: five facilities that were classified as Phase II facilities at proposal have been reclassified as Phase III facilities. Conversely, six facilities that were classified as Phase III facilities at proposal have been reclassified as Phase II facilities. As a result, the overall number of Phase II facilities increased from 539 to 540 facilities.[1] For the NODA, all cost and economic analyses are based on the updated set of Phase II facilities.

2. Technology Costs

EPA used new information to revise the capital and operation and maintenance (O&M) costs for several compliance technologies, including those used as the primary basis for the proposed regulatory option. Overall, the cost updates resulted in the following changes. For the preferred option (discussed above at Section II), total capital costs increased by 66 percent and total O&M costs increased by 48 percent. For the waterbody/capacity-based option, which would set performance standards for impingement mortality and entrainment reduction based on closed-cycle, recirculating cooling for some facilities and technologies such as fine-mesh screens and fish-return systems for others, total capital costs increased by 40 percent (net of existing condenser cost savings), while total O&M costs decreased by 13 percent. These comparisons are based on the raw costs, adjusted to year-2002 dollars, which have not been discounted or annualized.[2]

[1] Note that these numbers are unweighted. On a sample-weighted basis, the number of Phase II facilities increased from 550 to 551.

[2] Based on additional research between the proposal and the NODA, some facilities also experienced a change in their projected compliance response. This change, together with the increase in in-scope Phase II facilities, may have contributed to the change in total compliance costs. See section IV of the NODA preamble for more information.

The revised costing assumptions are discussed in detail below. EPA notes that the proposed rule includes a compliance option that allows site-specific flexibility in cases where compliance costs for a particular facility significantly exceed those estimated in the analysis for the final rule. EPA is currently considering whether the final rule should provide additional guidance on how to conduct this comparison, including how best to use the costing information in the rule record. EPA requests comment on its costing methodology; its relationship to the proposed site-specific, cost-cost comparison provisions; and what additional guidance, if any, EPA should provide on implementation of these provisions.

3. Permitting and Monitoring Costs

At proposal, the single most costly permitting activity was the ''Impingement Mortality and Entrainment Characterization Study,'' a required element of the ''Comprehensive Demonstration Study.'' *See* proposed § 125.95(b). The proposed rule did not require facilities with cooling towers to conduct these studies but, inadvertently, EPA included costs for the Impingement Mortality and Entrainment Characterization Study in its cost estimates for facilities projected to have cooling towers in the base case (*i.e.*, those projected to have cooling towers in the absence of the rule). EPA also applied costs for this study to facilities that EPA projected to install cooling towers under certain regulatory options. For the NODA analysis, EPA did not include the cost of the Impingement Mortality and Entrainment Characterization Study for facilities projected to have cooling towers in the base case or the waterbody/capacity-based option.

4. Net Installation Downtime for Compliance Technologies Other Than Recirculating Cooling Towers

In the analysis for the proposed rule, EPA made the assumption that compliance technologies other than recirculating cooling towers would not require facility downtime for installation. EPA has since revised this assumption. EPA expects additional unscheduled downtimes of between two and eight weeks for the installation of the various non-recirculating compliance technologies.

5. Net Installation Downtime and Other Site-Specific Factors for Recirculating Cooling Towers

To support the proposed Phase II rule, EPA assumed that each projected cooling system conversion would require a net downtime of four weeks. This estimate was based on information that had been previously available to EPA on the downtime needed for fossil-fuel and nuclear power plants. Just prior to proposal, EPA received additional technical information on the amount of operational downtime needed during cooling system conversions from once through to closed-cycle, recirculating with cooling towers at nuclear power plants (*see* DCN 4–2529). For the new analyses, EPA is incorporating the new information which suggests that cooling system conversions at nuclear power plants may take seven months. To the extent that conversions at nuclear power plants take less time to complete, costs for this factor would be lower.

For non-nuclear power plants, EPA's cost estimates at proposal assumed four weeks downtime for the retrofit of wet cooling towers at existing power plants. The Agency requests comment on whether more or less downtime may be required at some plants due to site-specific factors and, if so, whether EPA should use a different estimate of downtime in analyzing the costs of this regulatory option.

6. Energy Penalties

For the proposed Phase II rule, the average annual energy penalty, by region and fuel type, was applied to each facility upgrading to a closed-cycle, recirculating cooling system. Based on comments received, EPA has changed the energy penalty assumption to attempt to account for seasonal, peak effects. For the new analyses, the energy penalty applied is the greater of the peak-summer penalty or the average annual penalty for each facility projected to convert their cooling systems to a closed-cycle, recirculating cooling system. EPA notes that the approach used at proposal might have understated potential impacts of the energy penalty on generating capacity. Conversely, using the greater of the peak summer penalty and the average annual penalty might overestimate potential impacts of the energy penalty on generating capacity. EPA has adopted the latter approach in order to ensure that impacts are not underestimated.

7. Capacity Utilization Rates

For the proposed Phase II rule, the 15 percent capacity utilization determination was based on the generation and capacity of the entire facility, including steam electric and non-steam generators. EPA believes that utilization of the steam electric part of a facility better reflects a facility's potential for adverse environmental impact because only the steam electric generators use cooling water. As discussed at Section XI below, EPA is considering refining its regulatory definition for ''capacity utilization rate'' at the proposed § 125.93 to reflect use of the steam electric part of a facility. For the NODA, EPA is using the capacity utilization of only the steam electric generators at Phase II facilities so that its updated economic analyses include this potential refinement.

In addition, at proposal, EPA used the average capacity utilization based on EIA data for 1995 to 1999. This utilization rate was often different from the rate based on the ''IPM base case results'' EPA used to support its estimates of the economic impacts of the rule (see section V for additional description of EPA's economic analysis methodology. For the NODA analyses, EPA used projected capacity utilization rates for 2008 (the first model-run year in EPA's economic analysis), in order to ensure internal consistency in the analysis. For many facilities, this resulted in a lower capacity utilization rate in the baseline. As a result, the compliance requirements and compliance costs for these facilities may be lower, depending on the waterbody type from which they withdraw and the impingement mortality and entrainment technologies they already have in place in the baseline. Facilities with lower projected compliance costs than under the previous assumption may also have lower projected impacts in the analysis, depending on the magnitude of the cost differential and the facilities' operating characteristics in the baseline (*e.g.*, a change in cost for marginal units would have a greater effect than for units that generate electricity well below the cost of the marginal unit). EPA requests comment on this change in assumptions.

8. Compliance Schedule

At the time of proposal, promulgation of the final section 316(b) Phase II rule was scheduled for August 28, 2003. As a result, EPA assumed that facilities would come into compliance with the preferred option between 2004 and 2008 as their existing NPDES permits expired and were reviewed. For regulatory options based on the reductions in impingement and entrainment achievable using a closed-cycle recirculating system, EPA further assumed that facilities costed with a cooling tower would come into compliance between 2005 and 2012. Since proposal, the section 316(b) regulatory development schedule has changed. Promulgation of the final rule is now scheduled for February 16, 2004,

making it impossible for facilities to come into compliance in 2004 (the assumption in all economic analyses is that facilities comply in the beginning of the year in which they receive requirements in their permit). As a result, EPA shifted the compliance schedule for the NODA analysis by one year for all Phase II facilities. Facilities costed with a cooling tower are now assumed to have a compliance window from 2005 to 2013, while facilities without a recirculating requirement are assumed to come into compliance between 2005 and 2009 (during the year of their first post-promulgation permit). For purposes of the cost and impacts analysis, EPA used the 2010 model run year instead of the 2008 model run year, as at proposal. Under the preferred option, all facilities are projected to come into compliance by 2009.

9. Number of Facilities Projected To Upgrade to Recirculating Wet Cooling (Waterbody/Capacity-Based Option)

For the proposed Phase II rule, EPA estimated that 51 model facilities would upgrade their cooling systems from once-through to closed-cycle, recirculating cooling systems under the waterbody/capacity-based option. EPA estimates for these analyses that 44 model facilities would upgrade cooling systems for the same option. The requirements of the regulatory alternative have not changed. The change in number of facilities that would be required to upgrade their cooling system is due to: (1) EPA's effort to update, correct, and verify facility design intake flows and (2) the fact that EPA no longer needs to use a statistical methodology to determine the number of short technical questionnaire facilities that withdraw more than one percent of the mean tidal excursion. EPA has updated design intake flows for a number of in-scope facilities. In a few cases, these database flow changes have impacted the determination of whether a facility is projected to upgrade its cooling system because the requirements for the waterbody/capacity-based option, in some instances, hinge on intake flow. Since proposal, EPA has identified those short technical questionnaire facilities whose design intake flow exceeds one percent of the mean tidal excursion. This information was not available for the analyses supporting the proposal, and as such, EPA utilized a statistical method to project which facilities would meet these criteria. For these current analyses, EPA has utilized the actual data in lieu of the statistical method. As a result, a number of changes have been made to the list of short-technical questionnaire model facilities projected to upgrade their cooling systems.

IV. Engineering Cost Analysis

A. Facility Flow Verifications

In order to ensure the accuracy and quality of the data used for the costing effort, the Agency revisited its database of facility and intake design flows. Flow is an important factor in calculating costs. The Agency first screened the flow data in order to identify facilities with potentially inaccurate flow information. From this first set of facilities, the Agency attempted to identify errors by inspecting the original questionnaires on which the flows were reported. Through this effort, the Agency was able to correct a few flow values by identifying survey reporting errors (such as unit conversion inconsistencies). The remainder of the potentially inaccurate flow data set required outreach to 25 facilities to solve the identified discrepancies. In many cases, the original reported flows were correct. In others, incorrect initial reporting had led to incorrect calculations of design flow rates. The Agency corrected these flows for the master database used to support analyses presented in this Notice of Data Availability (*see* ''Flow Correction and Verification,'' in the Confidential Business Information portion of the docket).

B. Technology Cost Modules

The Agency developed a new approach to developing compliance costs that includes a broader range of compliance technologies than it used for calculating compliance costs for the proposed rule requirements. In order to do so, the Agency sought to evaluate new and/or additional costs for a wider range of intake technologies identified as having the potential to meet the proposed regulation requirements without the expense and energy penalty associated with capacity-reduction technologies such as cooling towers. In selecting among available technologies, EPA revised its traditional least cost approach, and instead assigned costs based on the projected performance of available technologies on a site-specific basis. This approach is discussed in more detail in section IV.C. below.

The revised and new technology modules analyzed by the Agency include the following:

—Addition of fish handling and return system to an existing traveling screen system,

—Addition of fine-mesh screens (both with and without a fish handling and return system) to an existing traveling screen system,

—Addition of a new, larger intake in front of an existing intake screen system,

—Addition of passive fine-mesh screen system (cylindrical wedgewire) near shoreline,

—Addition of a fish net barrier system,

—Addition of an aquatic filter barrier system,

—Relocation of an existing intake to a submerged offshore location (with velocity cap inlet, passive fine-mesh screen inlet, or onshore traveling screens),

—Addition of a velocity cap inlet to an existing offshore intake,

—Addition of passive fine-mesh screen to an existing offshore intake,

—Addition or modification of a shoreline-based traveling screen for an offshore intake system, and

—Addition of dual-entry, single-exit traveling screens (with fine-mesh) to a shoreline intake system.

The explanation and derivation of each of these modules is discussed in the public record (*see* ''316(b) Phase II NODA Cost Modules.'')

At proposal, EPA based its cost analysis primarily on the addition of fine-mesh traveling screens with fish handling systems. EPA recognized at proposal that some facilities would need to add larger intakes, move intakes, or modify offshore intakes, and included an approximate adjustment factor in its cost estimates to account for these types of modifications, but lacked sufficient data to model them explicitly. In the NODA analysis, EPA has added explicit cost modules for each of these activities. As a result, the per facility costs for adding traveling screens with fish handling systems have gone down significantly, but a significant number of facilities (about 40% of the in-scope universe) have been costed for other technologies, which are significantly more expensive than traveling screens. To help commenters better understand the impacts of these revisions, EPA has placed a summary document in the record that shows modeled costs for a range of flows for each major technology module used at proposal and in this NODA, broken out by salt water versus freshwater and nuclear facility versus non-nuclear facility (see ''Comparison of Capital and Net O & M Compliance Costs for Technologies Costed in Proposed Rule and NODA''). As discussed in section III above, EPA also modified its estimate of facility downtime potentially necessary to install these technologies, as well as

capacity reduction technologies such as cooling towers.

EPA has not yet examined other new information suggesting that site-specific factors may affect the costs of retrofitting wet towers at existing power plants. For example, in October 2002, the Department of Energy (DOE) provided EPA with a study analyzing the costs of retrofitting wet cooling towers at four facilities (*see* DCN W–00–32, 316(b) Phase II, comment 2.11). The study found costs at these facilities would be higher than EPA estimated for similar facilities in its proposal record. EPA invites comment on the data contained in the DOE study, and will consider these data as the Agency makes decisions for the final rule. In January 2003, the DOE/National Energy Technology Laboratory (NETL) provided EPA with an addendum to their October 2002 (see DCN W–00–32, 316(b) Phase II, comment 2.14). In that addendum, DOE determined that three out of four facilities would likely require plume abatement technologies that could double the capital costs of the cooling tower portion of a retrofit project. In February 2003, DOE provided additional information indicating that one plant located on brackish waters in a densely populated urban area that is considering a cooling tower retrofit may install a reverse osmosis system to reduce particulate salt emissions (see ''Astoria Repowering Project Article X Supplement,'' Reliant Energy, November 12, 2002). EPA notes that some other facilities located on brackish water using cooling towers do not use such systems to reduce particulate emissions (see DCN 4–2553) . The Agency requests comment on whether site-specific factors other than those addressed in the Agency's derivation of cost estimates for the waterbody/capacity-based option at proposal could increase or lower the costs of retrofitting a wet cooling tower at an existing plant.

C. Facility-Level Costing Options

In order to implement the revised costing approach (see section IV.B. above), the Agency necessarily changed its approach to developing costs at the model facility level. This approach focuses as much as possible on site-specific characteristics for which the Agency obtained data through the 316(b) questionnaire. In addition, EPA utilized available geographic information, including detailed topographic mapping and overhead satellite imagery, to better utilize site-specific characteristics of each model facility's intake(s) to inform decisions on the proper costing modules projected for compliance. ''Technology Costing Module Applications for Model Facilities,'' provides the background and explanation of the Agency's approach to model facility level costing.

EPA's approach to model facility-level costing may be described as follows. In order to project upgrades to technologies as a result of compliance with the proposed rule, the Agency utilizes as much information as is available about the characteristics of the hundreds of facilities within the scope of the proposed rule. By incorporating as many site-specific features as possible into the design and implementation of its costing approach the Agency has been able to capture a representative range of compliance costs at what it deems ''model facilities.'' However, the Agency did not have and will never have the opportunity to visit and study in detail all of the engineering aspects of each facility complying with this rule (over 400 facilities could incur technology-related compliance costs as a result of this rule). Therefore, although the Agency has developed costs that represent EPA's best effort to develop a site-specific engineering assessment for a particular facility, this assessment does not incorporate certain peculiarities that only long-term study of each facility would bear out. Hence, the Agency refers to its approach as a ''model'' facility approach.

In selecting technology modules for each model facility, EPA departed from its traditional least cost approach. This is because, while the Agency is confident that the suite of available technologies can achieve compliance with the proposed performance generally (60–90% reduction in entrainment and 80–95% reduction in impingement relative to the calculation baseline) EPA lacks sufficient data to determine the performance of each technology on a site-specific basis. The Agency thus selected the best performing technology (rather than the least costly technology) that was suitable for each site, in order to ensure that the technology on which costs were based would in fact achieve compliance at that site. EPA recognizes that this approach may entail a greater degree of cost conservatism than is typical in regulatory analyses, and that this may have implications for the cost-cost comparison provisions in the proposed rule. EPA requests comment on its revised approach for selecting model facility cost modules.

EPA believes that its modular approach to deriving costs of technologies and the costs to install and operate technologies incorporates sufficient flexibility to derive costs that reflect a broad range of applications. To ensure that the Agency does not underestimate the costs of the rule, EPA has approached the compliance costing effort with great conservatism. When there is uncertainty or the data are inconclusive, EPA has favored conservative approaches to costs (that is, higher than average). Therefore, the Agency is confident that the compliance costs represented in the analyses accompanying this Notice of Data Availability represent conservative estimates for the range of model facilities represented. However, for a particular facility, the costs may be higher or may be lower than would actually be realized.

D. Clarifications and Corrections

Estimating Design Intake Flows for Short Technical Questionnaire Facilities

At proposal, the Agency utilized a statistical methodology based on linear regression to assess the design intake flow information for facilities that responded to the short technical questionnaire. Because the Agency initially asked short technical respondents for only their actual annual intake flow for the reporting year, it was necessary to obtain design intake flow information for the purpose of accurately assessing compliance costs. The Agency did not include the statistical methodology for estimating design intake flows for short technical questionnaire facilities and its results in the record for the proposed rule. The Agency continues to use this methodology for this Notice of Data Availability and hereby includes the supporting information in the record (see DCN 5–2501).

V. IPM Analyses

At proposal, EPA used an electricity market model, the Integrated Planning Model 2000 (IPM® 2000), to identify potential economic and operational impacts of various regulatory options considered for proposal.[3] EPA conducted impact analyses at the market level, by North American Electric Reliability Council (NERC) region,[4] and for facilities subject to the

[3] For a detailed description of the IPM 2000 see Chapter B3 of the Economic and Benefits Analysis (EBA) document in support of the proposed rule (DCN 4–0002; *http://www.epa.gov/ost/316b/econbenefits/b3.pdf*).

[4] The ten NERC regions modeled by the IPM are: ECAR (East Central Area Reliability Coordination Agreement), ERCOT (Electric Reliability Council of Texas), FRCC (Florida Reliability Coordinating Council), MAAC (Mid-Atlantic Area Council), MAIN (Mid-America Interconnected Network, Inc.), MAPP (Mid-Continent Area Power Pool), NPCC (Northeast Power Coordination Council), SERC (Southeastern Electricity Reliability Council), SPP

Continued

Phase II regulation. Analyzed characteristics included changes in capacity, generation, revenue, cost of generation, and electricity prices. These changes were identified by comparing two scenarios: (1) The base case scenario (in the absence of any Section 316(b) regulation) and (2) the post compliance scenario (after the implementation of the new Section 316(b) regulations). The results of these comparisons were used to assess the impacts of the preferred option and two of the five alternative regulatory options considered by EPA: (1) the ''Intake Capacity Commensurate with Closed-Cycle, Recirculating Cooling System based on Waterbody Type/Capacity'' Option (hereafter the ''waterbody/capacity-based'' option) and (2) the ''Intake Capacity Commensurate with Closed-Cycle, Recirculating Cooling System for All Facilities'' Option (hereafter the ''all closed-cycle'' option).

Since publication of the proposed rule, EPA has made several changes to its IPM analysis. The following sections present a discussion of these changes and the results of the re-analysis of the preferred option and the waterbody/capacity-based option. EPA would use the same methodology as described in Chapter B3 of the EBA (as amended in this NODA) to analyze other options presented at proposal but not explicitly analyzed for this NODA if they were chosen for promulgation.

A. Changes to the IPM Analyses Since Proposal

This section presents the changes to the IPM assumptions and modeling procedures used at proposal. This section also describes modifications EPA made to the analyses to correct errors that were discovered after publication of the proposed rule.

1. IPM Analysis of the Proposed Regulatory Requirements

For the proposal, EPA did not explicitly analyze the preferred option because of time constraints. Rather, EPA conducted an electricity market model analyses of two alternative options that had higher costs than those of the preferred option. To assess the expected economic impacts of the preferred option at proposal, EPA adopted an indirect approach.[5] EPA acknowledges that an analysis specific to the requirements of the preferred option is preferable, and, as a result, EPA conducted an IPM model run using the proposed regulatory requirements for this NODA. The results of this analysis are presented in Section V.B below.

2. Model Aggregation

At proposal, the steam electric generators of the 530 Phase II facilities that are modeled by the IPM were disaggregated from the existing IPM model plants (as used in the standard IPM base case used for other EPA regulations, the EPA Base Case 2000) and ''run'' as individual facilities along with the other existing model plants. This change increased the total number of model plants from 1,390 under the EPA Base Case 2000 to 1,777 under the 316(b) Proposal Base Case.[6] For this NODA, EPA made two further changes to the model aggregation, which increased the total number of model plants from 1,777 to 2,096:

- *Disaggregation of non-steam generators at Phase II facilities.* At proposal, EPA only disaggregated Phase II steam electric generators from the original model plant specification. These steam electric generators were then re-aggregated to the facility-level, and the facility-level output was used in EPA's facility impact analyses. Disaggregating only steam-electric generators led to the underestimation of certain facility-level operating characteristics (*e.g.,* generation and revenues) because the facility-level results produced by the model did not include the economic activities of non-steam generators at Phase II facilities. Therefore, for this NODA analysis, EPA also disaggregated the non-steam generators at facilities subject to the rule from the original model plant specification, so that the facility-level results include the economic activities of the entire plant.
- *Phase III facilities.* In addition to disaggregating generators at Phase II facilities, EPA also disaggregated generators at Phase III facilities for this NODA. (At the time this analysis was started, the section 316(b) regulatory schedule called for proposal of the Phase III rule three months before promulgation of the Phase II rule.)

Because changes in model aggregation can result in changes to the base case results, EPA compared the base case results generated for the proposal and NODA analyses. This comparison identified little difference in the base case results caused by the modification in the model aggregation: Base case total production costs (capital, O&M, and fuel) using the revised NODA specifications are lower by 0.2% to 0.3% in the years 2008, 2010, and 2020. Early retirements of base case oil and gas steam capacity under the NODA specifications decreased by 1,258 MW. Early retirements of base case nuclear and coal capacity remained constant. In addition, the revised model specifications result in changes in base case coal and gas fuel use by less than 1.0 percent.

3. Capacity Utilization

Under the preferred option and the alternative regulatory options considered at proposal, facilities with a capacity utilization rate of less than 15 percent may be subject to less stringent compliance requirements than facilities with a utilization rate of 15 percent or more, depending on the water body from which they withdraw and the technologies they already have in place. EPA made the following changes to the determination of the capacity utilization of Phase II facilities for the economic analysis:

- *Capacity utilization rates based on steam-electric generators only.* At proposal, the 15 percent capacity utilization determination was based on the generation and capacity of the entire facility, including steam electric and non-steam generators. As discussed at Section III above, EPA believes that utilization of the steam electric part of the facility better reflects the facility's potential for adverse environmental impact because only the steam electric generators use cooling water subject to this regulation. At Section XI below, EPA invites comment on a refinement to the definition of ''capacity utilization rate'' at proposed § 125.93 to focus only on the steam electric generators at a facility. For the NODA, EPA is using the capacity utilization of only the steam electric generators at Phase II facilities so that the updated economic analyses, including the IPM analysis, include this potential refinement.
- *IPM capacity utilization rates.* At proposal, EPA used the average capacity utilization based on Energy Information Administration (EIA) data for 1995 to 1999. This utilization rate was often different from the rate based on the IPM base case results. This discrepancy might have led to an underestimation of economic impacts for those facilities whose utilization rate is less than 15 percent based on EIA data but 15 percent or more based on IPM data, and to an overestimation of economic impacts for those facilities whose utilization rate is 15 percent or more based on EIA data but less than 15

(Southwest Power Pool), and WSCC (Western Systems Coordinating Council). Electric generators in Alaska and Hawaii are not modeled by the IPM.

[5] For more information on this analysis, please refer to Section VIII.A of the preamble to the proposed rule and Chapter B3 of the EBA document.

[6] For more information on changes made to the EPA Base Case 2000, see EBA, Chapter B3, Section B3–2.2.

percent based on IPM data. To make the compliance response and costs consistent with the economic performance of facilities in the IPM, EPA used projected IPM capacity utilization rates for 2008 (the first model-run year) for the NODA.

As a result of these two changes, of the 530 facilities modeled by the IPM at proposal, 19 facilities that had a capacity utilization rate of less than 15 percent for the proposal analysis have a rate of 15 percent or more for the NODA analysis (base case using the EPA electricity demand growth assumption). Conversely, 75 facilities that had a rate of 15 percent or more for the proposal analysis have a rate of less than 15 percent for the NODA analysis (base case using the EPA electricity demand growth assumption). The net effect of these changes is that for the NODA analysis more facilities are estimated to have the less stringent compliance requirements associated with a low capacity utilization rate than was the case for the proposal analysis.

- *Generation cap.* A final modification to the capacity utilization of Phase II facilities relates to the potential change in the utilization rate between the base case and the post-compliance cases. Because facilities with a baseline capacity utilization rate of less than 15 percent are potentially subject to less stringent compliance requirements (depending on the water body from which they withdraw and the technologies they already have in place), they would not be able to increase their post-compliance capacity utilization without incurring more stringent compliance requirements. In order to ensure that the capacity utilization rate in the post-compliance case is consistent with the costing assumptions, the generation of facilities with a steam-electric capacity of less than 15 percent in the base case was capped so that their post-compliance capacity utilization would remain below 15 percent.

4. Treatment of Installation Downtime

The IPM models the electric power market over the 26-year period 2005 to 2030. Due to the data-intensive processing procedures, the model is run for a limited number of years only. Run years are selected based on analytical requirements and the necessity to maintain a balanced choice of run years throughout the modeled time horizon. EPA selected the following run years for the Section 316(b) analyses: 2008, 2010, 2013, 2020, and 2026.[7] 2005 to 2009 are mapped into the 2008 run year; 2010 to 2012 are mapped into the 2010 run year; and 2013 to 2015 are mapped into the 2013 run year. The years that are mapped into a run year are assumed to have the same characteristics as the run year itself. This model characteristic creates a challenge in correctly representing estimated downtimes associated with recirculating systems and other compliance technologies exactly the way they are estimated to occur (downtimes assigned to a model run year are also assigned to non-run years, and downtimes assigned to non-run years are not taken into account).

There are different options of accounting for downtimes. At proposal, EPA decided to model the downtime for each facility in its estimated year of compliance. Since 2005 through 2009 are all mapped into 2008, a facility that had downtime in 2008 was modeled as if it also had downtimes in 2005, 2006, 2007, and 2009. This may have understated the net present value (NPV) of the facility's operations and therefore overestimated its closure decision. Conversely, a facility that had a downtime in a non-model run year was modeled as if it had no downtime at all. This may have overestimated its NPV and therefore understated its closure decision. While this approach potentially affected the facility-level analysis, it provided for a realistic snapshot of the market effect of downtimes in the model run year.

For the NODA analysis, EPA decided to change the representation of downtimes to an average over the years that are mapped into each model run year. For example, a facility with a downtime in 2008 was modeled as if 1/5th of its downtime occurred in each year between 2005 and 2009. This approach more closely models potential facility-level impacts as it accounts for the correct total amount of downtime for each facility. The potential drawback of this approach is that the snapshot of the market-level effect of downtimes during the model run year is the average effect; this approach does not model potential worst-case effects of above-average amounts of capacity being down in one NERC region during a specific year.

5. Correction of Errors

EPA corrected two IPM input errors that were discovered after publication of the proposed rule: (1) At proposal, the capital costs of compliance were erroneously considered sunk and were not taken into account in making early retirement decisions; (2) The energy penalty was omitted for a few facilities costed with a recirculating system (one out of 49 facilities under the waterbody/capacity-based option and nine out of 408 facilities under the all closed-cycle option). These errors may have led the IPM to understate the modeled economic impacts at these facilities.

6. Other Changes Affecting the IPM Results

In addition to the modeling changes described above, a number of other changes affect the results presented below. These changes are outlined in Section III above and include the following: an increase in the estimated number of in-scope Phase II facilities from 550 to 551 (as a result, the number of Phase II facilities modeled by the IPM increased from 530 to 531); revisions of technology and permitting/monitoring costs; changes to the assumption of construction downtimes of recirculating cooling towers and other compliance technologies; an adjustment of energy penalties; changes in the estimation of the capacity utilization threshold; and adjustments to the compliance schedule.

EPA also notes that in 2010, non-dispatched capacity in the IPM base case (based on EPA's electricity demand growth assumption) is approximately 12 percent of total capacity, which is consistent with historical rates to ensure system reliability. (Non-dispatched facilities are those that operate on a stand-by basis throughout the year but are not called upon to generate and dispatch electricity.) Most of this capacity is oil/gas steam capacity (66 percent) and gas turbines (27 percent). Overall, 11 percent of steam electric capacity and 15 percent of non-steam capacity are modeled to be on stand-by. A large portion of the non-dispatched steam electric capacity is subject to Phase II regulation. In total, approximately 12 percent of Phase II steam electric capacity is not dispatched in the base case. This number is higher than historical data for these facilities. The main reason for this difference is that over time, existing capacity, especially oil/gas steam capacity, is expected to become less competitive relative to new capacity additions, especially combined-cycle facilities. Oil and gas steam units generally have (a) higher heat rates, (b) higher fuel costs, (c) higher variable O&M costs, and (d) higher emission rates than other steam electric capacity. As a result, some relatively inefficient oil and gas steam units are modeled to be idle in the IPM.

[7] Model run years 2020 and 2026 were specified for model balance, while run years 2008, 2010, and 2013 were selected to provide output across the compliance period. Output for 2020 and 2026 is not used in EPA's analyses. For more information on IPM model run years, see Chapter B3, section B3–2.1.d of the EBA.

All Phase II facilities are subject to the requirements of the Phase II regulation, even if they do not generate electricity. Therefore, unless EPA modeled a facility to cease operations and exit the marketplace, EPA assigned compliance costs to non-dispatched facilities. While none of the Phase II units that stand-by in the base case are modeled to be economic closures under the preferred option, it is possible that other economic measures, *e.g.*, impacts on pre-tax income, may be overestimated for these facilities. This would be the case because revenues might be understated if the modeling assumption that these facilities do not generate electricity is not realistic.

EPA requests comment on this part of the analysis.

B. Revised Results for the Preferred Option

This section presents the revised impact analysis of the preferred option. The impacts of compliance with the preferred option are defined as the difference between the model output for the base case scenario and the model output for the post-compliance scenario.[8] EPA analyzed impacts from the preferred option using output from model run year 2010. 2010 was chosen to represent the effects of the preferred option for a typical year in which all facilities are in compliance (compliance years for the preferred option are 2005 to 2009).[9] The analysis was conducted at two levels: the market level including all facilities (by NERC region) and the Phase II facility level (including analyses of the in-scope Phase II facilities as a group and of individual Phase II facilities). The results of these analyses are presented below.

1. Market-Level Impacts of the Preferred Option

The market-level analysis includes results for all generators located in each NERC region including facilities both in scope and out of scope of the proposed Phase II rule. Exhibit 1 below presents five measures used by EPA to assess market-level impacts associated with the preferred option: (1) Incremental capacity closures, calculated as the difference between capacity closures under the preferred option and capacity closures under the base case; (2) incremental capacity closures as a percentage of baseline capacity; (3) post-compliance changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by total generation; (4) post-compliance changes in energy price, where energy prices are defined as the wholesale prices received by facilities for the sale of electric generation; and (5) post-compliance changes in pre-tax income, where pre-tax income is defined as total revenues minus the sum of fixed and variable O&M costs, fuel costs, and capital costs. Additional results are presented in *Chapter B3: Electricity Market Model Analysis* (sec. B3–4.1) of the EBA, as updated for this NODA analysis. Chapter B3 also presents a more detailed interpretation of the results of the market-level analysis.

EXHIBIT 1.—MARKET-LEVEL IMPACTS OF THE PREFERRED OPTION (2010)

NERC region	Baseline capacity (MW)	Incremental capacity closures (MW)	Closures as % of baseline capacity	Change in variable production cost per MWh	Change in energy price per MWh	Change in pre-tax income ($2002)
ECAR	118,529	0	0.0	0.1	0.0	−1.1
ERCOT	75,290	0	0.0	0.0	6.1	−6.0
FRCC	50,324	0	0.0	0.4	0.6	−3.1
MAAC	63,784	0	0.0	−0.1	0.0	−0.9
MAIN	59,494	434	0.7	0.8	−0.3	−0.7
MAPP	35,835	0	0.0	−0.1	−0.4	−0.6
NPCC	72,477	0	0.0	−0.4	0.9	0.8
SERC	194,485	0	0.0	−0.1	0.0	−0.5
SPP	49,948	0	0.0	−0.1	−0.2	−0.4
WSCC	167,748	0	0.0	0.0	0.0	−1.1
Total	887,915	434	0.0	0.0	n/a	−1.1

One of the ten NERC regions modeled, MAIN, would experience economic closures of existing capacity as a result of the preferred option. However, this closure of 434 MW of nuclear capacity represents a relatively small percentage of baseline capacity in the region (0.7 percent). Three NERC regions would experience increases in variable production costs per MWh, although the largest increase would not exceed 1.0 percent. In addition, three NERC regions would experience an increase in energy price under the preferred option. Of these, only ERCOT would experience an increase of more than 1.0 percent (6.1 percent). Pre-tax incomes would decrease in all but one region, but the majority of these changes would be on the order of 1.0 percent or less. ERCOT would experience the largest decrease in pre-tax income (−6.0 percent). Only one region, NPCC, would experience an increase in market-level pre-tax income (0.8 percent).

2. Facility-Level Impacts of the Preferred Option

The results from model run year 2010 were used to analyze two potential facility-level impacts associated with the preferred option: (1) Potential changes in the economic and operational characteristics of the group

[8] Two base case scenarios were used to analyze the impacts associated with the preferred option and the waterbody/capacity-based option. The base case scenario used to analyze the preferred option was developed using EPA's electricity demand assumption. Under this assumption, demand for electricity is based on the Annual Energy Outlook (AEO) 2001 forecast adjusted to account for demand reductions resulting from the implementation of the Climate Change Action Plan (CAAP). The base case for the waterbody/capacity-based option was developed using the unadjusted electricity demand from the AEO 2001. (*See* the Appendix of ch.B8 of the EBA, as published for the proposed rule, for further explanation on the two base cases; *http://www.epa.gov/ost/316b/econbenefits/b8.pdf*.) EPA is currently completing additional IPM runs and will develop analyses of both options using both base cases. EPA intends to place these additional analyses in the docket during the comment period on this Notice. EPA expects to use information from the analyses in today's Notice and these additional analyses to support decision-making for the final rule.

[9] EPA also analyzed potential market-level impacts of the preferred option for a year within the compliance period during which some Phase II facilities experience installation downtimes. This analysis used output from model run year 2008. *See* ch. B3, sec. B3–4.3 of the EBA, as updated for this NODA analysis, for the results of this analysis.

of in-scope Phase II facilities and (2) potential changes to individual facilities within the group of Phase II facilities. EPA analyzed incremental capacity closures, changes in variable production costs per MWh of generation, total generation, and pre-tax income to assess impacts to all Phase II facilities resulting from the preferred option. Exhibit 2 below presents the results of this analysis, by NERC region.

EXHIBIT 2.—IMPACTS ON PHASE II FACILITIES OF THE PREFERRED OPTION (2010)

NERC region	Baseline capacity (MW)	Incremental closures		Change in variable production cost per MWh (%)	Change in generation (%)	Change in pre-tax Income (%)
		Capacity (MW)	% of baseline capacity			
ECAR	82,313	0	0.0	0.0	−0.1	−1.4
ERCOT	43,522	0	0.0	−0.7	−1.7	−11.0
FRCC	27,537	0	0.0	0.3	−0.8	−4.1
MAAC	33,590	0	0.0	0.0	0.2	−1.4
MAIN	35,373	434	1.2	0.5	−1.1	−1.0
MAPP	15,727	0	0.0	0.0	0.0	−1.6
NPCC	37,651	0	0.0	−1.4	−2.3	−0.8
SERC	107,450	0	0.0	−0.2	−0.2	−0.7
SPP	20,471	0	0.0	−0.4	−0.6	−1.0
WSCC	27,206	0	0.0	−1.0	−5.5	−27.0
Total	430,840	434	0.1	−0.5	−0.8	−2.0

Similar to the market level results, MAIN is the only region that would experience incremental capacity closures at Phase II facilities under this regulatory option: A total of 434 MW, or 1.2 percent of all Phase II capacity in this region, would be retired. Total capacity closures in MAIN are a net estimate (*i.e.*, policy case closures minus base cases closures) consisting of 519 MW of capacity retiring at one facility and an 85 MW reduction in closures at a second facility. Variable production costs per MWh at Phase II facilities would increase in two regions and decrease in five regions under the preferred option. No region would experience an increase in Phase II variable production costs that exceeds 0.5 percent while Phase II facilities in NPCC and WSCC would see reductions of 1.4 percent and 1.0 percent, respectively. Phase II facilities in four NERC regions would experience decreases in generation in excess of 1.0 percent as a result of the preferred option. The largest decrease would be in WSCC, where Phase II facilities would experience a 5.5 percent reduction in both generation and revenues. Overall, pre-tax income would decrease by 2.0 percent for the group of Phase II facilities. The effects of this change are concentrated in a few regions: WSCC would experience a reduction in pre-tax income of 27.0 percent, which is driven by a reduction in both generation and revenues (not presented in this exhibit). ERCOT and FRCC are estimated to experience a reduction of 11.0 and 4.1 percent, respectively.

Results for the group of Phase II facilities as a whole may mask shifts in economic performance among individual facilities subject to this rule. To assess potential distributional effects, EPA analyzed facility-specific changes in capacity utilization (defined as generation divided by capacity times 8,760 hours), generation, revenue, variable production costs per MWh (defined as variable O&M cost plus fuel cost divided by generation), and pre-tax income.

Exhibit 3 presents the total number of Phase II facilities with different degrees of change in each of these measures. This exhibit excludes 18 in-scope facilities with significant status changes (10 facilities are baseline closures, one facility is a policy closure, and seven facilities changed their repowering decision between the base case and the policy case). These facilities are either not operating at all in either the base case or the post-compliance case, or they experience fundamental changes in the type of units they operate; therefore, the measures presented below would not be meaningful for these facilities. In addition, the change in variable production cost per MWh of generation could not be developed for 57 facilities with zero generation in either the base case or post-compliance scenario. For these facilities, the change in variable production cost per MWh is indicated as ''n/a.''

EXHIBIT 3.—OPERATIONAL CHANGES AT PHASE II FACILITIES FROM THE PREFERRED OPTION (2010) [a]

Economic measures	Reduction			Increase			No change	N/A
	≦=1%	1–3%	> 3%	≦=1%	1–3%	> 3%		
Change in Capacity Utilization [b]	9	15	24	9	6	9	441	0
Change in Generation	7	1	44	10	3	17	431	0
Change in Revenue	80	27	42	100	22	15	227	0
Change in Variable Production Costs/MWh	33	13	9	140	13	14	234	57
Change in Pre-Tax Income	105	113	199	22	13	37	24	0

[a] For all measures percentages used to assign facilities to impact categories have been rounded to the nearest 10th of a percent.
[b] The change in capacity utilization is the difference between the capacity utilization percentages in the base case and post-compliance case. For all other measures, the change is expressed as the percentage change between the base case and post-compliance values.

Exhibit 3 indicates that the majority of Phase II facilities would not experience changes in capacity utilization or generation due to compliance with the preferred option. Of those facilities with changes in post-compliance capacity

utilization and generation, most would experience decreases in these measures. Exhibit 3 also indicates that the majority of facilities with changes in post-compliance variable production costs would experience increases. However, more than 80 percent of those increases would not exceed 1.0 percent. Changes in revenues at most Phase II facilities would also not exceed 1.0 percent. The largest effect of the preferred option would be on facilities' pre-tax income: over 80 percent of facilities would experience a reduction in pre-tax income, with almost 40 percent experiencing a reduction of 3.0 percent or greater.

C. Revised Results for the Waterbody/Capacity-Based Option

This section presents the revised impact analysis of the alternative waterbody/capacity-based option. Under this option, facilities that withdraw water from an estuary, tidal river, or ocean and that meet certain intake flow requirements, would generally be required to meet performance standards for reducing impingement mortality and entrainment based on a level that can be attained by using a closed-cycle, recirculating cooling system. These facilities would have the choice to comply with Track I or Track II requirements. Facilities that choose to comply with Track I would be required to reduce their intake flow to a level commensurate with that which can be attained by a closed-cycle, recirculating system. Facilities that choose to comply with Track II would have to demonstrate that alternative technologies would reduce impingement and entrainment to comparable levels that would be achieved with a closed-cycle recirculating system (see section VI.B.2 of the proposal preamble for a discussion of Track I and Track II under this option). Other facilities would be required to reduce impingement mortality or impingement mortality and entrainment based on the performance of technologies such as fine-mesh screens and fish-return systems.

EPA's estimation of impacts associated with the alternative waterbody/capacity-based option is based on an electricity market model analysis that assumes that all facilities required to reduce impingement mortality and entrainment based on the performance of a closed-cycle recirculating cooling system would choose to comply with the requirements of Track I. This analysis further assumes that such facilities would install a recirculating wet cooling tower. These requirements would be met by the end of the term of the first permit after promulgation of the final rule (2005 to 2013), depending on when a permittee's first NPDES permit after promulgation expires. The impacts of compliance with the waterbody/capacity-based option are defined as the difference between the model output for the base case scenario and the model output for the post-compliance scenario.[10]

EPA analyzed impacts using IPM output from model run year 2013. 2013 was chosen to represent the effects of the waterbody/capacity-based option for a typical year in which all facilities are in compliance (compliance years for the waterbody/capacity-based option are 2005 to 2013; however, for the purposes of this analysis, all facilities are modeled to comply by 2012).[11] The analysis was conducted at two levels: the market level including all facilities (by NERC region) and the Phase II facility level (including analyses of the in-scope Phase II facilities as a group and of individual Phase II facilities), using the same framework as the analysis of the preferred option presented above. It should be noted that a direct comparison of the results of the preferred option and the waterbody/capacity-based option is not possible because (1) the analyses use output for different model run years (2010 for the preferred option and 2013 for the waterbody/capacity-based option) and (2) the two analyses use different base cases with different assumptions about future growth in electricity demand. As noted above, EPA will provide analyses of both regulatory options for both base cases and intends to place these in the docket during the comment period on this Notice.

1. Market-Level Impacts of the Waterbody/Capacity-Based Option

The market-level analysis includes results for all generators located in each NERC region including facilities both in scope and out of scope of Phase II regulation. Exhibit 4 below presents the same five measures as discussed for the preferred option: (1) Incremental capacity closures, calculated as the difference between capacity closures under the waterbody/capacity-based option and capacity closures under the base case; (2) incremental capacity closures as a percentage of baseline capacity; (3) post-compliance changes in variable production costs per MWh, calculated as the sum of total fuel and variable O&M costs divided by total generation; (4) post-compliance changes in energy price, where energy prices are defined as the prices received by facilities for the sale of electric generation; and (5) post-compliance changes in pre-tax income, where pre-tax income is defined as total revenues minus the sum of fixed and variable O&M costs, fuel costs, and capital costs. Additional results are presented in Chapter B8 (Section B8–2) of the EBA, as updated for this NODA analysis. Chapter B8 also presents a more detailed interpretation of the results of the market-level analysis.

EXHIBIT 4.—MARKET-LEVEL IMPACTS OF THE WATERBODY/CAPACITY-BASED OPTION (2013)—

NERC Region	Baseline capacity (MW)	Incremental capacity closures (MW)	Closures as % of baseline capacity	Change in variable production cost per MWh	Change in energy price per MWh	Change in pre-tax income ($2002)
ECAR	133,048	0	0.0%	0.5%	0.8%	1.3%
ERCOT	86,609	0	0.0	1.2	1.7	−0.1
FRCC	57,078	0	0.0	1.7	3.8	−5.4
MAAC	71,441	0	0.0	1.3	1.4	−4.1
MAIN	66,420	1,012	1.5	2.2	1.6	1.4
MAPP	39,694	0	0.0	0.3	1.8	2.0
NPCC	77,557	0	0.0	1.2	1.1	−3.3
SERC	220,567	0	0.0	1.0	1.4	0.2
SPP	55,711	0	0.0	0.6	1.5	1.2

[10] Two base case scenarios were used to analyze the impacts associated with the preferred option and the waterbody/capacity-based option. See footnote 8 above for a full explanation.

[11] EPA also analyzed potential market-level impacts of the alternative waterbody/capacity-based option for a year within the compliance period during which some Phase II facilities experience installation downtimes. This analysis used output from model run year 2008. See Chapter B8, Section B8–4 of the EBA, as updated for this NODA analysis, for the results of this analysis.

EXHIBIT 4.—MARKET-LEVEL IMPACTS OF THE WATERBODY/CAPACITY-BASED OPTION (2013)——Continued

NERC Region	Baseline capacity (MW)	Incremental capacity closures (MW)	Closures as % of baseline capacity	Change in variable production cost per MWh	Change in energy price per MWh	Change in pre-tax income ($2002)
WSCC	186,001	2,150	1.2	2.9	1.4	−1.7
Total	994,126	3,162	0.3	1.2	n/a	−0.5

Two of the ten NERC regions modeled, MAIN and WSCC, would experience economic closures of facilities as a result of this option. The capacity closures in MAIN and WSCC represent 1.5 percent and 1.2 percent, respectively, of baseline capacity in these regions and 0.3 percent of total baseline capacity for all regions taken as a whole. Variable production costs per MWh and energy prices would increase in all NERC regions. The increases in variable production costs would exceed 1.0 percent in six NERC regions, and two regions, MAIN and WSCC, would experience increases of more than 2.0 percent. Energy prices would increase by more than 1.0 percent in nine of the ten regions modeled, with FRCC experiencing the largest increase (3.8 percent). Half of the regions would experience a reduction in pre-tax income, while the other half would experience increases in this measure. The majority of these changes would be less than 2.0 percent. FRCC, MAAC, and NPCC would experience the largest decrease in pre-tax income (-5.4, -4.1, and -3.3 percent, respectively), while the largest increase would occur in MAPP (2.0 percent).

2. Phase II Facility-Level Impacts of the Waterbody/Capacity-Based Option

The results from model run year 2013 were used to analyze two potential facility-level impacts associated with the preferred option: (1) Potential changes in the economic and operational characteristics of the group of in-scope Phase II facilities and (2) potential changes to individual facilities within the group of Phase II facilities. EPA analyzed the same measures as discussed for the preferred option to assess impacts to the group of Phase II facilities resulting from the waterbody/capacity-based option: economic closures, changes in variable production costs per MWh of generation, total generation, and pre-tax income. Exhibit 5 below presents the results from this analysis, by NERC region.

EXHIBIT 5.—IMPACTS ON PHASE II FACILITIES OF THE WATERBODY/CAPACITY—BASED OPTION (2013)

NERC	Baseline capacity (MW)	Closure analysis		Change in variable production cost per MWh	Change in generation	Change in pre-tax income
		Capacity (MW)	% of baseline capacity			
ECAR	82,258	0	0.0%	0.3%	0.1%	1.0%
ERCOT	44,400	0	0.0	0.3	0.6	0.5
FRCC	27,513	0	0.0	0.3	3.5	10.5
MAAC	34,696	0	0.0	0.8	1.0	7.7
MAIN	34,944	1,012	2.9	1.2	2.5	1.5
MAPP	15,723	0	0.0	0.0	0.1	2.0
NPCC	37,219	0	0.0	0.8	−0.6	−9.2
SERC	107,458	0	0.0	0.7	0.1	−0.1
SPP	20,471	0	0.0	−0.7	−0.6	1.4
WSCC	28,093	2,150	7.7	0.5	−29.2	−30.7
Total	432,776	3,162	0.7	0.0	−2.1	−2.1

Similar to the results of the broader market-level analysis, MAIN and WSCC are the only regions that would experience incremental capacity closures at Phase II facilities under this regulatory option. In MAIN, 1,012 MW, or 2.9 percent of baseline Phase II capacity, would retire; in WSCC, 2,150 MW, or 7.7 percent of baseline Phase II capacity, would retire. In aggregate, these closures of 3,162 MW represents less than 1.0 percent of total baseline Phase II capacity. Phase II facilities in only one region, MAIN, would experience an increase in excess of 1.0 percent in variable production cost per MWh. Phase II facilities in seven NERC regions would experience a decrease in generation. Of these, three regions would see reductions in excess of 2.0 percent with the largest decrease occurring in WSCC (-29.2 percent), partially because of the post-compliance closures. Similar to the market level, FRCC, MAAC, and NPCC would experience relatively large reductions in pre-tax income (-10.5, -7.7, and -9.2 percent, respectively). However, the highest reduction would be seen in WSCC (-30.7 percent), where the compliance costs per MW of Phase II capacity is relatively high, and where only a relatively small portion of the overall capacity is regulated under the Phase II rule.

To assess potential shifts in economic performance among individual facilities subject to this rule, EPA analyzed the same facility-specific changes as for the preferred option: changes in capacity utilization (defined as generation divided by capacity times 8,760 hours), generation, revenue, variable production costs per MWh (defined as variable O&M cost plus fuel cost divided by generation), and pre-tax income.

Exhibit 6 presents the total number of Phase II facilities with different degrees of change in each of these measures. This exhibit excludes 30 in-scope facilities with significant status changes (nine facilities are baseline closures, three facilities are policy closures, and 18 facilities changed their repowering decision between the base case and the policy case). These facilities are either not operating at all in either the base case or the post-compliance case, or they experience fundamental changes in the type of units they operate; therefore,

the measures presented below would not be meaningful for these facilities. In addition, the change in variable production cost per MWh of generation could not be developed for 62 facilities with zero generation in either the base case or post-compliance scenario. For these facilities, the change in variable production cost per MWh is indicated as ''n/a.''

EXHIBIT 6.—NUMBER OF PHASE II FACILITIES WITH OPERATIONAL CHANGES AT PHASE II FACILITIES WATERBODY/CAPACITY-BASED OPTION (2013) [a]

Economic measures	Reduction			Increase			No change	N/A
	≦1%	1–3%	>3%	≦1%	1–3%	>3%		
Change in Capacity Utilization [b]	4	11	21	6	14	15	430	0
Change in Generation	7	24	37	5	7	23	398	0
Change in Revenue	56	13	41	108	247	28	8	0
Change in Variable Production Costs/MWh	18	5	8	154	115	21	118	62
Change in Pre-Tax Income	51	62	164	45	141	36	2	0

[a] For all measures percentages used to assign facilities to impact categories have been rounded to the nearest 10th of a percent.
[b] The change in capacity utilization is the difference between the capacity utilization percentages in the base case and post-compliance case. For all other measures, the change is expressed as the percentage change between the base case and post-compliance values.

Exhibit 6 indicates that the majority of Phase II facilities would not experience changes in capacity utilization or generation due to compliance with the waterbody/capacity-based option. Of facilities with post-compliance changes in capacity utilization and/or generation, the majority would experience a decrease in these measures. Exhibit 6 also indicates that the majority of Phase II facilities would experience increases in both revenues and variable production costs of between 0.0 and 3.0 percent. Similarly, almost all Phase II facilities would experience a change in pre-tax income, with a slight majority seeing a reduction in this measure.

VI. Other Economic Analyses

EPA updated several of its other economic analyses conducted at proposal to determine the effect of changes made to the assumptions for this NODA on steam electric generating facilities. For more detailed information on these analyses, refer to the memo entitled ''Supporting Documentation of Changes to Economic Impacts in Support of the Section 316(b) Phase II NODA'' (DCN 5–3004). This section and the supporting memo discuss changes made to EPA's methodology and assumptions as well as the updated results. For a discussion of the original methodology used by EPA for the proposal analysis, refer to the chapters in Part B of the Economic and Benefits Analysis (EBA) document in support of the proposed rule at *http://www.epa.gov/waterscience/316b/econbenefits/.*

It should be noted that the measures presented in this section are provided in addition to the impact measures based on the Integrated Planning Model (IPM®) analyses (see Section V of this Notice). The following measures are used to assess the magnitude of compliance costs; they are not used to predict closures or other types of economic impacts on facilities subject to Phase II regulation.

It should also be noted that the results of the preferred option and the waterbody/capacity-based option cannot be directly compared to each other. EPA used two different demand growth assumptions for the IPM base cases of the preferred option (EPA electricity demand assumption) and the waterbody/capacity-based option (AEO electricity demand assumption, upon request by the Department of Energy). Since EPA is using IPM base case data in its estimate of the cost of installation downtime, the cost of the energy penalty, and revenues, the results presented in this section could vary between the two options, even for facilities or NERC regions with identical compliance requirements under the two options.[12] EPA intends to place additional IPM runs in the record during the NODA comment period to allow direct comparisons of both policy alternatives under both base cases.

A. National Costs

Based on the NODA analysis, EPA estimates that facilities subject to the preferred option would incur annualized post-tax compliance costs of approximately $265 million (at proposal, this estimate was $178 million). These costs include one-time technology costs of complying with the rule, a one-time cost of installation downtime,[13] annual operating and maintenance costs, and permitting costs (including initial permit costs, annual monitoring costs, and permit reissuance costs). This cost estimate does not include the costs of administering the rule by permitting authorities and the federal government. Also excluded are compliance costs for eight facilities that are projected to be baseline closures. Including compliance costs for projected baseline closure facilities would result in a total annualized compliance cost of approximately $269 million (at proposal, this estimate was $182 million). The cost differences between proposal and the NODA are accounted for primarily by the expanded range of technology options considered for the NODA and the ''best performing technology'' selection criteria used to assign cost modules to model facilities (see Section IV of this Notice).

EPA also updated the estimated total national annualized post-tax cost of compliance for the alternative waterbody/capacity-based option. Costs for this option include the same components as the estimate for the preferred option (one-time technology costs, cost of downtime, annual operating and maintenance costs, and permitting costs) but also include the cost of the energy penalty incurred by facilities estimated to upgrade to a recirculating cooling tower system. For the NODA analysis, the estimated total annualized post-tax cost of compliance for the waterbody/capacity-based option is approximately $793 million (at proposal, this estimate was $585 million). This increase reflects a number

[12] For example, compliance requirements in NERC regions without estuarine/tidal river or ocean facilities (*i.e.*, ECAR, MAIN, MAPP, and SPP) are identical under the two options. For this NODA analysis, all facilities in these regions would have had identical compliance costs under the two options, were it not for the difference in base case assumptions.

[13] At proposal, EPA assumed that the technologies required to comply with the preferred option would not require installation downtimes (see Section III.4 of this Notice).

of changes including increased technology costs, increased downtime for technology installation, and the use of electric demand assumptions from DOE's Annual Energy Outlook. Not included in this estimate are seven facilities that are projected to be baseline closures.[14] Including compliance costs for projected baseline closure facilities would result in a total annualized cost of compliance with the waterbody/capacity-based option of approximately $797 million (at proposal, this estimate was $595 million).

Exhibit 7 below summarizes the changes between the proposal and NODA analyses for the preferred option and the waterbody/capacity-based option.

EXHIBIT 7—SUMMARY OF CHANGES IN NATIONAL COSTS

	Proposal ($2001; mill.)	NODA ($2002; mill.)	Change	
			Absolute	Percent
Preferred Option				
Number of Phase II facilities	550	551	1	0.2
All facilities (pre-tax)	$279	$416	$137	49.1
All facilities (post-tax)	$182	$269	$87	47.8
Number of baseline closures	11	8	(3)	–27.3
Non-baseline closures (pre-tax)	$271	$410	$139	51.3
Non-baseline closures (post-tax)	$178	$265	$87	48.9
Waterbody/Capacity-Based Option				
Number of Phase II facilities	550	551	1	0.2
All facilities (pre-tax)	$968	$1,280	$312	32.2
All facilities (post-tax)	$595	$797	$202	34.0
Number of baseline closures	9	7	(2)	–22.2
Non-baseline closures (pre-tax)	$951	$1,273	$322	33.9
Non-baseline closures (post-tax)	$585	$793	$208	35.6

B. Cost-to-Revenue Measure

1. Facility-Level Analysis

EPA examined the annualized post-tax compliance costs of the preferred option and the waterbody/capacity-based option as a percentage of baseline annual revenues, for each of the 551 facilities subject to Phase II of the Section 316(b) regulation. This measure allows for a comparison of compliance costs incurred by each facility with its revenues in the absence of Phase II regulation. The revenue estimates are facility-specific baseline projections from the IPM base case for 2008 (see Section V of this Notice for a discussion of EPA's analyses using the IPM).[15]

Similar to the findings at proposal, the results of this analysis show that the vast majority of facilities subject to the preferred option, 404 out of 551 (73 percent), would incur annualized costs of less than one percent of revenues. Of these, 292 facilities would incur compliance costs of less than 0.5 percent of revenues. Ninety-seven facilities (18 percent) would incur costs of between one and three percent of revenues, and 41 facilities (seven percent) would incur costs of greater than three percent. Eight facilities are estimated to be baseline closures, and for one facility, revenues are unknown.[16] Exhibit 8 below summarizes these findings and also presents the ratios estimated at proposal.

EXHIBIT 8—COST-TO-REVENUE RATIO FOR THE PREFERRED OPTION (FACILITY LEVEL)

Annualized cost-to-revenue ratio	Proposal		NODA	
	All phase II	Percent of total phase II	All phase II	Percent of total phase II
<0.5%	331	60	292	53
>/= 0.5 to <1.0%	78	14%	112	20
>/= 1.0% to <3.0%	82	15	97	18
>/= 3.0%	46	8	41	7
Baseline Closure	11	2	8	1
n/a	1	0	1	0
Total	550	100	551	100

Exhibit 9 below presents the same information for the waterbody/capacity-based option.[17]

[14] The number of baseline closures is different for the preferred option and the waterbody/capacity-based option because different IPM base cases were used to estimate baseline closures. See footnote 8 above for a full explanation.

[15] EPA used 2008 rather than 2010 baseline revenues for this analysis because 2008 is the first model run year specified in the IPM analyses. EPA used the first model run year because it more closely resembles the current operating conditions of in-scope facilities than later run years (over time, facilities may be increasingly affected by factors other than a Phase II regulation).

[16] For the preferred option, IPM revenues for 2008 were not available for eight facilities estimated to be baseline closures, ten facilities not modeled by the IPM, and five facilities projected to have zero baseline revenues. EPA used facility-specific electricity generation and firm-specific wholesale prices as reported to the Energy Information Administration (EIA) to calculate the cost-to-revenue ratio for the 15 non-baseline closure facilities with missing information. The revenues for one of these facilities remains unknown.

EXHIBIT 9.—COST-TO-REVENUE RATIO FOR THE WATERBODY/CAPACITY-BASED OPTION (FACILITY LEVEL)

Annualized cost-to-revenue ratio	Proposal		NODA	
	All phase II	Percent of total phase II	All phase II	Percent of total phase II
<0.5%	355	65	281	51
>/=0.5 to <1.0%	60	11	101	18
>/=1.0 to <3.0%	57	10	102	19
>/=3.0%	67	12	58	11
Baseline Closure	9	2	7	1
n/a	1	0	1	0
Total	550	100	551	100

2. Firm-Level Analysis

The firms owning the facilities subject to Phase II regulation may experience greater impacts than individual in-scope facilities if they own more than one facility with compliance costs. EPA therefore also analyzed the cost-to-revenue ratios at the firm level. EPA identified the domestic parent entity of each in-scope facility and obtained their sales revenue from publicly available data sources (the Dun and Bradstreet database for parent firms of investor-owned utilities and nonutilities; and Form EIA–861 for all other parent entities) and EPA's 2000 Section 316(b) Industry Survey. This analysis showed that 128 unique domestic parent entities own the facilities subject to Phase II regulation. For both analyzed options, EPA compared the aggregated annualized post-tax compliance costs for each facility owned by the 128 parent entities to the firms' total sales revenue.

Since proposal, EPA has not updated the parent firm determination for Phase II facilities. However, EPA updated the average Form EIA–861 data used for this analysis from 1996 to 1998 (used at proposal) to 1997 to 1999 (used for the NODA). In addition, EPA made one modification to the data sources used: At proposal, EPA used Dun and Bradstreet (D&B) data for any parent entity listed in the database. If D&B data were not available, EPA used the EIA database or the Section 316(b) Survey. For the NODA analysis, EPA used the D&B database for privately-owned entities only. For other entities, EPA used the EIA database.

For the preferred option, EPA estimates that of the 128 unique entities, only two entities would incur compliance costs of greater than three percent of revenues; 11 entities would incur compliance costs of between one and three percent of revenues; eight entities would incur compliance costs of between 0.5 and one percent of revenues; and the remaining 107 entities would incur compliance costs of less than 0.5 percent of revenues. The highest estimated cost-to-revenue ratio for this NODA analysis is 7.4 percent of the entities' annual sales revenue (at proposal this value was 5.3 percent). Exhibit 10 below summarizes these findings and also presents the ratios estimated at proposal.

EXHIBIT 10.—COST-TO-REVENUE RATIO FOR THE PREFERRED OPTION (FIRM LEVEL)

Annualized cost-to-revenue ratio	Proposal		NODA	
	All phase II	Percent of total phase II	All phase II	Percent of total phase II
<0.5%	104	79	107	84
>/= 0.5 to <1.0%	12	9	8	6
>/= 1.0 to <3.0%	10	8	11	9
>/= 3.0%	3	2	2	2
Baseline Closure	2	2	0	0
Total	131	100	128	100

Exhibit 11 below presents the same information for the waterbody/capacity-based option.

EXHIBIT 11.—COST-TO-REVENUE RATIO FOR THE WATERBODY/CAPACITY-BASED OPTION (FIRM LEVEL)

Annualized cost-to-revenue ratio	Proposal		NODA	
	All phase II	Percent of total phase II	All phase II	Percent of total phase II
< 0.5%	108	82	95	74
>/= 0.5 to <1.0%	12	9	16	13
>/= 1.0 to <3.0%	6	5	15	12

[17] For the waterbody/capacity-based option, IPM revenues for 2008 were not available for seven facilities estimated to be baseline closures, ten facilities not modeled by the IPM, and two facilities projected to have zero baseline revenues. EPA used facility-specific electricity generation and firm-specific wholesale prices as reported to the Energy Information Administration (EIA) to calculate the cost-to-revenue ratio for the 12 non-baseline closure facilities with missing information. The revenues for one of these facilities remains unknown.

EXHIBIT 11.—COST-TO-REVENUE RATIO FOR THE WATERBODY/CAPACITY-BASED OPTION (FIRM LEVEL)—Continued

Annualized cost-to-revenue ratio	Proposal		NODA	
	All phase II	Percent of total phase II	All phase II	Percent of total phase II
>/= 3.0%	3	2	2	2
Baseline Closure	2	2	0	0
Total	131	100	128	100

C. Cost Per Household

EPA also conducted an analysis that evaluates the potential cost per household, if Phase II facilities were able to pass compliance costs on to their customers. This analysis estimates the average compliance cost per household for each North American Electricity Reliability Council (NERC) region,[18] using two data inputs: (1) The average annual pre-tax compliance cost per megawatt hour (MWh) of total electricity sales and (2) the average annual MWh of residential electricity sales per household.

The results of this analysis show that the average annual cost per residential household would range from $0.55 (in ASCC) to $5.69 (in HI) for the preferred option and from $0.55 (in ASCC) to $20.41 (in HI) for the waterbody/capacity-based option. Exhibit 12 below presents the values for each NERC region for the preferred option and the waterbody/capacity-based option. The exhibit also presents the values for the preferred option at proposal.

EXHIBIT 12.—SUMMARY OF COST PER HOUSEHOLD BY NERC REGION

NERC region	Preferred option			W/C-based option
	Proposal ($2001)	NODA ($2002)	Change	NODA ($2002)
ASCC	$0.33	$0.55	$0.22	$0.55
ECAR	0.99	1.49	0.50	1.52
ERCOT	1.01	1.12	0.11	1.75
FRCC	1.58	2.04	0.46	12.08
HI	2.55	5.69	3.14	20.41
MAAC	1.16	1.50	0.34	9.53
MAIN	0.84	1.32	0.48	1.32
MAPP	0.88	1.09	0.21	1.10
NPCC	1.09	1.49	0.40	4.57
SERC	0.83	1.17	0.34	3.21
SPP	0.64	0.88	0.24	0.88
WSCC	0.36	0.94	0.58	5.08
U.S. Average	0.87	1.30	0.43	4.00

D. Electricity Price Analysis

EPA also considered potential effects of the proposed Phase II rule on electricity prices. EPA used three data inputs in this analysis: (1) Total pre-tax compliance cost incurred by facilities subject to Phase II regulation, (2) total electricity sales, based on the Annual Energy Outlook (AEO) 2002, and (3) prices by end use sector (residential, commercial, industrial, and transportation), also from the AEO 2002. All three data elements were calculated by NERC region.

The results of the NODA analysis show that the annualized costs of complying (in cents per KWh sales) range from 0.007 cents in SPP to 0.020 cents in NPCC for the preferred option, and from 0.007 cents in SPP to 0.096 cents in MAAC for the waterbody/capacity-based option.

To determine potential effects of these compliance costs on electricity prices, EPA compared the per KWh compliance cost to baseline electricity prices by end use sector and for the average of the sectors. This analysis shows that the average increase in electricity prices would be 0.17 percent under the preferred option and 0.51 percent under the waterbody/capacity-based option. (At proposal, the estimated increase in electricity prices for the preferred option was 0.11 percent.)

Exhibit 13 below presents the values for each NERC region for the preferred option and the waterbody/capacity-based option. The exhibit also presents the values for the preferred option at proposal.[19]

[18] There are twelve NERC regions: ASCC (Alaska Systems Coordinating Council), ECAR (East Central Area Reliability Coordination Agreement), ERCOT (Electric Reliability Council of Texas), FRCC (Florida Reliability Coordinating Council), HI (Hawaii), MAAC (Mid-Atlantic Area Council), MAIN (Mid-America Interconnected Network, Inc.), MAPP (Mid-Continent Area Power Pool), NPCC (Northeast Power Coordination Council), SERC (Southeastern Electricity Reliability Council), SPP (Southwest Power Pool), and WSCC (Western Systems Coordinating Council).

[19] Note that Alaska and Hawaii are not represented in the AEO.

EXHIBIT 13.—SUMMARY OF ELECTRICITY PRICES BY NERC REGION

NERC region	Preferred option				W/C-based option	
	Proposal ($2001)		NODA ($2002)		NODA ($2002)	
	Annualized pre-tax compliance cost (cents/KWh sales)	% change in price	Annualized pre-tax compliance cost (cents/KWh sales)	% change in price	Annualized pre-tax compliance cost (cents/KWh sales)	% change in price
ECAR	0.010	0.15	0.015	0.23	0.015	0.23
ERCOT	0.007	0.11	0.008	0.12	0.013	0.18
FRCC	0.012	0.15	0.015	0.20	0.088	1.16
MAAC	0.012	0.13	0.015	0.17	0.096	1.05
MAIN	0.010	0.14	0.016	0.22	0.016	0.22
MAPP	0.008	0.13	0.010	0.15	0.010	0.16
NPCC	0.017	0.19	0.020	0.22	0.061	0.68
SERC	0.006	0.10	0.008	0.14	0.023	0.38
SPP	0.005	0.09	0.007	0.12	0.007	0.12
WSCC	0.004	0.05	0.010	0.13	0.053	0.70
U.S. Average	0.008	0.11	0.012	0.17	0.037	0.51

VII. Performance Standards

In the proposed rule, EPA set up a framework that would require facilities that did not reduce their intake capacity commensurate with a closed-cycle recirculating cooling system to meet certain other performance standards for reducing impingement mortality and entrainment based on technologies such as fine-mesh screens and fish-return systems. These other performance standards were based on the source water body type where the cooling water intake structure is located, the facility's capacity utilization rate, and the proportion or volume of the water body that is withdrawn by the facility. In general, most facilities would be required to implement control technologies that reduce impingement mortality by 80 to 95 percent and/or entrainment by 60 to 90 percent unless they demonstrate the need for a site-specific determination of best technology available. (See proposed § 125.94 and Chapter VI. Best Technology Available for Minimizing Adverse Environmental Impact at Phase II Existing Facilities (67 FR 17140)).

A. Technology Efficacy Database to Support Performance Standards

In an effort to document and further assess the performance of various technologies and operational measures designed to minimize the impacts of cooling water withdrawals, EPA compiled a database of documents that analyzes the efficacy of a specific technology or suite of technologies. The database contains materials that range from brief journal articles to more intensive analyses found in historical section 316(b) demonstration reports and technology evaluations. At this time, EPA is assembling as much documentation as possible to support future Agency decisions. Information entered into the database includes some notation of the limitations the individual studies may have for use in further analyses (*e.g.*, no biological data or conclusions).

EPA's intent in assembling this information is four-fold. First, EPA seeks to develop a categorized database containing a comprehensive collection of available literature regarding technology performance that will serve as a more rigorous compilation of data supporting the determination that the proposed performance standards are best technology available. Second, EPA expects to use the data to demonstrate that the technologies chosen as compliance technologies for costing purposes are reasonable and can meet the performance standards. Third, the availability of a user-friendly database would allow EPA, State permit writers, and the public to more easily evaluate potential compliance options, facility compliance with performance standards, and data pertaining to the streamlined option described in this NODA (see section VII.B below). Fourth, EPA has attempted to evaluate the technology efficacy data against objective criteria in order to assess the general quality and thoroughness of each study. This may assist in further analysis of conclusions made using the data.

Basic information from each document is recorded in the database (*e.g.*, type of technology evaluated, facility at which it was tested, etc.) In addition to basic document information, the database contains information in two principal areas: (1) General facility information and (2) detailed study information.

For those documents that refer to a specific facility (or facilities), basic technical information is included to enable EPA to classify facilities according to general categories. EPA collected locational data (*e.g.*, waterbody type, name, state) as well as basic cooling water intake structure configuration information. Each technology evaluated in the study is also recorded, along with specific details regarding its design and operation. Major categories of technology include modified traveling screens, wedge-wire screens, fine-mesh screens, velocity caps, barrier nets, and behavioral barriers. (Data identifying the technologies present at a facility as well as the configuration of the intake structure refer to the configuration at the time the study was conducted and do not necessarily reflect the present facility set-up.)

Information on the type of study and any study results, is recorded in the second portion of the database. EPA identifies whether the study evaluates the technology with respect to impingement mortality reduction (or avoidance), entrainment survival, or entrainment exclusion (or avoidance). Some studies address more than one area of concern and are noted accordingly. If provided, EPA records basic biological data used to evaluate the technology. These include target or commercially/recreationally valuable species, species type, life history stage, size, sample size, and raw numbers of impinged and/or entrained organisms. Finally, EPA records any overall conclusions reached by the study, usually presented as a percentage reduction or increase, depending on the area of focus. Identifying this information for each document allows EPA and others to more readily locate

and compare documents addressing similar technologies.

Each document is reviewed according to five areas of data quality where possible: (1) Applicability and utility, (2) soundness, (3) clarity and completeness, (4) uncertainty and variability, and (5) evaluation and review. Because the literature in question comes from many different sources and was developed under widely varying standards, EPA was not able to evaluate all of these criteria for all documents contained in the database.

To date, EPA has collected 148 documents for inclusion in the database. EPA did not exclude any document that addressed technology performance in relation to impingement and entrainment, regardless of the overall quality of the data. Sample questions are included in Exhibit 1 below. The proposed technology database is available in the record (See the document ''Technology Efficacy Database'' in the docket).

EXHIBIT 1.—QUALITY ASSURANCE SAMPLE QUESTIONS

QA Criteria	Sample Questions
Applicability and Utility.	• Does the study address impingement and/or entrainment reduction? • Does the study evaluate a technology (or technologies) in situ or against performance data from another source? • Does the study include biological data?
Soundness	• Does the study detail the CWIS configuration at the time of the study? • Are SOPs for sampling and testing included? • Is some measure of before and after biological data included? • Are O&M procedures described for the test period?
Clarity and Completeness.	• Is the sampling method clearly described? • Is a complete biological data set included? • Are results clearly and completely documented?
Uncertainty and Variability.	• Does the study identify potential uncertainties or mitigating factors such as those due to environmental conditions?
Evaluation and Review.	• What is the source of the document? • Is the document a primary study? • Has the document been peer reviewed? • Was the purpose of the study to evaluate the performance of a specific technology?

EPA is seeking comment on the applicability, quality, and quantity of the information and analyses in this database upon which EPA is relying. More specifically, EPA requests comment on whether these data are of sufficient quantity and quality to support the determination that the proposed performance standards are best technology available and that the existing facilities can meet these standards by implementing design and construction technologies either singly or in conjunction with other design and construction technologies (including operational and restoration measures). In addition, EPA requests comment on limitations of the data and identification of other relevant information available to be included in this database. Based on a preliminary review of the available data, the Agency continues to believe that an 80–95% reduction in impingement mortality and a 60–90% reduction in entrainment are achievable.

B. Streamlined Technology Option for Certain Locations

EPA received a number of comments expressing concern that the proposed Comprehensive Demonstration Study requirements at § 125.95(b) would impose a significant burden on permit applicants. As proposed, the Comprehensive Demonstration Study would have as many as seven different components: (1) A Proposal for Information Collection, (2) Source Waterbody Flow Information; (3) an Impingement Mortality and Entrainment Characterization Study; (4) a Design and Construction Technology Plan; (5) Information to Support any Proposed Restoration Measures; (6) Information to Support Site-Specific Determination of Best Technology Available for Minimizing Adverse Environmental Impact; and (7) a Verification Monitoring Plan.[20] The proposed Comprehensive Demonstration Study requirement would allow a permit applicant to either identify and compile available existing data, or to perform new site-specific studies to characterize the waterbody within the influence of the cooling water intake structure and the efficacy of proposed technologies.

Some commenters suggested that EPA provide an additional, more streamlined compliance option under which a facility could implement certain specified technologies that are deemed highly protective in exchange for not having to perform, or greatly reducing the scope of, the proposed Comprehensive Demonstration Study required at § 125.95(b). In response to these comments EPA is considering, and invites the public to comment on two variations of a streamlined compliance option that would reduce the information collection burden imposed on permit applicants.

Under the first variation, EPA would evaluate the effectiveness of specific technologies using the impingement mortality and entrainment performance standards specified in the proposed rule as assessment criteria. Specifically, EPA would require that the demonstrated efficacy of the control technology would at least reduce impingement mortality by 80 to 95 percent for fish and shellfish. If it was also to be used by facilities with an additional requirement to reduce entrainment by 60 to 90 percent for all life stages of fish and shellfish, then EPA would ensure that the technology would also satisfy this requirement. Evaluation of the level of impingement mortality or entrainment reduction would be based on review and analysis of available data, studies, and literature. The Agency also would assess the conditions where such technologies are effective (*e.g.*, location, whether a technology reduces impingement or entrainment or both, flow, velocity, species, life stage, etc.). If, based on such an assessment, the Agency identifies technologies that are sufficiently protective and for which applicability conditions can be defined, EPA would promulgate regulations (either as part of the 316(b) Phase II rule or at some later date) that allow for their use as a means of complying with Phase II section 316(b) requirements.

EPA is in the process of assessing this option and has not completed a comprehensive review of control technology efficacy data for the purpose of identifying and delineating technologies that might qualify under this option. However, the efficacy data

[20] Information to support the use of restoration measures and/or the use of site-specific determinations would be required to be collected and submitted only by permit applicants that choose to use restoration measures or demonstrate that a site-specific determination of best technology available is appropriate for their facility.

currently available to EPA do seem to support the use of a streamlined technology option for certain limited locations. Such a technology would be used to treat the entire cooling water intake flow and would not be used in combination with restoration measures to meet the performance standards. EPA is considering whether the following technology operated in the following locations would qualify for streamlined application requirements:

Use of submerged wedge-wire screens where the cooling water intake structure is located in a freshwater river or stream, sustained countercurrents exist to promote cleaning of the screen face, and the design intake velocity is 0.5 feet per second (ft/s) or less.

EPA believes that sufficient data exist in the record to demonstrate that all facilities that meet the criteria (*e.g.*, cooling water intake structure is located in a freshwater river or stream, facility proposes to use wedge-wire screen technology only, technology has a design intake velocity of 0.5 ft/s or less, and sustained countercurrents exist) and employ this technology would meet both the impingement mortality and entrainment reduction performance standards and that the record would thus justify limiting the amount of site-specific information required to be collected to support the use of this technology in freshwater systems (See DCN 1–3075, 1–5069, 1–5070, 3–0002, and 4–4002B). Facilities that choose to comply under this compliance option would still be required to meet the proportional flow standards in § 125.94(b)(2), (3), or (4).

At a minimum, the permitting authority would require each facility applying to use this technology to provide documentation that the facility's cooling water intake meets the applicability conditions specified for the technology and that, once installed, the facility will properly operate and maintain the technology. In addition, at a minimum, monitoring would be required as necessary to verify that the technology is in fact achieving an acceptable level of performance.

Under the second variation of this option, the Phase II regulations would establish the criteria and process for approving cooling water intake structure control technologies, but would allow the approval process to be carried out by the Director, perhaps with EPA oversight or approval. Under this option, the rule would define the criteria that a control technology must meet to be approved, and the process for approval. The criteria would focus on reducing impingement mortality and/or entrainment levels consistent with the proposed performance standards (see § 125.94), as appropriate under specified conditions. This option would also specify the data requirements and process required to have a control technology approved. Under the option, the requisite data would be submitted to the Director who would determine whether the technology satisfied the applicable performance criteria. If so, the technology would be approved for use by any eligible facility (*i.e.*, any facility that meets the applicability criteria) under the jurisdiction of the Director. The Director's draft determinations would likely be published and an opportunity for public comment would be provided. The Director would then modify the State's implementing regulations to include the other technology as one eligible for a streamlined comprehensive demonstration study. This option could create an incentive for the regulated community to develop and document both existing and new innovative technologies to reduce cooling water structure impacts.

The two variations are not mutually exclusive. If EPA implemented both, it might adopt regulatory language similar to that provided below as a new § 125.94(a)(4). Note that 4(i) corresponds to the first approach and 4(ii) to the second.

(4)(i) You may demonstrate to the Director that your Phase II existing facility meets the conditions in (A), (B) and (C), and you will properly install, operate, and maintain submerged wedge-wire screen technology;

(A) Your cooling water intake structure is located in a freshwater river or stream;

(B) Your cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face; and

(C) Your design intake velocity is 0.5 ft/s or less.

(ii) Any interested person may submit a request that a technology be approved for use under the compliance option in § 125.94(a)(4). If the Director approves, the technology may be used with compliance option § 125.94(a)(4) by all facilities under their jurisdiction. Requests for alternative technologies for compliance under § 125.94(a)(4) must be submitted to the Director and include the information in paragraphs (A), (B), and (C) below:

(A) A detailed description of the technology;

(B) A list of design criteria for the technology and site characteristics and conditions that each facility must posses in order to ensure that the technology can consistently meet the appropriate impingement mortality and entrainment performance standards in § 125.94(b); and

(C) Information and data sufficient to demonstrate that all facilities under the jurisdiction of the Director can meet the applicable impingement mortality and entrainment performance standards in § 125.94(b) if the applicable design criteria and site characteristics and conditions are present at the facility.

Another paragraph could be added as § 125.95(c) that would establish the streamlined information collection requirements for the new compliance option at § 125.94(a)(4). The language might read as follows:

(c) You must submit to the director the application information required by 40 CFR 122.21(r)(2), (3), and (5) and the Verification Monitoring Plan in 125.95(b)(7).

Both options discussed above pose several implementation issues. There is the question of how, and on what basis, should technology effectiveness be assessed? Because each control technology is being assessed in a general context (*i.e.*, not as applied to a specific facility, but as applied in specified conditions), it is not clear that an appropriate baseline can be established. Thus, EPA is considering using available data, studies, and literature to establish the performance levels of specific control technologies. Such an approach presents additional issues, such as which data are of sufficient quality to be considered, how much data are needed to make a national determination, whether actual data or modeled data suffice, and whether sufficient data exist to pursue such an approach. Another issue is determining what factors beyond impingement mortality and entrainment reduction efficacy are most critical to determining when a specific control technology can be used effectively. As noted above, many factors influence control technology efficacy. Additionally, EPA would have to determine how broadly applicable a technology must be before it could qualify as ''pre-approved.'' Finally, where a facility plans to implement an approved technology, EPA expects that Directors would retain discretion to impose permit conditions necessary to ensure the technology meets applicable standards, as well as the ability to add permit conditions as necessary to ensure all Phase II existing facilities that pursue this compliance option meet section 316(b) standards.

EPA requests comment on both variations of this option for Phase II section 316(b) compliance. The Agency is interested in comments on the overall approach, as well as on the specific issues each option presents, as discussed above. In addition, EPA is

interested in comments on the criteria used to determine eligibility for the streamlined technology option presented above, the availability of data needed to make technology determinations in general, as well as in receiving actual data that may support such determinations.

VIII. Cost Tests

Under the proposed rule, a facility may choose a site-specific alternative to demonstrate use of best technology available for minimizing adverse environmental impact at its site. If a facility chooses this alternative, the facility must demonstrate to the Director that the costs of compliance with the applicable performance standards would be ''significantly greater'' than the costs considered by the Administrator when establishing the performance standards, or that costs would be ''significantly greater'' than the benefits of complying with the applicable performance standards at its site. As discussed in the proposed rule, EPA's new facility rule required costs to be ''wholly out of proportion'' to the costs EPA considered when establishing the requirement at issue rather than ''significantly greater'' as proposed for existing facilities (see 67 FR 17146). This difference in standards for new and existing facilities is based on (1) the greater flexibility available to new facilities for selecting the location of their intakes and installing technologies at lower costs relative to the costs associated with retrofitting existing facilities and (2) the desire to avoid economically impracticable impacts on energy prices, production costs, and energy production that could occur if large numbers of Phase II existing facilities incurred costs that were more than ''significantly greater'' than but not ''wholly out of proportion'' to the costs in EPA's record. At proposal, EPA invited comment on whether a ''significantly greater'' cost test was appropriate for evaluating requests for alternative requirements by Phase II existing facilities but did not specify what degree of difference in cost or cost as compared to benefit is ''significant''. Many commenters requested that ''significantly'' be explicitly defined for the purposes of this rulemaking.

At this time, EPA requests comment on whether the Agency should adopt a quantitative definition of ''significantly greater,'' and if so, what specific ratio would be appropriate.

IX. Biology—Supporting Information

A. Entrainment Survival

Following publication of the proposed rule, EPA reviewed an additional 23 facility reports that evaluated entrainment survival. To date, EPA has reviewed a total of 36 entrainment survival studies. The additional facility studies examined by EPA after publication of the proposed rule include studies from the following facilities: Anclote Power Plant, Bergum Power Station, Bowline Point Generating Station, Connecticut Yankee Atomic Power Company, Contra Costa Power Plant, Danskammer Point Generating Station, Fort Calhoun Nuclear Station, Ginna Generating Station, Indian Point Generating Station, Muskingum River Plant, Northport Generating Station, Pittsburg Power Plant, and Roseton Generating Station.

Based on its review, EPA believes that the entrainment survival studies support the use of a default assumption of zero percent survival in the benefits assessment. The studies reviewed are characterized by significant uncertainty and variability which complicates efforts to synthesize the various results in a manner that would provide useful generalizations of the results or application to other particular facilities. The primary issue with regard to these studies is whether the results can support a defensible estimate of survival substantially different from the value of zero percent survival assumed by EPA. The review of the studies has shown that while some individual organisms may be alive in the discharge samples, the proportion of the organisms that are alive in the samples is highly variable and unpredictable. The current state of knowledge would not support reliable predictions of entrainment survival for the range of species, life stages, regions, and facilities involved in EPA's national benefits estimates. Therefore, EPA believes that the reported results do not provide a clear indication as to the extent of entrainment survival above zero percent to be used as a defensible assumption to calculate national benefits for this rule. EPA requests comment on this issue.

The revised version of Chapter A7: Entrainment Survival from the Case Study Analysis for the Section 316(b) Phase II Existing Facilities Rule provides more detailed information on the scientific basis for this position and has been added to the docket. EPA plans to conduct a formal, external peer review of this document prior to the final rule, and results from the peer review will be added to the docket when complete.

As at proposal, EPA notes that the proposed rule language does not preclude the use of estimates of entrainment mortality and survival when presenting a fair estimation of the monetary benefits achieved through the installation of the best technology available, instead of assuming 100 percent entrainment mortality. In EPA's view, estimates of entrainment mortality and survival used for this purpose should be based on sound scientific studies. EPA believes such studies should address times of both full facility capacity and peak abundance of entrained organisms. EPA requests comment on whether it is appropriate to allow consideration of entrainment mortality and survival in benefit estimates, and if so, should EPA set minimum data quality objectives and standards for a study of entrainment mortality and survival used to support a site-specific determination of best technology available for minimizing adverse environmental impact. EPA also requests comment on how an applicant can design and implement an entrainment mortality and survival study to properly account for those organisms which may disintegrate upon passage through a facility. EPA may decide to specify data quality objectives and standards either in the final rule language or through guidance.

B. Restoration

Restoration projects, when successful, can recreate otherwise lost natural resources. The Agency proposed in § 125.94(d) (67 FR 17221) that a facility may implement restoration measures in lieu of or in combination with reductions in impingement mortality and entrainment upon demonstration to the Director that such efforts will maintain fish and shellfish in the waterbody, including the community structure and function, at a level comparable to that which would be achieved through compliance with standards proposed in §§ 125.94(b) and (c) (67 FR 17221).

The Agency believes restoration projects have the potential to mitigate harm to fish and shellfish from cooling water intake structures. However, careful execution of these projects is vital to their successful use (see ''Note to Docket on Restoration Information Sources.'') Use of good practices drawn from historical experiences with restoration increases the probability of restoration project success, and therefore, reduces environmental and compliance costs associated with project failure. Therefore, EPA is considering requiring the following

practices during the development of restoration projects:

- Documentation of sources and magnitude of uncertainty in expected restoration project performance
- Creation and implementation of an adaptive management plan
- Use of an independent peer review to evaluate restoration proposals

These practices are described in greater detail below. This discussion supplements the discussions and requirements for restoration found in the Phase II proposal.

1. Documentation of Sources and Magnitude of Uncertainty

A clear and thorough documentation of the sources and nature of uncertainty in predictions of a project's ability to meet performance targets is vital to fully evaluating the capabilities of a project and subsequently taking, as necessary, the appropriate steps to prevent or compensate for potential performance shortfalls. Restoration projects in particular require careful documentation because of the uncertainties found in the current state of the art. Documentation of uncertainty must be quantitative wherever possible, qualitative otherwise, and make use of sound statistical techniques. The Agency is considering requiring permittees to submit documentation of uncertainty as part of the information required under proposed § 125.95(b)(5).

Because of the complexity and evolving nature of restoration projects as an environmental management tool, most will have several areas of uncertainty in descriptions of their performance. These areas may include project organism productivity, time lag before full productivity, and comparison of compensatory project performance with adverse environmental impact measurements, among others. The Agency solicits comment on these and other areas of uncertainty in restoration projects and on appropriate methods for their characterization. Sample regulatory language is offered below (new language is in italic):

Add to Section 125.95(b)(5):

(ii) A quantification of the combined benefits from implementing design and construction technologies, operational measures and/or restoration measures and the proportion of the benefits that can be attributed to each. This quantification must include: the percent reduction in impingement mortality and entrainment that would be achieved through the use of any design and construction technologies or operational measures you have selected (i.e., the benefits you would achieve through impingement and entrainment reduction); a demonstration of the benefits that could be attributed to the restoration measures you have selected; a demonstration that the combined benefits of design and construction technologies, operational measures, and/or restoration measures will maintain fish and shellfish at a level comparable to that which would be achieved under § 125.94. If it is not possible to demonstrate quantitatively that restoration measures such as creation of new habitats to serve as spawning or nursery areas or establishment of riparian buffers will achieve comparable performance, you may make a qualitative demonstration that such measures will maintain fish and shellfish in the waterbody at a level substantially similar to that which would be achieved under § 125.94. *To the extent that restoration measures are relied upon, the documentation should include a discussion, and quantification where feasible, of uncertainty associated with the implementation and results of these measures.*

2. Adaptive Management

Under adaptive management, an approach is chosen to address a problem and its effectiveness monitored during its implementation. Information from this monitoring is then used to make adjustments, as necessary, to the approach. Adaptive management is a particularly useful method when the outcome of a chosen approach is uncertain. Because of the uncertainty and evolving nature of restoration projects as an environmental management tool, the Agency is considering requiring permittees who choose to utilize restoration projects to create and implement an adaptive management plan. Permittees would submit this plan to the Director as part of the information required under § 125.95(b)(5).

The adaptive management plan would outline, to the extent possible, the actions a permittee would take should monitoring of project performance indicate deviation of performance from acceptable levels. The plan would describe, quantitatively where possible, the performance levels at which project adjustment would be necessary.

The adaptive management process relies heavily on adequate performance measurement methods and metrics to alert project managers to project deviations from expected performance levels or to indicate that a project is meeting performance goals. It is important for these reasons that project planners choose performance metrics that reflect attainment of project goals (i.e., maintenance of fish and shellfish levels in a waterbody) as accurately and directly as possible. Proxy measurement methods should be used with adequate caution. Project planners should also, where feasible, monitor for information useful for making corrections, as needed, in a project's performance. The Agency is considering requiring that permittees would stipulate performance measurement methods and metrics in their monitoring plan. (See proposed § 125.95(b)(7) (67 FR 17178, 17224)). Sample regulatory language is offered below (new language is in italic):

Add to § 125.95(b)(5):

(iii) A plan *utilizing the adaptive management method* for implementing and maintaining the efficacy of the restoration measures you have selected and supporting documentation to show that the restoration measures, or the restoration measures in combination with design and construction technology(is) and operational measures, will maintain the fish and shellfish in the waterbody, including the community structure and function, to a level comparable or substantially similar to that which would be achieved through § 125.94(b) or (c).

EPA requests comment on requiring an adaptive management plan for restoration projects.

3. Independent Peer Review

One challenge of successful restoration planning is the coordination of information from a large number of scientific disciplines, particularly hydrology, landscape ecology, and organismal biology. The Agency believes a thorough, multi-disciplinary review of restoration proposals would help to ensure their quality and therefore maximize the probability of project success. The Agency is concerned, however, that thorough review of restoration proposals may place a significant additional burden on the review capacities of permit writers, the majority of whom are trained primarily in the engineering sciences. To aid permit writers in their review of restoration proposals and to aid permittees in ensuring that the full range of pertinent expertise is brought to bear upon project plans, the Agency is considering requiring that the information a facility develops under proposed §§ 125.95(b)(5) and (7) in support of its restoration plan undergo an independent peer review prior to the plan's submission to the Director. EPA is considering whether a facility should be required to choose the members of the peer review panel in consultation with Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and shellfish potentially affected by the facility cooling water intake structure. The peer reviewers would be scientists who are otherwise independent of the permitting process for the facility and who, as a panel, have the appropriate multi-disciplinary expertise for the review of the restoration proposal. Peer reviewers would be charged with evaluating specific elements of each restoration proposal (*e.g.*, the quantitative or qualitative descriptions of the uncertainty associated with restoration goals and projected outcomes, delays between project initiation and when a restoration program shows measurable success, and the nexus between impingement and entrainment losses and the productivity of the proposed restoration program.). If permittees

decided to combine restoration measures with technologies or operational measures, they would provide peer reviewers, for background information purposes, with access to materials for submission to the Director under proposed §§ 125.95(b)(2)-(4). EPA requests comment on whether adding a peer review requirement may add expense and delay to the permitting process and, if so, what might be the extent of the expense or delay. EPA also requests comment on whether a peer review may result in cost savings by ensuring that restoration projects are effective and cost-effective. If EPA were to add such a requirement, regulatory language might be modified as follows:

Add to Section 125.95(b)(5):

(vi) The final report from an independent peer review of the items you submit under (b)(5)(I), (ii), (iii), (iv), (v), and (b)(7) of this section. You must choose the peer reviewers in consultation with Federal, State, and Tribal fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by your cooling water intake structure.

EPA requests comment on adding such a requirement.

C. Request for Impingement and Entrainment Data

EPA solicits data on additional impingement and entrainment at facilities withdrawing cooling water from surface waters of the U.S. Facilities responding to EPA's questionnaire surveys reported studies of impingement or entrainment at the following water sources: estuary or tidal river, 98 facilities; freshwater stream or river, 201 facilities; the Great Lakes, 20 facilities; lake or reservoir, 74 facilities; ocean, 21 facilities. Despite the large number of facilities reporting studies in freshwater, EPA has received relatively few such studies. To date, EPA has received approximately 20 studies from inland facilities. Thus, EPA especially requests recent impingement and entrainment studies and data for freshwater sources (streams, rivers, lakes, and reservoirs). Please see the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice for technical points of contact to whom studies and/or data may be submitted.

X. National Benefits

A. Case Study Clarifications and Corrections

EPA had numerous lengthy telephone conferences with industry and environmental groups to respond to questions on the cost-benefit analysis presented at proposal. EPA also provided detailed written responses to these questions in a series of memoranda provided to commenters during the summer of 2002. These materials are entitled: ''Appendix 2: Summary of CBI and Non-CBI Facilities from Questionnaires,'' ''Response to UWAG Questions Re: Phase II Proposal Record, Revised December 2, 2002,'' ''Appendix 1: Additional Detail on Extrapolation,'' ''Appendix 3: Tables 1–4,'' ''Response to Riverkeeper Questions Regarding Phase II Proposal Record, Revised July 31, 2002,'' ''Example calculations for national extrapolation,'' ''Responses to Riverkeeper Questions on § 316(b) Phase II Case Study Benefits Analyses,'' ''Responses to PG&E Questions about the § 316(b) Phase II Brayton Point Case Study,'' ''Responses to Riverkeeper Follow-Up Questions on § 316(b) Phase II Case Study Benefits Analyses,'' ''Responses to Riverkeeper Questions on § 316(b) Phase II Case Study Benefits Analyses,'' and ''Responses to Riverkeeper Questions About the § 316(b) Phase II Case Study I&E Analyses.'' The memorandum entitled ''Analytical and Clerical Errors in the § 316(b) Phase II Case Study Document, Preamble, and Economic and Benefits Analysis'' is an additional memorandum that corrects any clerical or analytical errors that were identified subsequent to proposal.

B. Regional Approach to Developing Benefits Estimates

1. Objectives of Regional Approach

In its analysis for section 316(b) Phase II proposal, EPA relied on nine case studies to estimate the potential economic benefits of reduced impingement and entrainment. EPA extrapolated facility-specific estimates to other facilities located on the same waterbody type and summed the results for all waterbody types to obtain national estimates. A number of commenters expressed concern about this method of extrapolation, noting that even within the same water body type, there are important ecological and socioeconomic differences among different regions of the country. For example, commercial and recreational fisheries of Atlantic Coast estuaries are substantially different from those of Pacific Coast estuaries.

To address this concern, EPA has revised the design of its analysis to examine cooling water intake structure impacts at the regional-scale. The regional approach to developing national benefits estimates involves evaluating changes in impingement and entrainment losses and the associated monetary values for improved recreational and commercial catch and nonuse value of these changes in impingement and entrainment, at the regional level. The estimated benefits will then be aggregated across all regions to yield the national benefit estimate. For this analysis, coastal regions are fisheries regions defined by National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS). Freshwater facilities are grouped into either the Great Lakes region or the interior region of the U.S. (The regional approach is further discussed in the document entitled ''Regional Methodology Used in the section 316(b) Phase II Notice of Data Availability.'') EPA believes that these regional definitions are both ecologically and economically meaningful, and offer a better scale of resolution upon which to base estimates of national impacts and benefits.

EPA is proposing this regional analytical approach for this national rulemaking effort, but is not advocating this approach for impact and/or benefits analyses that might be conducted for individual National Pollution Discharge Elimination System (NPDES) permits. At the individual permit level it should be generally necessary to conduct a more detailed, site-specific analysis of the environmental ramifications of the cooling water intake structures governed by the permit in question than is necessary or feasible for this national-level rulemaking analysis. Such a site-specific analysis to support a permit might, for example, consider detailed, species specific information on impingement mortality and entrainment, different factors, or use different approaches in estimating total benefits.

In addition, EPA received a number of comments on the valuation approaches applied to evaluate the proposed rule. In estimating benefits of the proposed rule for each case study, the Agency used several valuation approaches that are the focus of this NODA: (1) Commercial fishery benefits were valued using market data; (2) recreational fishery benefits were valued using both primary research and benefit transfer from other nonmarket valuation studies; (3) nonuse benefits were estimated based on benefits transfer using the ''50 percent rule'' (i.e., 50 percent of use value).

Several commenters posed questions or expressed concern with how the Agency at proposal attempted to convert projected changes in commercial landings into suitable measures of producer and consumer surplus. Most commenters agreed that properly executed benefits transfer is an

appropriate method for valuing nonmarket goods, and they pointed out that original travel cost analysis is one of the most appropriate approaches for estimating recreational use benefits. Most commenters agreed that nonuse values are difficult to estimate. Stated preference methods have been the most commonly used methods for estimating nonuse benefits. With these methods, people are asked through surveys to state their willingness to pay for particular ecological improvements, such as increased protection of aquatic species or habitats with particular attributes. According to these commenters, benefits transfer is the second best approach if conducting an original stated preference study is not feasible. Some commenters recommended that EPA use benefits transfer for valuing improved protection of threatened and endangered species.

EPA notes that there are advantages and disadvantages associated with using stated preference studies to value non-use benefits. On the one hand, there are no other generally accepted methods available for identifying and measuring non-use benefits for a non-market good or service. Benefit transfer methods used for estimating non-use benefits must ultimately rely on stated preference studies that independently assess non-use benefits. On the other hand, there is evidence that stated preference methods can over-estimate or misrepresent values because of a number of difficulties linked to the hypothetical nature of the survey instrument. These difficulties include (1) the absence of a real budget constraint (though survey respondents are often requested to think about their income constraints and purchases prior to stating their preferences), and (2) a frequent focus in the survey instrument on a limited number of resources or amenities to the exclusion of others. However, substantial research has been conducted to show that potential bias associated with hypothetical bids, lack of income constraint consideration, complex amenities, and whole/part complications is often manageable through careful survey design and pretesting, and/or may be accounted for through adjustments to utility-theoretic values derived from stated preference studies (see, *e.g.*, Carson, *et al.*, 1996).

In order to address some of the sources of bias in stated preference studies, a number of ''best practices'' for conducting stated preferences surveys and using them in policy analysis have evolved over the past decade. In 1992, the National Oceanic and Atmospheric Administration convened a panel of economic and survey research experts, who had no vested interest in stated preference methods, to conduct hearings on the validity of the contingent valuation (CV) method (form of stated preference) (FR 58:19, 4601–14, 1993). This panel issued proposed guidelines, consisting of a number of recommendations about survey design and implementation, ''compliance with which would define an ideal CV survey.''

The panel's general guidelines address the following issues: Sample type and size; minimizing nonresponses; use of personal interviews; pretesting for interviewer effects; reporting; careful pretesting of a CV questionnaire; conservative design; elicitation format; referendum format; accurate description of the program or policy; pretesting of photographs; reminder of undamaged substitute commodities; adequate time lapse from the accident; temporal averaging; ''no-answer'' option; yes/no follow-ups; cross-tabulations; checks on understanding and acceptance; alternative expenditure possibilities; deflection of transaction value; steady state or interim losses; present value calculations of interim losses; advance approval; burden of proof; and reliable reference surveys.

The NOAA panel concluded that (1) non-use (referred to by the panel as passive-use) losses are a meaningful component of environmental damages; (2) it is plausible that the results of CV surveys may be variable, sensitive to details of the survey instrument used, and vulnerable to upward bias; (3) under the suggested guidelines and conditions, CV studies convey reliable information—''the more closely the guidelines are followed, the more reliable the result will be. It is not necessary, however, that every single injunction be completely obeyed;'' (4) ''To the extent that the design of CV instruments makes conservative choices * * *, this intrinsic [upward] bias may be offset or even over-corrected;'' and (5) a well-conducted CV survey ''contains information that judges will wish to use, in combination with other evidence, including the testimony of expert witnesses.''

In addition to the guidelines generated by the NOAA panel, The Office of Management and Budget (OMB), in its recent Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations (68 FR 5492, Feb. 3, 2003), comments on the use of stated preference studies as it relates to policy/regulatory analysis. OMB notes that ''the contingent valuation instrument must portray a realistic choice situation for respondents—where the hypothetical choice situation corresponds closely with the policy context to which estimates will be applied.'' (68 Fed. 5519.) OMB also provides specific guidelines for sampling, survey design, transparency and replicability of results, and benefit transfer.

In response to comments, EPA made the following changes to the analysis: (1) Developed original or used available region-specific recreational angler behavior models to estimate recreational fishing benefits from reduced impingement and entrainment; (2) refined its commercial fishery analysis; and (3) developed a revised benefit transfer approach to estimate total value (including nonuse values) of impingement and entrainment losses for commercial, recreational, and forage species. In addition, EPA also carefully examined available evidence concerning total benefits, including use and nonuse values from the surface water valuation studies that are potentially applicable to the section 316(b) regulation. Section E.2 of today's notice summarizes EPA's findings from the review of the surface water valuation studies and outlines further steps in developing an approach for analyzing nonuse value of the aquatic resources affected by impingement and entrainment for the final rule analysis.

In this NODA, EPA presents its regional methodology and use benefits estimates for two regions, Northern California and the North Atlantic. Regional definitions are provided in the following section, followed by a summary of methods and results for commercial and recreational fishing. Discussion of a possible methodology for estimating nonuse benefits and some preliminary results are presented in Section E.

2. Study Regions

The Agency identified eight study regions based on similarities in the physical characteristics of the affected water bodies, aquatic species present in the area, and characteristics of commercial and recreational fishing activities in the area. EPA used NMFS definitions of marine fishery regions to define the six coastal regions. Table X–1 presents these geographic areas and the number of facilities included in each marine fishery region. A total of 124 Phase II facilities are withdrawing water from the nation's estuaries and oceans. Facilities in the Great Lakes region include all those that withdraw water from Lakes Ontario, Erie, Michigan, Huron, and Superior or are located on a waterway with open passage of Great Lakes fishery species to a Great Lake and within 30 miles of the lake. There

are 55 facilities in the Great Lakes Region. The remaining 372 facilities were included in the Interior region of the U.S.

TABLE X–1.—DEFINITION OF COASTAL REGIONS

Region	Geographic area	Number of estuarine facilities	Number of ocean facilities	Total number of facilities
North Atlantic	Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut.	19	2	21
Mid Atlantic	New York, New Jersey, Delaware, Maryland and Virginia	43	1	44
South Atlantic	North Carolina, South Carolina, Georgia, East Florida	13	1	14
Gulf of Mexico	West Florida, Alabama, Missouri, Louisiana, Texas	20	3	23
Northern California	All Counties North of Point Conception	6	2	8
Southern California	All Counties South of Point Conception	2	9	11
Total Number of Estuarine and Ocean Facilities [a].		103	18	121

[a] In addition, there are 3 ocean facilities in Hawaii that are not included in the NMFS-defined regions.

The analysis of direct use benefits for each region proceeds in three steps: (1) Estimating regional impingement and entrainment losses; (2) estimating benefits to recreational anglers from improved fishing opportunities due to reduced impingement and entrainment based on a region-specific valuation function; and (3) estimating benefits from improved commercial fishery yield. The following sections discuss each of these steps in detail.

3. Estimating Regional Impingement and Entrainment Losses

a. Species Groups

For the case studies presented at proposal, EPA conducted species-specific analyses of impingement and entrainment on a facility-specific basis. For the new regional studies, EPA is evaluating species groups comprised of species with similar life histories. Groups are based on family groups or groups used by NMFS for landings data. For example, bay goby, blackeye goby, yellowfin goby, and other gobies are grouped together as ''gobies.'' For the regional studies, EPA evaluated impingement and entrainment rates for such species groups and developed a regional total impingement and entrainment estimate by summing results for each group. An exception was made for species of exceptionally high commercial or recreational value (*e.g.*, striped bass). Such species were evaluated as single species.

Aggregation of species into groups of similar species facilitated parameterization of the fisheries models used by EPA to evaluate facility impingement and entrainment monitoring data. As noted by many commenters and by EPA in the section 316(b) Phase II Case Study Document, life history data are very limited for many of the species that are impinged and entrained. As a result, there are many data gaps for individual species. To overcome this limitation, in its new studies EPA used the available life history data for closely related species to construct a single representative life history for a given species group. For previously completed case studies, EPA used the species-specific life history information that was previously developed and then aggregated impingement and entrainment results for the species within a given group to obtain a group estimate. The document, ''Regional Methodology Used in the section 316(b) Phase II Notice of Data Availability,'' summarizes the regional methodology. The documents, ''Appendix 1: Life History Parameter Values Used to Evaluate I and E in the North Atlantic Region,'' and ''Appendix 2: Life History Parameter Values Used to Evaluate I and E in the Northern California Region,'' provide tables of all of the life history data and data sources used by EPA for the two regional analyses presented in this NODA.

EPA believes that the species group approach is appropriate for the national rulemaking given the many data limitations associated with our lack of knowledge of specific fish life histories, particularly the growth and mortality rates of early life stages. At the individual permit level, more detailed information should be available based on the data collected to support a permit application (see, for example, the proposed permit application requirements at § 122.21 (r) and § 125.95).

b. Impingement and Entrainment Methods

EPA evaluated facility impingement and entrainment monitoring data for all individual fish species with losses over one percent of the facility total. EPA converted annual impingement and entrainment losses for each species group into (1) age 1 equivalents, (2) fishery yield, and (3) biomass production foregone using standard fishery modeling techniques (Ricker, 1975; Hilborn and Walters, 1992; Quinn and Deriso, 1999). Details of these methods are provided in Chapter A5 of Part A of the section 316(b) Phase II Case Study Document, except for the corrections given in the preceding section ''Case Study Corrections and Clarifications'' and the changes noted below. Section A5–4 of Chapter A5 discusses data uncertainties. For all analyses, EPA assumed 100% entrainment mortality based on the analysis of entrainment survival studies presented in Chapter A7 of Part A of the section 316(b) Phase II Case Study Document

(1) Yield Equation

As several commenters pointed out, the equation for yield presented in Chapter A5 of the section 316(b) Phase II Case Study Document, contains a typographical error. The correct equation is:

$$Y_k = \Delta_j \Delta^a L_{jk} S_{ja} W_a (F_a / Z_a) (1 - e^{-Z_a})$$

where:

Y^k = foregone yield (pounds) due to impingement and entrainment losses in year k

L_{jk} = losses of individual fish of stage j in the year k

S_{ja} = cumulative survival fraction from stage j to age a

W_a = average weight (pounds) of fish at age a

F_a = instantaneous annual fishing mortality rate for fish of age a

Z_a = instantaneous annual total mortality rate for fish of age *a*

EPA would like to note that it verified that the correct equation was used for the case study analyses. The error was only in the transcription of the equation in Chapter A5.

(2) Trophic Transfer Rates Used To Model Production Foregone

For the case studies submitted at proposal, EPA used a simple model of trophic structure and trophic transfer efficiency to estimate the yield of harvested species that is lost because of the loss of forage species to impingement and entrainment (see Chapter A5 of Part A of the section 316(b) Phase II Case Study Document for details). The net trophic transfer efficiency in that model was 2.5 percent. Based on additional review of the scientific literature, EPA has modified the model so that the net trophic transfer efficiency is 20 percent. This transfer efficiency is used in natural resource damage assessments involving injuries to fish, as discussed in Reed *et al.* (1994). Although this change in transfer efficiency increases the portion of the total yield attributable to the consumption of forage fish, the net effect is insignificant because the trophic transfer pathway accounts for a very small portion of the total foregone yield.

(3) Impingement and Entrainment Extrapolation

To obtain regional impingement and entrainment estimates, EPA extrapolated losses from facilities with impingement and entrainment data to facilities without data. These results were then summed to obtain a regional total. This analysis was done separately within each region for different water body types (estuaries/tidal rivers, oceans, Great Lakes, inland freshwater rivers and lakes).

Average annual results for facilities with impingement and entrainment data were averaged and extrapolated on the basis of operational flow, in millions of gallons per day (MGD), to facilities without data. The extrapolation method used, by region, is:

(Total losses at case study facilities/ Flow at case study facilities) * Total flow in the region

The flow values used in this calculation have been weighted (weighted flow = average daily flow * weight) using the same facility weights applied in the cost analysis. The purpose of this weighting is to calculate costs and benefits for all 551 in-scope facilities, based on surveys received from 540 facilities.

The regional analyses incorporated data for many more facilities than were evaluated for proposal, and thus improved the basis for EPA's national benefits estimates.

(4) Impingement

In the case studies prepared for proposal, EPA determined that all impinged fish are age 1 because of a lack of data on the actual ages of impinged fish. As several commenters pointed out, this biases estimates low because impinged fish may include older individuals that are closer to harvestable age. This is confirmed by data on the ages of impinged fish presented in studies conducted at Salem (PSEG, 1999) and Millstone (Northeast Utilities Environmental Laboratory, 1992). To address this concern, the current studies relax the assumption that all impinged fish are age 1, and assume instead that the ages of impinged fish are 1 and older, and follow an age distribution that is implied by the associated survival rates. This approach takes into consideration the common observation that relatively few older, larger fish are impinged. The effect of this adjustment is that a higher proportion of impinged fish are assumed to survive until harvest. As a result of this adjustment, the estimate of foregone yield associated with impingement increases by a factor ranging from about three to ten, depending on a species' age-specific survival rates.

4. Recreational Fishing Benefits

For the final rule analysis, EPA's analysis of recreational fishing benefits from reduced impingement and entrainment will be based on region-specific models of recreational anglers' behavior for seven of the eight study regions: North Atlantic, Mid-Atlantic, South Atlantic, Gulf of Mexico, Northern California, Southern California, and Great Lakes. EPA's analysis of benefits for the interior U.S. region will combine an original random utility model (RUM) for the Ohio River and a benefit transfer approach for other rivers, lakes, and reservoirs affected by impingement and entrainment. Additional detail on the methods EPA will use throughout the recreational benefits analysis are provided in DCN 5–1008 and DCN 5–1009. These methods are similar to the methods used for the Delaware Bay, Tampa Bay, and Ohio River case study analyses, but EPA developed the travel coast models at the regional levels.

For the NODA, EPA developed recreational anglers' behavior models for three of the six coastal regions including Northern and Southern California and the Mid-Atlantic. Today's notice presents results only for the Northern California Region because impingement and entrainment data are not available for the Mid-Atlantic and Southern California regions at this time. For the final rule analysis, the Agency intends to expand the Tampa Bay case study used in the proposed rule analysis to include the whole Gulf of Mexico region and to develop an original travel coast model for the Great Lakes region. For the South Atlantic EPA is considering using the recreational anglers' behavior models developed by NMFS. The NMFS model is appropriate for benefit function transfer for the North Atlantic region, because it estimates region-specific values for the most important species affected by impingement and entrainment (*e.g.*, winter flounder). The Agency will further assess the applicability of the South Atlantic NMFS model for estimating benefits from reduced impingement and entrainment in the South Atlantic region when impingement and entrainment data for this region become available. If necessary, EPA will estimate a recreational behavior model for the South Atlantic region to support valuation of the most important species affected by impingement and entrainment in this region.

The regional recreational fishing studies use information on recreational anglers' behavior to infer anglers' economic value for the quality of fishing in the case study areas. The model's main assumption is that anglers will get greater satisfaction, and thus greater economic value, from sites where the catch rate is higher due to reduced impingement and entrainment, all else being equal. This benefit may occur in two ways: First, an angler may get greater enjoyment from a given fishing trip when catch rates are higher, and thus get a greater value per trip; second, anglers may take more fishing trips when catch rates are higher, resulting in greater overall value for fishing in the region.

EPA will rely on the following primary data sources in the regional analyses of recreational fishing benefits:

- For the six coastal regions, EPA intends to use the NMFS Marine Recreational Fishing Statistics Survey (MRFSS) combined with the Add-On MRFSS Economic Survey (AMES) (NMFS, 1994; 1997; 2000);
- For the Great Lakes region the Agency is considering using the 1995 Michigan Recreational Anglers survey to develop a RUM model. The Agency will

apply estimated values from Michigan sites to Great Lakes sites in other affected states. To transfer values from the Michigan study to other Great Lakes states, EPA is considering using information from state-level anglers' surveys on recreational fishing participation, targeted species, and site-specific catch rates at Great Lakes recreational fishing sites.

• For the interior U.S. region, the Agency is also considering using the 2000 National Survey of Recreation and Environment and the National Survey of Fishing, Hunting and Wildlife-Associated Recreation (U.S. Fish and Wildlife Service, 1996; 2001) to estimate the value of recreational fishery losses from impingement and entrainment at cooling water intake structures located on rivers, lakes, and reservoirs. DCN 5–1310 and DCN 5–1311 provide further information on these data sources.

These data sets provide information on where anglers fish, what fish they catch, and their personal characteristics. When anglers choose among fishing sites they reveal information about their preferences.

The Agency uses standard assumptions and specifications of the RUM model that are readily available in the recreation demand literature. Among these assumptions are that anglers choose a fishing mode and then the site at which to fish; and that anglers' choice of target species is exogenous to the model. EPA modeled an angler's decision to visit a site as a function of site-specific cost, fishing trip quality, and additional site attributes such as presence of boat launching facilities at the site.

The Agency uses the 5-year historical catch rates per hour of fishing as a measure of fishing quality in the case studies. Catch rate is one of the most important attributes of a fishing site from the angler's perspective. This attribute is also a policy variable of concern because catch rate is a function of fish abundance, which may be affected by fish mortality caused by impingement and entrainment.

The Agency uses the estimated model coefficients in conjunction with the estimated impingement and entrainment losses at the cooling water intake structures located in the relevant region to estimate per trip welfare losses from impingement and entrainment to recreational anglers.

The random utility models generate welfare measures for changes in catch rates on a per trip basis. To capture the effect of changes in catch rates on the number of fishing trips taken per recreational season, EPA will combine regional RUM models and a trip frequency model.[21] The trip frequency model estimates the number of trips that an angler will take annually. The Agency is considering developing trip frequency models for those regions for which sufficient data on anglers' socioeconomic characteristics are available. For the proposed rule analysis, the Agency developed trip frequency models for the three case studies used in the proposed rule analysis—Delaware Estuary, Tampa Bay, and the Ohio River. For the final rule analysis, the Agency will re-estimate these models to include all recreational anglers in a given region. The Agency also plans to estimate trip frequency models for the Great Lakes, North Atlantic, and South Atlantic regions for the final rule analysis. EPA will not estimate trip frequency models for the Northern and Southern California regions due to the lack of socioeconomic data for these regions. The Agency will use an average percentage increase in trip frequency from other regions to approximate changes in trip frequency for the Northern and Southern California regions due to improved fishing opportunities. However, in the regions where changes in trip participation can be calculated for the proposed rule, the increase in the number of trips was very small.

To estimate the economic value to recreational anglers of changes in catch rates resulting from changes in impingement and entrainment in a given region, EPA combines fishing participation estimates for a given region with the estimated per trip welfare gain (loss) under each policy scenario. The welfare estimates presented in the following sections are based on the estimates of baseline recreational fishing participation provided by NMFS. Thus, welfare estimates presented in today's notice do not account for changes in recreational fishing participation due to improved quality of the fishing sites, but these changes are likely to be small.

5. Commercial Fishing Benefits Methods

EPA will estimate the commercial fishing benefits expected under the final Phase II regulation for each region in the final analysis: the North Atlantic, Mid-Atlantic, South Atlantic, Gulf of Mexico, Northern California, Southern California, and Great Lakes. Additional detail on the regions is provided above. Additional detail on the methods EPA uses for this NODA and additional methods EPA is considering are provided in ''Chapter A13: Methods For Estimating Commercial Fishing Benefits'' that accompanies this NODA. These methods are similar to the methods used for the analysis for the proposed rule, but EPA has made some changes and clarification to these methods as indicated in the following steps.

1. *Estimate losses to commercial harvest (in pounds of fish) attributable to impingement and entrainment under current conditions.* EPA models these losses using the methods presented in Chapter A5 of Part A of the section 316(b) Phase II Case Study Document. Changes in these methods for the NODA and subsequent analyses are provided in the preceding sections ''Case Study Corrections and Clarifications'' and ''Impingement and Entrainment Methods.'' The basic approach is to assume linearity between stock and harvest, such that if, for example, 10% of the current commercially targeted stock is harvested, then 10% of any increase in stock due to this rule would be harvested.

2. *Estimate gross revenue of lost commercial catch.* The approach EPA uses to estimate the value of the commercial catch lost due to impingement and entrainment relies upon landings and dockside price ($/lb) as reported by NMFS for the period 1991–2001. These data are used to estimate the revenue of the lost commercial harvest under current conditions (*i.e.*, the increase in gross revenue that would be expected if all impingement and entrainment impacts were eliminated). Note that EPA currently assumes current prices when estimating changes in gross revenue, however, EPA will explore options for predicting new prices (*e.g.*, based on available elasticities), and solicits comment on the availability of information or data to assist in this matter.

3. *Estimate lost economic surplus.* The conceptually suitable measure of benefits is the sum of any changes in producer and consumer surplus. As detailed in ''Chapter A13: Methods For Estimating Commercial Fishing Benefits'' that accompanies this NODA, the methods used for estimating the change in surplus depends on whether the physical impact on the commercial fishery market appears sufficiently small such that it is reasonable to assume there will be no appreciable price changes in the markets for the impacted fisheries.

3a. *Estimate lost surplus when no change in price anticipated.* For the 2 regions analyzed to date by EPA, it is reasonable to assume no change in

[21] The trip frequency model is also called a trip participation model.

price, which implies that the welfare change is limited to changes in producer surplus. As described in ''Chapter A13: Methods For Estimating Commercial Fishing Benefits,'' this change in producer surplus is currently assumed to be equivalent to a portion of the change in gross revenues, as developed under step 2. Currently, EPA is using a range of 0% to 40% of the gross revenue losses estimated in step 2 as a means of estimating the change in producer surplus. This is based upon a review of empirical literature (restricted to only those studies that compared producer surplus to gross revenue) and is consistent with recommendations made in comments on the EPA analysis at proposal. This represents a change from the analysis for the proposed rule, which assumed a range of 40% to 70%.

EPA will continue to review this approach for the final analysis. In particular, EPA believes this is a conservative approach to estimating producer surplus when there are no anticipated price changes, because it does not account for shifts in marginal cost curves. If greater abundance of fish is assumed to imply that the same quantity of fish can be caught (*i.e.,* no change in managed quota) at a lower cost, then these cost savings may be over or underestimated using this method, depending on the slope and magnitude of shift of the marginal cost curve for harvesters. If a management council increases the optimal quota to account for greater stock size (and the cost of harvesting fish again decreases), then it is possible that the corresponding increase in producer surplus is equal to or greater than 100% of gross revenue change. EPA solicits comment on these approaches for assessing producer surplus.

3b. *Estimate economic surplus if a change in price anticipated.* EPA currently relies on the methodology in Step 9a above for estimating benefits for the two regional examples in this NODA, but EPA will explore alternative methods if changes in price are anticipated. As described in ''Chapter A13: Methods For Estimating Commercial Fishing Benefits'' that accompanies this NODA, if the impact on commercial fisheries in other regions analyzed for the final regulation are sufficiently large that a change in market prices becomes a likely outcome, then a more complex approach may be considered by the Agency. This approach would include estimates of consumer and other post harvest surplus, plus any net change in producer surplus (noting that one of the important aspects would be to net out potential transfers of surplus from producers to consumers, so as to avoid potential double-counting). This analysis would be conducted primarily to determine the distribution of surplus between consumers and producers. Joint estimation of consumer and producer surplus can lead to potential double counting as follows. If no price change is assumed when estimating gross revenue in step 2 above, then, theoretically, there is no consumer surplus. If however, change in gross revenue in Step 2 is based on a predicted price decrease, then change in producer surplus is not capturing changes in consumer surplus, assuming transfers on infra-marginal production are netted out.

EPA anticipates that the net change in producer surplus result can be added to consumer and post-harvest surplus estimated in the manner outlined by Bishop and Holt (2003). The work to date by Dr. Richard Bishop of the University of Wisconsin-Madison and Dr. Matthew Holt of North Carolina State University suggests that for the fishery markets they have studied, the percent change in consumer and post-harvest surplus roughly equals the percent change in gross revenue (as estimated in step 2), and this result may be refined in light of their recommendations and future work by EPA. EPA recognizes, however, that it would not be appropriate to add this change to an independently estimated change in producer surplus that already captures part or all of potential consumer surplus.

EPA will continue to review this approach for the final analysis, and in particular is examining and soliciting comment on using empirical information from the literature to (1) estimate price change for revenue calculations and netting out surplus transfers, (2) adjust existing estimates of normal profit so that they might better reflect the more suitable measure of producer surplus, (3) model changes in harvest cost that may result from increased stock size.

In conjunction with this NODA, EPA is asking for comment on the issues and approaches discussed above and as discussed in further detail in ''Chapter A13: Methods For Estimating Commercial Fishing Benefits'' that accompanies this NODA. Specific input is sought regarding assumptions and approaches including: (1) The likelihood that supply curves will shift, thereby creating the context for generating greater net surplus; (2) how best to incorporate fishery management regimes into the analysis; (3) estimates of normal profit and how to interpret them to estimate a more suitable measure of producer surplus; and (4) the likelihood and magnitude of price changes that may result from increased harvest.

6. Discounting Future Use Benefits

Discounting refers to the economic conversion of future benefits and costs to their present values, accounting for the fact that individuals tend to value future outcomes less than comparable near-term outcomes. Discounting is important when benefits and costs may occur in different years, and enables a comparison of benefits to costs across time periods.

For the section 316(b) rulemaking, discounting arises because some fishery benefits are realized a year or more after costs are borne. The issue of time lags between implementation of BTA and resulting increased fishery yields stems from the fact that one or more years may pass between the time an organism is spared impingement and entrainment, and the time of its ultimate harvest. For example, a larval fish spared from entrainment (in effect, at age 0) may be caught by a recreational angler at age 3, meaning that a 3-year time lag arises between the incurred cost of BTA and the realization of the estimated recreational benefit. Likewise, if a 1 year old fish is spared from impingement and is then harvested by a commercial waterman at age 2, there is a 1-year lag between the incurred BTA cost and the subsequent commercial fishery benefit.

At proposal, EPA did not apply any discounting to the beneficial fishery impacts from the reduced impingement and entrainment attributed to regulatory options, and instead assumed a steady state scenario (in effect, applying a discount rate of zero). The Agency approach at proposal was limited by the lack of age-specific monitoring data provided by the industry and the complexity of estimating appropriate species-specific and facility-specific discounting. As discussed above, the Agency also assumed at proposal that all impinged organisms were age 1, which decreased the fishery yield impacts estimated at proposal. For the new regional analysis, EPA will apply discounting by species groups in each regional study, as described below.

Two key factors determine how much the discounting will affect the benefit-cost results: the range of ages at which different types of fish are typically landed by commercial or recreational anglers, and the discount rate applied in the analysis. EPA uses the best available estimates of commercial fishing mortality rates to estimate the proportion of each species group, by age, that is caught annually following

implementation of BTA. This provides an estimate of the time-path of increases in future landings attributable to the rule. EPA discounts these future changes using two discount rates: a real rate of 3% and a real rate of 7%. Additional detail on EPA's discounting methods is provided in the document entitled ''Discounting Commercial and Recreational Fishing Benefits.'' The Agency notes that discounting is applied to recreational and commercial fishing benefits only. Nonuse benefits are independent of fish age and size and, thus, start as soon as impingement and entrainment ceases.

EPA recognizes that, by addressing species groups rather than individual species, potentially important species-specific differences cannot be accounted for. However, the lack of life history data, fishing mortality rates, and other information necessary to calculate foregone yield and other endpoints of interest at the regional and national level makes it necessary to group species in this way.

C. North Atlantic Regional Study

1. *Background: Marine Fisheries of the North Atlantic*

Commercial and recreational fisheries of the North Atlantic Region are managed by the New England Fisheries Management Council (NEFMC) according to Fishery Management Plans (FMP's) developed by NEFMC (NMFS, 2002). The NMFS Northeast Fisheries Science Center provides scientific and technical support for management, conservation, and fisheries development.

The multispecies groundfish fishery is the most valuable commercial fishery of the North Atlantic region, followed by American lobster (Homarus americanus) (NMFS, 1999a). Important groundfish species include Atlantic cod (Gadus morhua), haddock (Melanogrammus aeglefinus), yellowtail flounder (Pleuronectes ferrugineus), windowpane flounder (Scophthalmus aquosus), and winter flounder (Pleuronectes americanus). Atlantic pelagic fisheries are dominated by Atlantic mackerel (Scomber scombrus), Atlantic herring (Clupea harengus), bluefish (Pomatomus saltatrix), and butterfish (Peprilus triacanthus) (NMFS, 1999a). Important recreational fisheries of the region include Atlantic cod, winter flounder, Atlantic mackerel, striped bass (Morone saxatilis), bluefish, and bluefin tuna (Thunnus thynnus) (NMFS, 1999a).

Fifteen groundfish species making up 25 stocks are managed under the Northeast Multispecies FMP of the NEFMC (NMFS, 2002). Table X–2 summarizes the stock status of these species, indicating which stocks are subject to overfishing (the harvest rate exceeds threshold) and which stocks are overfished (stock size is below threshold). Overfishing refers to a level of fishing mortality that jeopardizes the long term capacity of the stock to produce the potential maximum sustainable yield on a continuing basis. In some cases, heavy fishing in the past may have reduced a stock to low abundance, so that it is now considered overfished even though the stock is not currently subject to overfishing.

TABLE X–2.—SUMMARY OF STOCK STATUS FOR HARVESTED SPECIES OF THE NORTH ATLANTIC REGION INCLUDED IN FEDERAL FISHERY MANAGEMENT PLANS

Stock (Species in bold are major stocks, with annual landings over 200,000 pounds)	Overfishing? (Is fishing mortality above threshold?)	Overfished? (Is biomass below threshold?)	Approaching Overfished Condition?
Cod:			
Gulf of Maine	Yes	Rebuilding	No.
Georges Bank	No	Rebuilding	No.
Haddock:			
Gulf of Maine	Yes	Rebuilding	No.
Georges Bank	No	Rebuilding	No.
American Plaice	Yes	No	No.
Redfish (ocean perch)	No	Yes	N/A.
Witch Flounder	No	No	No.
Yellowtail Flounder:			
Georges Bank	No	No	No.
Southern New England	No	Yes	N/A.
Cape Cod	No	Rebuilding	No.
Middle Atlantic	Yes	Yes	N/A.
White Hake	Yes	Yes	N/A.
Pollock	Unknown	Unknown	Unknown.
Ocean Pout	No	Yes	N/A.
Atlantic Halibut	Unknown	Yes	N/A.
Windowpane Flounder:			
Gulf of Maine/Georges Bank	No	No	No.
Southern New England/Middle Atlantic	No	No	Yes.
Winter Flounder:			
Gulf of Maine	Unknown	Undefined	Unknown.
Georges Bank	No	Rebuilding	No.
Southern New England	No	No	No.
Silver Hake:			
Gulf of Maine/Northern Georges Bank	Unknown	Rebuilding	No.
Southern Georges Bank/Middle Atlantic	Unknown	Yes	N/A.
Offshore Hake	Unknown	Unknown	Unknown.
Red Hake:			
Gulf of Maine/Northern Georges Bank	No	No	No.
Southern Georges Bank/Middle Atlantic	No		Unknown.

Source: Table 4 in NMFS (2002).

As indicated in Table X–2, seven of the stocks managed under the Northeast Multispecies FMP are classified as overfished, including redfish (Sebastes spp.), the southern New England and Middle Atlantic stocks of yellowtail flounder, white hake (Urophycis tenuis), ocean pout (Macrozoarces americanus), Atlantic halibut (Hippoglossus hippoglossus), and the Southern Georges Bank stock of silver hake (Merluccius bilinearis). Other stocks are in the process of being rebuilt from levels below the maximum sustainable yield, including the Gulf of Maine and Georges Bank stocks of Atlantic cod and haddock, the Cape Cod stock of yellowtail flounder, the Georges Bank stock of winter flounder, and the Gulf of Maine/Northern Georges Bank stock of silver hake (NMFS, 2002).

Stocks of another 12 North Atlantic species are under the jurisdiction of the Atlantic States Marine Fisheries Commission (ASMFC) and are not included in federal FMPs. These stocks and their status are given in Table X–3.

Offshore fisheries for crustaceans and molluscs, particularly American lobster (Homarus americanus) and sea scallop (Placopecten magellanicus), are among the most valuable fisheries in the Northeast (NMFS, 1999a). Surfclams (Spisula solidissima), ocean quahogs (Arctica islandica), squids (Loligo pealeii and Illex illecebrosus), northern shrimp (Pandalus borealis), and red crab (Chaceon quinquedens) also provide important invertebrate fisheries.

TABLE X–3.—SUMMARY OF STOCK STATUS OF HARVESTED SPECIES OF THE NORTH ATLANTIC REGION UNDER AFSMC JURISDICTION AND NOT INCLUDED IN FEDERAL FISHERY MANAGEMENT PLANS

Stock (species in bold are major stocks, with annual landings over 200,000 pounds)	Overfishing? (fishing mortality above threshold)	Overfished? (stock size below threshold)	Approaching overfished condition?
American Eel	Unknown	Unknown	Unknown
American Lobster	Yes	Undefined	Unknown
Atlantic Croaker	Unknown	Unknown	Unknown
Atlantic Menhaden	No	No	Unknown
Atlantic Sturgeon	No	Yes	N/A
Horseshoe Crab	Unknown	Unknown	Unknown
Northern Shrimp	Yes	Undefined	Unknown
Spot	Unknown	Unknown	Unknown
Spotted Seatrout	Unknown	Unknown	Unknown
Striped Bass	No	No	Unknown
Tautog	Yes	Undefined	Unknown
Weakfish	Undefined	No	No

Source: Table 6 in NMFS (2002).

The Northeast lobster fishery is second in commercial value after the multispecies groundfish fishery. The most recent comprehensive stock assessment, completed in 1996, indicated that lobster fishing mortality rates for both inshore and offshore populations greatly exceed the levels needed to provide maximum yields (NMFS, 1999a). Lobster fishing mortality in the Gulf of Maine was almost double the overfishing level. Inshore from Cape Cod through Long Island Sound fishing mortality was three times the overfishing level.

2. Impingement and Entrainment Results

Table X–4 provides a list of impinged and entrained species for the North Atlantic region that EPA was able to evaluate at the time of the NODA. The life history data used in EPA's analysis and associated data sources are provided in ''Appendix 1: Life History Parameter Values Used to Evaluate I & E in the North Atlantic Region.''

TABLE X–4.—SPECIES GROUPS AND ASSOCIATED SPECIES FOR THE NORTH ATLANTIC REGION

Species	Commercial	Recreational	Forage
Alewife	X		
American fourspot flounder			X
American plaice	X		
American sand lance			X
American shad	X	X	
Atlantic tomcod			X
Atlantic cod	X	X	
Atlantic seasnail			X
Atlantic silverside	X		
Atlantic menhaden	X		
Atlantic mackerel	X	X	
Atlantic herring	X		X
Bay anchovy			X
Blackspotted stickleback			X
Blue mussel	X	X	
Blueback herring	X	X	
Bluefish	X	X	
Butterfish			X
Clearnose skate	X		
Cunner	X	X	
Cusk			X
Fourbeard rockling			X

TABLE X–4.—SPECIES GROUPS AND ASSOCIATED SPECIES FOR THE NORTH ATLANTIC REGION—Continued

Species	Commercial	Recreational	Forage
Fourspine stickleback			X
Grubby sculpin			X
Gulf snailfish			X
Haddock	X		
Hickory shad	X		X
Hogchoker			X
Lined seahorse			X
Little skate	X		
Longhorn sculpin			X
Lumpfish			X
Lumpsucker			X
Moustache sculpin			X
Mummichog			X
Ninespine stickleback			X
Northern kingfish			X
Northern pipefish			X
Northern searobin		X	
Pollock	X	X	
Radiated shanny			X
Rainbow smelt	X	X	
Red hake	X		
Rock gunnel			X
Round herring	X		
Scup	X	X	
Sea raven	X		
Seaboard goby			X
Seahorse			X
Searobin		X	
Shorthorn sculpin			X
Silver hake	X		
Smallmouth flounder			X
Smooth flounder			X
Spot			X
Spotted hake	X		X
Striped bass	X	X	
Striped killifish			X
Striped searobin		X	
Summer flounder			X
Tautog	X	X	
Threespine stickleback			X
Weakfish	X	X	
White hake	X		
White perch	X	X	
Windowpane	X	X	
Winter flounder	X	X	
Witch flounder	X		
Yellowtail flounder	X	X	

Sixteen of a total of 67 distinct species (24%) that are known to be impinged and entrained by facilities of the North Atlantic region are harvested species for which some stock assessment has been conducted. These include several stocks that are currently overfished, stocks that have been overfished and are rebuilding, or stocks that are approaching an overfished condition (Atlantic cod, haddock, silver hake, windowpane flounder, and winter flounder) and stocks for which stock size is uncertain (American lobster, spot, and tautog). Table X–5 summarizes the stock status of the 16 impinged and entrained species of the North Atlantic that are harvested. Note that status is uncertain for nearly half of the stocks listed.

TABLE X–5.—SUMMARY OF STOCK STATUS OF HARVESTED SPECIES OF THE NORTH ATLANTIC REGION THAT ARE IMPINGED AND ENTRAINED

Stock (All are major stocks, with annual landings over 200,000 pounds)	Overfishing? (Is fishing mortality above threshold?)	Overfished? (Is stock size below threshold?)	Approaching overfished condition?
American lobster	Yes	Undefined	Unknown.
American plaice	Yes	No	No.
Atlantic cod-Gulf of Maine	Yes	Rebuilding	No.
Atlantic cod-Georges Bank	No	Rebuilding	No.
Atlantic croaker	Unknown	Unknown	Unknown.
Atlantic haddock-Gulf of Maine	Yes	Rebuilding	No.

TABLE X–5.—SUMMARY OF STOCK STATUS OF HARVESTED SPECIES OF THE NORTH ATLANTIC REGION THAT ARE IMPINGED AND ENTRAINED—Continued

Stock (All are major stocks, with annual landings over 200,000 pounds)	Overfishing? (Is fishing mortality above threshold?)	Overfished? (Is stock size below threshold?)	Approaching overfished condition?
Atlantic haddock-Georges Bank	No	Rebuilding	No.
Atlantic herring	No	No	No.
Atlantic menhaden	No	No	Unknown.
Pollock	Unknown	Unknown	Unknown.
Red hake-Gulf of Maine/Northern Georges Bank	No	No	No.
Red hake-Southern Georges Bank/Middle Atlantic	No		Unknown.
Silver hake-Gulf of Maine/Northern Georges Bank	Unknown	Rebuilding	No.
Silver hake-Southern Georges Bank/Middle Atlantic	Unknown	Yes	N/A.
Spot	Unknown	Unknown	Unknown.
Striped bass	No	No	Unknown.
Tautog	Yes	Undefined	Unknown.
Weakfish	Undefined	No	No.
Windowpane flounder-Gulf of Maine/Georges Bank	No	No	No.
Windowpane flounder-Southern New England/Middle Atlantic	No	No	Yes.
Winter flounder-Gulf of Maine	Unknown	Undefined	Unknown.
Winter flounder-Georges Bank	No	Rebuilding	No.
Winter flounder-Southern New England	No	No	No.

Source: Table 3 in NMFS (2002).

3. Impingement and Entrainment Losses Expressed as Age 1 Equivalents, Foregone Yield, and Production Foregone

At the outset, it should be noted that many of the species for which impingement and entrainment estimates are provided are presently at or near historic low levels of abundance. As a result, EPA's estimates of impingement and entrainment may reflect lower totals than would be produced by healthy populations. With ongoing fisheries management efforts by federal and state government and fisheries management councils designed to increase fish populations, impingement and entrainment numbers may increase in the future. For example, NMFS has spent approximately $150 million in the New England fishing vessel buy-back program to reduce fishing pressure on groundfish stocks. In addition, extensive fishing restrictions, habitat restoration projects, and other efforts are also being carried out to help rebuild groundfish stocks.

Table X–6 provides EPA's estimate of the annual age 1 equivalents, foregone fishery yield, and production foregone resulting from the impingement of aquatic species at facilities located on estuaries/tidal rivers in the North Atlantic Region. Table X–7 displays this information for entrainment. Table X–8 provides EPA's estimate of the annual age 1 equivalents, foregone fishery yield, and biological production foregone resulting from the impingement of aquatic species at ocean facilities in the North Atlantic Region.

TABLE X–6.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL ESTUARY/TIDAL RIVER FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Alewife	164,315	0	15,240
American sand lance	3,288,738	0	9,226
Atlantic cod	19,771	6,506	20,031
Atlantic herring	619	138	161
Atlantic mackerel	121	30	33
Atlantic menhaden	25,320	3,239	6,078
Atlantic silverside	33,187	0	134
Bay anchovy	58,826	0	90
Bluefish	1,118	706	954
Butterfish	9,915	401	900
Cunner	14,593	73	954
Fourbeard rockling	18	0	2
Grubby	48,273	0	11,756
Hogchoker	790,907	0	7,293
Northern pipefish	13,040	0	71
Pollock	525	817	1,601
Radiated shanny	35	0	0
Rainbow smelt	22,041	46	655
Red hake	1,414	306	488
Rock gunnel	435	0	9
Scup	1,030	129	541
Searobin	1,683	99	559
Silver hake	81,196	31,094	81,393
Skate species	4,575	1,000	1,844

TABLE X–6.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL ESTUARY/TIDAL RIVER FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE—Continued

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Striped bass	81	128	234
Striped killifish	7,767	0	202
Tautog	12,435	5,679	22,039
Threespine stickleback	78,481	0	92
Weakfish	10,829	7,882	13,033
White perch	31,126	389	4,079
Windowpane	16,074	1,774	2,881
Winter flounder	572,714	61,802	283,550
Total	5,311,206	122,238	486,124

TABLE X–7.—TOTAL ANNUAL ENTRAINMENT LOSSES FOR ALL ESTUARY/TIDAL RIVER FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Alewife	1,643	0	2,032
American sand lance	2,538,069	0	225,821
Atlantic menhaden	46,389	6,886	429,124
Atlantic silverside	28,589	0	32,912
Bay anchovy	4,399,749	0	5,163,216
Cunner	1,892,973	8,981	153,386
Grubby	3,197,585	0	899,274
Hogchoker	122,044	0	280,069
Rainbow smelt	176,933	1,255	20,408
Scup	1,820	777	16,903
Seaboard goby	5,410,421	0	191,385
Silver hake	6	190	396
Tautog	152,431	67,949	243,253,891
Threespine stickleback	2,332	0	128
Weakfish	1,757	1,265	8,420,351
White perch	0	0	638
Windowpane	26,337	2,705	1,088,284
Winter flounder	8,114,448	876,449	22,039,724
Total	26,113,529	966,457	282,217,941

TABLE X–8.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL OCEAN FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Alewife	19,507	100	3,179
American plaice	0	0	0
American sand lance	4,134	0	111
Atlantic cod	893	311	905
Atlantic herring	36,716	5,119	9,538
Atlantic mackerel	27	13	7
Atlantic menhaden	16,581	5,718	6,611
Atlantic silverside	39,296	22	123
Bay anchovy	147	0	0
Blueback herring	1,457	13	317
Bluefish	98	56	84
Butterfish	775	48	192
Cunner	2,464	15	161
Fourbeard rockling	22	0	2
Grubby	7,745	0	1,886
Hogchoker	33	0	8
Little skate	870	209	351
Lumpfish	910	0	941
Northern pipefish	1,402	0	8
Pollock	2,356	3,485	7,186
Radiated shanny	283	0	3

TABLE X–8.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL OCEAN FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE—Continued

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Rainbow smelt	25,005	190	4,854
Red hake	7,054	1,287	2,434
Rock gunnel	1,883	0	38
Sculpin species	1,704	0	415
Scup	764	154	500
Searobin	234	17	78
Striped bass	581	815	1,679
Striped killifish	458	0	12
Tautog	370	429	1,003
Threespine stickleback	880	0	0
White perch	310	0	12
Windowpane	2,063	181	299
Winter flounder	6,981	2,224	5,375
Total	184,004	20,406	48,312

Table X–9 displays this information for entrainment. In these tables, ''total yield'' includes direct losses of harvested species as well as the yield of harvested species that is lost due to losses of forage species. As discussed in detail in Chapter A5 of Part A of the section 316(b) Phase II Case Study Document, EPA used a simple model of trophic structure and trophic transfer efficiency to estimate the yield of harvested species that is lost because of the loss of forage to impingement and entrainment. The conversion of forage to yield contributes only a very small fraction to total yield.

TABLE X–9.—TOTAL ANNUAL ENTRAINMENT LOSSES FOR ALL OCEAN FACILITIES IN THE NORTH ATLANTIC REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Alewife	0	0	1,119
American plaice	1,388	952	859
American sand lance	4,513,770	0	267,006
Atlantic cod	4,468	2,887	4,827
Atlantic herring	34,143	5,837	20,037
Atlantic mackerel	7,716	1,441	13,253
Atlantic menhaden	8,124	3,729	14,845
Atlantic silverside	5,087	3	600
Bluefish	5	62	13
Butterfish	27	81	10
Cunner	1,177,927	5,584	92,933
Fourbeard rockling	576,339	0	69,754
Grubby	252,098	0	70,899
Lumpfish	6,094	0	36,035
Northern pipefish	782	0	33
Pollock	499	1,050	6,617
Radiated shanny	1,789,347	0	20,033
Rainbow smelt	1,330,867	9,997	386,647
Red hake	2,539	1,005	3,379
Rock gunnel	8,080,717	0	214,957
Sculpin species	764,165	0	214,910
Searobin	3,925	527	1,563
Tautog	882	2,417	2,537
Windowpane	27,575	3,788	5,418
Winter flounder	287,616	92,710	227,283
Total	18,876,100	132,070	1,675,567

4. Recreational Fishing Valuation

As noted above, anglers will get greater satisfaction, and thus greater economic value, from sites where the catch rate is higher, all else being equal. Recreational fishery losses due to impingement and entrainment may reduce recreational catch rates and thus negatively impact angler welfare. To estimate welfare losses to recreational anglers in the North Atlantic region from impingement and entrainment at cooling water intake structures in North Atlantic, the Agency used a model developed by R. Hicks *et al.* (NMFS, August 1999). For details see '' The Economic Value of New England and

Mid-Atlantic Sportfishing in 1994'' provided in DCN 5–1271.

To estimate per trip welfare losses to recreational anglers from impingement and entrainment in the North Atlantic region, the Agency combined the Hicks' model coefficients with the estimated impingement and entrainment losses at cooling water intake structures located in the North Atlantic and NMFS data on recreational landings. The Hicks' model includes three fishing modes—boat, shore, and charter boat—and five species groups—big game, small game, flatfish, bottom fish, and ''no target catch''. The ''no target catch'' group includes all species caught by anglers not targeting any specific fish species. For details on species groupings, see Table 1.3 in the ''The Economic value of New England and Mid-Atlantic Sportfishing in 1994'' report provided in DCN 5–1271. EPA used Hicks' definition of species groups to estimate changes in the average historical catch rate from eliminating impingement and entrainment.

Table X–10 shows the total average recreational landings for each species group, the number of fish impinged and entrained, and the estimated percent change in recreational landings if impingement and entrainment effects are eliminated. Eliminating impingement and entrainment would increase flatfish catch rates by 12.5%; small game catch rates by 0.01%; bottom fish catch rates by 1.05%; and no target catch rates by 1.45%. Table X–10 also shows the reductions in impingement and entrainment losses that would result from installation of the preferred option at each facility in the North Atlantic region, as well as the resulting increases in catch rates. Reductions in baseline impingement and entrainment losses due to the preferred option will result in a 3.64% increase in catch rates for flounders; a 0.23% increase in bottom fish catch rate; and a 0.4% increase in catch rate for no target anglers.

TABLE X–10.—ESTIMATED CHANGE IN THE TOTAL RECREATIONAL CATCH FOR NORTH ATLANTIC UNDER THE BASELINE AND POST-COMPLIANCE SCENARIOS

Species	Avg. total catch 1997–2001	Baseline		Preferred option	
		Total recreational losses from impingement and entrainment	Impingement and entrainment as % of total catch	Change in recreational losses from reduced impingement and entrainment	Reduced impingement and entrainment as % of total catch
Flatfish	2,525,530	315,703	12.50	91,995	3.64
Small Game	15,678,352	1,020	0.01	105	0.00
Bottom Fish	8,869,064	93,111	1.05	20,535	0.23
No Target Catch	28,280,214	409,960	1.45	112,652	0.40

Table X–11 presents the willingness to pay (WTP) values for anglers, regardless of fishing mode, for catching an additional fish per trip. Table X–11 also presents the estimated per trip welfare losses from the baseline impingement and entrainment levels at cooling water intake structures in the North Atlantic region, and the estimated welfare gain from the post-compliance impingement and entrainment reduction. The estimated per trip welfare losses from baseline impingement and entrainment at the cooling water intake structures are $0.34, $0.02, and $0.02 for flatfish, bottom fish, and no target catch, respectively (all in 2002$). Per trip welfare gains from the preferred option are $0.10, $0.005, and $0.004 for flatfish, bottom fish, and no target catch, respectively (all in 2002$). As shown in Table X–11, the greatest welfare gain from reducing impingement and entrainment losses at cooling water intake structures in the North Atlantic region results from improved opportunity for catching flatfish (*i.e.*, flounders).

TABLE X—11.—PER TRIP WELFARE GAIN FROM VARIOUS IMPROVEMENTS IN FISHING QUALITY AT ALL SITES IN NORTH ATLANTIC (2002$)

Species group	All Fishing Modes/All Anglers		
	Eliminating baseline impingement and entrainment losses	Reducing impingement and entrainment under the preferred option	+1 Fish
Big Game	NA	NA	5.90
Small Game	$0.0003	$0.00003	2.53
Flatfish	$0.34	$0.10	3.57
Bottom Fish	$0.02	$0.005	1.06
No Target Catch	$0.02	$0.004	1.66

EPA combined these estimates of per trip welfare change with fishing participation estimates from NMFS to estimate the annual value to recreational anglers of improved catch rates resulting from post-compliance reductions in impingement and entrainment at cooling water intake structures in the North Atlantic. Table X–12 provides the total number of angler days in the North Atlantic.GPOTABLE

TABLE X–12.—TOTAL NORTH ATLANTIC FISHING TRIPS IN 2001

	All fishing modes
Total North Atlantic Trips, 2001	8,084,261

Source: Marine Recreational Fishery Statistics Survey, NMFS, 2001.

EPA calculated total recreational losses to North Atlantic anglers by multiplying the estimated per trip welfare loss from baseline impingement and entrainment for a given species group by the number of recreational fishing trips in 2001. Table X–13 summarizes the results of this calculation. The total value of recreational losses for all species impinged and entrained at the cooling water intake structures in the North Atlantic is $3.1 million per year (2002$), for all anglers before discounting. Discounting the baseline losses at three percent and seven percent yields total recreational losses of $2.6 million, and $2.3 million, respectively, for all anglers (2002$). Table X–13 also presents estimates of the total welfare gain to recreational anglers from the post-compliance impingement and entrainment reduction. The estimated welfare gain from reduction in baseline losses resulting from the preferred option is $0.88 million, before discounting, for all anglers (2002$). Applying the discount factors for three and seven percent yield total losses of $0.76 million and $0.65 million, respectively (2002$).

TABLE X–13.—ESTIMATED ANNUAL WELFARE CHANGE TO RECREATIONAL ANGLERS IN THE NORTH ATLANTIC REGION UNDER THE BASELINE AND POST-COMPLIANCE SCENARIOS (2002$)

Species groups	Total baseline welfare losses			Welfare gain from reduction in baseline impingement and entrainment losses		
	Before discount	Discounted using 3%	Discounted using 7%	Before discounting	Discounted using 3%	Discounted using 7%
Big Game	NA	NA	NA	NA	NA	NA
Small Game	$2,425.28	$1,527.93	$1,358.16	$242.53	$184.32	$169.77
Flat Fish	2,748,648.74	2,418,810.89	2,061,486.56	808,426.10	711,414.97	606,319.58
Bottom Fish	161,685.22	88,926.87	77.608.91	40,421.31	21,019.08	18,189.59
No Target Catch	151,685.22	129,348.18	111,562.80	32,337.04	26,193.01	22,312.56
All Species	3,074,444.46	2,638,613.86	2,252,016.42	881,426.98	758,811.37	646,991.49

5. Commercial Fishing Valuation

Table X–14 provides EPA's estimate of the value of gross revenues lost in commercial fisheries resulting from the impingement of aquatic species in the North Atlantic region. Table X–15 displays this information for entrainment. As described above, EPA estimates that 0 to 40% of these revenue losses represent surplus losses to producers, assuming no change in prices or fishing costs. EPA will refine these assumptions for the final rule.

TABLE X–14A.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT ESTUARY FACILITIES IN THE NORTH ATLANTIC REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Atlantic cod	3,253	$2,928	$2,657	$2,349
Atlantic herring	138	8	7	7
Atlantic mackerel	23	7	6	5
Atlantic menhaden	3,236	153	145	135
Bluefish	77	19	18	16
Butterfish	401	249	244	237
Pollock	409	286	245	203
Rainbow smelt	46	24	23	22
Red hake	305	64	60	56
Scup	64	53	46	40
Searobin	16	33	30	27
Silver hake	31,094	10,496	9,281	7,952
Skate species	1,000	140	131	122
Tautog	443	331	240	159
Weakfish	6,729	5,474	4,926	4,324
White perch	82	92	84	75
Windowpane	1,774	993	925	845
Winter flounder	30,901	39,524	34,738	29,657

TABLE X–14A.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT ESTUARY FACILITIES IN THE NORTH ATLANTIC REGION—Continued

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Total	79,991	60,874	53,806	46,231

TABLE X–14B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT OCEAN FACILITIES IN THE NORTH ATLANTIC REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
American plaice	0	$0	$0	$0
Atlantic cod	156	129	117	104
Atlantic herring	5,113	256	231	204
Atlantic mackerel	10	3	2	2
Atlantic menhaden	5,712	228	216	200
Atlantic silverside	22	12	12	12
Blueback herring	13	1	1	1
Bluefish	6	2	1	1
Butterfish	48	23	22	21
Little skate	208	40	37	34
Pollock	1,743	1,202	1,031	854
Rainbow smelt	189	38	35	32
Red hake	1,285	283	267	248
Scup	77	80	70	60
Searobin	3	6	5	5
Tautog	33	21	19	17
White perch	0	0	0	0
Windowpane	181	103	96	87
Winter flounder	1,112	1,535	1,330	1,114
Total	15,910	3,962	3,492	2,995

TABLE X–15A.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO ENTRAINMENT AT ESTUARY FACILITIES IN THE NORTH ATLANTIC REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Atlantic menhaden	6,878	$326	$299	$267
Rainbow smelt	1,253	244	226	206
Scup	389	315	269	221
Silver hake	190	62	53	44
Tautog	5,299	3,966	2,786	1,779
Weakfish	1,080	806	705	595
White perch	0	0	0	0
Windowpane	2,705	1,514	1,369	1,204
Winter flounder	438,225	560,512	478,280	393,062
Total	456,019	567,746	483,987	397,377

TABLE X–15B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO ENTRAINMENT AT OCEAN FACILITIES IN THE NORTH ATLANTIC REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted Using 3% discount rate	Discounted using 7% discount rate
American plaice	951	$1,142	$957	$770
Atlantic cod	1,444	1,198	1,056	899

TABLE X–15B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO ENTRAINMENT AT OCEAN FACILITIES IN THE NORTH ATLANTIC REGION—Continued

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Atlantic herring	5,831	292	255	217
Atlantic mackerel	1,121	314	280	242
Atlantic menhaden	3,725	149	137	122
Atlantic silverside	3	2	2	2
Bluefish	7	2	2	1
Butterfish	80	38	35	32
Pollock	525	362	302	241
Rainbow smelt	9,987	1,997	1,810	1,599
Red hake	1,004	221	202	181
Searobin	85	174	155	133
Tautog	188	121	106	90
Windowpane	3,788	2,159	1,940	1,692
Winter flounder	46,355	63,970	53,829	43,393
Total	75,094	72,142	61,067	49,613

6. Total Recreational and Commercial Losses From Baseline Impingement and Entrainment in the North Atlantic Region

Table X–16 presents EPA's estimates of total baseline recreational and commercial fishing losses from impingement and entrainment at cooling water intake structures in the North Atlantic region. Total commercial and recreational fishing losses are $3.3 million per year for all species and fishing modes, before discounting. Discounting these total baseline welfare losses by three and seven percent yield total losses of $2.8 million and $2.4 million, respectively.

TABLE X–16.—ESTIMATED DISCOUNTED COMMERCIAL AND RECREATIONAL BASELINE WELFARE LOSSES IN THE NORTH ATLANTIC REGION FROM IMPINGEMENT AND ENTRAINMENT (2002$) [a]

Benefit type	Before discounting	Discounted using 3% discount rate	Discounted using 7% discount rate
Recreational	$3,074,444	$2,638,614	$2,252,016
Commercial [b]	281,889	240,941	198,487
Total	3,356,333	2,879,555	2,450,503

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.

[b] Based on 40 percent of gross revenues, or upper bound of 0–40 percent range assumed to represent producer surplus.

7. Estimated Use Benefits of Proposed Regulatory Option in the North Atlantic Region

Table X–17 presents EPA's estimates of the gain from the post-compliance reduction in impingement and entrainment at cooling water intake structures in the North Atlantic region. The total reduction in commercial and recreational fishing is $ 0.96 million per year for all species and fishing modes, before discounting. Discounting these total reduced welfare losses by three and seven percent yields total losses of $0.83 million and $0.70 million, respectively. These numbers may change for final if additional impingement and entrainment data become available.

TABLE X–17.—ESTIMATED DISCOUNTED COMMERCIAL AND RECREATIONAL REDUCED WELFARE LOSSES IN THE NORTH ATLANTIC REGION FROM IMPINGEMENT AND ENTRAINMENT (2002$) [a]

Benefit type	Expected % reduction	Before discounting	Discounted using 3% discount rate	Discounted using 7% discount rate
Recreational	28.7%	$881,426	$758,811	$646,991
Commercial [b]	29.2	82,222	70,256	57,860
Total	28.7	963,648	829,067	704,851

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.

[b] Based on 40 percent of gross revenues, or upper bound of 0–40 percent range assumed to represent producer surplus.

D. Northern California Regional Study

1. Background: Marine Fisheries of Northern California

The Northern California NMFS region extends from Point Conception north to the Oregon border. The oceanic transition zone off Point Conception creates a natural ecological separation between northern and southern California. North of Point Conception, coastal waters are cold and oceanic conditions are harsh, whereas to the south waters are warmer and conditions are moderate. As a result, the fish species composition differs between the two regions (Leet *et al.*, 2001). Fisheries of the Northern California Region are managed by the Pacific Fishery Management Council (PFMC), which governs commercial and recreational fisheries in federal waters from 3–200 nautical miles off the coasts of Washington, Oregon and California. The NMFS Northwest Fisheries Science Center provides scientific and technical support for management, conservation and fisheries development.

There are 83 species of groundfish included under PFMC's Groundfish FMP, including nearly 50 species of rockfish (Sebastes spp.) (Table 3 in NMFS, 2002). Pacific whiting (Merluccius productus) dominates the commercial catch, accounting for 78% of Pacific Coast landings (NMFS, 1999a). During the 1990's a major fishery developed for nearshore species, including rockfishes, cabezon, and sheephead (Leet *et al.*, 2001). Rockfishes are important for both commercial and recreational fisheries (NMFS, 1999a). In 1994, a limited entry program was implemented for the groundfish fishery due to concerns about overfishing (NMFS, 1999a).

There are five species of anadromous Pacific salmon supporting coastal and freshwater commercial and recreational fisheries along the Pacific Coast, including chinook (Oncorhynchus tshawytscha), coho (O. kisutch), sockeye (O. nerka), pink (O. gorbuscha), and chum (O. keta) salmon (NMFS, 1999a).

Since 1991, NMFS has listed 20 Evolutionary Significant Units (ESU's) [22] of Pacific Coast salmon and steelhead trout (O. mykiss) under the federal Endangered Species Act (ESA) (NMFS, 1999b). In NMF's Northern California region, listed species include steelhead, coho salmon, and chinook salmon of the central California Coast and steelhead and chinook salmon of California's Central Valley.

Ocean fisheries for chinook and coho salmon are managed by the PFMC under the Pacific Coast Salmon FMP. In Puget Sound and the Columbia River, chinook and coho fisheries are managed by the states and tribal fishery agencies. Declines in chinook and coho salmon coast-wide have led to reductions and closures of ocean fisheries in recent years (NMFS, 1999a).

The Pacific Salmon FMP contains no fishery management objectives for sockeye, chum, even-year pink, and steelhead stocks because fishery impacts are considered inconsequential (Table 3 in NMFS, 2002). Pink, chum, and sockeye salmon are managed jointly by the Pacific Salmon Commission, Washington state, and tribal agencies (NMFS, 1999a).

Pacific Coast pelagic species managed by the PFMC include Pacific mackerel (Scomber japonicus), jack mackerel (Trachurus symmetricus), Pacific sardine (Sardinops sagax), northern anchovy (Engraulis mordax), and California market squid (Loligo opalescens) (NMFS, 2002). These species typically fluctuate widely in abundance, and currently most stocks are low relative to historical levels (NMFS, 1999a). Pacific mackerel and Pacific sardine are not overfished, but the stock size of the other species governed by the Coastal Pelagic FMP is unknown (Table 3 in NMFS, 2002). Due to increases in abundance in recent years, Pacific mackerel now accounts for over half of recent landings of Pacific Coast pelagic species (NMFS, 1999a).

Pacific Coast shellfish resources are important both commercially and recreationally (NMFS, 1999a). Shrimps, crabs, abalones, and clams command high prices and contribute substantially to the value of Pacific Coast fisheries, even though landings are small.

2. Impingement and Entrainment Results

Table X–18 provides a list of impingement and entrainment species in the Northern California region and the species groups that were evaluated in EPA's analysis of regional impingement and entrainment. The life history data used in EPA's analysis and associated data sources are provided in ''Appendix 2: Life History Parameter Values Used to Evaluate I & E in the Northern California Region.''

TABLE X–18.—SPECIES GROUPS AND ASSOCIATED SPECIES FOR THE NORTHERN CALIFORNIA REGIONAL STUDY

Group evaluated	Species	Commercial	Recreational	Forage	Special status
Anchovies	Northern anchovy	X	X		
Bay shrimps	Bay shrimp		X		
	Other bay shrimp [a]		X		
Cabezon	Cabezon	X	X		
California halibut	California halibut	X	X		
Drums/croakers	Queenfish	X	X		
	White croaker	X	X		
	Other croakers		X		
Dungeness crab	Dungeness crab	X	X		
Flounders	Dover sole	X	X		
	English sole	X	X		
	Pacific sanddab	X	X		
	Rock sole	X	X		
	Sand sole	X	X		
	Starry flounder	X	X		
	Other flounders [B]	X	X		
Gobies	Bay goby			X	
	Blackeye goby			X	
	Blind goby			X	
	Longjaw mudsucker			X	

[22] An Evolutionarily Significant Unit (ESU) is a term introduced by NMFS in 1991 to refer to the Endangered Species Act (ESA) interpretation of ''distinct population segment.'' A stock must satisfy two criteria to be considered an ESU: (1) ''it must be substantially reproductively isolated from other conspecific population units,'' and (2) ''it must represent an important component in the evolutionary legacy of the species.''

TABLE X–18.—SPECIES GROUPS AND ASSOCIATED SPECIES FOR THE NORTHERN CALIFORNIA REGIONAL STUDY—Continued

Group evaluated	Species	Commercial	Recreational	Forage	Special status
	Shadow goby			X	
	Yellowfin goby			X	
Herrings	Pacific herring	X	X		
	Pacific sardine	X	X		
	Other herrings		X		
Rock crabs	Slender crab			X	
	Brown rock crab		X		
	Hairy rock crab			X	
	Red rock crab	X	X		
	Slender rock crab			X	
	Yellow crab		X		
Rockfishes	Aurora rockfish	X	X		
	Black and yellow rockfish	X	X		
	Black rockfish	X	X		
	Blue rockfish	X	X		
	Boccacio	X	X		
	Brown rockfish	X	X		
	California scorpionfish	X	X		
	Chilipepper	X	X		
	Copper rockfish	X	X		
	Gopher rockfish	X	X		
	Grass rockfish	X	X		
	Kelp rockfish	X	X		
	Olive rockfish	X	X		
	Shortbelly rockfish	X	X		
	Yellowtail rockfish	X	X		
	Other rockfish	X	X		
Sculpins	Other sculpins[c]	X	X		
Silversides	Jacksmelt		X		
	Other silversidesd		X		
Smelts	Surf smelt	X	X		
	Other smelts[e]	X	X		
Surfperches	Barred surfperch	X	X		
	Black surfperch	X	X		
	Pile surfperch	X	X		
	Shiner perch	X	X		
	Striped surfperch	X	X		
	Walleye surfperch	X	X		
	White surfperch	X	X		
	Other surfperch[f]	X	X		
Chinook salmon	Chinook salmon				X (FT, ST, FE, SE, FCT)
Delta smelt	Delta smelt				X (FT, ST)
Green sturgeon	Green sturgeon				X (SOC)
Longfin smelt	Longfin smelt				X (SOC)
Sacramento splittail	Sacramento splittail				X (FT)
Steelhead	Steelhead				X (FT)
Striped bass	Striped bass		X		
Herrings	American shad		X		

[a] Other bay shrimp includes Alaskan bay shrimp, black tailed bay shrimp, blackspotted bay shrimp, Franciscan bay shrimp, smooth bay shrimp, and spotted bay shrimp.
[b] Other flounders includes CO Turbot, curlfin turbot, diamond turbot, fantail sole, horneyhead turbot, slender turbot, and speckled turbot.
[c] Other sculpin includes bonyhead sculpin, brown Irish lord, buffalo sculpin, coralline sculpin, fluffy sculpin, manacled sculpin, pacific staghorn sculpin, prickly sculpin, rosy sculpin, roughcheek sculpin, smoothhead sculpin, snubnose sculpin, staghorn sculpin, tidepool sculpin, and wooly sculpin.
[d] Other silversides includes topsmelt.
[e] Other smelts includes night smelt and popeye blacksmelt.
[f] Other surfperch includes dwarf surfperch, kelp surfperch, rainbow surfperch, and spotfin surfperch.
FT = federally listed as threatened
ST = state listed as threatened
FE = federally listed as endangered
SE = state listed as endangered
FCT = federal candidate for listing as threatened
SOC = species of concern

Available impingement and entrainment data indicate that 20 of a total of 92 distinct species that are impinged and entrained by northern California facilities are harvested species subject to FMP's developed by the PFMC. Table X–19 summarizes information on the stock status of these species. Note that stock status is known for only 4 of these species. Most of the species listed are rockfish species. Northern anchovy falls under the

Coastal Pelagic FMP and the other species in the table are included in the Groundfish FMP. Although under the jurisdiction of the PFMC, there are no fishery management objectives for Central Valley chinook salmon and Central California Coast coho salmon because of their ESA listing (NMFS, 2002). There are also no fishery management goals for steelhead because fishery impacts are considered inconsequential (NMFS, 2002).

TABLE X–19.—SUMMARY OF STOCK STATUS OF HARVESTED SPECIES OF THE NORTHERN CALIFORNIA REGION THAT ARE IMPINGED AND ENTRAINED AND ARE INCLUDED IN FEDERAL FMP'S

Stock (species in bold are major stocks, with annual landings over 200,000 pounds)	Overfishing? Is fishing mortality above threshold?)	Overfished? (Is stock size below threshold?)	Approaching overfished condition?
Aurora rockfish	Unknown	Unknown	Unknown
Black rockfish	No	No	No
Black-and-yellow rockfish	Unknown	Unknown	Unknown
Blue rockfish	Unknown	Unknown	Unknown
Bocaccio	No	Yes	N/A
Cabezon	Unknown	Unknown	Unknown
California scorpionfish	Unknown	Unknown	Unknown
Central California Coast coho salmon[a]	N/A	N/A	N/A
Central Valley chinook salmon[a]	N/A	N/A	N/A
Chilipepper rockfish	No	No	No
Copper rockfish	Unknown	Unknown	Unknown
Gopher rockfish	Unknown	Unknown	Unknown
Grass rockfish	Unknown	Unknown	Unknown
Kelp rockfish	Unknown	Unknown	Unknown
Northern anchovy-central subpopulation		Undefined	Unknown
Olive rockfish	Unknown	Unknown	Unknown
Shortbelly rockfish	No	No	No
Starry flounder	Unknown	Unknown	Unknown
Steelhead[b]	N/A	N/A	N/A
Yellowtail rockfish	No	No	No

Source: Table 4 in NMFS (2002).
[a] There are no fishery management goals for Central Valley chinook salmon and Central California Coast coho salmon because of their ESA listing (NMFS, 2002).
[b] There are no fishery management goals for steelhead because fishery impacts are considered inconsequential (NMFS, 2002).

3. Impingement and Entrainment Losses Expressed as Age 1 Equivalents, Foregone Yield, and Production Foregone

Table X–20 provides EPA's estimate of the annual age 1 equivalents, foregone fishery yield, and production foregone resulting from the impingement of aquatic species at facilities located on estuaries/tidal rivers in the Northern California Region. Table X–21 displays this information for entrainment. Table X–22 provides EPA's estimate of the annual age 1 equivalents, foregone fishery yield, and production foregone resulting from the impingement of aquatic species at ocean facilities in the Northern California Region. Table X–23 displays this information for entrainment.

TABLE X–20.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL ESTUARY/TIDAL RIVER FACILITIES IN THE NORTHERN CALIFORNIA REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species group	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone
Anchovies	6,483,908	10,156	86,487
Bay shrimps	310,400	22	169
Cabezon	968	1,882	4,569
Chinook salmon	1,880	0	50,674
Croakers	6,737	390	710
Delta smelt	18,454	0	25
Dungeness crab	1,028	404	995
Flounders	56,767	4,652	16,970
Gobies	10,819	0	47
Herrings	545,982	25,560	65,791
Longfin smelt	189,940	0	6,553
Rock crabs	840,492	165	115,125
Rockfishes	257,596	62,420	164,021
Sacramento splittail	24,188	0	11,166
Sculpins	128,009	1,304	9,151
Silversides	888,074	39,672	202,453
Smelts	71,279	1,620	13,400
Striped bass	762,529	277,119	1,270,930
Surfperches	725,358	45,156	109,915
Total	11,324,407	470,522	2,129,153

TABLE X–21.—TOTAL ANNUAL ENTRAINMENT LOSSES FOR ALL ESTUARY/TIDAL RIVER FACILITIES IN THE NORTHERN CALIFORNIA REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species group	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Anchovies	332,963	525	47,178
Bay shrimps	5,820,260	419	4,164
Cabezon	20	46	2,868
California halibut	717	2,686	5,476
Chinook salmon	88	0	3,033
Croakers	0	0	476
Delta smelt	268,874	0	3,894
Dungeness crab	80,574	37,273	184,655
Flounders	1,984	193	2,602
Gobies	2,874,204	0	44,209
Herrings	1,495,230	69,974	257,242
Longfin smelt	333	0	19
Rock crabs	2,491,669	490	1,406,358
Rockfishes	63	17	5,512
Sacramento splittail	39	0	87
Sculpins	78,819	4,731	32,034
Silversides	5,744	321	1,948
Smelts	386	16	565
Striped bass	1,950,593	708,904	3,383,949
Total	15,402,559	825,595	5,386,270

TABLE X–22.—TOTAL ANNUAL IMPINGEMENT LOSSES FOR ALL OCEAN FACILITIES IN THE NORTHERN CALIFORNIA REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species group	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Anchovies	63	0	1
Bay shrimps	17,240	1	9
Cabezon	20	39	94
Croakers	581	34	61
Dungeness crab	3,431	1,583	3,322
Flounders	2,583	212	772
Rock crabs	3,841	1	526
Rockfishes	3,938	949	2,497
Sculpins	935	10	67
Silversides	841	30	192
Surfperches	2,802	122	425
Total	36,275	2,981	7,965

TABLE X–23.—TOTAL ANNUAL ENTRAINMENT LOSSES FOR ALL OCEAN FACILITIES IN THE NORTHERN CALIFORNIA REGION EXPRESSED AS AGE 1 EQUIVALENTS, FOREGONE FISHERY YIELD, AND PRODUCTION FOREGONE

Species group	Age 1 equivalents (#s)	Total yield (lbs)	Production foregone (lbs)
Anchovies	5,382	8	87,011
Bay shrimps	1,410,174	101	3,721
Cabezon	170	331	24,314
California halibut	5,413	19,617	42,161
Croakers	1	0	1,892
Flounders	5,198	431	6,817
Gobies	415,594	0	6,392
Herrings	847,884	39,634	215,090
Rock crabs	63,433,607	12,467	38,249,035
Rockfishes	1,620	390	142,462
Sculpins	539,868	5,523	38,624
Silversides	19	13	6
Smelts	778	19	1,140
Total	66,665,707	78,534	38,818,665

In these tables, ''total yield'' includes direct losses of harvested species as well as the yield of harvested species that is lost due to losses of forage species. As discussed in detail in Chapter A5 of Part A of the section 316(b) Phase II Case Study Document, EPA used a simple model of trophic structure and trophic transfer efficiency to estimate the yield of harvested species that is lost because of the loss of forage to impingement and entrainment. The conversion of forage to yield contributes only a very small fraction to total yield.

4. Recreational Fishing Valuation

This notice presents results for the Northern California regional analysis, including benefits calculations for this region. Details of the Northern California study are presented in DCN 5–1009. As noted above, the Northern California region is defined based on NMFS regional boundaries. Northern California includes all northern counties to, and including, San Luis Obispo County. EPA included anglers and sites from the counties on each regional border in the model, to allow anglers to travel to substitute sites in the bordering region. For example, EPA added Santa Barbara County from the Southern California region to allow anglers from Northern California to travel to all substitute sites located within a one day travel distance limit.

The Northern California model focuses on the following species and species groups: salmon, sturgeon, flounders, small game fish, big game fish, bottom fish, and other species. The flounder category includes flounders and halibut; the small game group includes striped bass and small tuna and mackerel; the big game category includes large tuna, sharks, marlin, and dolphin fish; the bottom fish category includes greenlings, sculpins, surfperches, croakers, rockfishes and other bottom species; and the other species category includes only anchovies, smelts, silversides and herrings. Approximately 20 percent of anglers fishing from boats and 47 percent of anglers fishing from shore target no particular species. These anglers (hereafter, no-target anglers) caught fish in all species groups. Therefore, EPA used average catch rates for all species caught by no-target anglers to define fishing site quality for no-target anglers.

The methodology used in the Northern California study follows closely that of McConnell and Strand (1994) and Hicks (1999) work for NMFS. EPA maintained most important aspects of the methodologies used in the previous recreational NMFS studies. The Agency, however, estimated separate models for boat and shore anglers for the Northern California region. The Agency attempted to estimate a nested RUM model for Northern California, including both boat and shore anglers. However, preliminary model results indicated that nesting was not appropriate for the data. The Agency did not estimate a model for the charter boat mode for the NODA, however, because charter boat trips represent only thirteen percent of the total angling trips in this region. For the NODA analysis, the welfare gain from improved catch rates to charter boat anglers is approximated based on the regression coefficients developed for boat anglers.

The Agency combined the estimated model coefficients with the estimated impingement and entrainment losses at the cooling water intake structures in the Northern California Region to estimate per trip welfare losses from impingement and entrainment. Table X–24 shows the total average recreational landings for each species group, the number of fish impinged and entrained, and the estimated percent change in recreational landings from impingement and entrainment elimination. Eliminating impingement and entrainment is expected to increase flounders catch rates by 0.58%; small game catch rates by 56.02%; bottom fish catch rates by 6.6%; and other species catch rates by 5.5%.

TABLE X–24.—IMPINGEMENT AND ENTRAINMENT AS PERCENT OF TOTAL CATCH FOR NORTHERN CALIFORNIA

Species	Avg. total catch 1996–2000	Change in recreational losses from reduced impingement and entrainment	Reduced impingement and entrainment as % of total catch
Flounders	238,394	1,377	0.578
Small Game	459,563	257,431	56.016
Bottom Fish	3,665,520	241,089	6.595
Other	1,442,356	79,047	5.480
All Species	5,795,833	578,944	9.989

Table X–25 shows the impingement and entrainment reductions that would result from installation of the preferred option at each facility in Northern California, as well as the resulting increases in catch rates. The preferred option will result in a 0.32% reduction in impingement and entrainment losses for flounders; a 14.9% reduction in losses for small game fish; a 5% reduction in losses for bottom fish; and a 4.4% reduction in losses for other species.

TABLE X–25.—ESTIMATED CHANGE IN CATCH RATES RESULTING FROM THE PREFERRED OPTION FOR NORTHERN CALIFORNIA

Species	Avg. total catch 1996–2000	Total recreational losses from impingement and entrainment	Change in recreational losses from impingement and entrainment as % of total catch
Flounders	238,394	762	0.320
Small Game	459,563	68,615	14.931
Bottom Fish	3,665,520	183,651	5.024

TABLE X–25.—ESTIMATED CHANGE IN CATCH RATES RESULTING FROM THE PREFERRED OPTION FOR NORTHERN CALIFORNIA—Continued

Species	Avg. total catch 1996–2000	Total recreational losses from impingement and entrainment	Change in recreational losses from impingement and entrainment as % of total catch
Other	1,442,356	62,760	4.351
All Species	5,795,833	315,788	5.449

The willingness to pay values for boat and shore anglers for an additional fish per trip, and for the expected benefits from reducing impingement and entrainment at cooling water intake structures in the Northern California region are shown in Table X–26. Table X–26 shows that boat anglers value most highly the improvements in catch rates for sturgeon and salmon, followed by flounder and big game fish. Boat and shore anglers show a few notable differences in values. For example, the value for flounders is higher for boat anglers. This can be explained by the fact that most boat anglers target and catch halibut, a larger species; most shore anglers catch the smaller flounders. The value for flounders is also higher for boat anglers. This can be explained by the fact that most boat anglers target and catch halibut, a larger species; most shore anglers catch the smaller flounders.

TABLE X–26.—PER TRIP WELFARE GAIN FROM IMPROVEMENTS IN FISHING QUALITY AT ALL SITES IN NORTHERN CALIFORNIA (2002$)

Targeted species group	Per trip welfare gain (2002$)				WTP for an additional fish per trip (2002$)	
	Eliminating impingement and entrainment		Reducing impingement and entrainment with preferred technology		Boat anglers	Shore anglers
	Boat anglers	Shore anglers	Boat anglers	Shore anglers		
Flounders	$0.32	$0.96	$0.02	$0.01	$2.97	$0.99
Small Game fish	1.19	3.37	0.32	0.96	0.76	3.55
Bottom fish	0.24	0.11	0.18	0.08	0.75	0.54
Other fish	NA	0.58	NA	0.46	NA	1.10
No Target	2.66	0.02	2.48	0.00	8.53	0.76
Salmon	NA	NA	NA	NA	9.40	10.66
Sturgeon	NA	NA	NA	NA	33.5	NA
Big Game fish	NA	NA	NA	NA	4.05	NA

As shown in Table X–26, the estimated welfare gains from impingement and entrainment reduction are $0.02, $0.32, and $0.24 per trip for boat anglers targeting flounders, small game and bottom fish, respectively; and $0.01, $0.96, $0.08, and $0.46 per trip for shore anglers targeting flounders, small game, bottom fish and other specie, respectively (all in 2002$). Anglers targeting small game are expected to experience the greatest welfare gain from reducing impingement and entrainment at cooling water intake structures in Northern California.

EPA then combined the estimated per trip welfare gain from eliminating impingement and entrainment at Northern California cooling water intake structures with NMFS fishing participation estimates to estimate the annual value to recreational anglers of improved catch rates resulting from reduced impingement and entrainment in the Northern California region. Table X–27 provides the total number of angler days in Northern California by fishing mode and targeted species.

TABLE X–27.—TOTAL NORTHERN CALIFORNIA FISHING TRIPS BY MODE, 2001 AND PERCENT OF ANGLERS TARGETING EACH SPECIES

Total Northern California trips, 2001	Boat mode 920,196		Shore mode 864,178		Charter mode 193,007	
	Percent of Anglers Targeting Each Species by Mode and Number of Trips by Mode and Species					
Salmon	34.93%	321,424	1.41%	12,185	27.54%	53,154
Sturgeon	8.73%	80,333	1.41%	NA	0.00%	0
Flounders	13.86%	127,539	1.86%	16,074	0.00%	0
Small Game	7.28%	66,990	22.2%	191,848	1.32%	2,548
Big Game	2.12%	19,508	0.83%	NA	0.00%	0
Bottom Fish	13.27%	122,110	23.1%	199,625	57.97%	111,886
Other Fish	0.03%	NA	1.86%	16,074	0.00%	0
No Target	19.77%	181,923	47.34%	409,102	13.18%	25,438

EPA calculated total baseline recreational losses to Northern California anglers by multiplying the estimated per trip welfare gain from impingement and entrainment elimination for a given species group by the relevant number of recreational fishing trips in 2001. Similarly, EPA calculated the total gains resulting from the preferred technology. Table X–28 summarizes results of these calculations. The total value of baseline recreational losses for all species impinged and entrained is $1,432,645 per year (2002$), for boat, shore, and charter anglers. The total annual value of reduced recreational losses with the preferred option is $790,560 per year (2002$), for boat, shore, and charter anglers. Table X–28 also presents the discounted values, using EPA's preferred 3% discount rate and OMB's 7% discount rate.

TABLE X–28.—ESTIMATED ANNUAL WELFARE CHANGE TO RECREATIONAL ANGLERS IN NORTHERN CALIFORNIA UNDER THE BASELINE AND POST-COMPLIANCE SCENARIOS (2002$) —

Species	Total baseline welfare losses			Total welfare gain from reductions in impingement and entrainment baseline losses under the preferred option		
	Before discounting	3% Discount rate	7% discount rate	Before discounting	3% discount rate	7% discount rate
Salmon [a]	N/A	N/A	N/A	N/A	N/A	N/A
Sturgeon [a]	N/A	N/A	N/A	N/A	N/A	N/A
Flounders	$56,634	$45,307	$35,679	$2,702	$2,189	$1,729
Small Game	728,909	634,151	532,104	206,584	183,860	157,004
Big Game	N/A	N/A	N/A	N/A	N/A	N/A
Bottom Fish	77,312	71,900	67,261	59,041	54,908	51,366
Other Fish	9,276	7,699	6,772	7,376	5,975	5,458
No Target	560,514	465,227	409,175	514,857	471,034	390,994
Totals	1,432,645	1,224,284	1,050,991	790,560	663,965	596,551

[a] Impingement and entrainment data are not available for these species.

5. Commercial Fishing Valuation

Table X–29 provides EPA's estimate of the value of gross revenues lost in commercial fisheries resulting from the impingement of aquatic species in the Northern California region. Table X–30 displays this information for entrainment. As described above, EPA estimates that 0 to 40% of these revenue losses represent surplus losses to producers, assuming no change in prices or fishing costs. EPA will refine these assumptions for the final rule.

TABLE X–29A.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT ESTUARY FACILITIES IN THE NORTHERN CALIFORNIA REGION

Species	Estimated pounds of harvest lost	Estimated Value of Harvest Lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Anchovies	10,156	$812	$781	$744
Cabezon	1,019	3,383	2,899	2,401
Croakers	97	55	48	40
Dungeness	404	623	588	546
Flounders	4,606	1,428	1,368	1,294
Herrings	25,560	5,368	4,840	4,257
Rock crabs	165	188	171	151
Rockfishes	38,955	21,425	16,863	12,547
Sculpins	147	384	367	345
Smelts	1,520	395	375	352
Surfperches	3,198	5,020	4,650	4,219
Total	85,826	39,082	32,949	26,897

TABLE X–29B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT OCEAN FACILITIES IN THE NORTHERN CALIFORNIA REGION

Species	Estimated pounds of harvest lost	Estimated Value of Harvest Lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Anchovies	0	$0	$0	$0
Cabezon	21	69	59	49
Croakers	8	5	4	3
Dungeness	1,583	2,438	2,301	2,137

TABLE X–29B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO IMPINGEMENT AT OCEAN FACILITIES IN THE NORTHERN CALIFORNIA REGION—Continued

Species	Estimated pounds of harvest lost	Estimated Value of Harvest Lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Flounders	210	65	62	59
Rock crabs	1	1	1	1
Rockfishes	592	325	256	191
Sculpins	1	3	3	3
Surfperches	9	13	12	11
Total	2,424	2,920	2,699	2,454

TABLE X–30A.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO ENTRAINMENT AT ESTUARY FACILITIES IN THE NORTHERN CALIFORNIA REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Anchovies	525	$42	$39	$36
Cabezon	25	82	69	55
California halibut	1,076	2,701	2,145	1,600
Croakers	0	0	0	0
Dungeness	37,273	57,400	52,594	47,024
Flounders	192	59	55	50
Herrings	69,974	14,695	12,864	10,893
Rock crabs	490	558	492	419
Rockfishes	10	6	4	3
Sculpins	2,096	5,490	5,087	4,612
Smelts	15	4	4	3
Total	111,675	81,039	73,353	64,696

TABLE X–30B.—ANNUAL COMMERCIAL FISHING GROSS REVENUES LOST DUE TO ENTRAINMENT AT OCEAN FACILITIES IN THE NORTHERN CALIFORNIA REGION

Species	Estimated pounds of harvest lost	Estimated value of harvest lost (in dollars)		
		Undiscounted	Discounted using 3% discount rate	Discounted using 7% discount rate
Anchovies	8	$1	$1	$1
Cabezon	179	595	495	394
California halibut	2,816	7,067	5,604	4,177
Croakers	0	0	0	0
Flounders	427	132	123	112
Herrings	39,634	8,323	7,286	6,170
Rock crabs	12,467	14,212	12,532	10,659
Rockfishes	243	134	102	73
Sculpins	621	1,627	1,507	1,366
Smelts	18	5	4	4
Total	56,413	32,096	27,655	22,956

6. Total Recreational and Commercial Losses from Baseline Impingement and Entrainment in the Northern California Region

Table X–31 presents EPA's estimates of total baseline welfare losses from impingement and entrainment at cooling water intake structures in the Northern California region. Total commercial and recreational fishing losses are 1.5 million per year for all species and fishing modes, before discounting. Discounting these total baseline welfare losses by 3% and 7% yields total losses of $1.3 million and $1.1 million, respectively.

TABLE X–31.—ESTIMATED COMMERCIAL AND RECREATIONAL BASELINE WELFARE LOSSES IN NORTHERN CALIFORNIA FROM IMPINGEMENT AND ENTRAINMENT (2002$) [a]

Benefit type	Before discounting	Discounting using 3% discount rate	Discounted using 7% discount rate
Recreational	$1,432,645	$1,224,284	$1,050,991
Commercial [b]	62,055	54,662	46,801
Total	1,494,700	1,278,946	1,097,792

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.
[b] Based on 40 percent of gross revenues, or upper bound of 0–40 percent range assumed to represent producer surplus.

7. Estimated Use Benefits of Proposed Regulatory Options for the Northern California Region

Table X–32 presents EPA's estimates of total welfare gain from post-compliance impingement and entrainment reduction at cooling water intake structures in the Northern California region. Total commercial and recreational fishing gains are $0.85 million per year for all species and fishing modes, before discounting. Discounting the estimated welfare gain by 3% and 7% yields total losses of $0.71 million and $0.64 million, respectively.

TABLE X–32.—ESTIMATED DISCOUNTED COMMERCIAL AND RECREATIONAL REDUCED WELFARE LOSSES IN NORTHERN CALIFORNIA FROM IMPINGEMENT AND ENTRAINMENT (2002$) [A]

Benefit type	Expected % reduction	Before discounting	Discounted using 3% discount rate	Discounted using 7% discount rate
Recreational	55.2%	$790,560	$663,965	$596,551
Commercial [b]	36.7	22,755	19,514	16,208
Total	54.4	847,448	712,749	637,080

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.
[b] Based on 40 percent of gross revenues, or upper bound of 0–40 percent range assumed to represent producer surplus.

E. Nonuse Benefits

Reducing impingement and entrainment losses of fish and shellfish results in both use and nonuse benefits. Impingement and entrainment losses to commercial and recreational fish that are harvested by fishermen can be valued as direct use benefits. Methodologies for estimating use values for recreational and commercial species are well developed, and some of these species have been extensively studied. As a result, these values are relatively easy to estimate. The portion of impingement and entrainment losses consisting of fish that are recreationally and commercially landed, however, represented only approximately 0.15 percent of the total age one equivalent impingement and entrainment losses at five estuary/tidal river and ocean case study facilities evaluated for the section 316(b) Phase II proposal (See Appendix 4 of Estimating Total and Nonuse Values for Fish, Based on Habitat Values for Coastal Wetlands and Eelgrass (SAV) DCN 5–1010.) [23] The remaining impingement and entrainment losses at these five facilities are distributed as follows:

- Unharvested recreational and commercial fish represent 0.77 percent of the total age one equivalent impingement and entrainment losses,
- Forage fish represent 99.08 percent of the total age one equivalent loss.

Neither forage species nor the unlanded portion of recreational and commercial species have direct uses; therefore, they do not have direct use values. The lack of use values for the unlanded fish means that EPA did not directly value approximately 99.85 percent of the total age one equivalent impingement and entrainment losses at the five cooling water intake structures discussed above.[24] Although individuals do not use these resources directly, they may nevertheless care about and be affected by changes in their status or quality. Monetary expression of individuals' preferences for these resources is known as nonuse value. Both commercial and recreational fishermen, as well as those who do not use the resource, may have nonuse values for these species.

Given that aquatic species without any direct uses account for the majority of cooling water intake structure losses, it is important to try to account for nonuse values in the benefits analysis. Stated preference methods, or benefit transfers based on stated preference studies, are the only generally accepted techniques for estimating nonuse values. Stated preference methods rely on surveys, which ask people to state their willingness to pay for particular ecological improvements, such as increased protection of aquatic species or habitats with particular attributes. Benefits transfer involves adapting research conducted for another purpose, from the available literature, to address the policy questions at hand. It is not feasible to conduct a primary stated-preference study for the section 316(b) rule, because of the regulatory schedule and the time and significant resources

[23] The estuary/tidal river facilities incorporated in this estimate include Salem, Big Bend, and Brayton Point. The ocean facilities are Seabrook and Pilgrim.

[24] Although the percentages vary by case study, the same trend occurs in the other case studies. For example, the total percentage unvalued in the Great Lake case study (J. R. Whiting and Monroe) was 99.92 percent. For example, the total percentage unvalued in the Great Lake case study (J. R. Whiting and Monroe) was 99.92 percent. Note that some use value for forage fish is accounted for in the commercial and recreational fishing benefits through trophic transfer. However, trophic transfer accounts for a small percentage of total recreational and commercial yield.

necessary to properly perform such a study. Thus, EPA's analysis of nonuse benefits of the section 316(b) regulation relies on benefits transfer. As noted above, however, stated preference methods have several limitations that must be considered when conducting benefits transfer. EPA recognizes that benefits transfer of stated preference-based WTP estimates to a policy context that differs from the study context can be problematic, given the significant influence of context on stated-preference values. EPA is still considering whether the underlying studies in the current analysis are close enough to the policy context to warrant benefits transfer and requests comment on this issue.

For the proposed rule analysis, EPA used a ''50 percent'' rule to estimate nonuse benefits from reducing impingement and entrainment losses (see the proposed rule Case Study Analysis for detail, available at *http://www.epa.gov/waterscience/316b/*). The Agency received numerous comments on this approach. Specifically, commenters argued that the ''50 percent rule'' is outdated and that EPA needs to revise this approach based on more recent studies of use and nonuse benefits associated with environmental quality improvements.

In response to public comments, EPA has developed a revised analysis of nonuse benefits and is requesting comment in the NODA on this revised methodology. First, the Agency developed a benefit transfer approach that combines an estimate of the amount of habitat required to offset impingement and entrainment losses (including forage species and the unlanded portion of commercial and recreational species) by means of wild fish production with a benefits transfer estimate of WTP for aquatic habitat preservation/restoration. The following section briefly summarizes this approach. Second, EPA reviewed available evidence concerning total benefits (including use and nonuse values) from the surface water valuation studies that are potentially applicable to the section 316(b) regulation. Section E.2 below discusses EPA's review of these studies and outlines further steps in analyzing nonuse and use benefits from available economic literature.

1. Benefit Transfer Approach

The methodology used in this analysis uses values that survey respondents indicated for preservation/restoration of eelgrass (submerged aquatic vegetation, SAV), and wetlands to evaluate losses of fishery resources. Because one of the results of aquatic habitat preservation/restoration is increased production of fish and shellfish, it may be appropriate to use valuation of habitat restoration as a proxy for the value of the fish and shellfish lost due to impingement and entrainment. The method used by EPA in this NODA for such indirect valuation first assesses respondents' values for habitats that play a significant role in the production of fish or shellfish, and then estimates the quantity of such habitat required to replace fish and shellfish lost to impingement and entrainment. These data are then combined to yield an indirect estimate of household values for fish and shellfish. Survey respondents were asked to value acres of habitat (*e.g.*, eelgrass or wetlands) without knowing the exact quantities of each species produced by the habitat. These values per acre were then translated, using estimates of fish abundance in these habitats, into values for specific species and quantities of fish or shellfish. The habitat valuation study used in this analysis specifically described eelgrass as ''habitat for fish and shellfish.'' The authors of this study concluded, based on comments made by participants in focus groups, that the survey population was familiar with both eelgrass and wetlands, and that they associated both of these habitats with production of and habitat for fish and shellfish. Another study (Johnston *et al.*, 2002) found that ecological improvements to statewide fish and shellfish populations were among the attributes that affected respondents' relative valuation of various wetlands restoration projects. This suggests that respondents in the habitat valuation study were aware of the fish production ''services'' provided by SAV (eelgrass), and may have been aware of the fish production ''services'' provided by wetlands.

EPA's approach to estimating values for fish and shellfish habitats needed to offset impingement and entrainment losses of fish involves three general steps:

- Estimate the amount of wetland and eelgrass habitat needed to produce organisms to the level necessary to offset impingement and entrainment losses for the subset of species for which production information is available;
- Develop willingness to pay (WTP) values for the fish production services of the relevant habitat types; and
- Estimate the value of impingement and entrainment losses, based on values for the restored habitat required to offset impingement and entrainment losses, by multiplying the WTP values for the fish and shellfish production services per acre of restored eelgrass and wetland habitat by the required number of restored acres of each habitat type.

The Agency solicits comments on whether this approach provides a more comprehensive value that addresses all impingement and entrainment losses.

The following NODA sections briefly summarize this benefits transfer approach and its application to estimating the value of the fish habitat required to offset impingement and entrainment losses in the North Atlantic Region. Additional detail on the methods and data EPA will use throughout this analysis are provided in ''Estimating Total and Nonuse Values for Fish, Based on Habitat Values for Coastal Wetlands and Eelgrass'' (DCN 5–1010) that accompanies this NODA.

a. Estimating the Amount of Different Habitat Types Needed To Offset Impingement and Entrainment Losses for Specific Species

The first step in the analysis involves calculating the area of SAV or wetland habitat needed to offset impingement and entrainment losses, for the subset of species for which restoration of these habitats was identified by local experts as the preferred restoration alternative, and for which production information is available; *i.e.*, the habitat that will produce the equivalent quantity of fish impinged and entrained. Details on this analysis are provided in Estimating Total and Nonuse Values for Fish, Based on Habitat Values for Coastal Wetlands and Eelgrass, DCN 5–1010, that accompanies this NODA.

Table X–33 presents lower and upper bound estimates of the total wetland and SAV restoration required to offset North Atlantic impingement and entrainment. These estimates reflect the acreage needed for the species requiring the maximum quantity of habitat restoration to offset its impingement and entrainment losses. The amount of tidal wetland restoration in the North Atlantic region is based on the acreage required for winter flounder. The lower bound estimate is winter flounder restoration estimate derived for Brayton Point and the upper bound estimate is the estimate for Pilgrim. The lower bound estimate for regional SAV restoration is based on the acreage needed for northern pipefish at Pilgrim and the upper bound estimate is based on the acreage needed for scup at Brayton Point.

TABLE X–33.—LOWER AND UPPER BOUND ESTIMATES OF TOTAL WETLAND AND SAV RESTORATION REQUIRED TO OFFSET NORTH ATLANTIC IMPINGEMENT AND ENTRAINMENT

Habitat restoration category	Lower bound on required number of acres	Upper bound on required number of acres
Tidal wetland restoration	25,589	43,813
SAV restoration	151	1,205

These estimates are derived from abundance data for these species in wetland and SAV habitats. Abundance data were used because estimates of production rates in these habitats are not available for the species of interest. Individuals were counted within subsampling areas of the habitats (*e.g.*, 100 square meters), and the resulting counts were scaled up to derive per acre density estimates by species. Usable data were available for three species for which impingement and entrainment data were also available that were found in wetlands (winter flounder, Atlantic silverside, and striped killifish) and for three species that were found in SAV (threespine stickleback, northern pipefish, and scup). The amount of wetlands acreage needed to restore impingement and entrainment losses ranged from 11–12 acres for killifish to 25,589–48,813 acres for winter flounder. While it is not known how many acres would be needed for the many other species found in wetlands, it appears from the available data that the acreage needed for winter flounder significantly overstates the acreage needed for other species, and restoring this many acres would lead to more than offsetting increases in these other species. For SAV, the acreage estimated ranged from 105–180 acres for threespine stickleback, to 1205 acres for scup. EPA requests comment on using abundance data for these analyses. EPA also requests comment on using the species that require the maximum quantity of habitat to offset impingement and entrainment losses as the basis for estimating the total habitat required to offset regional losses. Finally, EPA requests comment on using estimates of fish production per acre as the basis for benefits transfer, given that respondents were likely not aware of the quantitative relationship between habitat and fish production when they provided valuation information.

b. Developing WTP Values for Fish Production Services Provided by Submerged Aquatic Vegetation and Wetlands for the North Atlantic Region

For the North Atlantic Region, EPA based the benefit transfer of both total and nonuse values for fish habitat provided by eelgrass and wetlands on a site-specific study of the Peconic Estuary, located on the East End of Long Island, New York (Johnston *et al.,* 2001a, Opaluch *et al.,* 1995, 1998; Mazzotta, 1996). For detail on the Peconic Estuary study used in this analysis see DCN's 5–1275, 5–1292, 5–1293, and 5–1284. Conducted in 1995, the study provides information for the Peconic Estuary Program's Comprehensive Conservation and Management Plan (see *http://www.savethepeconicbays.org/ccmp/*).

Both eelgrass and wetlands located in the Peconic Estuary support aquatic species that are found throughout the North Atlantic region and that are likely to be affected by impingement and entrainment (*e.g.*,bay anchovy, Atlantic silverside, scup, summer flounder, winter flounder, windowpane flounder, weakfish, tautog, bay scallops, and hard clams).[25] The Peconic Estuary study thus provides values for eelgrass and wetlands that may be representative of habitat needed to produce many of the species affected by impingement and entrainment at power plants. EPA will further evaluate applicability of the habitat in the Peconic study to other study regions such as the mid-Atlantic. EPA will also evaluate other aquatic habitat valuation studies for their applicability to the analysis of benefits of the section 316(b) rule in other regions.

EPA re-estimated the Peconic model with separate coefficients for users and nonusers of fishery resources in order to separate out nonuse values. The Agency defined users as those who stated that they either fish or shellfish. These individuals have both nonuse and indirect use values from the fish habitat services of eelgrass and wetlands. EPA estimated nonuse values only for those who do not fish or shellfish.[26] Table X–34 presents the Peconic model results. For eelgrass, the value for nonusers is 77.7 percent of the total value for users. For wetlands, the value for nonusers is 94.4 percent of the total value for users. Nonuse values, defined here as total values for nonusers of the fishery resources, represent a large portion of the total value estimated in the study. Nonusers assigned similar values to both types of habitat, while users assigned a slightly higher value to eelgrass, perhaps because it was explicitly identified on the survey as fish and shellfish habitat. It is difficult to determine ex post why the values for eelgrass and wetlands are similar for nonusers. However, the fact that nonusers assigned similar values to both types of habitat may indicate that they did not significantly differentiate the two habitat types on dimensions affecting valuation or, alternatively, they differentiated among habitat types, but assigned similar values. Since SAV was explicitly identified as fish and shellfish habitat and wetlands was not, this may mean that fish and shellfish services were not a significant attribute affecting respondents' valuation, or, alternatively that they were aware that wetlands also provide habitat for fish and shellfish based on knowledge external to the survey.

TABLE X–34.—ESTIMATED WTP VALUES PER HOUSEHOLD FROM THE PECONIC STUDY (2002$) [a]

	Wetlands [b]		Eelgrass (SAV)	
	$/HH/Acre/Year [c]	Nonuse value %	$/HH/Acre/Year [c]	Nonuse value %
All Residents	0.056	95.80	0.063	82.40
Users	0.057	94.40	0.067	77.70
Nonusers [d]	0.054	100.0	0.052	100.0

[a] EPA made dollar value adjustments using the Consumer Price Index for all urban consumers for the first half of 2002.

[25] Further detail on fish SAV in the North and mid-Atlantic can be found in Wyda, *et al*, 2002 ''The response of fishes to submerged aquatic vegetation complexity in two ecoregions of the Mid-Atlantic Bight: Buzzards Bay and Chesapeake Bay'' (see DCN 5–1318).

[26] Note that this is not strictly true for wetlands, because other services exist that allow for use values such as birdwatching. The value of wetlands is adjusted to reflect fish production services only in the section on wetlands below.

[b] Note that wetlands values presented here are WTP for all wetland services, not just fish habitat services. The adjustment for fish habitat values appears below.
[c] Values shown are WTP per household per additional (*i.e,* marginal) acre per year.
[d] Nonusers are defined as respondents who neither fish nor shellfish.

Because coastal wetlands provide a number of services (*e.g.*, habitat, water purification, storm buffering, and aesthetics), EPA attempted to separate values for fish habitat from values for other wetland services. Given survey data available from the Peconic Study, however, there is no direct means to estimate the proportion of total wetland value associated with fish and shellfish habitat services alone. EPA therefore used a stated preference study from Narragansett Bay, Rhode Island to adjust wetland values to reflect fish and shellfish habitat services (Johnston *et al.*, 2002, (DCN 5–1273). Based on the Johnston *et al.* (2002) study, the proportion of saltwater wetland value associated with fish habitat is 0.2564; and the proportion of value associated with shellfish habitat is 0.2778. For detail on estimating the proportion of wetland value associated with fish and shellfish habitat services see Estimating Nonuse Values for Fish Based on Habitat Values for Coastal Wetlands and Eelgrass (SAV), provided in DCN 5–1010.

Briefly, the Johnston *et al.* study asked survey respondents to choose among different hypothetical restoration projects based on attributes of these projects. Attributes of hypothetical restoration plans characterized relative statewide improvement in bird populations, fish populations, shellfish populations, and mosquito control. On average these attributes received roughly equal weight in the valuations (with bird populations being weighted a little less heavily, and mosquito control a little more heavily than the other two). Based on model results, the authors concluded that roughly one-fourth of the value derived from each project was attributable to each type of services.

The Peconic survey described eelgrass specifically as fish and shellfish habitat. EPA is not aware of other direct uses of eelgrass. Based on focus groups during survey development and pretesting, the authors concluded that individuals were aware of eelgrass and its importance for fish and shellfish production. Thus, EPA assigned all of the estimated WTP for SAV restoration to fish and shellfish production services. Based on these same focus groups and pretests the authors also concluded that, individuals were aware of and valued a number of functions of wetlands, including fish and other wildlife habitat, storm buffering, and aesthetics. Therefore, EPA assigned only a portion of the estimated WTP for wetlands restoration to fish habitat services, based on results from the Johnston *et al.* study described above. EPA requests comment on its methodology for assigning a share of WTP to ''fish production services'' for each habitat type.

EPA estimated the value of saltwater wetlands associated with fish and shellfish habitat services by multiplying the proportions presented above by the total wetland values from the Peconic Estuary study. Table X–35 presents the final per household values for an acre of wetlands that were ascribed to fish and shellfish habitat services. Because the overall values of Peconic Estuary residents for eelgrass and wetlands are similar, once adjustments are made to wetlands values to ascribe a portion to fish habitat services, the values for fish and shellfish habitat of eelgrass are estimated as four times higher than those for fish habitat only for wetlands. EPA requests comments on whether such adjustments are appropriate and whether further adjustments are needed for eelgrass values.

TABLE X–35.—ESTIMATED WTP VALUES PER HOUSEHOLD FOR FISH AND SHELLFISH HABITAT SERVICES OF WETLANDS (2002$) FROM THE PECONIC STUDY

	$/HH/ Acre/ Year [a]	Fish habitat %	$/HH/ Acre/ Yearfor fish habitat [b]	Shellfish habitat %	$/HH/ Acre/Year for shellfish habitat [c]
All Residents	0.056	25.64	0.014	27.78	0.016
Users	0.057	25.64	0.015	27.78	0.016
Nonusers [d]	0.054	25.64	0.014	27.78	0.015

[a] Values shown are WTP per household per additional (*i.e,* marginal) acre per year.
[b] Total value per acre per year times 25.64 percent.
[c] Total value per acre per year times 27.78 percent.
[d] Note that wetland values for fish and shellfish services are not linearly additive within the same acreage, due to the functional form use in Johnston *et al* (2002).

c. Estimating Total and Nonuse Values for Fish Production Services Provided by Submerged Aquatic Vegetation and Wetlands in the North Atlantic Region

The SAV and wetland values from the Peconic study presented in Table X–34 and Table X–35 are per household values for individuals residing in towns bordering the Peconic Estuary. Estimating the total value per acre of SAV and wetlands requires defining and using the affected population for the study area. The Peconic study defined the affected population as the total number of households (both year-round and seasonal) in the towns bordering the Peconic Estuary. Similarly, EPA defines the affected population as households residing in the counties that abut the water bodies in the North Atlantic Region. These households are likely to value gains of fish or shellfish in the nearby water body due to their close proximity to the affected resource.

Analysis of data from the Rhode Island Salt Marsh Restoration Survey (Johnston *et al.* 2002) reveals that values were ascribed to even relatively small-scale salt marsh restoration actions (*i.e.*, 3–12 acres) were stated by respondents from various parts of the state. EPA thus assumed for the current analysis that residents within a similar distance from the coast as residents in the Johnston *et al.* (2002) study would have positive values for improving fish habitat. EPA calculated the average distance from Johnston's studied locations to the farthest edges of Rhode Island, which totaled 32.43 miles. The Agency then assumed that all households living within the same distance of the affected

resource as Rhode Island residents from the studied resource would also value fish habitat improvements in their affected water body.

Additionally, EPA notes that a study by Pate and Loomis (1997) found that respondents outside the political jurisdiction in which a study site is located were also willing to ascribe stated preference values to the amenity being studied. The study was designed to determine the effect of distance on WTP for public goods with large nonuse values. Specifically, the study evaluated environmental programs designed to improve wetlands habitat and wildlife in the San Joaquin Valley. It compared WTP values for households residing in the San Joaquin Valley, California, to values for California households outside the Valley, and to households in Washington State, Oregon, and Nevada. The study found that WTP values for California residents outside the Valley were 97.7 percent of the WTP of the Valley residents. WTP values for Oregon residents were approximately 27 percent of the WTP of the Valley residents. As with the Rhode Island study, care should be taken in interpreting these results.

In this analysis, EPA calculated per acre WTP values using two different definitions of affected populations: (1) The average number of households residing in counties abutting the affected water body and (2) the average number of households living within the 32.4 mile radius of each affected water body in the region. Average per acre values for SAV and wetlands were calculated based on these estimates of the average affected population for each facility. The average number of affected households in counties abutting affected water bodies is 210,357 and the average number of households within a 32.4 mile radius of each facility is 737,711. Detailed information used in calculating the average number of affected households in counties abutting affected water bodies and the average number of households within a 32.4 mile radius of each facility is provided in DCN 5–1008.

Table X–36 presents an average value per acre per year for restored SAV for households in the counties abutting the affected water bodies and for households within the larger radius (32.4 miles), for the North Atlantic Region. The total annual value per acre for eelgrass (SAV) for households living in counties abutting the region's affected water bodies is $13,341 for all residents; and the total nonuse only value is $10,993. The table also shows two estimates of the values for households living within the larger area. EPA calculated these values based on the findings of Pate and Loomis (1997), as shown below. EPA assigned the value per household from the Peconic study to the average number of households residing in the counties abutting the affected water bodies in the North Atlantic Region (210,357 households). For households beyond these coastal counties (an additional 527,354 households), EPA multiplied the Peconic values by 97.7 percent and 27 percent to provide a range of WTP values.

TABLE X–36.—HOUSEHOLD WTP VALUES FOR SAV FOR THE NORTH ATLANTIC REGION (2002$)

Value category	$/HH/Acre/Year [a]	Total WTP/Acre/Year for HH in Counties abutting affected water bodies [b]	Total WTP/Acre/Year for HH within 32.4 mile radius of affected water body [c]	
			97.7%	27.0%
Total Value	$0.063	$13,341	$45,949	$22,371
Nonuse Value [d]	0.052	10,993	37,863	18,434

[a] Values shown are WTP per household per additional (*i.e,* marginal) acre per year from the Peconic study.
[b] Total WTP per acre is calculated as household WTP per acre times the average of 210,357 households in the counties abutting affected water bodies.
[c] Total WTP per acre is calculated as household WTP per acre times 737,711, the average number of households within a 32.43-mile radius of affected water bodies. Adjustments to WTP values are described in the text.
[d] Total nonuse value is calculated as value per acre for nonusers only times all households in the study area.

Table X–37 presents the values per acre per year for the fish and shellfish habitat services of wetlands for the total affected population for the regional study area. For the counties abutting the affected water bodies, the total annual value per acre for fish habitat services provided by wetlands is $3,017 for all households, whereas the total nonuse only value is $2,891. For the larger area, the total annual value per acre for fish habitat services provided by wetlands ranges from $5,059 to $10,390 for all households, whereas the total nonuse only value ranges from $4,848 to $9,958.

The table also shows the corresponding values if the estimated WTP share for ''shellfish production services'' rather than the WTP for ''fish production services'' is used.

TABLE X–37.—ESTIMATED WTP VALUES FOR FISH AND SHELLFISH IN WETLANDS FOR THE NORTH ATLANTIC REGION (2002$)

	$/HH/Acre/Year [a]	Total WTP/Acre/Year for HH in Counties abutting affected waterbody [b]	Total WTP/Acre/Year for HH within 32.4 mile radius of affected water body [c]	
			97.7%	27%
Fish				
Total Value	$0.014	$3,017	$10,390	$5,059
Nonuse Value [c]	0.014	2,891	9,958	4,848

TABLE X–37.—ESTIMATED WTP VALUES FOR FISH AND SHELLFISH IN WETLANDS FOR THE NORTH ATLANTIC REGION (2002$)—Continued

	$/HH/Acre/Year [a]	Total WTP/Acre/Year for HH in Counties abutting affected waterbody [b]	Total WTP/Acre/Year for HH within 32.4 mile radius of affected water body [c]	
			97.7%	27%
Shellfish				
Total Value	$0.016	$3,268	$11,258	$5,481
Nonuse Value [d]	0.015	3,132	10,789	5,253

[a] Values shown are WTP per household per additional (*i.e,* marginal) acre per year from the Peconic study.
[b] Total WTP per acre is calculated as household WTP per acre times the average of 210,357 households in the counties abutting affected water bodies.
[c] Total WTP per acre is calculated as household WTP per acre times 737,711, the average number of households within a 32.43-mile radius of affected water bodies.
[d] Total nonuse value is calculated as value per acre for nonusers only times all households in the region.

d. Estimates of the Value of Baseline Impingement and Entrainment Losses for the North Atlantic Region

EPA multiplied the estimated number of acres of SAV and wetlands needed to offset impingement and entrainment losses for the North Atlantic region by the estimated per acre values of SAV and wetlands to assess the value of baseline impingement and entrainment losses. As discussed above, EPA performed this analysis on the SAV—and wetlands-dependent species requiring the maximum restoration acres among these for which productivity estimates are available.

Table X–38 presents the estimated values for SAV restoration for the North Atlantic Region. EPA estimated that between 151 and 1,204 acres of revegetated SAV (eelgrass) is required to offset average annual impingement and entrainment losses of scup and northern pipefish, depending on whether Brayton Point or Pilgrim is used for the productivity estimates. Based on the estimated value per acre to residents of counties abutting the affected water bodies, the total value of restoring 151 acres of eelgrass is $2,014,450. Nonuse only value is $1,659,930. The estimated total value to all households residing within 32.43 miles from the affected water bodies, ranges from $3,377,982 to $6,938,316 per year. Nonuse only value ranges from $2,783,496 to $5,717,253. Figures are given in 2002 dollars.

TABLE X–38.—WTP VALUES FOR SAV RESTORATION OF FISH FOR THE NORTH ATLANTIC REGION (2002$)

Species benefitting from SAV restoration	Acres of required SAV restoration	Total willingness to pay per acre per year	
Counties Abutting Affected Water Bodies			
Scup	151 acres	Total Value	$2,014,450
Threespine stickleback		Nonuse Value	1,659,243
Northern pipefish	1,205 acres	Total Value	16,075,574
		Nonuse Value	13,246,458
All Households Residing Within 32.43 Miles of Affected (High Estimate)			
Scup	151 acres	Total Value	$6,938,316
Threespine stickleback		Nonuse Value	5,717,253
Northern pipefish	1,205 acres	Total Value	55,368,683
		Nonuse Value	45,624,433
All Households Residing Within 32.43 Miles of Affected Water Bodies (Low Estimate)			
Scup	151 acres	Total Value	$3,377,982
Threespine stickleback		Nonuse Value	2,783,496
Northern pipefish	1,205 acres	Total Value	26,956,743
		Nonuse Value	22,212,667

Table X–39 presents the estimated values for wetlands restoration for the North Atlantic Region. EPA estimated that between 25,589 and 43,813 acres of restored tidal wetlands is required to offset average annual impingement and entrainment losses to winter flounder. Based on the estimated value per acre to residents of counties abutting affected water bodies, the total value of restoring 25,589 acres of coastal wetlands (after adjusting for the estimated portion attributable to fish production services) is $77 million per year, whereas nonuse only value is $74 million. For all households residing within 32.43 miles of affected water bodies, the total value of restoring 25,589 acres of coastal wetlands ranges from $129 million to $266 million per year, whereas the nonuse only value ranges from $124 million to $254 million for fish habitat only. Figures are given in 2002 dollars.

Based on the estimated value per acre to residents of counties abutting affected water bodies, the total value of restoring 43,813 acres of coastal wetlands is $132 million per year, whereas nonuse only value is $127 million, adjusted to fish production services only. For all households residing within 32.43 miles of affected water bodies, the total value of restoring 43,813 acres of coastal wetlands ranges from $222 to $455 million per year, whereas the nonuse only value ranges from $212 to $436 million, adjusted to fish production services only. Figures are given in 2002 dollars. This analysis does not include fish or shellfish losses caused by thermal discharges which are covered under section 316(a).

EPA estimated the total WTP value for the amount of habitat required to offset baseline impingement and entrainment losses in the North Atlantic region by adding the SAV and wetland values presented in Table X–38 and Table X–39. Based on the estimated value per acre to residents of counties abutting the affected water bodies, the total value of habitat required to offset impingement and entrainment losses in the North Atlantic region ranges from $79 million to $511 million per year, whereas nonuse only value ranges from $76 million to $482 million.

TABLE X–39.—WTP VALUES FOR WETLANDS RESTORATION OF FISH FOR THE NORTH ATLANTIC REGION (2002$)

Species Benefitting from tidal wetlands restoration	Acres of required wetlands restoration	Total willingness to pay per acre per year	
Counties Abutting Affected Water Bodies			
Winter flounder		Total Value	$77,194,196
Atlantic silverside	25,589 acres	Nonuse Value	73,982,015
Striped killifish		Total Value	132,170,436
	43,813 acres	Nonuse Value	126,670,601
All Households Residing Within 32.43 Miles of Affected (Low Estimate)			
Winter flounder		Total Value	$265,877,962
Atlantic silverside	25,589 acres	Nonuse Value	254,814,331
Striped killifish		Total Value	455,231,200
	43,813 acres	Nonuse Value	436,288,260
All Households Residing Within 32.43 Miles of Affected Water Bodies (Low Estimate)			
Winter flounder		Total Value	$129,445,085
Atlantic silverside	25,589 acres	Nonuse	124,058,656
Striped killifish		Total Value	221,633,417
	43,813 acres	Nonuse Value	212,410,876

The values in Table X–39 do not account for all species lost to impingement and entrainment in the North Atlantic Region (*e.g.*, tautog) and include benefits for species not affected by impingement and entrainment. EPA continues to evaluate this approach as an alternative for estimating comprehensive non-use benefits associated with this regulation.

e. Estimates of the Value of the Preferred Option for the North Atlantic Region

Table X–40 shows the percent reduction in impingement and entrainment losses for each of the affected species included in this analysis. The preferred option is expected to reduce impingement and entrainment losses by 18.4 to 23.8 percent, depending on species. EPA applied the percent reduction for the species that determined the number of acres of restoration required. For tidal wetlands, winter flounder required the largest number of acres of restoration. Accordingly, EPA used the 18.73% reduction in impingement and entrainment for winter flounder to calculate the benefits of the preferred technology. Similarly, EPA used the 18.97% reduction for northern pipefish to estimate benefits of the lower bound estimate of SAV restoration, and the 23.75% reduction for scup to estimate upper bound benefits for SAV.

TABLE X–40.—REDUCTIONS IN IMPINGEMENT AND ENTRAINMENT LOSSES WITH THE PREFERRED OPTION

Species	Percent reduction
Winter flounder	18.73
Atlantic silverside	21.78

TABLE X–40.—REDUCTIONS IN IMPINGEMENT AND ENTRAINMENT LOSSES WITH THE PREFERRED OPTION—Continued

Species	Percent reduction
Striped killifish	18.43
Threespine stickleback	31.17

TABLE X–40.—REDUCTIONS IN IMPINGEMENT AND ENTRAINMENT LOSSES WITH THE PREFERRED OPTION—Continued

Species	Percent reduction
Northern pipefish	18.97
Scup	23.75

Table X–41 gives the range of WTP values for the preferred option for the North Atlantic region. Summing the values for wetlands and SAV restoration, the total benefits of the preferred option for the six species identified above range from $15 to $98 million (2002$). Nonuse value only ranges from $14 to $92 million (2002$).

TABLE X–41.—WTP VALUES FOR WETLANDS AND SAV RESTORATION OF FISH FOR THE NORTH ATLANTIC REGION, BASED ON THE PREFERRED OPTION (2002$)

	Lower bound	Upper bound
Counties Abutting Affected Water Bodies		
Total Value	$14,840,614	$28,573,472
Nonuse Value	14,171,720	26,871,437
All Households Residing Within 32.43 Miles of Affected Water Bodies (High Estimate)		
Total Value	$51,115,141	$98,414,866
Nonuse Value	48,811,287	92,552,594
All Households Residing Within 32.43 Miles of Affected Water Bodies (Low Estimate)		
Total Value	$24,885,868	$47,914,165
Nonuse Value	23,764,215	45,060,065

f. Per Household Values of Changes in Impingement and Entrainment Losses for the North Atlantic Region

Another way of presenting these results is to calculate the implied per household WTP for households residing in the two different definitions of the study area. Table X–42 presents results of these calculations. A total of 3.65 million households live in the counties abutting affected water bodies while 4.2 million households live within a 32.4 mile radius of affected water bodies. This implies a total WTP to eliminate all I&E losses of $21.70 to $40.62 and non-use WTP of $20.73 to $33.97 per household residing in the counties abutting affected water bodies.

If a 32.4 mile radius is used in these calculations, the implied WTP values to reduce all I&E losses range from $31.62 to $121.57 and non-use WTP range $29.92 to $113.68 per household residing in the 32.4 mile-radius area. All values are given in 2002$.

TABLE X–42.—VALUES PER HOUSEHOLD FOR TOTAL AFFECTED POPULATION OF THE NORTH ATLANTIC, FOR SAV AND WETLANDS RESTORATION

	Baseline losses		Preferred option	
	Lower bound	Upper bound	Lower bound	Upper bound
Households in Bordering Counties				
Total Value (nonuse + use)	$79,208,646	$148,246,010	$14,840,614	$28,573,472
Total value/hh	21.70	40.62	4.07	7.83
Total non-use value	75,641,944	139,917,060	14,171,720	26,871,437
Non-use value/hh	20.73	33.97	3.44	6.52
Households Within 32.4 Mile Radius (high estimate)				
Total Value (nonuse + use)	$272,816,278	$510,599,883	$51,115,141	$98,414,866
Total value/hh	64.96	121.57	12.17	23.43
Total non-use value	260,531,584	481,912,693	48,811,287	92,552,594
Non-use value/hh	61.46	113.68	11.51	21.83
Households Within 32.4 Mile Radius (low estimate)				
Total Value (nonuse + use)	$132,823,067	$248,590,160	$24,885,868	$47,914,165
Total value/hh	31.62	59.19	5.93	11.41
Total non-use value	126,842,152	234,623,543	23,764,215	45,060,065
Non-use value/hh	29.92	55.35	5.61	10.63

This calculation implies a total WTP to reduce impingement and entrainment losses of $4.07 to $7.83 and non-use WTP of $3.44 to $6.52 per household residing in the counties abutting affected water bodies. If a 32.4 mile radius is used in these calculations, the implied WTP values to reduce all I&E losses range from $5.63 to $23.43 and non-use WTP range from $5.61 to $21.83 per household residing in the 32.4 mile-radius area. All values are provided in 2002$.

2. Future Steps in Analyzing Nonuse Values

In addition to the nonuse valuation approach summarized in the preceding sections, EPA is also exploring and soliciting comment on alternative methodologies for estimating nonuse benefits for the Final rule.

a. Nonuse and Use Values: Literature Review

In response to public comments regarding the analysis of non-use values in the proposed rule, the Agency continues to review and summarize surface water valuation studies that estimate non-use and total use values for water resources. The purpose of this review is to report on the range of nonuse values for water resources in the economic literature, to compare estimates of use and nonuse values for users and nonusers, and explore the feasibility of deriving nonuse values based on these comparisons.

Based on comments received, EPA is re-evaluating past studies and their applicability to this rule. These studies summarized and compared nonuse and use values (*e.g.*, Fisher and Raucher's (1984) and Brown's (1993)). The Fisher and Raucher's (1984) comparison of nonuse and use values relies on eight contingent valuation studies of benefits of improved water quality published from 1974 to 1983. This analysis served as a basis for developing the 50 percent rule used for estimating non-use benefits in the proposed rule analysis. Brown (1993) conducts a similar assessment of nonuse and use values that relies on 31 contingent valuation studies published from 1980 to 1992.

EPA is also identifying a set of new studies that may contain information about the relative magnitude of use and nonuse values for aquatic resources affected by this rule. As of the publication of this NODA, EPA is reviewing 18 surface water valuation studies that meet a set of criteria for suitability and reliability (*e.g.*, the resource amenities valued in the study must be water bodies that provide recreational fishing, U.S. populations are surveyed in the study, research methods in the study are supported by literature). As a consequence of these criteria, EPA has identified fewer applicable studies than Brown (1993). These studies use either stated preference or a combination of stated and revealed preference techniques to elicit nonuse and use values associated with aquatic habitat improvements (see document ''Comparison of Nonuse and Use Values from Surface Water Valuation Studies'' (See DCN 5–1011)). These studies vary in several respects, including the specific environmental change valued, the types of values estimated, the magnitude of the change, the geographic region affected by environmental changes and survey administration methods. EPA is qualitatively analyzing these studies and interpreting relevant characteristics to determine their relevance for the analysis of nonuse values resulting from this rule.

These 18 valuation studies provide 27 observations of use and non-use values associated with various aquatic habitat improvements, because six studies generated more than one nonuse value estimate. A list of the studies being considered by EPA is provided in Table X–43; Appendix A in the document ''Comparison of Nonuse and Use Values from Surface Water Valuation Studies'' (See DCN 5–1011)'' that accompanies this NODA presents key information from each study compiled by EPA.

TABLE X–43.—EXAMPLES OF STUDIES THAT PROVIDE INFORMATION ABOUT USE AND NONUSE VALUES

Author	Year	Title	Source
Clonts & Malone	1990	Preservation Attitudes and Consumer Surplus in Free Flowing Rivers.	In: Social Science and Natural Resource Recreation Management, Joanne Vining, editor. Westview Press, Boulder, CO. pp. 301–317.
Croke *et al*	1986–87	Estimating the Value of Improved Water Quality in an Urban River System.	Journal of Environmental Systems. Vol. 16, No. 1. pp. 13–24.
Cronin	1982	Valuing Nonmarket Goods Through Contingent Markets.	Pacific Northwest Laboratory, PNL–4255, Richland, WA.
Desvousges *et al* ...	1983	Contingent Valuation Design and Results: Option and Existence Values.	In: A Comparison of Alternative Approaches for Estimating Recreation and Related Benefits of Water Quality Improvements. U.S. Environmental Protection Agency, Economic Analysis Division, Washington, D.C.
Huang *et al*	1997	Willingness to Pay for Quality Improvements: Should Revealed and Stated Preference Data Be Combined?.	Journal of Environmental Economics and Management Vol. 34, No. 3. pp. 240–255.
Kaoru	1993	Differentiating Use and Nonuse Values for Coastal Pond Water Quality Improvements.	Environmental and Resource Economics. Vol. 3. pp. 487–494.
Lant & Roberts	1990	Greenbelts in the Cornbelt: Riparian Wetlands, Intrinsic Values, and Market Failure.	Environment and Planning. Vol. 22. pp. 1375–1388.
Magat *et al*	2000	An Iterative Choice Approach to Valuing Clean Lakes, Rivers, and Streams.	Journal of Risk and Uncertainty. Vol. 21, No. 1. pp. 7–43.
Mitchell & Carson ..	1981	An Experiment in Determining Willingness to Pay for National Water Quality Improvements.	Preliminary Draft of a report to the U.S. Environmental Protection Agency. Resources for the Future, Inc., Washington, D.C.
Olsen *et al*	1991	Existence and Sport Values for Doubling the Size of Columbia River Basin Salmon and Steelhead Runs.	Rivers. Vol. 2, No. 1. pp. 44–56.
Roberts & Leitch	1997	Economic Valuation of Some Wetland Outputs of Mud Lake.	Agricultural Economics Report No. 381, Department of Agricultural Economics, North Dakota Agricultural Experiment Station, North Dakota State University.
Rowe *et al*	1985	Economic Assessment of Damage Related to the Eagle Mine Facility.	Energy and Resource Consultants, Inc., Boulder, CO.

TABLE X–43.—EXAMPLES OF STUDIES THAT PROVIDE INFORMATION ABOUT USE AND NONUSE VALUES—Continued

Author	Year	Title	Source
Sanders *et al*	1990	Toward Empirical Estimation of the Total Value of Protecting Rivers.	Water Resources Research. Vol. 26, No. 7. pp. 1345–1357.
Sutherland & Walsh	1985	Effect of Distance on the Preservation Value of Water Quality.	Land Economics. Vol. 61, No. 3. pp. 282–291.
Walsh *et al*	1978	Option Values, Preservation Values and Recreational Benefits of Improved Water Quality: a Case Study of the Southe Platte River Basin, Colorado.	EPA–600/5–78–001, Socioeconomic Environmental Studies Series, Office of Research and Development, U.S. Environmental Protection, Research Triangle Park, NC.
Welle	1986	Potential Economic Impacts of Acid Deposition: A Contingent Valuation Study of Minnesota.	Dissertation, University of Wisconsin-Madison.
Whitehead & Groothuis.	1992	Economic Benefits of Improved Water Quality: a case study of North Carolina's Tar-Pamlico River.	Rivers. Vol. 3. pp. 170–178.
Whitehead *et al*	1995	Assessing the Validity and Reliability of Contingent Values: A Comparison of On-Site Users, Off-Site Users, and Non-users.	Journal of Environmental Economics and Management. Vol. 29. pp. 238–251.

The Agency is considering applying the results of this type of review and analysis to estimate nonuse value for aquatic resources potentially affected by impingement and entrainment for the final rule analysis, and recognizes that this approach requires careful accounting of factors that are likely to affect nonuse values of aquatic resources such as the geographic scale of environmental improvements, regional or national importance of the affected resources, and the magnitude of environmental quality changes. The Agency seeks comment on this general approach as well as the applicability and feasibility of estimating nonuse values that are based on (1) a percent or fraction of use values per household (see Section X B 4 of this preamble for summary of methods for assessing recreational use values) and/or (2) specific user and nonuser populations for this rule. The agency also solicits feedback about the studies reviewed by EPA as well as other studies that might be suitable.

b. Meta Analysis

In addition to simply reviewing available information about the relative magnitudes of nonuse and use values, EPA is also considering regression-based meta-analysis of nonuse WTP for water resources. Depending on the suitability of available data, a meta-analysis can provide information on the relative influence of various study, economic, and natural resource characteristics on nonuse willingness to pay. Economic literature characterize meta analysis as a rigorous alternative to the more casual, narrative discussion of research studies which typify many attempts to summarize available information about environmental values. The primary advantage of a regression-based approach is that it may account for differences among study sites that may contribute to changes in nonuse values, to the extent permitted by available data. The following discussion briefly summarizes EPA's approach to this analysis. DCN 5–1011 provides further detail.

The dependent variable in the regression-based meta-analysis may be either the estimated nonuse value or the total value (including use and nonuse value) of aquatic habitat improvements. The total value can be modeled as a function of explanatory variables that include (1) core economic variables and (2) study design effects variables. The core economic variables are used to characterize specifics of the resource(s) valued (*e.g.* whether they are estuarine or freshwater); the geographic scale of resource improvements (*e.g.*, single water body versus multiple water bodies); the estimated use values for environmental quality improvement, quantitative or categorical measures of environmental quality improvements, and survey respondents' characteristics such as mean income of survey respondents. Study design effects characterize the year in which a study was conducted, the elicitation format of the survey (*e.g.*, telephone and mail); the elicitation method (*e.g.*, open ended WTP method). DCN 5–1011 provides information on key variables available from the 18 studies reviewed by EPA.

EPA also notes potential limitations of this approach. Limitations of the regression analysis approach specifically stem from the number of studies that meet criteria for inclusion, the number of variables that could be included in the regression analysis (which depends on the number of and information available from the original studies), as well as degrees of freedom and statistical significance. For example, study differences often prevent the use of a single measure of the degree of environmental quality improvements. Prior meta-analyses of this type, including Woodward and Wui (2000) and Poe *et al.* (2001), lack a continuous and quantified measure of environmental quality improvement. The use of other economic variables that might be desirable from a theoretical perspective (*e.g.*, information on substitute goods) may complicate extraction of suitable data from the underlying studies. EPA also recognizes that clear and objective criteria are needed to determine which studies are suitable for inclusion in meta analysis; criteria should acknowledge issues related to potential bias associated with stated preference studies, and steps that the researchers should take to minimize bias, as noted in Section X B 1 of this preamble. One key challenge of both of the approaches discussed in this section is to determine the applicability of study results to the policy case of interest (*i.e.*, fish impacts due to impingement and entrainment in this rule) because of significant variations in study objectives and methodologies. The use (and interpretation) of the value estimates to predict WTP in specific cases will follow the methodologies from the benefits transfer literature (*e.g.*, Vandenberg *et al.* 2001; Desvousges *et al.*, 1998).

EPA seeks comments on appropriateness of the meta-analysis approach for calculating nonuse values for aquatic habitat improvements associated with reduced impingement and entrainment in this rule.

F. Regional-Level Benefit Cost Analysis

This section presents EPA's estimates of the total monetary value of the baseline impingement and entrainment losses at cooling water intake structures located in the North Atlantic and Northern California study regions. A comprehensive estimate of the value of the resource should include both use

and nonuse values. However, EPA was able to estimate nonuse values for the North Atlantic region only due to data limitations. ''Nonuse values, like use values, have their basis in theory of individual preferences and the measurement of welfare changes. According to theory, use values and nonuse values are additive'' (M. Freeman, 1993). The following sections present the estimated monetary value of impingement and entrainment losses under the baseline scenario and the estimated impingement and entrainment reduction benefits under the preferred option for the two study regions. The Agency, however, points out the estimate of benefits for the Northern California region is incomplete and includes recreational and commercial fishing benefits only.

1. Benefit-Cost Analysis of the Preferred Option for the North Atlantic Region

a. Total Monetary Value of Baseline Impingement and Entrainment Losses in the North Atlantic Region

Table X–44 presents EPA's estimates of the total value of baseline impingement and entrainment losses at cooling water intake structures in the North Atlantic region. The estimated nonuse value of fishery resources lost to impingement and entrainment ranges from $75.64 million to $139.92 million per year (2002$). Note that EPA has provided two different estimates of total value in Table X–44. The first total value is the sum of aggregate use value and the nonuse component of restoration-based value. The second total value (*i.e.*, restoration-based total value) is simply the total value (including nonuse) for SAV and wetland restoration acres as presented in Section X E d of this preamble. The estimated total value of impingement and entrainment losses in the North Atlantic region ranges from $79 to $143 million (2002$) per year when commercial/recreational use values are added to the nonuse component of restoration-based values. The total value based on the total restoration-based value is similar in range ($79 to $148 million).

TABLE X–44.—ANNUAL VALUE OF BASELINE LOSSES FROM IMPINGEMENT AND ENTRAINMENT IN THE NORTH ATLANTIC REGION (MILLIONS 2002$)

	Before discounting		Discounted using 3% discount rate		Discounted using 7% discount rate	
	Low	High	Low	High	Low	High
Use Value of Resources Lost						
Commercial Use [a,b]	$0.28	$0.28	$0.24	$0.24	$0.20	$0.20
Recreational Use [a,b]	3.07	3.07	2.64	2.64	2.25	2.25
Aggregate Use Benefits	3.36	3.36	2.88	2.88	2.45	2.45
Nonuse Value of Resources Lost [c]						
Restoration-based nonuse value	75.64	139.92	75.64	139.92	75.64	139.92
Total Monetary Value of Resources Lost						
Total value (aggregate use + restoration-based nonuse)	79.00	143.28	78.52	142.80	78.09	142.37
Restoration-based total value [d]	79.21	148.25	79.21	148.25	79.21	148.25

Note: Sum of components may not equal totals due to rounding.

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories. Commercial/recreational use values are annual values derived in Section X C.

[b] Commercial and recreational losses are presented undiscounted, and discounted at 3% and 7%. There are no low or high estimates for welfare losses.

[c] Nonuse values are not discounted. Values are based on nonuse values for SAV and wetland restoration for the populations in counties abutting affected water bodies. Low values assume lower bound restoration acreage and high values assume upper bound restoration acreage amounts (see Section X E d of this preamble).

[d] Total monetary value based on total values associated with restoration is not discounted (see Section E.2 for detail).

b. Estimated Benefits and Costs of the Preferred Option

Table X–45 presents the total annual costs of the preferred regulatory option for the North Atlantic region. The estimated pre-tax cost for facilities located on estuaries or tidal rivers is $17.58 million and, for ocean-located facilities, $0.57 million. The total annual cost is $18.15 million.

TABLE X–44.—TOTAL ANNUAL COSTS FOR THE NORTH ATLANTIC REGION (PRE-TAX) AS OF 2005 (IN 2002$, MILLIONS)

	Estuary/Tidal/ Total River	Ocean	Total
North Atlantic	$17.58	$0.57	$18.15

Table X–46 presents EPA's estimates of the total benefits from impingement and entrainment reduction in the North Atlantic region under the preferred option. The estimated impingement and entrainment reduction benefits under the preferred option range from $14.84 to $28.57 million per year (2002$).

Combining the estimated cost and benefit values, the estimated net benefits of installing the preferred option range from negative $3.31 million to positive $10.42 million (2002$).

TABLE X–46.—ANALYSIS OF COSTS AND BENEFITS OF THE PREFERRED OPTION FOR THE NORTH ATLANTIC REGION (MILLIONS 2002$)

	Before discounting		Discounted using 3% discount rate		Discounted using 7% discount rate	
	Low	High	Low	High	Low	High
Annual Use Benefits						
Commercial [a,b]	$0.08	$0.08	$0.07	$0.07	$0.06	$0.06
Recreational [a,b]	0.88	0.88	0.76	0.76	0.65	0.65
Aggregate Use Benefits	0.96	0.96	0.83	0.83	0.71	0.71
Annual Nonuse Benefits [c]						
Restoration-Based Nonuse Benfits [d]	14.17	26.87	14.17	26.87	14.17	26.87
Total Annual Benefits						
Total Benefits (aggregate use + restoration-based nonuse values)	15.13	27.83	15.00	27.70	14.88	27.58
Total Restoration-based Benefits [d]	14.84	28.57	14.84	28.57	14.84	28.57
Annualized Costs						
Total Costs	18.15	18.15	18.15	18.15	18.15	18.15
Net Annual Benefits (Benefits—Costs)						
Net Benefits	(3.02)	9.68	(3.15)	9.55	(3.27)	9.43
Restoration-based Net Benefits	(3.31)	10.42	(3.31)	10.42	(3.31)	10.42

Note: Sum of components may not equal totals due to rounding.

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories. Commercial/recreational use values are annual values derived in Section X C.

[b] Commercial and recreational losses are presented undiscounted, and discounted at 3% and 7%. There are no low or high estimates for welfare losses.

[c] Nonuse values are not discounted. Values are based on nonuse values for SAV and wetland restoration for the populations in counties abutting affected water bodies. Low values assume lower bound restoration acreage and high values assume upper bound restoration acreage amounts (see Section X E d of this preamble).

[d] Total monetary value based on total values associated with restoration is not discounted (see Section E.2 for detail).

2. Benefit-Cost Analysis of the Preferred Option for the Northern California Region

a. Total Monetary Value of Baseline Impingement and Entrainment Losses in the Northern California Region

Table X–47 presents EPA's estimates of the monetary value of baseline impingement and entrainment losses at cooling water intake structures in the Northern California region. As noted above, EPA did not estimate nonuse values of impingement and entrainment losses for the Northern California region analysis; data aren't available to support use of the restoration-based approach for the North California region. The estimated use value of fishery resources lost to impingement and entrainment in the Northern California region ranges from $1.1 million to $1.49 million per year (2002$).

TABLE X–47.—ANNUAL VALUES OF THE BASELINE FISHERY LOSSES FROM IMPINGEMENT AND ENTRAINMENT IN THE NORTHERN CALIFORNIA REGION (MILLIONS 2002$)

	Before discounted	Discounted using 3% discount rate	Discount using 7% discount rate
Use Value of the Resources Lost			
Commercial Use [a b]	$0.06	$0.05	$0.05
Recreational Use [a b]	1.43	1.22	1.05
Total Use Benefits	1.49	1.27	1.10

Note: Sum of components may not equal totals due to rounding.

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.

[b] Commercial and recreational losses are presented undiscounted, and discounted at 3% and 7%. There are no low or high estimates for welfare losses.

b. Estimated Benefits and Costs of the Preferred Option for the Northern California Region

Table X–48 presents the total annual costs of the preferred regulatory option for the Northern California region. The estimated pre-tax cost for facilities located on estuaries or tidal rivers is $6.6 million and, for ocean-located facilities, $13.5 million. The total annualized cost is $20.1 million.

TABLE X–48.—TOTAL ANNUAL COSTS FOR THE NORTHERN CALIFORNIA REGION (PRE-TAX) AS OF 2005 (IN 2002$, MILLIONS)

	Estuary/ Tidal River	Ocean	Total
Northern California	$6.60	$13.50	$20.10

Table X–49 presents EPA's estimates of the total use benefits from impingement and entrainment reduction at cooling water intake structures in the Northern California region under the preferred option. The estimated use benefits of impingement and entrainment reduction under the preferred option range from $0.62 to $0.81 million per year (2002$), depending on the factor for discounting the use value of lost resources. EPA did not estimate net benefits in CA due to the lack of information on nonuse.

TABLE X–49.—ANALYSIS OF COSTS AND BENEFITS OF THE PREFERRED OPTION IN THE NORTHERN CALIFORNIA REGION (MILLIONS 2002$)

	Before discounting	Discounted using 3% discount rate	Discounted using 7% discounted rate
Annual Use Benefits			
Commercial [a b]	$0.02	$0.02	$0.02
Recreational [a b]	0.79	0.66	0.60
Total Use Benefits	0.81	0.68	0.62
Nonuse Benefits	(c)	.....	.....
Annualized Costs			
Total Costs	20.10	20.10	20.10
Net Annual Benefits (Benefits—Costs)			
Total Net Benefits	(c)	(c)	(c)

Note: Sum of components may not equal totals due to rounding.

[a] Welfare losses represent losses due to both impingement and entrainment because recreational estimates cannot be presented separately for these categories.

[b] Commercial and recreational losses are presented undiscounted, and discounted at 3% and 7%. There are no low or high estimates for welfare losses.

[c] Not estimated.

G. Break-Even Analysis

Estimating nonuse values is an extremely challenging and uncertain exercise, particularly when primary research using stated preference methods is not a feasible option (as is the case for this rulemaking). In the preceding section, EPA described possible alternative approaches for developing nonuse benefit estimates based on benefits transfer and associated methods. Due to the uncertainties of providing estimates of the magnitude of nonuse values associated with the regulation, this section provides an alternative context with which to consider the potential magnitude of nonuse values. The approach used here applies a ''break-even'' analysis to identify what nonuse values would have to be in order for the proposed option to have benefits that are equal to costs.

The break-even approach uses EPA's estimated commercial and recreational use benefits for the rule and subtracts them from the estimated annual costs. The resulting ''net cost'' enables one to work backwards to estimate what nonuse values would need to be (in terms of willingness to pay per household per year) in order for total annual benefits to equal annualized costs. Table X–50 provides such an assessment for the marine resources impacted in the two regions for which commercial and recreational benefit estimates are available to date. The table shows the values using a seven percent discount rate.

TABLE VII–50.—IMPLICIT NON-USE VALUE—BREAK-EVEN POINTS FOR REGIONAL BENEFIT-COST ANALYSIS, USING A 7% DISCOUNT RATE

Study region	Use benefits [1]	Compliance costs [1]	Net costs [2]	Number of households (millions) [3]	Break-even nonuse WTP per household
North Atlantic	$0.70	$18.15	$17.45		
Abutting Counties	.....	.....	.....	3.65	$4.78
Within 32.4 Diles	.....	.....	.....	4.20	4.15
Statewide	.....	.....	.....	5.14	3.39
Northern California	0.64	20.10	19.46		
Abutting Counties	.....	.....	.....	2.38	8.18
Within 32.4 Miles	.....	.....	.....	2.50	7.78
All N. CA Counties	.....	.....	.....	4.99	3.90
Statewide	.....	.....	.....	11.51	1.69

[1] Millions of 2002$s per year, from 2/19/03 NODA: Tables X–53 and X–56
[2] Annualized compliance costs minus annual use benefits only (millions 2002$s)
[3] Millions of households:(a) in abutting counties only (b) within 32 miles of impacted marine resources, (c) and (d) statewide (or, for northern half of CA). Sources: US Census 2000 (BLS): http://factfinder.census.gov;
[4] Dollars per household per year that, when added to use benefits, would yield a total annual benefit (use plus nonuse) equal to the annualized costs.

As shown in Table X–50, nonuse values per household for the affected marine resources in the region would have to amount to at least $4.78 per year to residents in the North Atlantic region—if assuming that only households in abutting counties have nonuse values for the affected marine resources—in order for the proposed option to have total benefits (annual use plus nonuse values) that would equal or exceed the estimated annual compliance costs for the proposed option. For households within 32.4 miles of the impacted resources, nonuse values would have to equal $4.15 per year to have total benefits equal the costs of the proposed option. If nonuse values are considered for all households in the coastal states of the region (CT, ME, MA, NH, and RI), then the break-even nonuse value would need to be only $3.39 per household.

For the Northern California region, the ''break-even'' nonuse willingness to pay (WTP) per household would need to be $8.18, based solely on households in coast-abutting counties only. For households within 32.4 miles of the impacted resources, nonuse values would have to equal $7.78 per year to have total benefits equal the costs of the proposed option. This level of break-even nonuse value would decline to $3.90 if all households in the northern part of California are considered, and declines further to $1.69 per household per year if the costs are spread over all households statewide.

While this approach of backing out the ''breakeven'' nonuse value per household does not directly answer the question of what nonuse values might actually be worth for the 316b rulemaking, these results do frame the question with a useful perspective that appeals to common sense and facilitates policy-making decisions. The break-even approach poses the question: ''are the implicit non-use WTP estimates per household at plausible levels, given empirical evidence available from the existing body of empirical research?''. EPA requests comment on whether these values are plausible as an average across all households in the target area, and data or research that addresses this question.

XI. Implementation and Other Regulatory Refinements

A. Definition and Methods for Determining the ''Calculation Baseline''

EPA received a number of comments on the definition and methods associated with the calculation baseline during the comment period for the proposed Phase II rule. This calculation baseline sets a hypothetical baseline against which compliance with the proposed technology-based performance standards in § 125.94 is determined (see 67 FR 17176). The calculation provides facilities a consistent basis for determining compliance and allows them to take credit for fish protection technologies already in place at their facility. EPA proposed in § 125.93 (see 67 FR 17221) that the ''*calculation baseline* was an estimate of impingement mortality and entrainment that would occur at your site assuming you had a shoreline cooling water intake structure with an intake capacity commensurate with a once-through cooling water system and with no impingement and/or entrainment reduction controls.'' Some commenters stated that, in general, the proposed definition was too vague. They added that the regulated industry as well as the permitting authority would be better served if there were more specific design criteria included in the definition. In response to these comments, EPA is considering and is requesting comments on adding the following specifications to the definition:

- Baseline cooling water intake structure is located at, and the screen face is parallel to, the shoreline. EPA is considering that it may be appropriate to allow credit in reducing impingement mortality from screen configurations that employ angling of the screen face and currents to guide organisms away from the structure before they are impinged.
- Baseline cooling water intake structure opening is located at or near the surface of the source waterbody. This may be appropriate to allow credit in reducing impingement mortality or entrainment due to placement of the opening in the water column.
- Baseline cooling water intake structure has a traveling screen with the standard ⅜ inch mesh size commonly used to keep condensors free from debris. This would allow a more consistent estimation of the organisms that are considered ''entrainable'' vs. ''impingeable'' by specifying a standard mesh size that can be related to the size of the organism that may potentially come in contact with the cooling water intake structure.
- Baseline practices and procedures are those that the facility would maintain in the absence of any operational controls implemented in whole or in part for the purpose of reducing impingement mortality and entrainment. This would recognize and provide credit for any operational measures, including flow or velocity

reductions, a facility had adopted that reduce impingement mortality or entrainment.

If all of the above specifications are determined to be appropriate for the baseline cooling water intake structure that is used to determine the calculation baseline, EPA would modify the regulatory definition at proposed § 125.93 to read as follows:

Calculation baseline means an estimate of impingement mortality and entrainment that would occur at your site assuming (1) the cooling water system has been designed as a once-through system; (2) the opening of the cooling water intake structure is located at, and the face of the standard 3/8-inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source waterbody; and (3) the baseline practices and procedures are those that the facility would maintain in the absence of any operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment.''

EPA also considered whether basing the calculation baseline on a shoreline intake would penalize facilities with constructed waterways such as intake canals or intake bays, if these configurations had a higher potential for impingement and entrainment than a ''shoreline'' intake located on the open waterbody. Basing calculations on this hypothetical open waterbody intake could potentially result in such facilities having to reduce impingement and entrainment by more than the specified performance ranges. This is not EPA's intent. Rather, facilities should demonstrate they have (or will) reduce impingement mortality or entrainment by the percentages established in the proposed performance ranges when compared to an intake at which no measures have been taken to reduce impingement mortality and entrainment. In the case of an intake located on the ''shoreline'' of an intake canal or intake bay, EPA would consider the intake's location on the constructed waterway to be the shoreline for purposes of the calculation baseline.

EPA solicits comment on these design specifications for inclusion or exclusion in the definition of the calculation baseline. In particular, EPA is interested in whether it would be redundant to include all of the hypothetical design criteria. EPA requests comments on any other design criteria that may be appropriate to set a consistent and reproducible baseline upon which to determine compliance with the proposed performance standards. EPA also requests comment on whether these design criteria will provide the intended credit in the compliance analyses to those facilities which have implemented technologies or operational measures that reduce impingement mortality and/or entrainment, without creating unintended consequences such as the opportunity to seek credit for hypothetical ''reductions'' from unreasonable claims regarding baseline operational measures.

One commenter suggested that determination of the calculation baseline for entrainment be supplemented with an optional alternative, ''As Built'' approach. Under this approach, a facility would determine the baseline for calculating entrainment reduction by either: (1) Using actual historical measurements of entrained organisms before installation of the new intake technology; or (2) sampling immediately in front of the new technology and enumerating organisms of a size that will pass through a standard 3/8-inch screen. To determine entrainment reduction, the facility would then sample and enumerate entrained organisms behind the new technology or at the outfall. This second option would eliminate the need for predictive estimates of baseline entrainment occurring at a facility and would not require collection of historical data nor the use of estimations that may increase uncertainty.

Potential benefits cited for using this alternative ''As Built'' approach for estimating compliance with performance included that (1) the facility would demonstrate entrainment reductions directly in an easily verifiable manner that does not rely on hypothetical calculations; (2) facilities could install new technologies sooner than they would under the other calculation baseline approach, because pre-deployment studies would not be necessary; and (3) the baseline numbers would be actual samples of entrained or entrainable organisms. EPA requests comments on providing this approach as an optional alternative for determining the calculation baseline for entrainment.

It should be noted that the commenter states that the ''As Built '' approach for determining the calculation baseline would not be appropriate for impingement as it is highly species-specific and life-stage specific with no reliable way to measure ''impingeable'' organisms outside of the cooling water intake structure. The commenter suggests that to determine the calculation baseline for impingement mortality the only valid approach would be to collect samples before the new intake technology is deployed so that the baseline impingement (pre-deployment) can be compared to the post-deployment impingement to estimate the percent reduction in impingement mortality attributable to the technology. EPA requests additional comment on the applicability of an ''As Built'' approach to estimate the calculation baseline for impingement mortality.

The proposed Phase II preamble language (see 67 FR 17176) stated that the calculation baseline could be estimated by evaluating existing data from a nearby facility. Some commenters requested that the calculation baseline be allowed to be estimated using data from facilities that are not located nearby or that are located on another waterbody as long as the two facilities had closely comparable environmental conditions including similar locations and similar species that would be impinged and entrained. These same commenters also requested that the proposed rule retain flexibility for the facility in choosing the location of the hypothetical shoreline intake as long as the location is one where an intake might have been placed in the exercise of sound engineering judgment, without regard for fish protection. Another commenter stated that assessing the mere presence or absence of organisms at a nearby facility or in the same waterbody may not accurately characterize the potential for impingement and entrainment at a future cooling water intake structure. This commenter also indicated that site-specific interactions of organisms with the hydrology of the source waterbody and the cooling water intake structure configuration would confound the assessment and that composition and abundance of impingement of organisms can be very different for two cooling water intake structures located close to one another.

EPA requests additional comment on the appropriateness of allowing facilities to define the calculation baseline using data from other facilities, what types of other facilities might be appropriate for this purpose, and whether the variability introduced due to site-specificity is greater than that due to normal fluctuations in natural systems.

B. Options for Evaluating Compliance With Performance Standards

EPA received numerous comments requesting clarification on how compliance with the proposed performance standards for reducing impingement mortality by 80–95% and entrainment by 60–90% would be determined. For both impingement mortality and entrainment, EPA is evaluating two basic methods for

determining a percent reduction: (1) Consideration of all fish and shellfish species that have the potential to be impinged or entrained, or (2) consideration of fish and shellfish from only a subset of species determined to be representative of all the species that have the potential to be impinged or entrained. For either approach, species impinged or entrained may be measured by counting the total number of individual fish and shellfish, or by weighing the total wet or dry biomass of the organisms. These approaches are described in more detail below. EPA invites comments on these approaches and whether EPA should require facilities to use a specific method or only provide guidance.

All Species Approach

For determining compliance with the impingement mortality and entrainment standards, EPA is considering requiring that all species of fish and shellfish present at the cooling water intake structure and having the potential to be impinged be included in the measurement. Under this approach, the permittee would measure either the total number or the total biomass of the fish and shellfish impinged (without regard to their taxonomic grouping) and use this number to compare to the calculation baseline to determine compliance with the impingement mortality reduction performance standards. This approach would be the simplest conceptually to implement since only the total number or mass of impinged organisms would need to be measured. However, this approach would have the limitation that information on efficacy of the technology related to each species would not be collected, and all species would be treated as equivalent, without regard to their relative ecological, economic, recreational, or cultural importance.

EPA is similarly considering requiring that entrainment losses also be measured by counting the total numbers of organisms entrained. This approach has been commonly used in freshwater rivers and streams and produces either a total number of undifferentiated eggs and larvae entrained, or an identification of the entrained eggs and larvae by species or family. Several commenters emphasized that a permittee should not be required to prove reduced entrainment of every entrained species by at least 60 percent. These commenters also stated that the difficulty and cost of taxonomic classifications makes species-specific monitoring unreasonable, and that classification is not possible for early life stages of some species.

If EPA were to require the use of an approach that considers the total number of all fish and shellfish that have the potential to be impinged or entrained, regardless of species, language similar to the following would be added at proposed § 125.94(b)(5):

> (5) Compliance with impingement mortality and entrainment performance standards in paragraphs (b)(1) through (4) above must be determined based on a comparison of the enumeration of all fish and shellfish impinged and killed and entrained with those estimated to be impinged and killed and entrained at the calculation baseline.

EPA requests comment on the approach of enumerating all fish and shellfish, regardless of their taxonomy in determining compliance with the performance standards for impingement mortality and entrainment and the regulatory language above. EPA is also accepting comment on the advantages and disadvantages of using the absolute number of organisms impinged or entrained as opposed to using wet or dry total weights of biomass.

For measuring compliance with the entrainment reduction performance standard, several commenters suggested that the entrained biomass could be measured by collecting entrained organisms from the outfall or other appropriate monitoring location where a representative sample can be taken. This mass would then be compared to the mass of eggs and larvae that would have been entrained at the calculation baseline to determine if there is a 60 percent reduction or better. However, EPA is concerned that if a facility uses biomass, the weights may not be substantial enough to yield useable data since most entrained organisms are at the egg or larval stage. EPA requests comment on the feasibility of using biomass for measuring compliance with the entrainment reduction standard.

Representative Species Approach

Another approach to determine compliance with the impingement mortality and entrainment performance standard involves considering a subset of the species that are representative of all species that are susceptible to impingement or entrainment in the waterbody that needs to be protected. This approach would require the permittee to identify representative important/indicator species (RIS), as opposed to considering all species present at the cooling water intake structure, for use in calculating compliance with the performance standards. If this approach were allowed, EPA is considering requiring that the list of RIS be developed by the facility, in consultation with the Director and Federal, State and Tribal fish and wildlife management agencies using available data. EPA might also require the concurrence of the Director.

Historically, the term RIS has been defined in different ways. EPA's 1977 Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: Section 316(b) P.L. 92–500 uses the concept of ''critical aquatic organisms.'' This term is used in a manner similar to RIS. The 1977 Guidance states that ''critical aquatic organisms'' are ''those species which would be involved with the intake structure and are: (1) Representative, in terms of their biological requirements, of a balanced, indigenous community of fish, shellfish, and wildlife; (2) commercially or recreationally valuable (*e.g.*, among the top ten species landed—by dollar value); (3) threatened or endangered; (4) critical to the structure and function of the ecological system (*e.g.*, habitat formers); (5) potentially capable of becoming localized nuisance species; (6) necessary, in the food chain, for the well-being of species determined in 1–4; (7) one of 1–6 and have high potential susceptibility to entrapment-impingement and/or entrainment; and (8) critical aquatic organisms based on 1–7, are suggested by the applicant, and are approved by the appropriate regulatory agencies '' (see DCN 4–0006).

In EPA's section 316(a) regulations, the term ''representative important species (RIS)'' is used and defined as ''species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made'' (see 40 CFR 125.71). Under these same regulations, the term ''balanced, indigenous community'' is defined as ''a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by lack of domination by pollutant tolerant species.''(See 40 CFR 125.71). The section 316(a) regulations require that in selecting RIS, special consideration be given to species mentioned in applicable water quality standards. It further requires that after the discharger submits its detailed plan of study, the Director either approve the plan or specify any necessary revisions to the plan (see 40 CFR 125.72).

Other entities, including some States, use the concept of RIS defined as those species selected by a discharger and

approved by the state that exhibit one or more of the following characteristics: Species that are sensitive to adverse harm from operations of the facility (for example, heat-sensitive species); species that use the local area as spawning or nursery grounds, or both, including those species that migrate past the facility to spawn; species of commercial or recreational value or both; species that are habitat formers and are critical to the functioning of the local ecosystem; species that are important links in the local food web; rare, threatened, or endangered species; or potential nuisance organisms likely to be enhanced by plant operations. In some cases, the permitting authority allows the permittee to identify RIS on a site-specific basis (see State of Maryland comments on proposed Phase II rule).

EPA is considering an approach that employs a RIS or ''critical aquatic organisms'' approach to determine compliance with the impingement mortality performance standards. Facilities would be required to identify all species being impinged (or having the potential to be impinged) by the cooling water intake structure. From that total list of species, the facility would then choose a limited number of organisms based on a definition of ''critical aquatic organisms'' provided in the regulations. EPA requests comment on whether 10 to 15 species might be an appropriate number to protect the types of species and ecosystem functions discussed in the above discussions of representative indicator species and critical aquatic organisms. EPA is considering using the same term ''critical aquatic organisms'' since it has been associated with section 316(b) requirements in the past. EPA is concerned that the RIS term, which has been used in other regulatory programs, may have conflicting programmatic issues and definitions associated with it that could not be anticipated. EPA would consider using the portions of the above language from the definition provided in the 1977 Guidance as it provides a reasonable, but flexible, framework for determining a list of fish and shellfish that are representative of all the species that have the potential to be impinged or entrained at cooling water intake structures. Changes to the language above might include modifying criteria number 8 to require the following:

(8) critical aquatic organisms based on 1–7, are developed by the applicant, with the concurrence of the Director and in consultation with Federal, State, and Tribal fish and wildlife management agencies with responsibility for fisheries and wildlife.

The definition would be added to the proposed rule at § 125.93. As discussed above, EPA is also considering a consultation role for the Director rather than one of concurrence.

Compliance with the impingement mortality and entrainment performance standards could then be measured by either counting the total number of individuals of all the critical aquatic organisms impinged and killed or entrained, or by measuring the total biomass (wet or dry) of the critical aquatic organisms impinged and killed or entrained. This value would then be compared to the calculation baseline to determine compliance with the performance standard.

EPA is also considering two options for making the compliance determination using the critical aquatic organism approach. The first option would be to determine compliance based on a total enumeration of individuals from all of the listed critical aquatic organism species, and the second option would be to base compliance on a separate analysis to determine the reduction in impingement mortality and entrainment for each species. If this critical aquatic organism approach is used, EPA might adopt regulatory language at § 125.94(b)(5) for Option 1 as follows:

(5) Compliance with the applicable impingement mortality and entrainment performance standards in paragraphs (b)(1) through (4) above must be determined based on a comparison of the enumeration of individuals from all of the listed critical aquatic organism species impinged and killed and entrained with the total number of listed critical aquatic organism species estimated to be impinged and killed and entrained at the calculation baseline.

If this critical aquatic organism approach is used for Option 2, EPA might adopt regulatory language at § 125.94(b)(5) for Option 2 as follows:

(5) Compliance with the applicable impingement mortality and entrainment performance standards in paragraphs (b)(1) through (4) above must be determined based on a comparison of the enumeration of individuals from each of the listed critical aquatic organism species impinged and killed and entrained with each of those estimated to be impinged and killed and entrained at the calculation baseline.

EPA invites comments on the use of critical aquatic organism approach, the above definition for critical aquatic organisms, the above regulatory language above, and the two options (a total enumeration of all organisms from the critical aquatic organism species or a separate analysis for each species) for determining compliance with the impingement mortality and entrainment performance standards. In addition to the potential refinements discussed above EPA is also considering and requests comment on whether the Agency should allow the Director to determine how best to measure compliance, either programmatically or as part of individual permit decisions.

EPA recognizes that a challenge in determining compliance with both the impingement mortality and entrainment performance standards is how to address the number of moribund or dead fish that wash up against the intake structure or become entrained. Under ideal circumstances, fish that were previously injured or killed from weather-related phenomena, or other episodic fish kills, would be removed from the measurement in order to more accurately determine the control technology performance. To ensure consistency with the use of the term moribund among permittees, EPA is considering adding the following definition of moribund (A Dictionary of Ecology, Evolution, and Systematics, Cambridge University Press, 1982) to § 125.93:

Moribund means dying; close to death.

EPA is considering placing in the regulatory language the ability for a facility to take into account moribund fish and shellfish for determining compliance with the impingement mortality and entrainment performance standard using actual or historical data (if representative of current conditions). If EPA allowed the exclusion of already moribund fish and shell fish in determining compliance with the performance standards, the Agency might adopt regulatory language at § 125.94(b)(5) as follows:

(5) Compliance with the applicable impingement mortality and entrainment performance standards in paragraphs (b)(1) through (4) above must be determined based on a comparison of * * *. The number of moribund organisms that were previously injured or killed prior to encountering the intake structure must be removed from the calculation if data are available.

EPA invites comments on including this regulatory language in the regulation at § 125.94 to allow facilities to exclude already moribund fish and shellfish, if data are available. EPA also invites comment on whether a facility should have the opportunity to remove the number of moribund organisms from the calculation but not be required to do so (as in the sample regulatory language above).

Other Issues

To calculate the mass of organisms entrained for the calculation baseline

facility and the existing plant with new intake technology installed, several commenters proposed the following approach: The entrained biomass could be measured by sampling the waterbody near the intake (the hypothetical shoreline intake for the baseline plant and the existing or relocated intake for the future complying plant). To calculate the mass of organisms that would be entrained both by the hypothetical shoreline intake without any protective technology and by whatever new proposed intake technologies are being assessed, the density of entrainable organisms present in the samples would be used (number/volume). An important consideration in evaluating entrainment is the element of time, *i.e.*, the density of entrainable organisms will fluctuate. EPA is soliciting comment on the use of total biomass or density in predicting or determining the entrainment reduction that would occur at a cooling water intake structure.

EPA received numerous comments requesting clarification of the averaging period for determining the percent reduction required by the impingement mortality and entrainment performance standards. The commenters stated that due to significant natural temporal and spatial variability in fish abundance and distribution, a short-term averaging period may not be appropriate. Entrainment may be near zero during months when there are no entrainable organisms near the intake. Additionally, the density of aquatic populations varies naturally over the longer term. Some commenters suggested that the averaging period for determining reductions should be two to five years to verify that the technology is achieving reductions within the ranges specified for the performance standards. This could involve measuring the percent reductions over the entire monitoring period. EPA is considering specifying an averaging time for determining compliance with performance standards over 1 year, 3 years, or a running average over the entire permit term (5 years). In addition, EPA is considering requiring the use of basic arithmetic means as the averaging methodology. EPA is requesting comment on the time frames and averaging method discussed above. In addition, EPA requests comment on the appropriate methodology for determining the averaging period. EPA is also considering leaving it to the Director to determine appropriate averaging periods and methodologies, either programmatically or on a site-specific basis, and requests comment on this approach.

C. Compliance Timelines, Schedules, and Determination

The proposed rule states that Phase II existing facilities would have to comply with the proposed rule requirements when a NPDES permit containing requirements consistent with the proposed Subpart J requirements is issued to the facility (see proposed § 125.92). Under existing NPDES program regulations, this would occur following publication of the final rule when an existing NPDES permit is reissued, or when an existing permit is modified, or revoked and reissued. EPA is considering options that would require full compliance with the rule after the effective date, similar to what EPA did in the Concentrated Animal Feeding Operations Rule, to the extent the best technologies will not be available immediately after promulgation of the final rule. As discussed below, the nature of this regulation is such that facilities may need to test and verify the efficacy of the technology option that they choose. (68 FR 7176, 7214 Feb. 12, 2003). EPA requests comment on this approach.

Commenters raised numerous issues regarding the proposed implementation and compliance schedules. Key comments include concern that the proposed rule does not provide sufficient time for permittees to develop necessary information, prepare the permit application, and come into compliance; suggestions that each permit renewal need not encompass a complete re-application and re-development of the permit; questions regarding how the proposed requirements will be enforced (*i.e.*, what constitutes compliance); and a general request for additional clarification about implementation timing issues (*e.g.*, effective date).

Several commenters indicated that the proposed requirement to submit data associated with the Comprehensive Demonstration Study at least 180 days prior to permit renewal is unrealistic. These commenters indicated that sufficient time is needed to collect data and prepare the permit application, as well as to design and test equipment. Commenters suggested various means by which time could be built into the implementation schedule, including allowing for the use of compliance schedules, phased compliance requirements, and providing a fixed period of time for facilities to evaluate how they will comply and submit an application.

The proposed 180-day requirement is based on the existing NPDES permit program requirement for renewal of existing permits (40 CFR 122.21(d)(2)). EPA proposed this time period, in part, to ensure consistency with the existing NPDES program. The 180-day time period ensures that permit writers have sufficient time to review NPDES permit applications, which for Phase II existing facilities will often be complex and include considerable amounts of information.

Some commenters have suggested EPA allow for the use of compliance schedules for Phase II existing facilities to conform to newly promulgated section 316(b) requirements. NPDES regulations at § 122.47 allow for the use of compliance schedules in NPDES permits by allowing permittees additional time to achieve compliance with the CWA and applicable regulations. Examples of situations where compliance schedules have been used include, but are not limited to, where new or revised effluent limitations guidelines were promulgated prior to 1989, or where new water quality standards are developed. EPA believes that the use of compliance schedules in the context of section 316(b) warrants consideration because such schedules are intended to allow permittees additional time where it clearly is necessary to achieve compliance. Compliance schedules, in association with the proposed Phase II regulations, would allow facilities whose NPDES permit would be reissued within the first few years after promulgation, additional time during the term of the permit to collect the information needed for the analyses required for the permit application, and/or to design, install, and optimize technologies to meet the performance standards. For example, facilities that would be issued a revised NPDES permit six months after the Phase II rule was published may not have provided the Director with information on their cooling water intake structure, and even if they had, it may not have contained the regulation-specific information such as the Impingement Mortality and Entrainment Characterization Study, the Design and Construction Technology Plan, or the Verification Monitoring Plan. In addition, the facility may not have assessed feasibility and certainly would not have begun construction of technologies. Use of compliance schedules under the NPDES permit program would require that the permit writer develop a schedule that is reasonable and that will ensure that the

facility is brought expeditiously towards compliance.

Some commenters suggested that EPA provide for a delayed or phased compliance date that would allow Phase II existing facilities to have, at least, a specified, minimum period of time to conduct their study and implement appropriate technologies. Commenters questioned whether facilities with permit renewal dates shortly after the Phase II rule becomes final would have sufficient time to conduct the required characterization studies and implement enhanced control technologies. As a result, they suggested that some specified period of time be provided to all Phase II existing facilities under the rule. Generally, suggestions regarding the specific amount of time necessary ranged from two or three years to a full 5-year permit term (*i.e.*, allow applicants to collect data and perform analyses within the term of the permit).[27]

EPA is considering and requests comment on whether the final rule should allow facilities required to apply for a permit renewal shortly after promulgation of the Phase II rule additional time to complete the studies associated with submitting a permit application. EPA is considering the following options: (1) Allowing applicants whose permits must be renewed in the first year after promulgation of the Phase II rule to submit application materials required by the Phase II rule one year after their current permit expires; and (2) allowing a two-year extension in the deadline for submitting Phase II application materials.

Commenters also questioned whether the study and data requirements specified under the proposed Phase II rule will be fully applicable to all subsequent 316(b) permit renewals for a given facility (*i.e.*, the second, third, or subsequent rounds of 316(b) permit renewals that take place following publication of the final Phase II rule). Some suggested that neither the preamble nor the proposed rule covering the Comprehensive Demonstration Study make clear whether the information required to be submitted is required with each NPDES permit renewal. Generally, commenters asserted that detailed permit evaluations should not be required every 5 years (*i.e.*, with each renewal cycle). One commenter suggested that a full re-assessment should only be required every third permit term (every 15 years).

EPA did not discuss alternative permit application requirements for permit renewals in the proposed Phase II rule. The proposed Phase II rule specifies that with each permit renewal the Director must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit (see proposed § 125.98(a)(1)). EPA does not generally specify reduced permit application requirements for permit renewals under the NPDES program. Rather, permitted facilities and permit writers normally exchange the information specified in the relevant permit application requirements and the permit writer determines when the application is complete (see 40 CFR 122.21(d)). It is not uncommon, however, that some existing information (*i.e.*, information submitted as part of an earlier permit application) remains part of a renewal application. EPA expects this to be true for Phase II existing facilities as well.

Under the proposed Phase II rule, EPA has identified several categories of permit application data and information requirements. These requirements, which are reasonably general in nature, provide certain flexibility to applicants to update only the key parts of the application that reflect changes in environmental conditions or operations. For example, the proposed rule would allow Phase II existing facilities to submit a proposal for information as the first step in identifying the scope of the Comprehensive Demonstration Study (see proposed § 125.95(b)(1)). This proposed requirement would provide applicants with an opportunity to identify the information in the study that has changed and must be updated, as well as existing information that remains representative of current conditions. In fact, it specifically provides for inclusion of historical studies where relevant. It also provides for the use of historical impingement and entrainment data, provided they are representative of the current operation and biological conditions. The proposed requirements do ensure that the Director retains sufficient flexibility to require Phase II existing facilities to submit data needed to assess source waterbody conditions and design and operational conditions at the facility. EPA is evaluating an additional option that it believes would maintain the Director's ability to obtain the information needed to make informed decisions when writing NPDES permits for existing facilities with cooling water intake structures. The proposed rule requires that facilities submit all of the information required in § 122.21(r) and § 125.95 (as applicable). EPA is considering whether to develop additional regulatory language that would allow the Director to relax the application information requirements if conditions at the facility and in the waterbody remain unchanged since the facility submitted their previous NPDES permit application, such that the information that they would submit would remain unchanged. Should this new regulatory language be implemented, the facility would be required to submit evidence that the conditions remain unchanged. This would serve to lessen the burden for information collection activities on the facility after the initial permit where section 316(b) requirements are placed in the NPDES permit as long as conditions remain unchanged. To demonstrate that operational conditions remain unchanged, the facility may rely upon data collected during the permit term, including facility operational data, monitoring, design information, and other data. To demonstrate that conditions in the waterbody remain unchanged, the facility may rely on monitoring and studies conducted by the facility, or data collected by other sources such as universities, federal, State, or local environmental and resource agencies, or other facilities located in close proximity. Determinations of unchanged conditions may rely upon demonstrations that there is no statistically significant changes in impingement and entrainment at the facility or in the densities of organisms in the vicinity of the cooling water intake structures, for example. If EPA decides to relax application requirements for permit renewals after a facility's initial permit implementing the Phase II regulations, the regulatory language of § 125.95(a) might be revised as follows:

(a)(1)You must submit to the Director the application information required by 40 CFR 122.21(r)(2), (3) and (5) and the Comprehensive Demonstration required by paragraph (b) of this section at least 180 days before your existing permit expires, in accordance with Sec. 122.21(d)(2).

(2) In subsequent permit terms, the Director may approve a request to reduce the information required to be submitted in your permit application on the cooling water intake structure and the source waterbody, if conditions at your facility and in the waterbody remain unchanged since your previous application. You should submit your request for reduced cooling water intake structure and waterbody application

[27] For example, one commenter suggested allowing two years for baseline ecological studies and economic studies; one year to proposed and install technologies; and two years to monitor effectiveness of changes.

information to the Director at least 1 year prior to the expiration of the permit term. Your request must contain a list and justification for each information item in § 122.21(r) or § 125.95 that you determine has not changed since the previous permit application.

EPA requests comment on the two options described above. EPA specifically requests comments on whether an option like that in the suggested regulatory language above is appropriate to reduce the burden for NPDES permit applicants in subsequent permit terms or whether the option that would provide guidance and allow resubmittal of existing data and hence a reconfirmation of the data through the application process is needed to ensure accurate data for the Director. There would be companion language in § 125.98 requiring the Director to review and approve, approve with comments, or disapprove the request within 60 days of submittal by the applicant. EPA also requests comment on the specific time frames that would be appropriate for this option, and whether they should be specified by EPA or left up to the discretion of the Director.

In addition to the concerns discussed above regarding the timing and content of application materials, some commenters also voiced concerns regarding how Directors will determine if a facility is in compliance with the requirements of the proposed rule. These commenters expressed concern that, given the difficulty of predicting the performance of distinct cooling water intake control technologies, it is not reasonable to expect every Phase II existing facility to be able to ensure that it will achieve reductions in impingement and entrainment that are consistent with the proposed performance standards within the first permit term and, therefore, it would be unfair to enforce the proposed standards until each facility has had a reasonable period to achieve compliance. One comment expressed by these groups is that proper design, installation, operation, and maintenance of technologies reasonably likely (based on appropriate characterization and study) to meet the performance standards should satisfy the permit terms and conditions (*i.e.*, be deemed compliance), at least until the second round of permitting occurs. Stated another way, commenters maintain that Phase II existing facilities should not be subject to immediate enforcement actions in the first permit term for failing to meet the proposed performance ranges (*i.e.*, a facility that properly designs, installs, operates and maintains cooling water intake structure control technologies but discovers, at or near the end of the first permit term, that it has not achieved the requisite level of impingement and entrainment reduction, should not be subject to enforcement for violating the section 316(b) requirements). EPA recognizes that significant variability in biological communities over seasons and other time periods (for example, a period of peak larval abundance that typically occurs in the spring months), may complicate optimization of the performance of technologies for reducing impingement mortality and entrainment. EPA is considering the need for regulatory language that would allow facilities time to come into compliance if they choose to install technologies to meet the performance standards in proposed § 125.94. This would allow facilities a period of time to optimize technology(ies) so that they operate to minimize impingement mortality and entrainment. EPA is currently evaluating and considering allowing six months, one year, two years, or five years (one permit term) for a facility to come into compliance after issuance of its permit. Example regulatory language for a new paragraph (e) in § 125.94 might read as follows:

(e) If you propose to implement design and construction technologies or operational measures to meet the performance standards in § 125.94(b) or (c), you will have an optimization period of [six months/one year/two years/five years] from the issuance of a permit requiring compliance with § 125.94(b) or (c) after which you must comply with the standards.

In this case, the proposed paragraphs § 125.94(e) and (f) would then become (f) and (g), respectively. EPA requests comments on these time frames and the suggested regulatory language above. EPA also requests comment on whether EPA should specify the length of the optimization period or whether the Director should make this decision.

D. Determining Capacity Utilization Rates

At § 125.94(b)(2), the proposed rule would require facilities with a capacity utilization rate of less than 15 percent to meet performance standards for reducing impingement mortality. § 125.94(b)(3) would require facilities with a capacity utilization rate of 15 percent or more to meet performance standards both for reducing impingement mortality and for reducing entrainment. (See 67 FR 17221.) As discussed in Section III above, the proposed Phase II rule defined capacity utilization based on the generation and capacity of the entire facility, including steam electric and non-steam generators. (See the proposed definition of ''capacity utilization rate'' at § 125.93, 67 FR 17220.) EPA is considering whether, for the purposes of implementing Section 316(b), defining capacity utilization based on the steam electric part of a facility better reflects a facility's potential for adverse environmental impact because only the steam electric generators use cooling water. Thus, EPA is considering refining its regulatory definition for ''capacity utilization rate'' at the proposed § 125.93 to reflect use of the steam electric part of a facility. If EPA were to make this change, the definition of ''capacity utilization rate'' in § 125.93 might be revised as follows (new language is underlined):

Capacity utilization rate means the ratio between the average annual net generation of the *steam electric part of a* facility (in MWh) and the total net capability of the *steam electric part of a* facility (in MW) multiplied by the number of available hours during a year. The average annual generation must be measured over a five year period (if available) of representative operating conditions.

EPA requests comment on this suggested refinement.

E. Clarifications and Corrections

1. Implementation Burden for Studies and Biological Data Collection

EPA received comments concerning the information collection, study, and monitoring costs presented in the supporting Information Collection Request for Cooling Water Intake Structures for the Phase II Existing Facility Proposed Rule (US EPA ICR No. 2060.01) (February 2002). Commenters stated that the format was confusing and the detail provided in the ICR was insufficient to enable them to review and comment on these costs. To assist reviewers, EPA has placed additional information into the record summarizing the general derivation of information collection, study, and monitoring activity costs associated with the Phase II rule. Labor categories, labor rates, monitoring components, and associated costs are outlined and additional cost details are presented in summary tables to facilitate ease of review and understanding.

Commenters also pointed out that EPA had inadvertently transposed the labor figures for statisticians and biological technicians when putting together the summary tables of costs. EPA has recalculated the ICR costs to rectify this error and has determined that costs will not change substantially. Labor costs associated with monitoring activities in the ICR were significantly higher than the labor for writing final reports and studies. Therefore, when the

correction to the labor rates was made, the overall facility costs decreased.

However, the decrease in facility costs due to the correction to the labor rates was offset by other changes that EPA has made to the ICR costs since proposal. Some commenters stated that the burdens for impingement and entrainment monitoring were too low. EPA has reviewed these burden estimates and has increased the burdens associated with impingement and entrainment monitoring associated with the Impingement Mortality and Entrainment Characterization Study. In addition, EPA has revised capital and O&M costs associated with the pilot-scale studies some facilities may perform to reflect the assumption that only facilities which are projected to install new technologies will perform pilot studies, and to be proportional to the projected capital costs for installing these new technologies to comply with the rule. The following provides a summary of the effects of these corrections and updates on labor costs and overall costs for facilities, as well as total combined costs for States and facilities.

- Facility labor costs increased by 65% from $66,399,819 to $109,346,909 annually.
- Facility capital and O&M costs decreased by 61% from $63,633,640 to $24,801,777 annually.
- Total costs for facilities increased by 3.2% from $130,033,459 to $134,148,685 annually.
- Total facility and State costs increased by 2.8% from $135,990,706 to $139,820,531 annually.

The effects of the recalculation are summarized in more detail in a memorandum placed in the record (see ''Updated Information Collection Costs for the 316(b) Phase II Notice of Data Availability, January 31, 2002).

2. San Onofre Impacts Discussion

In response to comments received about inaccuracies related to facility-specific impacts caused by impingement and entrainment discussed in EPA's Information Collection Request (ICR), EPA provides the following clarification. Specifically, the ICR for the proposed rule described entrainment losses at San Onofre Nuclear Generating Station (SONGS). EPA received updated information from SONGS facility scientists that clarified actual entrainment losses in normal (non-El Nino) years and described trends in shallow-water and deepwater fish species affected by entrainment. In addition, prior to publication of the proposed rule, EPA concluded that kelp bed losses in proximity to the SONGS intake were attributable to turbidity increases caused by cooling water discharges, not cooling water withdrawals. The updated information for SONGS was placed in the preamble to the proposal (see 67 FR 17138–17139), but was inadvertently omitted from the ICR. The final ICR will reflect the changes described above.

XII. General Solicitation of Comments

EPA encourages public participation in this rulemaking and requests comments on this notice of availability supporting the proposed rule for cooling water intake structures for existing Phase II facilities. As stated in section II of this NODA, EPA is also reopening the comment period on all aspects of the proposal. EPA invites all parties to coordinate their data collection activities with the Agency to facilitate mutually beneficial and cost-effective data submissions.

Please refer to the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble for technical contacts at EPA.

Dated: March 12, 2003.

G. Tracy Mehan,

Assistant Administrator, Office of Water.

[FR Doc. 03–6453 Filed 3–18–03; 8:45 am]

BILLING CODE 6560–50–P



Federal Register

Wednesday,
March 19, 2003

Part V

Department of Veterans Affairs

38 CFR Parts 17 and 61

VA Homeless Providers Grant and Per Diem Program; Interim Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 61

RIN 2900–AL30

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: We are revising the regulations concerning the VA Homeless Providers Grant and Per Diem Program in large part to implement the provisions of the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA).

We also are establishing provisions in the form of funding priorities to meet a statutory mandate. In addition, to help ensure that program objectives are met by those receiving assistance we are adding provisions to state that to receive assistance under the interim final rule, an entity must not be in default by failing to meet requirements under any previously awarded grant.

Further, we are making changes to provide that each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income not including amounts equal to medical expenses, child care expenses, or court ordered payments. This is intended to provide a system that is administratively feasible, that allows for significant help for covering operating expenses, and that would allow veterans to retain sufficient funds to help prepare for a successful transition to independent living.

DATES: Effective Date: This interim final rule is effective on March 19, 2003; except for 38 CFR 61.11, 61.14, 61.17, 61.31, 61.41 and, 61.51, which are effective April 3, 2003.

Comment Dates: Comments on the rule, including comments on the information collection provisions, must be received on or before May 19, 2003; except that comments on the request for emergency approval of the collection of information provisions must be received on or before April 3, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL30.'' All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: The regulations previously established for the VA Homeless Providers Grant and Per Diem Program (38 CFR 17.700 through 17.731) contained a mechanism for providing grants and per diem to public or nonprofit private entities to assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing. As discussed below, we are revising the regulations in this interim final rule to implement the provisions of Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001.

Organization and Clarity

We are transferring the revised regulations to a new part 61 in 38 CFR and are making other changes to provide better organization and clarity.

Use of the Term ''capital grants''

In the previous regulations the term ''grant'' concerned construction, renovation, and acquisition of facilities; and also concerned acquisition of vans. In the interim final rule, we have referred to this type of grant as a ''capital grant'' to distinguish it from the new ''special needs grant'' and the new ''technical assistance grant,'' both discussed below.

Capital Grants to Expand Existing Structures

Public Law 106–117 added authority to allow VA to award capital grants to expand existing programs which was codified by the HVCCA at 38 U.S.C. 2011(a). We made changes to reflect this authority.

Recovery Provisions for Capital Grants

The provisions of 38 U.S.C. 2011 authorize recovery of capital grant funds if not used for the intended purpose within 3 years after the grant was awarded. The interim final rule provides that if, after 3 years from the date of award of a capital grant, the grant recipient does not establish the project for which the grant was made or has withdrawn from the VA Homeless Providers Grant and Per Diem Program, the United States would be entitled to recover from the grant recipient all of the grant amounts provided for the project. If thereafter, but prior to the period of time specified in the following chart, the capital grant recipient ceases to provide the services for which the grant was made or withdraws from the VA Homeless Providers Grant and Per Diem Program, the rule provides that the United States would be entitled to recover grant amounts from the grant recipient on a prorated basis. The amount to be recaptured equals the amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant amount (dollars in thousands)	Years of operation
0–250	7
251–500	8
501–750	9
751–1,000	10
1,001–1,250	11
1,251–1,500	12
1,501–1,750	13
1,751–2,000	14
2,001–2,250	15
2,251–2,500	16
2,501–2,750	17
2,751–3,000	18
Over-3,000	20

Example A: Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

Example B: Grantee B is awarded a grant in the amount of $300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was $300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case ¼ of the original grant would be subject to recapture.

Example C: Grantee C is awarded a grant in the amount of $400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount

subject to recapture would thus be 7/8 × $400,000 or $350,000.

This represents an equitable system for recovering capital grant amounts that are not used to the full extent of the intended purpose.

The provisions of 38 U.S.C. 2011 also provide that VA may obligate any recovered funds without fiscal year limitation. We amended the regulations to reflect this authority.

Life Safety Code

We are establishing a special mechanism for providing certain Life Safety Code capital grants. Public Law 107–95 established 38 U.S.C. 2012(c)(3) to provide grants to renovate facilities that already received a capital grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590; 38 U.S.C. 7221 *note*). Such grants are solely for renovations to comply with the Life Safety Code of the National Fire Protection Association.

Under the interim final rule, when funds are made available for the Life Safety Code capital grants, VA would publish a Notice of Fund Availability in the **Federal Register** stating the estimated amount of funding available and the particulars for applying for a Life Safety Code capital grant, including the submission of an application package. This corresponds with the process that the interim final rule continues to provide for other capital grants.

Applicants would be rated based on criteria designed to identify cost-effectiveness and need. Life Safety Code capital grants would be allocated to the highest-ranked applicants in descending order until funds are expended. These provisions are designed to help ensure that the Life Safety Code capital grant would be awarded for needed quality projects.

The provisions of 38 U.S.C. 2011 and 2012 further require that neither a capital grant nor per diem (with delayed effective dates for grant recipients under the Homeless Veterans Comprehensive Service Program Act of 1992 seeking per diem) may be provided unless the facility for which the assistance is provided meets the fire and safety requirements applicable under the Life Safety Code of the National Fire Protection Association or other comparable requirements. Accordingly, in addition to setting forth procedures specifically to provide Life Safety Code capital grants under 38 U.S.C. 2012(c)(3), the interim final rule provides that entities receiving a capital grant under 38 U.S.C. 2011 or per diem under 38 U.S.C. 2012 (with statutorily imposed delayed effective dates) must comply with the Life Safety Code of the National Fire Protection Association.

Per Diem Payments

Under the interim final rule, the rate of per diem payments for each veteran in supportive housing would be the lesser of:

(i) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of State and local governments, from private entities or organizations, and from program participants), or

(ii) The current VA State Home Program per diem rate for domiciliary care.

Also, the rule provides that the per diem amount for service centers would be 1/8 of the lesser of the amounts in paragraph (i) or (ii) above per hour, not to exceed 8 hours in any day.

These provisions for calculating per diem reflect requirements imposed by Pub. L. 107–95 that are set forth at 38 U.S.C. 2012.

In addition, to avoid making per diem payments when services are not being rendered while still allowing reasonable absences (such as for visiting family, job searches, or short term medical care), the rule states that VA will not pay per diem for any additional days of absence when a veteran has been already absent for consecutive full days exceeding 72 hours (scheduled or unscheduled).

Moreover, to avoid making per diem payments for services that have limited chance of success, the rule states that VA will not pay per diem payments for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for by VA. However, the rule provides that VA may waive the episode requirement if the services offered are different from those previously provided and may lead to a successful outcome.

Special Needs Grants

We are establishing a mechanism for providing special needs grants. Section 5 of Pub. L. 107–95, codified at 38 U.S.C. 2061 authorizes VA to provide special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing beds or services at supportive housing and service centers for the following homeless veterans:

(1) Women, including women who have care of minor dependents;

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

We have defined ''terminally ill'' to mean a prognosis of 9 months or less to live based on a written medical diagnosis from a physician. We also have defined ''chronically mentally ill'' to mean a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood. In addition, we have defined ''frail elderly'' to mean 65 years of age or older with one or more chronic health problems and limitations in performing one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.). We believe these definitions constitute a reasonable interpretation of the statutory intent. They are designed to help ensure that those most in need are benefited by the special needs grants.

Under the interim final rule, when funds are made available for special needs grants, VA would publish a Notice of Fund Availability in the **Federal Register** stating the estimated amount of funding available and the particulars for applying for a special needs grant, including the submission of a special needs grant application package. This corresponds with the process that the interim final rule continues to provide for capital grants.

The interim final rule sets forth minimum threshold criteria by limiting special needs grants to those entities that demonstrate that they are eligible for a special needs grant, and would use the funds productively. Those meeting the threshold criteria would then be rated based on criteria designed to identify those who would use the special needs grant to provide the strongest programs. Special needs grants would be allocated to the highest-ranked applicants in descending order until funds are expended. These provisions are designed to help ensure that the special needs grants would be awarded for quality projects and be of sufficient duration to be worthwhile.

Technical Assistance Grants

We also are establishing a mechanism for providing technical assistance grants. Section 5 of Pub. L. 107–95, codified at 38 U.S.C. 2064 authorizes VA to provide grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. To meet this mandate VA would provide grants for:

(a) Group or individual seminars providing general instructions concerning grant applications;

(b) Group or individual seminars providing instructions for applying for a specific grant; or

(c) Group or individual instruction for preparing analyses to be included in a grant application.

Under the interim final rule, when funds are made available for technical assistance grants, VA would publish a Notice of Fund Availability in the **Federal Register** stating the estimated amount of funding available and the particulars for applying for a technical assistance grant, including the submission of a technical assistance grant application package. This corresponds with the process that the interim final rule continues to provide for capital grants.

The interim final rule sets forth minimum threshold criteria by limiting technical assistance grants to those entities that are eligible for a technical assistance grant and that demonstrate that they would use the grant productively. Those meeting the threshold criteria would then be rated based on criteria designed to identify those who would use the grant to provide the strongest programs. Technical assistance grants would be allocated to the highest-ranked applicants in descending order until funds are expended. These provisions are designed to help ensure that the technical assistance grants would be awarded for quality projects.

Nonprofit Entities

The provisions of 38 U.S.C. 2011 also state that only public and nonprofit entities are eligible for assistance under the VA Homeless Providers Grant and Per Diem Program. We are amending the definition of ''nonprofit organization'' to include the requirement that the organization must be recognized as a nonprofit organization by the United States Internal Revenue Service. This will help ensure that only nonprofit organizations will be recognized as such and should eliminate disputes regarding such status.

Funding Priorities

The provisions of 38 U.S.C. 2011 state that awards shall not result in the duplication of ongoing services and to the maximum extent practicable shall reflect appropriate geographic dispersion and an appropriate balance between urban and nonurban locations. We are establishing provisions in the form of funding priorities to meet the statutory mandate.

Service Centers

The regulations retain provisions requiring service centers for which assistance is awarded under the VA Homeless Providers Grant and Per Diem Program to provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. However, we are changing the regulations to specifically provide that the calculation of minimum hours would include travel time for mobile service centers. This is necessary because a substantial portion of work time for mobile service centers consists of travel time.

We also are requiring fixed site service centers to prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Further, we are requiring mobile service centers to take some action reasonably calculated to provide in advance a tentative schedule of visits. This will help ensure that homeless veterans know when and where they can obtain assistance.

Default Under Previously Awarded Grant

We are adding provisions to state that to receive assistance under the interim final rule, an entity must not be in default by failing to meet requirements under any previously awarded grant. This is intended to help ensure that program objectives are met by those receiving assistance.

Resident Rent

The regulations previously provided that each resident of supportive housing may be required to pay as rent an amount determined by the recipient, which could not exceed the highest of:

(1) 30 percent of the resident's monthly adjusted income (adjustment factors include the number of relatives in the family residing with the veteran, medical expenses, and child care expenses);

(2) 10 percent of his or her family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

We have changed the regulations to provide instead that each resident of supportive housing may be required to pay as rent an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments. This is intended to provide a system that is administratively feasible, that allows for significant help for covering operating expenses, and that would allow veterans to retain sufficient funds to help prepare for a successful transition to independent living.

Summaries of Certain Requirements

We are deleting summaries of certain non-VA federal requirements since the source material should be used to determine those requirements.

Paperwork Reduction Act

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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 interim final rule at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by April 3, 2003. If OMB does not approve the collections of information as requested, we will immediately remove §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 or take such other action as is directed by OMB.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the

collection of information provisions contained in §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.70 on a non-emergency basis. Comments must be submitted by May 19, 2003.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AL30.''

Title: VA Homeless Providers Grant and Per Diem Program.

Summary of collection of information: The interim final rule at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, and 61.51, contains application provisions for capital grants, per diem, special needs grants, and technical assistance grants. The interim rule at §§ 61.55 and 61.70 contain requirements for compliance reports.

Application Provisions for Capital Grants and Per Diem

Description of the need for information and proposed use of information: This information is needed to determine eligibility for capital grants and per diem.

Description of likely respondents: Public or nonprofit private entities requesting a capital grant.

Estimated number of respondents per year: 100.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3,500 hours.

Estimated annual burden per collection: 35 hours.

Application Provisions for the Life Safety Code Capital Grants

Description of the need for information and proposed use of information: This information is needed to determine eligibility for Life Safety Code capital grants.

Description of likely respondents: Public or nonprofit private entities requesting a Life Safety Code capital grant.

Estimated number of respondents per year: 200.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 2,000 hours.

Estimated annual burden per collection: 10 hours.

Application Provisions for Per Diem for Non-Capital Grant Recipients.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for per diem.

Description of likely respondents: Public or nonprofit private entities requesting per diem.

Estimated number of respondents per year: 150.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3,000 hours.

Estimated annual burden per collection: 20 hours.

Application provisions for special needs grants.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for special needs grants.

Description of likely respondents: Public or nonprofit private entities requesting a special needs grant.

Estimated number of respondents per year: 200.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 4,000 hours.

Estimated annual burden per collection: 20 hours.

Application provisions for technical assistance grants.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for technical assistance grants.

Description of likely respondents: Entities or organizations with expertise in preparing grant applications requesting a technical assistance grant.

Estimated number of respondents per year: 25.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 250 hours.

Estimated annual burden per collection: 10 hours.

Compliance reports for technical assistance grants.

Description of the need for information and proposed use of information: This information is needed to determine compliance with the requirements for a technical assistance grant.

Description of likely respondents: Entities receiving technical assistance grants.

Estimated number of respondents per year: 10.

Estimated frequency of responses per year: 4.

Estimated total annual reporting and recordkeeping burden: 90 hours.

Estimated annual burden per collection: 2.25 hours.

Compliance reports for per diem and special needs grants.

Description of the need for information and proposed use of information: This information is needed to determine compliance with the requirements for per diem and a special needs grant.

Description of likely respondents: Entities receiving per diem or special needs grants.

Estimated number of respondents per year: 300.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 1500 hours.

Estimated annual burden per collection: 5 hours.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest and that we have good cause to dispense with notice and comment on this rule and to dispense with a 30-day delay of its effective date. The Homeless Veterans Comprehensive Assistance Act of 2001 (Pub. L. 107–95) authorizes increases in both the services (3 new grant programs) and the per diem available to homeless veteran providers. These increased services and per diem are critical to properly provide services to the homeless veterans population and meet the Congressional mandates of ending chronic homelessness. Also, a delay in some cases may even lead to the closing of some of our collaborative partners' homeless veteran programs. Therefore, the need to take emergency action is particularly great for those homeless veterans who will benefit from the increased services (grants) and per diem.

Executive Order 12866

This document has been reviewed by the office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. In all likelihood, only similar entities that are small entities will participate in the Homeless Providers Grant and Per Diem Program. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program; Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: December 17, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we are amending 38 CFR chapter I as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§§ 17.700 through 17.731 [Removed]

2. Remove §§ 17.700 through 17.731 and the undesignated center heading, VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM, immediately preceding those sections.

3. A new part 61 is added to read as follows:

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

Sec.

61.0 Purpose.
61.1 Definitions.
61.10 Capital grants—general.
61.11 Applications for capital grants.
61.12 Threshold requirements for capital grant applications.
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(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.0 Purpose.

This part implements the VA Homeless Providers Grant and Per Diem Program which consists of the following components: capital grants, per diem, special needs grants, and technical assistance grants.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.1 Definitions.

For purposes of this part:

Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

Capital grant means a grant for construction, renovation, or acquisition of a facility; or for acquisition of a van.

Capital lease means a lease that will be in effect for the full period in which VA may recover all or portions of the capital grant amount under this part.

Chronically mentally ill means a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one

documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood.

Fee means a fixed charge for a service offered by a recipient under this part, that is in addition to the services that are outlined in the recipient's application; and are not paid for by VA per diem or provided by VA, (*e.g.*, cable television, recreational outings, professional instruction or counseling).

Fixed site means a physical structure that under normal conditions is not capable of readily being moved from one location to another location.

Frail elderly means 65 years of age or older with one or more chronic health problems and limitations in performing one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.)

Homeless means: (1)(i) Lacking a fixed, regular and adequate nighttime residence; or

(ii) Having a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The term homeless does not include imprisonment or other detainment pursuant to Federal or State law. Imprisonment or other detainment does not include probation, parole or electronic custody.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must be recognized as a 501(c)(3) or 501(c)(19) nonprofit organization by the United States Internal Revenue Service, and:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA, obtaining program audits, and securing accreditation; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van costs or building rent (except under capital leases), *e.g.*, fuel, insurance, utilities, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services;

(4) Other costs associated with operating the supportive housing.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person receiving services based on a grant or per diem provided under this part.

Public entity includes:

(1) A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government, and

(2) The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

Rehabilitation means the improvement or repair of an existing structure. Rehabilitation does not include minor or routine repairs.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing with supportive services provided for homeless veterans and is:

(1) Transitional housing, or

(2) A part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services means services, which may be designed by the recipient or program participants, that provide appropriate services or assist such persons in obtaining appropriate services to address the needs of homeless veterans to be served by the project. Supportive services does not include inpatient acute hospital care, but does include:

(1) Outreach activities;

(2) Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(3) Establishing and operating child care services for dependents of homeless veterans;

(4) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;

(5) Providing assistance in obtaining permanent housing;

(6) Providing education, employment counseling and assistance, and job training;

(7) Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and

(8) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

Terminally ill means a prognosis of 9 months or less to live based on a written medical diagnosis from a physician.

VA means the Department of Veterans Affairs.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.10 Capital grants—general.

(a) VA provides capital grants to public or nonprofit private entities so they can assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing. Specifically, VA provides capital grants for up to 65 percent of the cost to:

(1) Construct structures and purchase the underlying land to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(2) Acquire structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(3) Renovate existing structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers; and

(4) Procure vans (purchase price, sales taxes, and title and licensing fees) to provide transportation or outreach for the purpose of providing supportive services.

(b) Capital grants may not be use for acquiring buildings located on VA-owned property. However, capital grants may be awarded for construction, expansion, or renovation of buildings located on VA-owned property.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.11 Applications for capital grants.

(a) To apply for a capital grant, an applicant must obtain from VA a capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability under § 61.60 of this part.

(b) The capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the capital grant;

(2) Site description, site design, and site cost estimates;

(3) Documentation on eligibility to receive a capital grant under this part;

(4) Documentation on matching funds committed to the project;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

(8) If capital grant funds are proposed to be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction;

(9) If grant funds are proposed to be used for new construction, documentation demonstrating that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction, and that new construction is less costly than acquisition of an existing building, (for purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition);

(10) If the proposed construction includes demolition, a demolition plan, including the extent and cost of existing site features to be removed, stored, or relocated and information establishing that the proposed construction is in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project (the cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project);

(11) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(12) Reasonable assurances with respect to receipt of a capital grant under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) The recipient will continue to operate the project until the expiration of the period during which VA could seek recovery under § 61.67;

(iii) Title to such site or van will vest solely in the applicant and the applicant will insure vans to the same extent they would insure a van bought with their own funds;

(iv) Adequate financial support will be available for the completion of the project or for the purchase and maintenance, repair, and operation of the van; and

(v) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(c) Applicants may apply for more than one capital grant.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.12 Threshold requirements for capital grant applications.

To be eligible for a capital grant, an applicant must meet the following threshold requirements:

(a) The application was completed in all parts and included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant is a public or nonprofit private entity;

(c) The population proposed to be served is homeless veterans;

(d) The activities for which assistance is requested are eligible for funding under this part;

(e) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the capital grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(f) The application has demonstrated compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655);

(g) The applicant has agreed to comply with the requirements of this part and has demonstrated the capacity to do so;

(h) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(i) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.13 Rating criteria for capital grant applications.

(a) Applicants that meet the threshold requirements in § 61.12 of this part, will then be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 600 points (out of a possible 1,200) and must receive points under criteria in paragraphs (b), (c), (d), (e), and (i) of this section.

(b) Quality of the project. VA will award up to 300 points based on the following:

(1) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(2) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(3) How program participants will be involved in making project decisions that affect their lives so that they achieve greater self-determination, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals;

(4) How permanent affordable housing will be identified and made known to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(5) How the service needs of participants will be assessed on an ongoing basis;

(6) How the proposed housing, if any, will be managed and operated;

(7) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities, and services;

(8) How and when the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented;

(9) How and when the effectiveness of the overall project in achieving its goals will be evaluated and documented; and how any needed program modifications will be made based on those evaluations; and how program modifications will be reported to VA; and

(10) How the proposed project will be implemented in a timely fashion.

(c) Targeting to persons on streets and in shelters. VA will award up to 150 points based on:

(1) The extent to which the project is designed to serve homeless veterans living in places not ordinarily meant for human habitation (*e.g.,* streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(2) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(d) Ability of applicant to develop and operate a project. VA will award up to 200 points based on the extent to which the application demonstrates experience in the following areas:

(1) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(2) Assessing the housing and relevant supportive service needs of homeless veterans;

(3) Accessing housing and relevant supportive service resources;

(4) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(5) If applicable, administering a rental assistance program;

(6) Providing supportive services or supportive housing for homeless veterans;

(7) Monitoring and evaluating the progress of persons toward meeting their individual goals;

(8) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements, as needed; and

(9) Maintaining fiscal solvency as evidenced by providing their last complete yearly financial statements.

(e) Need. VA will award up to 150 points based on the extent to which the applicant demonstrates:

(1) Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation such as the streets, emergency shelters, based on reliable data from surveys of homeless populations or other reports or data gathering mechanisms that directly support claims made; and

(2) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(f) Innovative quality of the proposal. VA will award up to 50 points based on the innovative quality of the proposal, in terms of:

(1) Helping homeless veterans or homeless veterans with disabilities to reach residential stability, to increase their skill level and/or income, and to increase the influence they have over decisions that affect their lives;

(2) Establishing a clear link between the innovation(s) and its proposed effect(s); and

(3) Establishing usefulness as a model for other projects.

(g) Leveraging. VA will award up to 50 points based on the extent to which the applicant documents resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application.

(h) Cost-effectiveness. VA will award up to 100 points for cost-effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount, and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high-cost areas. Cost-effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(i) Coordination with other programs. VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

(1) They are part of an ongoing community-wide planning process within the framework described above which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(2) They have consulted directly with the closest VA Medical Center and other providers within the framework described above regarding coordination of services for project participants; and

(3) They have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.14 Selecting applications for capital grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be

conditionally selected to receive a capital grant in accordance with their ranked order, as determined under § 61.13 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.15 Obtaining additional information and awarding capital grants.

(a) Each applicant who has been conditionally selected for a capital grant will be requested by VA to submit additional information, including:

(1) Documentation to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in § 61.16 of this part;

(3) Documentation establishing site control described in § 61.17 of this part;

(4) Documentation establishing compliance with the National Historic Preservation Act (16 U.S.C. 470);

(5) Information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines;

(6) Documentation establishing compliance with local and state zoning codes;

(7) Documentation in the form of one set of design development (35 percent completion) drawings demonstrating compliance with local codes, state codes, and the Life Safety Code of the National Fire Protection Association.

(8) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(9) A site survey performed by a licensed land surveyor; and

(10) Such other documentation as specified by VA in writing to the applicant to confirm or clarify information provided in the application.

(b) The required additional information must be received by VA in acceptable form within the time frame established by VA in a Notice of Fund Availability published in the **Federal Register**.

(c) Following receipt of the additional information in acceptable form, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.16 Matching funds for capital grants.

The amount of a capital grant may not exceed 65 percent of the total cost of the project for which the capital grant was awarded. The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the project not funded by the capital grant. This matching share shall constitute at least 35 percent of the total cost. If the project is for supportive housing, or a service center that would be used for purposes under this part and for other purposes, a capital grant may be awarded only in proportion to the use under this part. Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.17 Site control for capital grants.

(a) As a condition for obtaining a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control through a deed, a capital lease, or an executed contract of sale, unless the site is in a building or on land owned by VA. Such site control must be demonstrated within 1 year after execution of an agreement under § 61.61 of this part.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62 of this part. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.20 Life Safety Code capital grants.

(a) This section sets forth provisions for obtaining a Life Safety Code capital grant under 38 U.S.C. 2012(c)(3). To be eligible to receive such a capital grant, an applicant already must have received a grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590; 38 U.S.C. 7221 note) for construction, renovation, or acquisition of a facility and must obtain the Life Safety Code capital grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association. The following sections of this part apply to the Life Safety Code grants §§ 61.60 through 61.66; and § 61.80 and § 61.82.

(b) To apply for a Life Safety Code capital grant under this section, an applicant must obtain from VA a Life Safety Code capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The Life Safety Code capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the modifications needed to meet the Life Safety Code or such other comparable fire and safety requirements;

(2) Site description, site design, and site cost estimates;

(3) Reasonable assurances with respect to receipt of a Life Safety Code capital grant under this part that:

(i) The project being renovated is being, and will continue to be, used principally to furnish veterans the level of care for which VA awarded the applicant a grant under the Homeless Veterans Comprehensive Service Program Act of 1992; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based;

(iii) The applicant has agreed to comply with the applicable requirements of this part and has demonstrated the capacity to do so;

(iv) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(v) The applicant is not in default, by failing to meet requirements for any previous assistance from VA.

(c)(1) Cost-effectiveness. VA will award up to 300 points for cost-effectiveness with adjustments for high-cost areas. Applicants should address the following:

(i) Estimated cost of the renovation and the type of work to be done;

(ii) Estimated cost of any displacement of program participants or services due to the renovation; and

(iii) Cost-benefit analysis addressing the benefit of renovation to the structure compared to moving program to another site.

(2) Coordination. VA will award up to 200 points for a summary countersigned by the local VAMC Facilities Management of the discussions concerning renovation plans. The summaries should detail the following:

(i) Urgency of the renovation;

(ii) Adequacy of the renovation; and

(iii) Opinion of feasibility and cost benefit.

(d) The highest-ranked applications for the Life Safety Code capital grants for which funding is available will be selected to receive grants in accordance with their ranked order. The amount awarded will be 100 percent of the estimated total cost of the renovation as stated in the Life Safety Code application (this may include application costs, architectural fees, and engineering fees). VA will execute an agreement and make payments to the Life Safety Code capital grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part. In the event of a tie between applicants, VA will use the score from § 61.20(c)(2) of this part to determine the ranking.

(e) Applicants may apply for more than one Life Safety Code capital grant.

(f) The authority to provide Life Safety Code grants expires on December 21, 2006.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.30 Per diem-general.

VA provides per diem funds to capital grant recipients or to entities eligible to receive a capital grant, which established a program of supportive housing or services after November 10, 1992 so they can assist homeless veterans by helping to offset operating costs to ensure the availability of supportive housing and service centers tasked with furnishing outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.31 Application for per diem.

(a) To apply for per diem, a capital grant recipient need only indicate the intent to receive per diem on the capital grant application or may separately request per diem by submitting to VA a written statement requesting per diem.

(b) To apply for per diem, a non-capital grant recipient must obtain from VA a non-capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The non-capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for per diem;

(2) Documentation on eligibility to receive per diem under this part;

(3) Documentation on operating budget and cost sharing;

(4) Documentation on supportive services committed to the project;

(5) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(6) Reasonable assurances with respect to receipt of per diem under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;

(ii) Adequate financial support will be available for the per diem program; and

(iii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.32 Ranking non-capital grant recipients for per diem.

(a) Applications from non-capital grant recipients in response to a Notice of Fund Availability will be reviewed and grouped in categories according to the funding priorities set forth in the NOFA, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 500 cumulative points from paragraphs (b), (c), (d), (e), and (i) of § 61.13 of this part. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected for eligibility to receive per diem payments in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

(c) All applicants responding to a NOFA for ''Per Diem Only'' will be subject to the ranking method in paragraph (a) of this section.

Note to § 61.32: Capital grant recipients are not required to be ranked, however, continuation of per diem payments to capital grant recipients will be subject to limitations set forth in § 61.33 of this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.33 Payment of per diem.

(a) A capital grant recipient meeting the application requirements as outlined in § 61.31(a) of this part is eligible for per diem subject to a site inspection establishing that the applicant continues to meet the requirements for a capital grant as outlined in the following sections, §§ 61.62, 61.64, 61.65, 61.66, 61.80, 61.81, and 61.82.

(b) For non-capital grant recipients who apply for per diem under this part, funds will be allocated to the highest-ranked applicants in descending order until funds are expended. Payments will be contingent upon verification of application information based on an initial site inspection and other inspections pursuant to § 61.66 of this part and will be made for 3 years or as otherwise specified in the Notice of Fund Availability. Non-capital grant recipients may apply again thereafter only in response to a Notice of Fund Availability.

(c) For those applicants selected to receive per diem, VA will execute an agreement in accordance with § 61.61of this part and make payments to the grant recipient or non-grant recipient for those homeless veterans—

(1) Who VA referred to the grant recipient or non-grant recipient; or

(2) For whom VA authorized the provision of supportive housing or supportive service.

(d)(1) The rate of per diem payments for each veteran in supportive housing shall be the lesser of—

(i) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of State and local governments, from private entities or organizations, and from program participants), or

(ii) The current VA State Home Program per diem rate for domiciliary care.

(2) The per diem amount for service centers shall be 1/8 of the lesser of the amounts in paragraphs (f)(1)(i) and (f)(1)(ii) of this section per hour, not to exceed 8 hours in any day.

(e) Per diem payments may be paid retroactively for services provided not more than 3 days before VA approval is given or, where through no fault of the recipient, per diem payments should have been made but were not made. VA will not pay per diem for any additional days of absence when a veteran has already been absent for more than 72 hours consecutively (scheduled or unscheduled). In addition, VA will not pay per diem payments for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive the episode requirement if the services offered are different from those previously provided and may lead to a successful outcome.

(f) Payment of per diem is subject to availability of funds. When necessary due to funding limitations, VA will reduce the rate of per diem as necessary.

(g) Capital grant recipients and non-capital grant recipients may continue to receive per diem assistance only so long as they continue to meet the minimum eligibility requirements for obtaining a grant. For grant recipients this is the minimum 600 points as provided for in § 61.13(a) of this part. For non-grant recipients this is the minimum 500 points provided for in § 61.32(a) of this part.

(h) Per diem payments will not be paid for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) For non-capital grant recipients, only those portions of the service center or supportive housing described in the application will be considered for per diem assistance.

(j) At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The information in this paragraph provides a basis for adjustments to the per diem payment.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.40 Special needs grants—general.

(a) VA provides special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing beds or services in supportive housing and at service centers for the following homeless veterans:

(1) Women, including women who have care of minor dependents;

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

(b) No part of a special needs grant may be used for any purpose that would change significantly the scope of the project for which a capital grant or per diem was awarded.

(c) The following sections of this part apply to special needs grants: §§ 61.60 through 61.66; and § 61.80; § 61.82.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.41 Special needs grants application.

(a) To apply for a special needs grant, an applicant must obtain from VA a special needs grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability.

(b) The special needs grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the special needs grant;

(2) Documentation on eligibility to receive a special needs grant under this part;

(3) Documentation concerning the estimated operating costs for the needs of the specific population for which the special needs grant is requested;

(4) Documentation concerning supportive services committed to the project;

(5) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(6) Reasonable assurances with respect to receipt of a special needs grant under this part that:

(i) The funds will be used to furnish to veterans the level of care for which such application is made; and that the special needs program will comply with applicable requirements of this part;

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and

(iii) Adequate financial support will be available for the special needs program.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.42 Threshold requirements for special needs grant applications.

To be eligible for a special needs grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant still meets the requirements for receipt of per diem;

(c) The activities for which assistance is requested are eligible for funding under this part;

(d) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit;

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part; and

(g) The applicant has agreed to comply with applicable requirements of this part, to maintain eligibility for special need payments and has demonstrated the capacity to do so.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.43 Rating criteria for special needs grant applications.

(a) Applicants that meet the threshold requirements in § 61.42 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a special needs grant, an applicant must receive at least 300 points (out of a possible 500) and must score points in all areas (paragraphs (b)(1) through (c)(3)).

(b) VA will award up to 200 points based on the extent to which the applicant demonstrates why the service, operation, or personnel for which the special needs grant:

(1) Is needed for the project;

(2) Is integral to the project;

(3) Is appropriate to the population and overall project design; and

(4) Meets the special needs population provided per diem in the previous year.

(c) VA will award up to 300 points based on the extent the applicant's goals, objectives, and measures for the population to be served are:

(1) Appropriate;

(2) Reasonable; and

(3) Measurable.

(d) The information provided under paragraphs (b) and (c) of this section for

women, including women who have care of minor dependents, should demonstrate how the program design will:

(1) Ensure transportation for women and their children, especially for health care and educational needs;

(2) Provide directly or offer referrals for adequate and safe child care;

(3) Ensure children's health care needs are met especially age appropriate wellness visits and immunizations; and

(4) Address safety and security issues including segregation procedures from other program participants if deemed appropriate.

(e) The information provided under paragraphs (b) and (c) of this section for the frail elderly should demonstrate how the program design will:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;

(4) Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

(f) The information provided under paragraphs (b) and (c) of this section for the terminally ill should demonstrate how the program design will:

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in ''tasks of dying,'' or activities of ''getting things in order'' or other therapeutic actions that help resolve end of life issues and enable transition and closure;

(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

(g) The information provided under paragraphs (b) and (c) of this section for the chronically mentally ill should demonstrate how the program design will:

(1) Help participants join in and engage with the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.44 Awarding special needs grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a special needs grant in accordance with their ranked order, as determined under § 61.43 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.43(b) of this part to determine the ranking.

(c) For those applicants selected for a special needs grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61of this part.

(d) The amount of the special needs grant will be the estimated total operational cost of the special need over the life of the special needs grant award as specified in the special needs grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.50 Technical assistance grants-general.

VA provides grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. This includes:

(a) Group or individual seminars providing general instructions concerning grant applications;

(b) Group or individual seminars providing instructions for applying for a specific grant; or

(c) Group or individual instruction for preparing analyses to be included in a grant application.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.51 Applications for technical assistance grants.

(a) To apply for a technical assistance grant under this part, an applicant must obtain from VA a technical assistance grant application package and submit to VA the information called for in the technical assistance grant application package within the time period established in the Notice of Fund Availability.

(b) The technical assistance grant application package includes exhibits to be prepared and submitted as part of the application process, including

(1) Justification for the technical assistance grant;

(2) Documentation on eligibility to receive a technical assistance grant under this part;

(3) Description of type of technical assistance that would be provided (see § 61.50);

(4) Documentation concerning the estimated operating costs and operating budget for the technical assistance program for which a grant is sought;

(5) Documentation concerning expertise in preparing grant applications;

(6) Documentation on resources committed to the provision of technical expertise;

(7) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and

(8) Reasonable assurances with respect to receipt of a technical assistance grant under this part that:

(i) The recipient will provide adequate financial and administrative support for providing the services set forth in the technical assistance grant application and will actually provide such services; and

(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.52 Threshold requirements for technical assistance grant applications.

To be eligible for a technical assistance grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;

(b) The applicant established expertise in preparing grant applications;

(c) The activities for which assistance is requested are eligible for funding under this part;

(d) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and

(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.53 Rating criteria for technical assistance grant applications.

(a) Applicants that meet the threshold requirements in § 61.52 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a technical assistance grant, an applicant must receive at least 600 points (out of a possible 800) and must score points under paragraphs (b) and (c) of this section.

(b) Quality of the technical assistance. VA will award up to 400 points based on the following:

(1) How the recipients of technical training will increase their skill level regarding the completion of applications;

(2) How the recipients of technical training will learn to find grant opportunities in a timely manner;

(3) How the technical assistance provided will be monitored and evaluated and changes made, if needed; and

(4) How the proposed technical assistance programs will be implemented in a timely fashion.

(c) Ability of applicant to demonstrate expertise in preparing grant applications develop and operate a technical assistance program. VA will award up to 400 points based on the extent to which the application demonstrates:

(1) Ability to find grants available for addressing the needs of homeless veterans;

(2) Ability to find and offer technical assistance to entities eligible for such assistance;

(3) Ability to administer a technical assistance program;

(4) Ability to provide grant technical assistance; and

(5) Ability to evaluate the overall effectiveness of the technical assistance program and to make adjustments, if necessary, based on those evaluations.

§ 61.54 Awarding technical assistance grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.53(c) of this part to determine the ranking.

(c) For those applicants selected to receive a technical assistance grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.

(d) The amount of the technical assistance grant will be the estimated total operational cost of the technical assistance over the life of the technical assistance grant award as specified in the technical assistance grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

(e) The amount of a technical assistance grant under this part may not exceed the cost of the estimated cost of the provision of technical assistance.

(f) VA will not pay for sustenance or lodging under a technical assistance grant.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.55 Technical assistance reports.

Each recipient of a technical assistance grant must submit to VA, quarterly, a report describing the activities for which the technical assistance grant funds were awarded, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.60 Notice of Fund Availability.

When funds are made available for capital grants, per diem for non-capital grant recipients, special needs grants, or technical assistance grants, VA will publish a Notice of Fund Availability in the **Federal Register**. The notice will:

(a) Give the location for obtaining application packages;

(b) Specify the date, time, and place for submitting completed applications;

(c) State the estimated amount and type of funding available; and

(d) State any priorities for or exclusions from funding to meet the statutory mandate of 38 U.S.C. 2011, to ensure that awards do not result in the duplication of ongoing services and to reflect the maximum extent practicable appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.

(e) Provide other information necessary for the application process.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.61 Agreement and funding actions.

(a) When an applicant for a capital grant, per diem, a special needs grant, or a technical assistance grant meets all of the requirements under this part for the type of assistance requested and VA has funding for such assistance, VA will incorporate requirements under this part into an agreement to be executed by

VA and the applicant. Upon execution of the agreement, grant funds are obligated to cover the amount of the approved assistance subject to the availability of funding. Payments will be for services rendered and are contingent upon submission of documentation in the form of invoices or purchase agreements and contingent on inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended.

(b) Except for increases in the rate of per diem, VA will not make revisions to increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) VA will enforce the obligations under this part through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency.

(d) VA may deobligate all or parts of assistance awarded under this part:

(1) If the actual total costs for assistance is less than the total cost stated in the application, or

(2) If the recipient fails to comply with the requirements of this part.

(e) However, before determining whether to deobligate under paragraph (d)(2) of this section, VA will issue a notice of intent to terminate payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.

(f) VA may also seek recovery under § 61.67 of this part where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation under § 61.67.

(g) Where a recipient has no control over causes for delays in implementing a project, VA may change the due date, as appropriate.

(h) Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost of the bed per day, product, operation, personnel, or service provided.

(i) No funds provided under this part may be used to replace Federal, State or local funds previously used, or designated for use, to assist homeless veterans.

(j) VA may obligate any recovered funds without fiscal year limitation.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.62 Program changes.

(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior VA approval. Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(b) Recipients of grants exceeding $100,000 for nonconstruction projects must receive prior VA approval for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.

(c) Recipients of grants for projects involving both construction and nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction and construction categories.

(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(e) Any changes to an approved program must be fully documented in the recipient's records.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.63 Procedural error.

If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.64 Religious organizations.

(a) As a condition for receiving assistance under this part, an organization that is primarily a religious organization must agree to conduct activities for which the assistance is provided in a manner that is free from religious influences and must comply with the following:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion; and

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence as a condition of the provision of housing and supportive services.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.65 Inspections.

VA may inspect the facility and any records of an entity applying for or receiving assistance under this part at such times as are deemed necessary to determine compliance with the provisions of this part. The authority to inspect carries with it no authority over the management or control of any entity applying for or receiving assistance under this part.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.66 Financial management.

(a) All recipients shall comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A–133.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and provides accounting records, including cost accounting records that are supported by documentation. Such cost accounting must be reflected in the entity's fiscal cycle financial statements to the extent that the actual costs can be determined for the program for which assistance is provided. All entities receiving per diem under this part must monitor the accuracy of the costs used to determine payment amounts per veteran. Entities receiving assistance must meet the applicable requirements of the appropriate OMB Circular for Cost-Principles (A–122 or A–87).

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.67 Recovery provisions.

(a) If after 3 years from the date of award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program); does not establish the project for which the grant was made; or has established the project for which the grant was made but has not

had final inspection, VA would be entitled to recover from the grant recipient all of the grant amounts provided for the project.

(b) Where the grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date of final inspection for which the grant was made. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant amount (dollars in thousands)	Years of operation
0–250	7
251–500	8
501–750	9
751–1,000	10
1,001–1,250	11
1,251–1,500	12
1,501–1,750	13
1,751–2,000	14
2,001–2,250	15
2,251–2,500	16
2,501–2,750	17
2,751–3,000	18
Over 3,000	20

Example A: Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

Example B: Grantee B is awarded a grant in the amount of $300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was $300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case 1/4 of the original grant would be subject to recapture.

Example C: Grantee C is awarded a grant in the amount of $400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount subject to recapture would thus be 7/8 × $400,000 or $350,000.

(c) VA will seek to recover from the recipient of per diem, a special needs grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(d) Before VA would take action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.80 General operation requirements for supportive housing and service centers.

(a) Supportive housing and service centers for which assistance is provided under this part must:

(1) Comply with the Life Safety Code of the National Fire Protection Association and all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers.

(2) Notwithstanding the provisions of paragraph(a)(1) of this section, recipients of grants prior to December 21, 2001, are required to comply with the Life Safety Code of the National Fire Protection Association by December 21, 2006. Such recipients are not excused from meeting the other requirements of paragraph (a)(1) of this section, including State and local fire and safety requirements.

(b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;

(2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;

(3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by section 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;

(4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;

(5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;

(6) The water supply must be free from contamination;

(7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;

(8) The housing must have adequate heating and/ or cooling facilities in proper operating condition;

(9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;

(10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(11) The housing and any equipment must be maintained in a sanitary manner;

(12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and

(14) Residents must be provided a clean and sober (free from illicit drugs) environment and those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project and the availability of such services, and make adjustments as appropriate. The recipient will provide evidence of this ongoing assessment to VA at such times as are deemed necessary, but as a minimum, once annually in the form of a report that addresses the recipient's

ability to meet the goals, objectives, measures, and special needs as set forth in the recipient's grant proposal.

(d) A homeless veteran may remain in transitional housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such transitional housing facility may have resided at the facility for periods longer than 24 months.

(e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

(g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:

(1) The confidentiality of records pertaining to any individual provided services, and

(2) The confidentially of the address or location where the services are provided.

(i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes that services furnished by the recipient are unacceptable.

(k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

(l) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits, (*e.g.*, newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:

(1) The region of operation;

(2) Times of operation;

(3) Expected services to be provided; and

(4) Contacts for specific information and changes.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.81 Outreach activities.

Recipients of capital grants and per diem under this part relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. Accordingly, a recipient should search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed toward veterans who have a nighttime residence that is an emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (*e.g.*, cars, streets, or parks).

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

§ 61.82 Resident rent for supportive housing.

(a) Each resident of supportive housing may be required to pay rent in an amount determined by the recipient, except that such rent may not exceed 30 percent of the resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments.

(b) Resident rent may be used for costs of operating the supportive housing or to assist supportive housing residents move to permanent housing.

(c) In addition to resident rent, recipients may charge residents reasonable fees for services not covered by VA per diem funds and not otherwise provided by VA.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 *note*)

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Federal Register

Wednesday,
March 19, 2003

Part VI

Environmental Protection Agency

40 CFR Part 9, et al.

Withdrawal of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[WH–FRL–7470–2]

RIN 2040–AD84

Withdrawal of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action withdraws the final rule entitled ''Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation (''the July 2000 rule'') published in the **Federal Register** on July 13, 2000. The July 2000 rule amended and clarified existing regulations implementing a section of the Clean Water Act (CWA) that requires States to identify waters that are not meeting applicable water quality standards and to establish pollutant budgets, called Total Maximum Daily Loads (TMDLs), to restore the quality of those waters. The July 2000 rule also amended EPA's National Pollutant Discharge Elimination System (''NPDES'') regulations to include provisions addressing implementation of TMDLs through NPDES permits. The July 2000 rule has never become effective; it is currently scheduled to take effect on April 30, 2003. Today, EPA is withdrawing the July 2000 rule, rather than allow it to go into effect, because EPA believes that significant changes would need to be made to the July 2000 rule before it could represent a workable framework for an efficient and effective TMDL program. Furthermore, EPA needs additional time beyond April 30, 2003, to decide whether and how to revise the currently-effective regulations implementing the TMDL program in a way that will best achieve the goals of the CWA. The withdrawal of the July 2000 rule will not impede ongoing implementation of the existing TMDL program. Regulations that EPA promulgated in 1985 and amended in 1992 remain in effect for the TMDL program. EPA has been working steadily to identify regulatory and nonregulatory options to improve the TMDL program and is reviewing its ongoing implementation of the existing program with a view toward continuous improvement and possible regulatory changes in light of stakeholder input and recommendations.

DATES: The July 2000 rule amending 40 CFR parts 9, 122, 123, 124 and 130, published on July 13, 2000, at 65 FR 43586, is withdrawn as of April 18, 2003. This rule is considered final for purposes of judicial review as of 1 p.m. eastern time, on April 2, 2003, as provided in 40 CFR 23.2.

ADDRESSES: The complete record for the final rule, Docket ID No. OW–2002–0037, is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information about today's final rule, contact: Francoise M. Brasier, U.S. EPA Office of Wetlands, Oceans and Watersheds (4503T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone (202) 566–2385.

SUPPLEMENTARY INFORMATION:

A. Authority

Clean Water Act sections 106, 205(g), 205(j), 208, 301, 302, 303, 305, 308, 319, 402, 501, 502, and 603; 33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1311, 1312, 1313, 1315, 1318, 1329, 1342, 1361, 1362, and 1373.

B. Entities Potentially Regulated by the Final Rule

TABLE OF POTENTIALLY REGULATED ENTITIES

Category	Examples of potentially regulated entities
Governments	States, Territories and Tribes with CWA responsibilites

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you may be regulated by this action, you should carefully examine the applicability criteria in § 130.20 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to you, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. How Can I Get Copies of This Document and Other Related Information

EPA has established an official public docket for this action under Docket ID No. OW–2002–0037. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call ahead to schedule an appointment. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to view public comments, access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously mentioned. Once in the electronic system, select ''search'' and then key in the appropriate docket identification number.

D. Explanation of Today's Action

I. Background

On December 27, 2002, EPA proposed to withdraw final regulations affecting the TMDL program (67 FR 79020) that were published in the **Federal Register** on July 13, 2000 (65 FR 43586). Among other things, the July 2000 rule was intended to resolve issues concerning the identification of impaired waterbodies by promoting more comprehensive inventories of impaired waters. The rule was also intended to improve implementation of TMDLs by requiring EPA to approve, as part of the TMDL, implementation plans containing lists of actions and expeditious schedules to reduce pollutant loadings. Finally, the rule included changes to the NPDES program to assist in implementing TMDLs and to better address point source discharges to waters not meeting water quality standards prior to establishment of a TMDL.

The July 2000 rule was controversial from the outset. Both the proposed and final rules generated considerable controversy, as expressed in Congressional action, letters, testimony and public meetings. Even before it was published in the **Federal Register** on July 13, 2000, Congress prohibited EPA from implementing the final rule through a spending prohibition attached to an FY2000 appropriations bill that prohibited EPA from using funds ''to make a final determination on or implement'' the July 2000 rule. This spending prohibition was scheduled to expire on September 30, 2001, and, barring further action by Congress or EPA, the rule would have gone into effect 30 days later on October 30, 2001. Because of the continuing controversy regarding the July 2000 rule, EPA proposed on August 9, 2001 (66 FR 41817), and promulgated on October 18, 2001 (66 FR 53044), a new effective date of April 30, 2003, for the July 2000 rule, to allow time for reconsideration of the rule.

Stakeholder concerns were also reflected in legal challenges to the July 2000 rule by a broad array of litigants. Ten petitions for review were filed by States, industrial and agricultural groups, and environmental organizations asserting that many of EPA's revisions to the TMDL regulations were either unlawful under the Administrative Procedure Act or exceeded the Agency's authority under the CWA. These petitions, which identified more than 50 alleged legal defects in the July 2000 rule, were ultimately consolidated in *American Farm Bureau Federation* et al. v. *Whitman* (No. 00–1320) in the United States Court of Appeals for the District of Columbia Circuit. In addition, several other stakeholders have intervened in these lawsuits. The litigation over the July 2000 rule is currently stayed pending EPA's determination regarding whether, and to what extent, that rule should be revised.

In the December 27, 2002, preamble to the proposed withdrawal rule, EPA explained why it had decided to withdraw the July 2000 rule. EPA said that by continuing to examine the regulatory needs of the TMDL and NPDES programs against the impending April 30, 2003, effective date for the July 2000 rule, the Agency was sending confusing signals to the States and other interested parties about which set of rules they should be prepared to implement. Further, because of the significant controversy, pending litigation and lack of stakeholder consensus on key aspects of the July 2000 rule, the Agency said that the July 2000 rule could not function as the blueprint for an efficient and effective TMDL program without significant revisions. Moreover, the Agency said it needed more time to consider whether and how to revise the currently-effective TMDL rules without concern that those efforts would be adversely affected and distracted by the July 2000 rule's impending effective date. In the preamble to the proposed rule, the Agency also explained why it believes that, given the significant progress States have made during the past four years in developing TMDLs, withdrawal of the July 2000 rule will not compromise continuing efforts to implement section 303(d) of the Clean Water Act. EPA's rationale for proposing the withdrawal of the July 2000 rule is more fully explained in the preamble accompanying the proposal (67 FR 79020).

II. Response to Comments and Final Decisions

EPA received approximately 90 separate written comments regarding its proposal to withdraw the July 2000 rule. These comments came from a broad cross-section of stakeholders, including agricultural and forestry groups, business and industry entities and trade associations, State agencies, environmental organizations, professional associations, academic groups and private citizens. An overwhelming majority of the commenters (more than 90 percent) supported EPA's proposed action to withdraw the July 2000 rule. These commenters generally agreed with the Agency's rationale for withdrawing the rule as discussed in the December 27, 2002, preamble. Commenters reiterated EPA's concerns about the potential distraction and confusion caused by the July 2000 rule's impending deadline, as well as the controversy surrounding various provisions of the rule and uncertainty caused by the pending DC Circuit Court litigation. Others stated that the July 2000 rule was no longer needed because of the increased technical guidance that EPA has provided to States to improve the quality of their lists of impaired waters, and the increased funding provided by EPA for developing TMDLs. Many commenters said that States have made significant strides in developing TMDLs since the rule was originally proposed and promulgated and, therefore, the July 2000 rule was not needed. Several commenters stated that allowing the July 2000 rule to go into effect would be disruptive to ongoing TMDL development efforts, and that withdrawing the July 2000 rule would give the Agency additional time to evaluate the need for new TMDL regulations. Some commenters offered additional reasons for supporting withdrawal of the July 2000 rule. Although most of these reasons are consistent with EPA's rationale for withdrawing the July 2000 rule, some are not. For example, some commenters, though supporting EPA's decision to withdraw the July 2000 rule, also questioned the legal soundness of certain provisions of that rule. EPA does not necessarily agree with those comments, and its decision today to withdraw the July 2000 rule should not be understood as an implicit endorsement of those views and comments.

A small minority of commenters (four) disagreed with EPA's proposal to withdraw the July 2000 rule. One commenter asserted that withdrawing the July 2000 rule would ''postpone the TMDL program for several more years'' and, by removing incentives to reduce pollution, would hinder progress ''to implement the TMDL program'' and ''only make the problem worse.'' Another commenter said that not going forward with the July 2000 rule would ''undermine the momentum of State programs'' that have been ''waiting to see Federal guidelines to develop programs of their own.'' EPA does not agree with these comments. Indeed, one State in its comments supporting withdrawal said that the July 2000 rule ''would undo much of the momentum and success'' of the State's ongoing and successful TMDL program. As described in more detail in the December 27, 2002, preamble, in recent years, EPA and the States have made great strides in implementing the existing 303(d) program to list impaired waters and develop and implement TMDLs to restore impaired waters. States have substantially improved their TMDL programs while the Agency has provided the States with significant increases in technical and financial support to expand and strengthen all elements of their programs. From FY 1999 to 2002, EPA has provided the States almost $30 million for TMDL-specific activities and allowed States to use a portion of State grants for water program administration (CWA section 106 grants) and nonpoint source programs (CWA sections 319 grants) for developing and implementing TMDLs. In addition, since 1998, EPA has spent more than $11 million to support development of technical guidance for developing TMDLs and identifying the most appropriate and efficient best management practices for nonpoint

sources. A complete list of these guidance documents can be found at: *http://www.epa.gov/edocket.*

Helped by these programmatic initiatives, States have made considerable progress in developing TMDLs despite the fact that the July 2000 rule never became effective. As stated in the December 27, 2002, proposal, between 1996 and 1999, EPA and the States established approximately 800 TMDLs. Since then, and despite the fact that the July 2000 rule never became effective, EPA and the States have established more than an additional 7,000 TMDLs; and States continue to improve the pace at which TMDLs are established. Given this progress and the States' adoption since 1998 of schedules for TMDL development, EPA anticipates no reduction in the pace of TMDLs being developed and the associated improvement in water quality, even if the July 2000 rule does not take effect.

One commenter objected to withdrawing the July 2000 rule because of provisions contained in the rule for expanded public involvement in the listing and TMDL development process. By not implementing the July 2000 rule, the commenter asserted that the public remains ''shut out'' of the listing and TMDL development process, which allows the States to develop impaired waters lists and establish TMDLs ''without adequate public scrutiny.'' EPA disagrees with this comment. While it is true that the July 2000 rule would have clarified, and, in some measure strengthened, the public participation components of EPA's currently-effective TMDL regulations, the current statutory and regulatory provisions (as supplemented by EPA guidance to the States and its Regional Offices) already allow for public scrutiny and participation in the listing and TMDL development process. EPA's existing regulations require that the process for involving the public in a State's listing and TMDL program ''shall be clearly described in the State Continuing Planning Process (CPP)'' (40 CFR 130.7(a)), and § 130.7(c)(1)(ii) requires that a State's calculations to establish TMDLs be subject to public review, as defined in the State CPP. Additionally, EPA regulations require that when EPA disapproves and establishes a list or a TMDL, EPA must seek public comment (40 CFR 130.7(d)).

EPA's policy has always been that there should be full and meaningful public participation in both the listing and TMDL development process, and EPA has issued guidance in addition to the regulations to support this effort. In EPA's ''Guidelines for Reviewing TMDLs Under Existing Regulations Issued in 1992'' (May 20, 2002), EPA states that, in addition to the TMDL regulatory requirements, ''final TMDLs submitted to EPA for review and approval should describe the State's/tribe's public participation process, including a summary of significant comments and the State's/tribe's responses to those comments.'' The guidance also states that ''provision of inadequate public participation may be a basis for disapproving a TMDL. If EPA determines that a State/tribe has not provided adequate public participation, EPA may defer its approval action until adequate public participation has been provided for, either by the State/tribe or by EPA.''

EPA's ''Integrated Report'' guidance to States, tribes and EPA Regions (Integrated Water Quality Monitoring and Assessment Report (November 19, 2001)) states that ''States and territories should provide for full public participation in the development of their Integrated Report prior to its submission to EPA. EPA believes that public understanding of how standard attainment determinations are made for all A[sessement] U[nits]s is crucial to the success of water quality programs and encourages active stakeholder participation in the assessment and listing process.... EPA will consider how the State or territory addressed the comments...when approving or disapproving the 303(d) list of AUs (Category 5).''

Most recently, in May 2002, EPA issued guidance to its Regional Offices stating that when reviewing State 303(d) lists, EPA Regions should review how States provided for public participation to ensure that each State carried out its public participation process consistent with the State's public participation requirements (''Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submission.'') If the Region believes a State has not provided adequate public participation, the guidance provides steps the Region should take in working with a State to provide for additional public participation, and how the State or, if necessary, the Region, should consider and address public comments prior to EPA's approval or disapproval of the list. Finally, it is important to note that nearly all of the States already have public participation requirements under their own State laws for the listing and TMDL development processes, and also provide for public notice.

For all of these reasons, EPA believes that adequate public participation opportunities exist under the currently-effective regulations and that withdrawing the July 2000 rule will not limit meaningful public participation in the listing and TMDL development process.

One commenter stated that, by not implementing the July 2000 rule, States would continue to have inadequate monitoring programs and continue to develop lists of impaired waters based on inadequate data. EPA disagrees. EPA recognizes that no State has a perfect monitoring and listing program. Monitoring and assessment programs are expensive to assemble and implement. While the July 2000 rule would have clarified certain aspects of the existing TMDL regulations regarding listing methodologies, that rule, by itself, would not have provided the additional funding needed by many States to expand their monitoring and assessment programs. Moreover, many of the important listing clarifications and improvements contained in the July 2000 rule have already been provided to, and are currently being implemented by, States, even without the July 2000 rule having gone into effect.

To assist in implementation of the currently-effective TMDL rules, EPA issued the ''2002 Integrated Water Quality Monitoring and Assessment Report Guidance'' (November 19, 2001) to promote a more integrated and comprehensive system of accounting for the nation's impaired waters. The guidance recommends that States submit an ''Integrated Report'' that will satisfy CWA requirements for both section 305(b) water quality reports and section 303(d) lists. The objectives of this guidance are to strengthen State monitoring programs, encourage timely monitoring to support decision making, increase numbers of waters monitored, and provide a full accounting of all waters and uses. The guidance encourages a rotating basin approach and strengthened State assessment methodologies, and is intended to improve public confidence in water quality assessments and 303(d) lists. EPA extended the date for submission of 2002 lists by six months (66 FR 53044) to allow States and Territories time to incorporate some or all of the recommendations suggested by EPA in this guidance. Approximately half of the States and Territories have submitted a 2002 report which incorporates some or all of the elements of this guidance. In addition, EPA also held five stakeholder meetings in 2001 and 2002 to review and comment on a best practices guide that EPA was developing for States on consolidated assessment and listing methodologies. This guidance (''Consolidated Listing and Assessment

Methodology—Toward a Compendium of Best Practices'') was released in July 2002. EPA is continuing to work with States to clarify and strengthen their monitoring programs and to help improve the quality and credibility of their lists of waters that require a TMDL.

One commenter stated that withdrawing the July 2000 rule would continue ''to make EPA and the States the target of numerous lawsuits—resulting in the courts driving environmental policy, rather than EPA and the States.'' EPA does not agree with this comment. EPA does not agree that there are, in the commenter's words, ''weaknesses'' with the currently-effective TMDL regulations that make the Agency any more vulnerable to litigation than if it did not withdraw the July 2000 rule. Indeed, we believe withdrawing the July 2000 rule will render moot the pending D.C. Circuit Court challenge to that rule. Before July 2000, EPA was named as defendant in over 30 lawsuits challenging State lists and the pace of State TMDL development. Since July 2000, only a few such lawsuits have been filed, even though the July 2000 rule never became effective. Clearly, the number of such suits has declined as the States and EPA have done a better job under the 1985/1992 TMDL rules to establish lists and TMDLs. In addition, to date only a handful of lawsuits have been filed challenging any of the more than 7,000 TMDLs that the States or EPA have established. Given these numbers, the Agency does not believe there is anything inherently litigation-provoking in the currently-effective TMDL rules and, based on this record, EPA does not believe that withdrawing the July 2000 rule will result in increased TMDL litigation.

One commenter objected to withdrawing the July 2000 rule because of concerns regarding the inconsistent implementation of the program under the currently-effective regulations and EPA guidance. EPA does not agree that inconsistent implementation of the TMDL program is a significant problem. Nor, for that matter, would implementation of the July 2000 rule remove all potential for divergent implementation approaches by the different States and EPA Regions. As discussed previously, since publication of the July 2000 rule, EPA has issued numerous detailed policy memoranda, national guidance documents, technical protocol documents, and information on best management practices so that States can improve their methods to monitor and list impaired waters, and develop and implement TMDLs in a consistent, yet flexible way. A complete list of these guidance documents can be found at *http://www.epa.gov/edocket*. As noted previously, EPA has issued detailed national guidance to EPA Regions on reviewing and approving lists and TMDLs, (''EPA Review of 2002 Section 303(d) Lists and Guidelines for Reviewing TMDLs Under Existing Regulations Issued in 1992'' (May 20, 2002)) and is working closely with all the EPA Regional Offices to ensure that their regional review and approval of lists and TMDLs correspond with this national policy. In addition, EPA has recently released a guidance on ''Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'' (November 22, 2002). This memorandum clarifies EPA's policy on wasteload allocations, specifically that NPDES-regulated storm water discharges must be included in the wasteload allocation component of the TMDL (*see* 40 CFR 130.2(h)) and affirms EPA's view that an iterative, adaptive management BMP approach is appropriate for permitting such discharges.

EPA has also sponsored numerous TMDL and TMDL-related training sessions and meetings to clarify and provide detailed technical support to the States and Regions to help ensure consistency in listing and TMDL development (*see* EPA's website for a complete list of recent activities: *http://www.epa.gov/owow/tmdl/training*.) EPA also has made available to the public the ''National TMDL Tracking System'' (NTTS), which includes all State-specific data on approved 303(d) lists and approved TMDLs as well as a national summary of impaired waters and TMDLs that have been approved for these waters (*http://www.epa.gov/owow/tmdl/*.) In addition, since the Spring of 2001, EPA has held regular conference calls with EPA Regions and the States to discuss and answer any questions regarding the TMDL program, including technical and policy questions. EPA believes that these guidance documents, the National TMDL Tracking System, training, workshops, and close communication with States and EPA Regional Offices have improved the national consistency in how the TMDL program is implemented at both the Federal and State level, while accommodating the inherent variability in States' water quality standards, land and water characteristics, and available resources.

As to the commenter's point that ''there are significant differences between the July 2000 rule and the 1985, 1992 rule * * * [that] cannot adequately be addressed through EPA guidance,'' EPA notes that its review of the currently-effective TMDL regulations in light of the July 2000 rule is ongoing. EPA has not yet decided what, if any, changes to propose to those regulations. As it continues to consider the need for regulatory changes, EPA will consider the commenter's suggestions regarding which elements belong in regulation and which may be appropriately left to guidance. EPA will also consider the commenter's suggestion that the Agency should allow the public to participate in the development of future program guidance.

One commenter said EPA had not provided enough information to allow it to make a ''well-reasoned decision or provide meaningful comment on EPA's proposal to withdraw the July 2000 rule.'' Nevertheless, that commenter did oppose EPA's proposed action. EPA disagrees with the claim that it did not provide enough information for the public to provide meaningful comment, and given the number of other comments to the proposal addressing EPA's rationale, EPA believes that it adequately discussed its justification for withdrawing the July 2000 rule in the December 27, 2002, preamble.

One commenter opposed withdrawal of the July 2000 rule because it believed that the rule was ''necessary'' to ''aid in the control of nonpoint source pollution.'' EPA disagrees with this comment. EPA notes that there are numerous existing Clean Water Act authorities and programs, supplemented by other Federal and State programs and initiatives, that address nonpoint source pollution.

One commenter opposed withdrawal of the ''TMDL program'' because it believed ''much time went into the planning of this program to protect waterways * * * [and] it needs to be tied into the NPDES permit program and should be customized to fit individual permits.'' EPA is not sure it fully understands this comment. To the extent the commenter is opposed to withdrawal of the ''TMDL program,'' EPA notes that it is only withdrawing the July 2000 rule, which has never become effective, and not the TMDL program itself. EPA agrees that it took much planning to develop the July 2000 rule, but, for the reasons already discussed in this preamble and in the December 27, 2002, preamble, EPA has decided to withdraw that rule, regardless of the effort that went into its development. EPA also notes that the currently-effective TMDL program is ''tied into the NPDES permit program'' in that, among other things, permit

effluent limits must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. *See* 40 CFR 122.44(d)(1)(vii)(B). Similarly, 40 CFR 122.4(i) addresses what requirements must be met for a permit to be issued to a new source or new discharger who proposes to discharge a pollutant for which a TMDL has been prepared.

One State commenter, while supporting withdrawal of the July 2000 rule, recommended that as part of this final rulemaking EPA immediately modify 40 CFR 130.7 to require State 303(d) lists every four (instead of every two) years. As EPA continues to consider whether and how to revise the TMDL program, EPA will consider the commenter's suggestion.

One commenter asked for ''an evaluation of potential changes from rule making, implementation and funding of Clean Water Act programs and enforcement relative to the Russian River [California] * * * [and an] assurance that this regulatory shift will not result in degradation of either the quality or quantity of our local resources.'' The commenter did not appear to take a position on the proposed withdrawal of the July 2000 rule, and EPA believes this comment is beyond the scope of the proposal and does not require a response.

One electronic comment merely stated as follows: ''We strongly oppose any reduction of restrictions on wetland maintenance.'' Again, the commenter did not appear to take a position on the proposed withdrawal of the July 2000 rule, and EPA believes this comment is beyond the scope of the proposal and does not require a response.

More than half the commenters requested or encouraged EPA to pursue further rulemaking once the July 2000 rule was withdrawn. Many of these commenters submitted specific recommendations regarding how EPA should structure a new TMDL rule. Some commenters requested that this new rulemaking occur as quickly as possible. One commenter said it ''supports EPA's proposed withdrawal of the 2000 rule, assuming that EPA intends to replace that rule in a timely manner with an improved rule now known as the Watershed Rule.'' Another commenter said it ''will only support withdrawal of the July 2000 rule if EPA moves quickly to propose and promulgate a Watershed Rule that provides a comprehensive framework for the evolving TMDL program.'' Three commenters who supported withdrawal of the July 2000 rule advised against a new rulemaking saying that it ''would be disruptive and would only derail State momentum to clean up our waterways.'' Two other commenters cautioned that a new regulatory proposal ''could slow needed progress'' and strongly urged the Agency ''not to propose any regulatory or other changes that would cripple this vitally important water clean up program.''

In response to these comments regarding the future direction of the TMDL program, EPA restates that it has not yet completed its evaluation regarding whether and how to revise the currently-effective TMDL rules. Nor can EPA commit to how long it will take to complete that process. EPA is committed to structuring a flexible, effective TMDL program that States, territories and authorized tribes can support and implement. EPA will carefully consider all of the past and recently-provided commenters' recommendations as it continues to evaluate whether and how to revise the currently-effective TMDL regulations using new regulatory or non-regulatory approaches. EPA, to the best of its ability, will continue to meet and share information with stakeholders regarding this effort, and will provide an opportunity for public comment in a separate **Federal Register** notice if the Agency decides to move forward with a new rulemaking.

After carefully considering all the comments received in response to its December 27, 2002, proposal, EPA is today promulgating a final rule that withdraws the July 2000 rule. EPA is withdrawing the July 2000 rule, rather than allowing it to go into effect, because EPA believes that significant changes would need to be made to the July 2000 rule before it could represent a workable framework for an effective TMDL program. EPA needs additional time beyond April 2003 to decide whether and how to revise the currently-effective regulations implementing the TMDL program in a way that will best achieve the goals of the CWA, and EPA is not sure how long that effort will take. In light of the significant progress States have made in the past three years establishing TMDLs under the currently-effective rules, EPA does not believe that withdrawing the July 2000 rule will impede States' efforts to implement section 303(d) to work towards cleaning up the nation's waters and meeting water quality standards.

Today's final rule does not change any part of the currently effective TMDL regulations promulgated in 1985, as amended in 1992, at 40 CFR part 130 or the NPDES regulations at parts 122—124.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) 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, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action, which withdraws the July 2000 rule that has not taken effect, will not have a significant economic impact on a substantial number of small entities. Like the July 2000 rule, this final rule will not impose any requirements on small entities. This action withdraws the July 2000 rule, which has never taken effect.

D. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, tribal and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Like the July 2000 rule, today's final rule, which withdraws the July 2000 rule that has not taken effect, contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The final rule imposes no enforceable duty on any State, local or Tribal government or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA. For the same reason, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any requirement on any entity. There are no costs associated with this action. Therefore, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This action does not have federalism implications. It will 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. It finalizes the withdrawal of the July 2000 rule, which has never taken effect. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. It withdraws the July 2000 rule, which has never taken effect. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866.

H. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule simply finalizes the withdrawal of the July 2000 rule which has never taken effect. We have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not impose any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory 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). This rule will be effective on April 18, 2003.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Air pollution control, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 130

Environmental protection, Grant programs—environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water supply.

The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

For the reasons stated in the preamble, EPA withdraws the final rule amending 40 CFR parts 9, 122, 123, 124 and 130 published July 13, 2000 (65 FR 43586).

Dated: March 13, 2003.

Christine T. Whitman,

Administrator.

[FR Doc. 03–6574 Filed 3–18–03; 8:45 am]

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