

Please follow the above instructions for submitting comments to the docket (FMCSA–2008–0363) commenting on the medical examiner draft training specifications. While FMCSA will consider all comments, FMCSA specifically requests that commenters focus on improving the clarity, and accuracy of the draft guidance to the proposed core curriculum specifications.

In addition to the draft guidance for the core curriculum specifications, FMCSA has posted a sample training module on the National Registry Web site (<http://nrcme.fmcsa.dot.gov>) to assist training providers in developing a curriculum that meets the training specifications.

Dated: May 11, 2011.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 424

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 424

[Docket No. FWS–R9–ES–2010–0073;
Docket No. 110131071–1153–01; MO–
92210–0–0009–B4]

RIN 1018–AX44; RIN 0648–BA77

Endangered and Threatened Wildlife and Plants; Revised Implementing Regulations for Requirements To Publish Textual Descriptions of Boundaries of Critical Habitat

AGENCY: United States Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We (FWS and NMFS; also collectively referred to as the Services) propose to revise regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations. In the interest of making the process of designating critical habitat more user-friendly for affected parties, the public as a whole, and the Services, as well as more efficient and

cost effective, we are proposing to maintain the publication of maps of proposed and final critical habitat designations, but make optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the Code of Federal Regulations. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** will be the official delineation of the designation, and we will continue to provide the public with additional tools, such as interactive maps and additional descriptions, on the Services' Internet sites, Regulations.gov, and at local field offices that will represent the Service's interpretation of which areas are covered by the designation. We are undertaking this effort as part of the agencies' response to Executive Order 13563 (Jan. 18, 2011) directing agencies to review their existing regulations and, inter alia, to modify or streamline them in accordance with what has been learned.

DATES: We will accept comments from all interested parties until July 18, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this proposed rule, which is FWS–R9–ES–2010–0073. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: [Docket No. FWS–R9–ES–2010–0073]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Nicole Alt, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420; Arlington, VA 22203,

telephone 703/358–2171; facsimile 703/358–1735 or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–713–1401; facsimile 301–713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties. We seek information on the following:

1. What is the best way for us to share information about critical habitat designation boundaries with the public?

2. Could we improve the usefulness of the maps in the **Federal Register** and Code of Federal Regulations (CFR)? If so how?

3. Does publication of the textual descriptions of boundaries of critical habitat in the **Federal Register** and CFR provide any practical value?

4. What is the usefulness of the critical-habitat-boundary descriptions in latitude–longitude, Public Land Survey descriptions, or Universal Transverse Mercator (UTM) coordinates?

5. Besides the Internet, what other methods should we use to convey information regarding critical habitat boundaries?

6. Will the changes proposed make our critical habitat designations easier to understand? Are there other changes that are needed?

You may submit your information concerning this proposal by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov> or by appointment during normal business

hours at the U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171 or National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301-713-1401 (see **FOR FURTHER INFORMATION CONTACT**).

Background

Before a plant or animal species can receive the protection provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), it must first be added to the Federal lists of threatened and endangered wildlife and plants. The List of Endangered and Threatened Wildlife (found in title 50 of the Code of Federal Regulations (CFR) in § 17.11) and the List of Endangered and Threatened Plants (found in 50 CFR 17.12) contain the names of all organisms that have been determined by the FWS and NMFS (jointly referred to as the Services) to qualify as “endangered species” or “threatened species.” When a species is listed as endangered or threatened under the Act, the Services designate specific areas as “critical habitat.”

Under section 4(b)(5)(A) of the Act, as amended (16 U.S.C. 1531 *et seq.*), and the implementing regulations contained within 50 CFR sections 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), the Services are required, when designating or revising critical habitat for species listed under the Act, to publish the complete text of the regulation, maps, and descriptions of such habitat in the Regulation Promulgation section of a rulemaking published in the **Federal Register**. We have found over time that textual descriptions of critical habitat boundaries are often difficult to interpret and understand, and do not provide clarity regarding the areas being designated. Publishing these textual descriptions is also inefficient and costly. Below we discuss our current requirements and their limitations, and proposed regulation changes to address these issues.

NMFS' current practice is to publish maps in the **Federal Register** along with a textual description of the boundaries of the areas being designated as critical habitat in both their proposed and final rules. FWS publishes only the maps in the proposed critical habitat rule and then publishes the maps along with a textual description of the boundaries in the final critical habitat rule. We previously described the boundaries following a variety of methods including Public Land Survey System designations (which specify township,

range, and section; sometimes referred to as the “rectangular survey system”) and metes-and-bounds (a system of describing a parcel of land using the physical features of local geography, along with directions and distances, to define the boundaries). However, as GIS and specific geographic-based data have become more available, we have been using predominantly Universal Transverse Mercator (UTM) coordinate system (a grid-based system employing a series of 60 zones to specify locations on the surface of the Earth) and latitude-longitude. We adopted these practices because our current regulations at 50 CFR 424.12(c) state “Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area.” Unfortunately, these descriptions are often difficult to interpret and understand, and do not provide clarity regarding which areas are being designated as critical habitat. Therefore, in addition to the maps and textual descriptions published in the **Federal Register**, over the last several years we have provided the public with interactive maps and additional descriptions, on the Services' Internet sites, Regulations.gov, and at local field offices. References to these Internet sites are cited throughout the proposed (NMFS only) and final (NMFS and FWS) rules and in our outreach materials for the specific action. In addition, we have provided maps and GIS coverages (data layers) to affected Federal agencies, States, counties, jurisdictions, and interested parties for use in their computer databases and to make available to their constituencies. The public's reliance on these latter materials in lieu of the textual descriptions published in the **Federal Register** and codified in the Code of Federal Regulations reinforces our view that the textual descriptions are of limited utility in informing the public as to which areas are designated critical habitat.

Given that the textual descriptions are of limited utility, we are proposing to revise the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical

Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register**. The maps and brief textual descriptions that we plan to publish in the **Federal Register** after we finalize this proposed rule will be sufficient to inform the public as to where a particular critical habitat designation is located, and thus sufficient to provide notice to the public and give them an opportunity to comment. We will provide further information online on our web sites, but we do not think it is necessary for the public to have UTM or latitude-longitude coordinates in order to know where critical habitat is located. We believe these changes will be for the public good and make the process more user-friendly, without compromising the public involvement or the overall process.

Eliminating the need to publish detailed textual descriptions in the **Federal Register** and annually in the CFR will also result in significant financial savings, thereby saving Federal resources. In FWS's final designations, UTM coordinate pairs or other textual descriptions of the boundaries of areas often account for more than half of the document, resulting in significant **Federal Register** publication costs. For example, FWS spent approximately \$764,523 in fiscal year 2008, \$539,639 in fiscal year 2009, and \$662,952 in fiscal year 2010 to publish critical habitat designations in the **Federal Register**, for a total of approximately \$1,967,114 for the three fiscal years combined. If we estimate that 50 percent of those costs are spent on the publication of the textual descriptions of the boundaries, then publication of those descriptions will cost \$983,557 for the three fiscal years, or approximately \$327,852 per fiscal year.

In addition, the regulation portion of the rule, including the maps and textual descriptions of the boundaries, is reprinted annually in the CFR, resulting in a further expenditure of taxpayer resources. FWS has spent approximately \$80,000 in fiscal year 2008, \$92,400 in fiscal year 2009, and \$83,160 in fiscal year 2010 to reprint critical habitat designations in the CFR. Based on a review of the current volume (*i.e.*, number of pages) of critical habitat designations represented in the CFR, we estimate that the textual descriptions account for approximately 75 percent of the volume and therefore 75 percent of the printing costs. Using the estimated 75 percent as the cost of reprinting the textual descriptions of the boundaries, publication of those descriptions will

cost \$191,670 for the three fiscal years, or approximately \$63,890 per fiscal year. Adding this to the **Federal Register** costs discussed above, we estimate that the annual cost for publishing textual descriptions of boundaries in the **Federal Register** and then reprinting them in the CFR will be nearly \$391,742 for FWS alone. Thus, eliminating the need to publish latitude-longitude coordinates, UTM coordinate pairs or other detailed textual descriptions in the **Federal Register** and CFR would result in a significant cost savings to the Services and the public as a whole.

Finally, relying on maps and brief textual descriptions to identify areas designated as critical habitat is consistent with the ESA. Section 4(a)(3)(A) of the Act only requires that critical habitat be designated “by regulation.” Moreover, section 4(b)(5)(A) of the Act indicates that the Secretary shall “not less than 90 days before the effective date of the regulation—(i) publish a general notice and the complete text of the proposed regulation in the **Federal Register**, and (ii) give actual notice of the proposed regulation (including the complete text of the

regulation).” In the context of critical habitat designation, we interpret the mandate to publish the “complete text” of the proposed regulation as requiring that the regulation provide a sufficiently detailed description of the area included within the proposed designation, in the form of maps and any accompanying text, so as to provide all interested persons with a meaningful opportunity to comment. Due to the technical limitations on what can be published in the **Federal Register** (*i.e.*, map size and detail), we anticipate that information we make available to the public through our outreach efforts, Internet sites, and at local Services offices will also assist the Services in addressing day-to-day questions about the designation. To the extent that questions arise from the public as to the precise coverage of a proposed or final designation (*e.g.*, due to the scale at which the published maps are drawn), additional materials will be available on the Web site or at Service offices to provide the needed clarity.

In this regard, we note that the Services never maintained that requiring detailed textual descriptions was legally necessary. Instead, the first

critical habitat regulations required only that critical habitat designations be “accompanied by maps and/or geographical descriptions.” 43 FR 870, 876 (Jan. 4, 1978). Although the Services subsequently added the requirement that critical habitat designations include textual descriptions describing the specific boundary limits of the critical habitat, there is nothing in the preamble to that rule indicating that the Services did so because the ESA required it. Rather, it was in response to several commenters, who had opined that the proposed rule was not sufficiently clear in setting out the method by which critical habitat boundaries would be described. 45 FR 13009, 13015 (Feb. 27, 1980). With this change, the regulations would continue to be explicit as to the method by which critical habitat boundaries would be described; it would just do so by means that did not require detailed textual descriptions.

Regulation Changes

The following table shows the current and proposed CFR text. After Table 1, we provide explanations of why we are proposing to revise the text as indicated.

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT
[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
17.94(b)	(b) The map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.	(b)(1) For Critical Habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the Federal Register and made available from the lead office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites within the mapped area. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT—Continued
[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
226.101 (last sentence).	Maps and charts identifying designated critical habitat that are not provided in this section may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of “Office of Protected Resources”).	(b)(2) For Critical Habitat designations published and effective on or prior to [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the Critical Habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only. Additional information regarding designated critical habitats that are not provided in this part may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of “Office of Protected Resources”).
424.12(c)	(c) Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (<i>e.g.</i> , trees, sand bars) shall not be used in defining critical habitat.	(c) Each critical habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the Federal Register and made available from the lead office of the Service responsible for such designation. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (<i>e.g.</i> , paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (<i>e.g.</i> , trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.
424.16(b)	(b) <i>Contents.</i> A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule, a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources), and shall show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary shall, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat shall also include a summary of factors affecting the species and/or critical habitat.	(b) <i>Contents.</i> A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation. Any proposed rule to designate or revise critical habitat will contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species or its designated critical habitat or both.
424.16(c)(1)(ii)	(ii) Give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;	(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

TABLE 1—CURRENT AND PROPOSED REGULATORY TEXT SETTING FORTH THE DESIGNATION OF CRITICAL HABITAT FOR SPECIES LISTED UNDER THE ENDANGERED SPECIES ACT—Continued
[16 U.S.C. 1531 *et seq.*]

Title 50 CFR section and paragraph	Current CFR text	Proposed CFR text
424.18(a)	(a) <i>Contents.</i> A final rule promulgated to carry out the purposes of the Act will be published in the Federal Register . This publication will contain the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat shall also provide a summary of factors affecting the species. A rule designating or revising critical habitat will also contain a description of the boundaries and a map of such habitat and will, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely [sic] modify such habitat or be affected by such designation.	(a) <i>Contents.</i> A final rule promulgated to carry out the purposes of the Act will be published in the Federal Register . This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species. For a rule designating or revising critical habitat, the detailed description of the action will include a map that delineates the official boundary of the designation. The official boundary may also be clarified or refined by rule text, or by the map as modified by rule text. The Service may also create additional explanatory text, information, or maps and include them in the preamble of the rule-making document or make them available from the lead Service office responsible for the designation. The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

50 CFR 17.94(b)

The existing regulation states that the map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. In order to provide more clarity regarding the areas being designated, as well as be more efficient and cost-effective, we are proposing to change the wording of the first sentence to state “For critical habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map(s) provided by the Secretary of DOI constitutes the definition of the boundaries of a critical habitat designation.” We are replacing “the Director” with “the Secretary of DOI” since the authority to designate critical habitat under the Act lies with the Secretary due to the Secretarial discretion under section 4(b)(2) of the Act to exclude specific areas from final critical habitat, and this authority has not been delegated to the Director. For existing critical habitat designations, we also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR, without changing the boundaries of those designations, in separate rulemakings in order to save the annual reprinting cost.

The second sentence of the existing regulation states “Such maps are provided for reference purposes to guide

Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat.” We are proposing to revise this sentence to read “Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation.” We believe this will provide greater clarity regarding the areas being designated, as well as be a more efficient and cost effective way to provide information to the public concerning areas designated as critical habitat. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. However, should there be ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

We are proposing also to replace the third existing sentence “Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the

States and county(ies) within which all or part of the Critical Habitat is located.” The new wording would be “Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided for clarification purposes or to explain the exclusion of sites (*e.g.*, paved roads, buildings) within the mapped area.” This change will relieve us of the regulatory and financial burden of publishing the textual descriptions of the boundaries of critical habitat in the regulations, which have shown to be of limited use to the general public.

50 CFR 226.101

This section addresses critical habitat designations made by the Secretary of Commerce. We are proposing to replace the “Maps and charts identifying designated critical habitat * * *” phrase in the beginning of the last sentence with “Additional information regarding designated critical habitat * * *.” This new language will provide the flexibility needed to provide useful information to the public concerning areas designated as critical habitat.

50 CFR 424.12(c)

We are proposing to remove the references to defining critical habitat by specific limits using reference points and lines as found on standard topographic maps of the area. The proposed revision would read “Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation.” This proposed revision would provide more clarity regarding the areas being designated, as well as relieve the regulatory and financial burden of both Services being required to print these reference points in the **Federal Register** and reprint them annually in the CFR. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. However, should there be ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. We also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR for existing critical habitat designations in separate rulemakings in order to save the annual reprinting cost.

We are proposing to add the following sentence to this regulation: “General descriptions of the location and boundaries of each area may be provided for clarification purposes or to explain the exclusion of sites (*e.g.*, paved roads, buildings) within the mapped area.”

50 CFR 424.16(b)

The proposed change to this section is in the first sentence where it currently states “A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule.” We are proposing to change the wording “shall contain the complete text of the proposed rule” to “will contain a detailed description of the proposed action.” Although we will in fact publish “the complete text of the proposed regulation,” as required by 16 U.S.C 1533(b)(5)(A)(i), this change in wording, along with the other changes in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, should there be

ambiguity with the scale of the map, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

Because the regulation will be the legally binding description of the designation, we included the language “will contain a detailed description of the proposed action” to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

50 CFR 424.16(c)(1)(ii)

The proposed change to this section is removing the parenthetical phrase that states “(including the complete text of the regulation).” As stated above, this change in wording, along with the other changes proposed in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat.

Because the regulation will be the legally binding description of the designation, we included the language “will contain a detailed description of the proposed action” to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

50 CFR 424.18(a)

This section addresses the final rule requirements. In the second sentence of the existing regulation, we are proposing to replace “the complete text of the rule” with “a detailed description of the action being finalized.” As with the sections above that deal with the requirements for a proposed rule, changing the wording here, along with the other changes proposed in this notice, will clarify how we interpret this mandate in the context of critical habitat designation. As discussed above, our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. Because the regulation will be the legally binding description of the designation, we

included the language “will contain a detailed description of the proposed action” to clarify that the regulation (in the form of maps and any accompanying text) must itself provide a sufficiently detailed description.

In the fourth sentence of the existing regulation, we are proposing to remove the references to the final rule containing a description of the boundaries of the critical habitat being designated. We are modifying this section and expanding the discussion on the requirement for a map. The new proposed section would read: “A rule designating or revising critical habitat will also include a map of the critical habitat area. The map itself constitutes the official boundary of the designation. The official boundary may also be delineated by rule text or by the map as modified by rule text. The Services may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead Service office responsible for the designation.” This change will provide more clarity regarding the areas being designated, as well as allow us to reduce our printing costs in both the **Federal Register** and for the annual reproductions of the CFR. Our interpretation of what is included within the designation will be provided with the more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office responsible for such designation habitat. We believe this change will not increase the burden on the public.

Required Determinations*Regulatory Planning and Review—Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

- a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- b. Whether the rule will create inconsistencies with other Federal agencies' actions.
- c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities as defined under the RFA.

This proposed rule would revise the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. A full description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. The proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This rulemaking amends the procedural requirements for NMFS and FWS when designating critical habitat. NMFS and FWS are the only entities that are directly impacted by this rule, and they are not considered to be small entities under SBA's size standards. No other entities are directly impacted by this rule.

The revisions to the implementing regulations proposed herein are not expected to impose any direct costs on regulated entities. The elimination of the procedural requirement to publish

textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR is an administrative action, and it is intended to facilitate public understanding of the critical habitat designation process and make it easier for the public to determine if specific areas are within the critical habitat designation. In fact, this regulation would make the process more cost-effective for the agencies and the public as a whole and would potentially save the FWS alone an estimated \$391,742 annually. Therefore, for the reasons above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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.*), the Services make the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal

assistance or (ii) a duty arising from participation in a voluntary Federal program."

b. We do not believe this rule will significantly or uniquely affect small governments, because the revisions to the implementing regulations proposed herein will facilitate public understanding of the critical habitat designation process, and the areas included within the critical habitat, and make the process more cost-effective for the agencies and the public as a whole by potentially saving the FWS alone an estimated \$391,742 annually. As such, we do not believe that a Small Government Agency Plan is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have evaluated the proposal to revise the implementing regulations for designating critical habitat and have determined that this proposed rule does not pose significant takings implications. The proposed revisions to the implementing regulations are intended to facilitate the public understanding of the rulemaking process for critical habitat.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. The revisions to the regulations addressed in this proposed rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the authority of the States to govern themselves.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor 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. The revisions to the regulations addressed in this proposed rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register**.

Also, it is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

However, we have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act. Since this proposal is administrative in nature (*i.e.*, we are making optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register**), there is no effect to the quality of the human environment. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

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 "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Native American Tribes on a government-to-government basis. We

have evaluated the potential effects on federally recognized Tribes from these proposed revisions to our implementing regulations for critical habitat. We have determined that there are no potential effects to federally recognized Tribes since the revisions to the implementing regulations are intended to facilitate the public understanding of critical habitat designations and save taxpayer monies. We will, however, continue to coordinate with Tribes as we promulgate critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to revise the implementing regulations for designating critical habitat 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.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a. Be logically organized;
- b. Use the active voice to address readers directly;
- c. Use clear language rather than jargon;
- d. Be divided into short sections and sentences; and
- e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise this rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author(s)

The primary authors of this package are staff members from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

List of Subjects in 50 CFR Parts 17, 226, and 424

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend parts 17, 226, and 424, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.94, revise paragraph (b) as set forth below:

§ 17.94 Critical habitats.

* * * * *

(b)(1) For the Critical Habitat designations published and effective after [EFFECTIVE DATE OF FINAL RULE], the map provided by the Secretary of DOI, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

(2) For Critical Habitat designations published and effective on or prior to [EFFECTIVE DATE OF FINAL RULE], the map provided by the Director is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the Critical Habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a Critical Habitat. Critical Habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located.

Unless otherwise indicated within the Critical Habitat description, the State and county(ies) names are provided for informational purposes only.

* * * * *

PART 226—[AMENDED]

3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

4. Revise § 226.101 to read as follows:

§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical, under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at § 223.102 of this chapter if threatened and at § 224.101 of this chapter if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title; for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Additional information regarding designated critical habitats that is not provided in this section may be obtained upon request to the Office of Protected Resources (see § 222.102, definition of “Office of Protected Resources”).

PART 424—[AMENDED]

5. The authority citation for part 424 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); unless otherwise noted.

6. In § 424.12, revise paragraph (c) as set forth below:

§ 424.12 Criteria for designating critical habitat.

* * * * *

(c) Each Critical Habitat area will be shown on a map, with more detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead office of the Services responsible for such designation. Textual information may be included for purposes of clarifying or

refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. Unless otherwise indicated within the Critical Habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (e.g., trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.

* * * * *

7. In § 424.16, revise paragraphs (b) and (c)(1)(ii) as set forth below:

§ 424.16 Proposed rules.

* * * * *

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule designates or revises critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat or may be affected by such designation. Any proposed rule to designate or revise critical habitat shall contain a map of such habitat. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species and/or its designated critical habitat.

(c) * * *

(1) * * *

(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

* * * * *

8. In § 424.18, revise paragraph (a) to read as follows:

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register**. This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species. For a rule designating or revising critical habitat, the detailed description of the action will include a map that delineates the official boundary of the designation. The official boundary may also be clarified or refined by rule text or by the map as modified by rule text. The Services may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead office of the Service responsible for the designation. The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

* * * * *

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

Dated: March 11, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: May 4, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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