ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Long Beach Bridge at mile 4.7, across Reynolds Channel at Nassau, New York. The deviation is necessary to facilitate public safety for a public event. This deviation allows the bridge to remain in the closed position for two hours.

DATES: This deviation is effective from 10 p.m. on June 25, 2011, through 11:59 p.m. on June 26, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0481 and are available online at *http://www.regulations.gov*, inserting USCG–2011–0481 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil*, or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Long Beach Bridge, across Reynolds Channel at mile 4.7, at Nassau, New York, has a vertical clearance in the closed position of 20 feet at mean high water and 24 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(g).

The waterway users are mostly commercial operators.

The owner of the bridge, Nassau County Department of Public Works, requested a temporary deviation from the regulations to facilitate public safety during a public event, the Annual Salute to Veterans Fireworks Display on Saturday June 25, 2011.

Under this temporary deviation the Long Beach Bridge may remain in the closed position between 10 p.m. and 11:59 p.m. on June 25, 2011. In the event of inclement weather on the scheduled date the fireworks display will occur between 10 p.m. and 11:59 p.m. on June 26, 2011. Vessels that can pass under the bridge in the closed position may do so at any time.

The commercial users were notified. No objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 8, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–15352 Filed 6–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0050; 92220–1113–0000–C3]

RIN 1018–AW60

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Bull Trout in the Clackamas River Subbasin, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), jointly with the State of Oregon, and in cooperation with the U.S. Forest Service, Mt. Hood National Forest (USFS), National Marine Fisheries Service (NMFS), and Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), will establish a nonessential experimental population (NEP) of bull trout (*Salvelinus confluentus*) in the Clackamas River and its tributaries in Clackamas and Multnomah Counties, Oregon, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). The geographic boundaries of the NEP include the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel. The best available data indicate that reintroduction of bull trout to the Clackamas River subbasin is biologically feasible and will promote the conservation of the species.

DATES: This rule is effective June 21, 2011.

ADDRESSES: This final rule, along with the public comments, Environmental Assessment (EA), and Finding of No Significant Impact (FONSI), is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are also available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266; (telephone 503–231–6179).

FOR FURTHER INFORMATION CONTACT: Chris Allen at the address listed above. If you use a telecommunication device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Framework

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j) which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed).

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or

private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Under 50 CFR 17.81(f), the Secretary of the Interior (Secretary) may designate critical habitat as defined in section 3(5)(A) of the Act for an essential experimental population. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat will be designated for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself. No designation of critical habitat will be made for nonessential experimental populations.

Any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population.

Any experimental population designated for a listed species (1) determined not to be essential to the survival of that species and (2) not occurring within the National Park System or the National Wildlife Refuge System, will be treated for purposes of section 7 (other than subsection (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species.

Any experimental population designated for a listed species that either (1) has been determined to be essential to the survival of that species, or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, will be treated for purposes of section 7 of the Act as a threatened species. Notwithstanding the foregoing, any biological opinion prepared pursuant to section 7(b) of the Act and any agency determination made pursuant to section 7(a) of the Act will consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.

On December 9, 2009, the Service published: (1) A proposed rule in the **Federal Register** to establish a nonessential experimental population of bull trout in the Clackamas River subbasin, Oregon (74 FR 65045); and (2) a draft environmental assessment (EA) in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (74 FR 65045). This document analyzed the potential environmental impacts associated with the proposed reintroduction. We contacted interested parties including Federal and State agencies, local governments, scientific organizations, interest groups, and private landowners through a press release and related fact sheets, and e-mails. In addition, we notified the public and invited comments through news releases to local media outlets. The public comment period for the proposed rule and the draft EA closed on February 8, 2010.

Biological Information

The bull trout is a large native char found in the coastal and intermountain west of North America and is one of five species in the genus *Salvelinus* found in the United States (Bond 1992, p. 1). Bull trout have a slightly forked tail; yellow or cream-colored spots on their back; yellow, orange, or pink spots on their side; and no black spots on their dorsal fin. Migratory adults commonly reach 24 inches (61 centimeters) or more (Goetz 1989, pp. 29–30; Pratt 1992, p. 8). The largest known specimen weighed 32 pounds (14.5 kilograms) (Simpson and Wallace 1982, p. 95).

The historical range of bull trout in the coterminous United States extended from the Canadian border south to the Jarbidge River in northern Nevada and from the Pacific Ocean inland to the Clark Fork River in western Montana and the Little Lost River in central Idaho. Genetic analyses have shown that bull trout in the coterminous United States are divided into major genetically differentiated (*e.g.,* evolutionary) groups or lineages (Spruell *et al.* 2003, p. 21; Ardren *et al.* 2010, In Press, p. 13; Taylor *et al.* 1999, p. 1162). At a coarse scale, these assessments have identified the existence of two distinct lineages: A ''coastal'' lineage and a ''interior'' lineage. The ''coastal'' lineage includes the Deschutes River and all of the Columbia River drainage downstream (including the Willamette Basin), as well as coastal streams in Washington, Oregon, and British Columbia. The ''interior'' lineage includes tributaries of the Columbia River upstream from the John Day River, including major river basins in northeastern Oregon, eastern Washington, Idaho, and northwestern Montana.

In a finer-scale analysis, the Service recently identified additional genetic units within the coastal and interior lineages (Ardren *et al.* 2010, In Press, p. 18). Based on a recommendation in the Service's 5-year review of the species' status (USFWS 2008, p. 45), the Service reanalyzed the 27 recovery units identified in the draft bull trout recovery plan (USFWS 2002) by utilizing, in part, genetic information from this finer-scale genetic analysis. In this examination, the Service applied relevant factors from the joint Service and NMFS Distinct Population Segment (DPS) policy (61 FR 4722; February 7, 1996) and subsequently identified six draft recovery units that contain assemblages of core areas that retain genetic and ecological integrity across the range of bull trout in the coterminous United States. These six draft recovery units were used to inform designation of critical habitat for bull trout by providing a context for deciding what habitats are essential for recovery (75 FR 63898; October 18, 2010). The six draft recovery units identified for bull trout in the coterminous United States include: Coastal, Klamath, Mid-Columbia, Columbia Headwaters, Saint Mary, and Upper Snake.

Bull trout exhibit both resident and migratory life-history strategies, although bull trout in the ''coastal'' lineage are largely migratory. Migratory bull trout spawn in tributary streams where juvenile fish rear for 1 to 4 years before migrating to either a lake (adfluvial form), river (fluvial form) (Fraley and Shepard 1989, pp. 138–139; Goetz 1989, p. 24), or saltwater (anadromous form) to rear as subadults and to live as adults (Cavender 1978, p. 139; McPhail and Baxter 1996, p. 14; Washington Department of Fish and Wildlife (WDFW) *et al.* 1998, p. 2). Bull trout normally reach sexual maturity between age 4 and 7, and may live longer than 12 years. They are iteroparous (spawning more than once in a lifetime). Both consecutive-year and alternate-year spawning have been reported (Fraley and Shepard 1989, p. 135). Preferred habitat consists of cold water, complex cover, stable channels, loose and clean gravel, and migratory corridors (Fraley and Shepard 1989, pp. 137–139; Goetz, 1989, pp. 16–25).

The current distribution of bull trout in the lower Columbia River portion of the ''coastal'' lineage includes populations in the Deschutes, Hood, Lewis, Klickitat, and upper Willamette rivers. Throughout much of its historical range, the decline of bull trout has been attributed to habitat degradation and fragmentation, the blockage of migratory corridors, poor water quality, angler harvest, entrainment (the incidental withdrawal of fish and other aquatic organisms in water diverted out-of-stream for various purposes) into diversion channels and dams, and introduced nonnative species. Specific land and water management activities that may negatively impact bull trout populations and habitat, if not implemented in accordance with best management practices, include the operation of dams and other diversion structures, forest management practices, livestock grazing, agriculture, agricultural diversions, road construction and maintenance, mining, and urban and rural development (Beschta *et al.* 1987, pp. 221–224; Chamberlain *et al.* 1991, pp. 199–200; Furniss *et al.* 1991, pp. 297–302; Meehan and Bjornn 1991, pp. 483–517; Nehlsen *et al.* 1991, p. 16; Craig and Wissmar 1993, p. 18; Frissell 1993, p. 351; McIntosh *et al.* 1994, pp. 47–48; Wissmar *et al.* 1994, p. 28; Montana Bull Trout Scientific Group (MBTSG) 1995a [p. 14], 1995b [p. 10], 1995c [p. 13], 1995d [p. 21], 1995e [p. 13], 1996a [p. 12], 1996b [p. 9], 1996c [p. 12], 1996d [p. 11], 1996e [p. 12], 1996f [p. 10]; Light *et al.* 1996, pp. 9–11; U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995 [pp. 70–71], 1996 [pp. 106–107, 111], 1997 [pp. 132–154]).

The historical distribution of bull trout in the Clackamas River subbasin likely extended from the lower Clackamas River upstream to headwater spawning and rearing areas (Shively *et al.* 2007, Ch. 1, pp. 10–12). It is possible that bull trout from the Clackamas River migrated to the upper Willamette River above Willamette Falls or to lower Columbia River tributaries (Zimmerman 1999, p. 17); however, it is unlikely that bull trout historically occupied habitat upstream of waterfall barriers known to impede upstream movement of anadromous salmon and steelhead in the Clackamas River.

The last documented bull trout observation in the Clackamas River subbasin was in 1963 (Stout 1963, p. 97). Due to geographic distance to extant bull trout populations in other subbasins, natural recolonization of the Clackamas River subbasin is extremely unlikely (USFWS 2002, Ch. 5, p. 9). Extirpation was likely caused by many of the factors that led to the decline in the species across its range, including migration barriers from hydroelectric and diversion dams, direct and incidental harvest in sport and commercial fisheries, targeted eradication through bounty fisheries (currently known as ''sport reward'' programs), and habitat and water quality degradation from forest management and agricultural activities not in accordance with best management practices (Shively *et al.* 2007, Ch. 1, pp. 18–22).

Relationship of the Experimental Population to Recovery Efforts

On November 1, 1999, we published a final rule to list bull trout within the coterminous United States as threatened under the Act (64 FR 58910). This final rule served to consolidate the five separate DPS listings into one listing throughout the species' entire range in the coterminous United States. We published notices of availability of draft recovery plans for the Columbia River, Klamath River, and St. Mary-Belly River segments on November 29, 2002 (67 FR 71439), and the Coastal Puget Sound and Jarbidge River segments on July 1, 2004 (69 FR 39950 and 69 FR 39951, respectively). We published a revised final rule on October 18, 2010 (75 FR 63898), designating critical habitat for bull trout in the coterminous United States. We anticipate publishing a draft revised recovery plan for bull trout in the coterminous United States in 2011, and a final recovery plan in 2012. The recovery objectives from the 2002 draft recovery plan are:

(1) Maintain current distribution of bull trout within core areas as described in recovery unit chapters and restore distribution where recommended in recovery unit chapters;

(2) Maintain stable or increasing trend in abundance of bull trout;

(3) Restore and maintain suitable habitat conditions for all bull trout life-history stages and strategies; and

(4) Conserve genetic diversity and provide opportunity for genetic exchange.

As noted above in *Biological Information,* new draft recovery units were identified in the October 2010 bull trout critical habitat final rule (75 FR 63898). We anticipate these 6 recovery units will replace the 27 recovery units previously identified in our 2002 draft recovery plan (67 FR 71439; November 29, 2002), and that these new units will be incorporated into the revised draft recovery plan expected to be published for public review and comment in 2012. The recovery criteria specific to the 27 recovery units identified in the 2002 draft recovery plan continue to inform demographic recovery targets at the core area scale. Therefore, the criteria identified below for what was then described as the Willamette River Recovery Unit in the 2002 draft recovery plan (USFWS 2002, Ch. 5 pp. 7–8) are still relevant:

(1) Distribution criteria will be met when bull trout are distributed among five or more local populations in the recovery unit: four in the Upper Willamette River core area and one in the Clackamas River core habitat.

(2) Abundance criteria will be met when an estimated abundance of adult bull trout is from 900 to 1,500 or more individuals in the Willamette River Recovery Unit, distributed in each core area as follows: 600 to 1,000 in the Upper Willamette core area and 300 to 500 in the Clackamas River core habitat.

(3) Trend criteria will be met when adult bull trout exhibit stable or increasing trends in abundance in the Willamette River Recovery Unit, based on a minimum of 10 years of monitoring data.

(4) Connectivity criteria will be met when migratory forms are present in all local populations and when intact migratory corridors among all local populations in core areas provide opportunity for genetic exchange and diversity.

Establishment of an experimental population of bull trout in the Clackamas River will help to achieve distribution in the Clackamas River core habitat (recovery criterion 1 and

recovery objective 1) and will increase abundance of adult bull trout in the Willamette River basin (recovery criterion 2 and recovery objective 2 from the 2002 draft recovery plan).

Is the experimental population essential or nonessential?

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. Although the experimental population will contribute to the recovery of the bull trout in the Willamette River basin, it is not essential to the continued existence of the species in the wild. Bull trout populations are broadly distributed, occurring in 121 core areas in 5 western States, and the species' continued existence is dependent upon conserving a number of interacting populations that are well distributed throughout its range. Because the donor stock for the reintroduction will come from a wild population of bull trout, the reintroduced population will not possess markedly divergent genetic components or adaptive traits. Furthermore, the Clackamas River is not a unique or unusual ecological setting or geographical context for bull trout. Bull trout occur in other portions of the Willamette River basin and in other nearby tributaries to the Columbia River. Therefore, as required by 50 CFR 17.81(c)(2), we find that the experimental population is not essential to the continued existence of the species in the wild, and we hereby designate the experimental population in the Clackamas River as a nonessential experimental population (NEP).

Location of the Nonessential Experimental Population

The NEP area includes the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel. The Willamette River's confluence with the Columbia River occurs at river mile (RM) 101, near the City of Portland. A secondary channel of the Willamette River, named the Multnomah Channel, branches off the Willamette River approximately 3 river miles (5 river kilometers) upstream from its confluence with the Columbia River. This secondary channel runs approximately 20 river miles (32 river kilometers) along the west side of Sauvie Island before joining the Columbia River at RM 86 near the town of St. Helens. The NEP boundary extends down the Multnomah Channel to its confluence with the Columbia River, as well as the mainstem Willamette River, from Willamette Falls to its confluence with the Columbia River.

Under this final rule, the Service will release bull trout into areas of suitable spawning and rearing habitat in the Clackamas River subbasin. The portion of the subbasin currently containing these areas is limited to the mainstem Clackamas River and its tributaries in the upper headwaters of the subbasin, upstream of the Collawash River confluence. This portion of the subbasin, referred to as the upper Clackamas River subbasin, contains a total of 70.1 river miles (112.8 river kilometers) of suitable spawning and rearing habitat. The amount and characteristics of habitat in the Clackamas River subbasin compare favorably to other river systems in the lower Columbia River with extant bull trout populations (*e.g.,* Lewis, McKenzie, and Deschutes rivers) (Shively *et al.* 2007, Ch. 2, p. 40).

Section 10(j) of the Act requires that an experimental population be geographically separate from wild populations of the same species. The nearest wild bull trout populations to the Clackamas River are located in the following tributaries of the lower Columbia River: The Lewis (RM 84), Hood (RM 165), and Deschutes (RM 200) rivers. Because fluvial populations of bull trout tend to migrate, individual fish from these populations may seasonally occupy the mainstem of the lower Columbia River. Although we have no records of bull trout in the mainstem Willamette River, given our understanding of bull trout ecology in other river systems, it is likely that, historically, bull trout seasonally occupied the mainstem Willamette River. If a reintroduction of bull trout to the Clackamas River is successful, it is possible that a small percentage of adult bull trout will migrate to, and overwinter in, the mainstem Willamette River, between Willamette Falls and its points of confluence with the Columbia River, including Multnomah Channel. Should any bull trout be found in the Willamette River within the NEP boundary, the Service will assume the fish to be part of the reintroduced population, unless the fish is tagged or otherwise known to be from another population.

It is unlikely that reintroduced bull trout will migrate outside of the NEP boundary into the Columbia River or upstream of Willamette Falls in the Willamette River due to the significant distance to spawning and rearing habitats in the upper Clackamas River. Bull trout found outside of the NEP boundary but known to be part of the NEP will assume the status of bull trout within the geographic area in which they are found. Although Willamette Falls and the confluence points of the Willamette and Columbia Rivers are not absolute boundaries, the NEP is geographically separate from other wild bull trout populations due to geographic distance.

Likelihood of Population Establishment and Survival

The Service, USFS, State of Oregon (hereafter referred to as either the State of Oregon or the Oregon Department of Fish and Wildlife (ODFW)), and other major stakeholders established the Clackamas River Bull Trout Working Group (CRBTWG) to assess the feasibility of bull trout reintroductions. In 2007, the CRBTWG completed the Clackamas River Bull Trout Reintroduction Feasibility Assessment (Feasibility Assessment), a scientifically rigorous examination of habitat suitability and projected viability of a reintroduced population (Shively *et al.* 2007). The Feasibility Assessment indicates that there is a reasonable likelihood that reintroduced bull trout will survive and reestablish in the upper portion of the Clackamas River, from North Fork Reservoir to the headwaters. Specifically, the CRBTWG concludes:

(1) There is a high level of confidence that bull trout have been locally extirpated from the Clackamas River subbasin;

(2) The causes for their decline have been sufficiently mitigated;

(3) High-quality habitat is available in sufficient amounts;

(4) Nearby donor stocks are unlikely to naturally recolonize;

(5) Suitable donor stocks are available that can withstand extraction of individuals;

(6) Nonnative brook trout presence is restricted to a small portion of the suitable habitat and not a likely threat; and

(7) A diverse and abundant fish assemblage would serve as a sufficient prey base with no obvious threats posed by bull trout to these species (Shively *et al.* 2007, Ch. 5, pp. 3–4).

Based on this assessment, reintroduced bull trout are likely to become established and persist in the Clackamas River subbasin. Copies of the Feasibility Assessment can be obtained: (1) Online at *http://www.fws.gov/oregonfwo/Species/Data/BullTrout/ReintroductionProject.asp,* (2) at *http://www.regulations.gov,* or (3) in person, by appointment, during normal business hours, at the Oregon Fish and Wildlife

Office (see **FOR FURTHER INFORMATION CONTACT**).

Addressing Causes of Extirpation

Investigating the causes for decline and extirpation of bull trout in the Clackamas River is necessary to understand whether the threats have been sufficiently curtailed such that reintroduction efforts are likely to be successful. The CRBTWG identified the primary threats to be hydroelectric dams (passage and screening), forest management (*i.e.,* lack of aquatic habitat protection), and fisheries management (particularly sport fishing upstream of North Fork Dam) (Shively *et al.* 2007, Ch. 1, pp. 22–23). The changes in threats since extirpation of bull trout in the Clackamas River subbasin are explained below in more detail.

Diversion dams that would impede bull trout migration were present in the late 1800s and early 1900s, but no longer exist in the lower Clackamas River subbasin. Within bull trout historical habitat in the Clackamas River subbasin there are three existing dams owned and operated by Portland General Electric (PGE). Beginning in the late 1990s, PGE began Federal relicensing proceedings for its hydroelectric dams in the Clackamas River subbasin. In their final license application to the Federal Energy Regulatory Commission (FERC) and in an accompanying Settlement Agreement among more than 30 local, State, Federal, and Tribal governments, nongovernmental organizations, and other interested stakeholders, PGE proposed to make several upstream and downstream fish passage improvements for the three dams along the mainstem Clackamas River. One improvement, which is already completed, is the reconstruction of the River Mill Dam fish ladder. Other improvements include upgrades to the downstream fish collection facility and bypass at North Fork Dam, construction of a new fish trap and handling facility at the North Fork fishway, and new downstream fish passage facilities at River Mill Dam (Shively *et al.* 2007, Ch. 1, p. 23). No additional changes or protections regarding the operation and maintenance of the Clackamas River Hydroelectric Project are necessary to support a successful reintroduction of bull trout in the Clackamas River subbasin.

The majority of lands in the upper portion of the Clackamas River subbasin are USFS- and Bureau of Land Management (BLM)-administered public forest lands. These lands are managed in accordance with the Mt. Hood National Forest Land and Resource Management Plan (USFS 1990) or the Salem District BLM Resource Management Plan (USDI 1995), respectively, as amended by the 1994 Northwest Forest Plan (USDA and USDI 1994). The 1994 Northwest Forest Plan established an Aquatic Conservation Strategy (ACS) with protective measures, standards and guidelines, and land allocations to maintain and restore at-risk fish species, including bull trout. The ACS Riparian Reserve land allocation extends a minimum of 300 feet (91.4 meters) on both sides of all fish-bearing streams and prohibits scheduled timber harvest. These plans, along with the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) that established several new wilderness areas in the upper Clackamas River watershed, provide substantial protections for watersheds and aquatic habitats on USFS- and BLM-administered public lands in the upper subbasin. No additional changes or protections regarding forest management activities on public or non-public forest lands are necessary to support a successful reintroduction of bull trout in the Clackamas River subbasin (Shively *et al.* 2007, Ch. 1, pp. 124–125).

When the NMFS listed salmon and steelhead in the Clackamas River as threatened under the Act (64 FR 14308, March 24, 1999; 70 FR 37160, June 28, 2005; 71 FR 834, January 5, 2006), fisheries management practices for the portion of the Clackamas River subbasin upstream of North Fork Reservoir changed substantially. For example, stocking of catchable rainbow trout within the Clackamas River has been discontinued altogether along the mainstem and tributaries upstream of North Fork Reservoir, and current sport fishing regulations now require catch and release of all native trout caught in the Clackamas River subbasin. Additionally, angling is restricted to the use of artificial flies and lures upstream of North Fork Reservoir. All waters in the Willamette Zone for the State of Oregon's sport fishing regulations are closed to angling for bull trout. Beginning in 2003, ODFW eliminated the stocking of nonnative brook trout in lakes with outlets to streams in the upper Clackamas River subbasin that provide suitable bull trout spawning and rearing habitat. With these significant changes in angling regulations and stocking of nonnative brook trout, no additional changes to angling regulations and stocking in the upper portion of the subbasin are necessary to support a successful reintroduction of bull trout (Shively *et al.* 2007, Ch. 1, pp. 24).

Donor Stock Assessment and Effects on Donor Populations

A donor stock should be composed of fish that most closely resemble the bull trout that historically inhabited the Clackamas River (*e.g.,* genotype, phenotype, behavior, and life-history expression). However, because little is known about the biology and evolutionary history of bull trout that historically occupied the Clackamas River, and no genetic material is available for analysis, the CRBTWG was limited to an assessment of biological information from other local populations, existing studies of the evolution and biogeography of bull trout, information derived from historical harvest data from the Clackamas River, and recent regional bull trout genetic analyses.

By exploring issues associated with life-history strategy, metapopulation dynamics, biogeography, and genetic considerations, the CRBTWG identified bull trout populations in the ''coastal'' lineage as the best source for a donor population (see *Biological Information* above). Any of the ''coastal'' lineage bull trout populations are likely to carry the genetic material to preserve and protect the ''coastal'' lineage regardless of localized and specific adaptations. Although these local adaptations are important, each of the populations is likely to contain the evolutionary potential that is characteristic of the ''coastal'' evolutionary lineage. However, in a further refinement, the CRBTWG determined that donor populations from lower Columbia River tributaries would be most appropriate due to their geographic proximity to the historical bull trout population in the Clackamas River. The potential lower Columbia River donor populations of bull trout include fish in five river basins: The Willamette River, Hood River, Lewis River, Deschutes River, and Klickitat River basins (Shively *et al.* 2007, Ch. 3, pp. 8–14).

Specific benchmarks have been developed concerning the minimum bull trout population size necessary to maintain genetic variation important for short-term fitness and long-term evolutionary potential. Rieman and Allendorf (2001, pp. 762) concluded that an average of 100 spawning adults each year is required to minimize risks of inbreeding in a bull trout population and that 1,000 spawning adults each year will likely prevent loss of genetic diversity due to genetic drift. This latter value of 1,000 spawning adults may also be reached with a collection of local populations among which gene flow occurs. The CRBTWG utilized these

general benchmarks in the Feasibility Assessment to assess potential risk to each of the five potential donor stocks in the lower Columbia River from the loss of individuals, recognizing that risk increases as donor populations near 100 spawning adults and diminishes as populations approach 1,000 spawning adults (Shively *et al.* 2007, Ch. 3, pp. 8–14).

When the Feasibility Assessment was developed in December 2007, bull trout from two of the above five river basins, the Lewis River and Deschutes River, contained groups of interacting local populations that exceeded 1,000 spawning adults. For the Lewis River basin, this total included the combined Pine Creek and Rush Creek populations that occur above Swift Dam. For the Deschutes River basin, it included the three interacting populations present in the Metolius River subbasin. Since 2007, adult bull trout abundance in the Lewis River has declined, with the current number of annual spawners estimated to be approximately 536 adults (Byrne 2010, pers. comm.). The Metolius River bull trout population has also declined but has still maintained a spawning population size greater than 1,000 adults, which is sufficiently large enough to protect against the loss of genetic diversity from genetic drift (Rieman and Allendorf 2001, p. 762). The Metolius River population of bull trout comprised an estimated 1,458 spawning adults in 2010 (Ratliff 2010, pers. comm.). Given the long-term stability and size of the Metolius River bull trout population, the Service has determined this population to be at very low risk of impact from loss of individuals from contribution as donor stock, and the least ''at risk'' of the potential donor stocks that were considered.

This final action allows for the direct transfer of wild bull trout adults, subadults, juveniles, fry, and fertilized eggs from the Metolius River subbasin to the Clackamas River. The numbers and life stages of fish transferred each year will be linked strongly to the annual population size of the donor stock, as well as to information derived from monitoring the success of the various life stages in the NEP over the initial few years of the project. Details regarding the implementation strategy such as release sites and timing, annual stocking numbers, disease screening, and monitoring and evaluation are contained in the Implementation, Monitoring, and Evaluation Plan, which is appended to our final EA, and can be obtained: (1) In person at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) and (2) online at *http://www.regulations.gov* or *http://www.fws.gov/oregonfwo/Species/Data/BullTrout/ReintroductionProject.asp.*

Management Considerations and Protective Measures

We conclude that the effects of Federal, State, or private actions and activities will not pose a substantial threat to bull trout establishment and persistence in the Clackamas River subbasin, because most activities currently occurring in the NEP area are compatible with bull trout recovery and there is no information to suggest that future activities would be incompatible with bull trout recovery. Most of the area containing suitable release sites with high potential for bull trout establishment is managed by the USFS and is protected from major development activities and timber harvest through the following mechanisms:

(1) Forty-seven miles (76 kilometers) of the Clackamas River, from its headwaters to the Big Cliff area just upstream of North Fork Reservoir, was designated in 1988 as part of the Federal Wild and Scenic Rivers System (USFS 1993, p. 14).

(2) The State of Oregon designated 82 miles (132 kilometers) of the Clackamas River and its tributaries as part of the Oregon Scenic Waterway Program in 1989 (ORS 390.826).

(3) The 1994 Northwest Forest Plan established protective measures, standards and guidelines, and land allocations to maintain and restore at-risk fish species, including bull trout.

(4) NMFS' listings of salmon and steelhead under the Act caused fisheries management practices (*i.e.,* sport fishing regulations and stocking of catchable rainbow trout) in the Clackamas River subbasin to become significantly more restrictive.

(5) The Federal Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) designated two new wilderness units in the upper Clackamas River watershed, at Sisi Butte (3,245 acres) and at Big Bottom (1,264 acres), and also designated the Big Bottom Protection Area (1,581 acres) as a special management unit adjacent to the Big Bottom Wilderness unit.

The Service recognizes that the provisions of PGE's Clackamas Settlement Agreement do not reflect the reintroduced presence of bull trout in the Clackamas River subbasin. However, no additional changes or protections regarding PGE's operation of the Clackamas River Hydroelectric Project are necessary to support a successful reintroduction of bull trout to the Clackamas River subbasin.

The Service, ODFW, and the USFS, in cooperation with members of the CRBTWG, will implement and manage the reintroduction of bull trout. In addition, these agencies will carefully collaborate on collection and transportation of donor stock, releases, monitoring and evaluation, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful reintroduction of the species. A few specific management considerations related to the experimental population are addressed below.

Incidental Take: Experimental population special rules contain specific prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the expected reestablishment area. Section 3(19) of the Act defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Take of bull trout within the experimental population area will be allowed provided that the take is unintentional, not due to negligent conduct, or is consistent with State fishing regulations that have been coordinated with the Service. We expect levels of incidental take to be low because the reintroduction is compatible with existing activities and practices in the area. As recreational fishing for species other than bull trout is popular within the NEP area, we expect some incidental take of bull trout from this activity but, as long as it is in compliance with ODFW fishing regulations and Tribal regulations on land managed by the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), such take will not be a violation of the Act.

Special Handling: Service and ODFW employees and authorized agents acting on their behalf may handle bull trout for scientific purposes; to relocate bull trout to avoid conflict with human activities, for recovery purposes; to relocate bull trout to other release sites in the Clackamas River, to aid sick or injured bull trout; and to salvage dead bull trout. However, non-Service or other non-authorized personnel will need to acquire permits from the Service and ODFW for these activities. USFS personnel, the primary land managers in the reestablishment area, will be permitted to handle reintroduced bull trout through a modification of their existing section 10(a)(1)(A) recovery permit.

Coordination with Land Owners and Land Managers: The NEP reintroduction has been discussed with potentially affected State agencies, Tribal entities, local governments, businesses, and landowners within the expected reestablishment area. The land along the expected reestablishment area is owned mainly by USFS although a small portion located in North Fork Reservoir is owned by PGE. Nothing in this rule requires any additional changes, protections, or mitigation or enhancement measures for bull trout with respect to PGE's operation of Project 2195 (Clackamas River Hydroelectric Project) pursuant to the Settlement Agreement or the new license for the Project; nor does any provision of this rule amend or modify the Settlement Agreement or require that any plan pursuant to the Settlement Agreement be modified to address the presence of bull trout.

Public Awareness and Cooperation: During October and November 2008, in cooperation with ODFW and USFS, we conducted several NEPA scoping meetings on this action. We notified a comprehensive list of stakeholders of the meetings including affected Federal and State agencies, Tribal entities, local governments, landowners, nonprofit organizations (environmental and recreational), and other interested parties. The comments we received are listed in the final EA, were included in the formulation of alternatives considered in the NEPA process, and were considered in this final rule designating an NEP for reintroduced bull trout.

Potential impacts to other Federally listed fish species: Stakeholders expressed concern during development of the proposed rule and this final rule that predation and competition from reintroduced bull trout may negatively impact Federally listed anadromous salmonids, particularly juvenile life stages of steelhead trout, coho salmon, and Chinook salmon in the Clackamas River above North Fork Dam. Although our analysis suggests the risk to anadromous salmonids from this action is low, we acknowledge the uncertainty and sensitivity around this issue. We believe it is important to assess uncertainty using appropriate tools and methods and then take steps necessary to reduce that uncertainty to an acceptable level while recognizing that it cannot be eliminated entirely.

In the development of this action, we have addressed concerns over predation and competition to listed anadromous salmonids by sponsoring an expert science panel workshop specifically to assess the potential impacts of a Clackamas River bull trout reintroduction on listed anadromous salmonids (Marcot *et al.* 2008). Based on stakeholder input, we modified our initial proposed action to reduce the number and maximum sizes of older life stages of bull trout for transfer, and we committed to tagging all fish transferred, including radio-tagging all older life stages the first 2 years of project implementation in part to monitor abundance, behavior and distribution. In addition, we funded, together with the USFS and PGE, a baseline food Web investigation in the upper Clackamas River subbasin in order to establish a baseline for future monitoring of food Web effects, particularly on salmon and steelhead, following the bull trout reintroduction (Lowery and Beauchamp 2010). We have also met numerous times during development of this final rule with our project partners and stakeholders to discuss monitoring actions that could be incorporated into the reintroduction program to reduce uncertainty and concern over impacts to listed anadromous salmonids.

Adaptive management will guide how this project is implemented on an annual basis. The primary tool to accomplish adaptive management is monitoring and evaluation. The monitoring of impacts to salmon and steelhead will provide valuable information that will inform how the project is implemented in future years including numbers, life stages, and release locations of bull trout, as well as the disposition of individual fish should they be documented or observed staging near, within, or immediately below fish bypass systems where juvenile salmonids may be particularly vulnerable to predation.

An adaptive approach provides flexibility to act in the face of uncertainty, is learning based, and specifies what actions are to be taken and when. Consistent with this approach, we developed, in consultation and coordination with NMFS, the State of Oregon, and other project partners, a Stepwise Impact Reduction Plan (SIRP), to facilitate management decisions associated with potential impacts from the bull trout reintroduction on listed anadromous salmonids.

The purpose of the SIRP, which is described in more detail in the EA, is to outline a sequence of management actions that will be taken to minimize impacts to salmon and steelhead from the reintroduction of bull trout in the Clackamas River, if specific bull trout and/or anadromous salmonid thresholds are triggered. Management actions implemented under the SIRP, and the frequency of those actions, will be informed by: (1) The reintroduction project's monitoring and evaluation program, jointly implemented by the Service, ODFW, and USFS; and (2) the conservation status of the listed Clackamas River anadromous salmonid populations.

While we believe the SIRP will provide much of the guidance necessary to address potential impacts to salmon and steelhead from the reintroduction project, we acknowledge our inability to predict all likely impact scenarios and appropriate management responses. To that end, we anticipate the SIRP will be modified as necessary, in consultation and coordination with NMFS, the State of Oregon, and other project partners, consistent with the overall adaptive management of the project.

Our analysis (USFWS 2010, pp. 109–131) indicated a low likelihood for population-level impacts to Federally listed salmon and steelhead populations. However if the Service determines, in consultation and coordination with the State of Oregon, NMFS and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts are not consistent with the recovery of salmon or steelhead, the reintroduction program will be discontinued and bull trout will be removed from the experimental population area. The Service initiated formal consultation with NMFS pursuant to section 7(a)(2) of the Act in December 2010 (USFWS 2010) and will ensure section 7(a)(2) compliance prior to releasing bull trout into the Clackamas River.

Adaptive Management: A key component of our proposed action is the adaptive management of the bull trout reintroduction project, ranging from the annual numbers, life stages, and collection methods of the donor stock, to the locations and timing of translocations (implementation strategy), and finally the management of bull trout in the Clackamas River relative to their potential impact on threatened salmon and steelhead. Our goal with this approach is to implement the project most effectively, while assuring no harm to the donor stock and limiting negative impacts to other listed species in the Clackamas River subbasin.

The adaptive management of the bull trout reintroduction project will be based in part on guidance provided in the Department of the Interior's technical guide to adaptive management (USDI 2009). The guidance defines adaptive management as a decision process that promotes flexible

decisionmaking that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a ''trial and error'' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather is a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders (USDI 2009).

Monitoring and evaluation will inform the adaptive management of this project, including the appropriate management of this experimental population of bull trout both during the period they are being reintroduced and post-project if we are successful in reestablishing a self-sustaining population in the Clackamas River.

Monitoring and Evaluation

Acknowledging the limited availability of information on fish introductions and reintroductions (Seddon *et al.* 2007, p. 305), the Service and our project partners adopted a goal early in project development to document, learn about, and report on all the major phases of the project beginning with our feasibility assessment (Shively *et al.* 2007; Dunham and Gallo 2008) and extending through project planning, development, and implementation. One of the most critical aspects of this goal is to document the effectiveness of the reintroduction by evaluating components of the implementation strategy, including the utilization of habitats chosen for release of individuals, the numbers and life stages of donor stock, the genetic health of the recipient population, documentation of reproduction and recruitment, and ultimately the establishment of a self-sustaining bull trout population.

In order to document and adaptively manage the project, a robust monitoring and evaluation program is necessary. Along with other project documentation, we expect information gained from the monitoring and evaluation program will contribute significantly to other fish reintroductions, and specifically bull trout recovery projects that we anticipate will occur across the species' range consistent with recovery guidance for the species (USFWS 2002, Ch. 1). The monitoring and evaluation program, detailed in the Implementation, Monitoring, and Evaluation Plan appended to the final EA, has three major goals: (1) Monitor and evaluate bull trout reintroduction effectiveness, (2) monitor and evaluate donor population status, and (3) monitor and evaluate impacts to listed anadromous salmonids. These three major components are summarized below:

Reintroduction Effectiveness Monitoring: The objectives of the effectiveness monitoring program for phase 1 of the project (2011–2017) are to assess: (1) Distribution and movement, (2) relative survival of translocated bull trout by monitoring presence and absence, (3) occurrence of spawning and reproduction, and (4) genetic health (as measured against the donor population). Successful reproduction in phase one of the project (2011–2017) would logically result in the incorporation of a monitoring component directed at assessing the distribution, movement, growth, and survival of the initial cohorts of naturally produced bull trout. Monitoring activities in phase 2 (2018–2024) and phase 3 (2025–2030) will be informed by phase 1 monitoring and evaluation. Effectiveness monitoring of the project will be conducted jointly by the Service and ODFW, with assistance from the USFS and potentially U.S. Geological Survey (USGS) and the University of Washington.

Donor Population Monitoring: We intend to monitor donor stock status annually to determine if the population is free of pathogens of concern, and to ensure the population maintains a minimum threshold of spawning adults to contribute as a donor stock to the Clackamas River bull trout reintroduction project. Bull trout in the Metolius River are monitored primarily by annual full census redd counts. These counts are conducted by ODFW, CTWSRO, USFS, PGE, and Service staff. In addition to the genetic monitoring of the recipient bull trout population in the Clackamas River subbasin, we will also replicate the Metolius River bull trout genetic health assessment (DeHaan *et al.* 2008) on the donor stock at an appropriate interval to ensure the loss of individuals via contribution toward the Clackamas River reintroduction is not impacting the genetic health of the Metolius River donor stock.

Monitoring Impacts to Anadromous Salmonids: The monitoring of potential impacts to juvenile anadromous salmonids will generally focus on PGE's Clackamas Hydroelectric Project area. Juvenile salmonids utilize project reservoirs, especially North Fork Reservoir, for rearing. Fish collection facilities that aid downstream migration of salmon and steelhead juveniles necessarily concentrate the fish, increasing their vulnerability to predation and the potential for them to avoid collection facilities due to the presence of a predator. These areas of increased vulnerability for anadromous juveniles are also areas where we expect to be better able to detect a behavioral response caused by bull trout, relative to areas upstream of North Fork Reservoir or in the lower Clackamas River below River Mill Dam. We developed this monitoring component with the intent of reducing uncertainty and informing future management decisions associated with the bull trout reintroduction program.

In order to assess impacts to listed anadromous salmonids we propose to: (1) Determine if adult and subadult bull trout occupy areas within the PGE hydroelectric project during periods in which they could consume particularly high numbers of rearing or migrating juvenile salmon and steelhead; (2) if so, determine if survival rates are affected for listed anadromous salmonid juveniles rearing in, or moving through the PGE hydroelectric project area; and (3) determine the degree to which bull trout are responsible for such impacts by using field data, bioenergetics, and life-cycle modeling. Monitoring of impacts to anadromous salmonids will be conducted by the Service and ODFW, with possible assistance from USGS, PGE, University of Washington, and the National Oceanic and Atmospheric Administration's Northwest Fisheries Science Center (NOAA–NWFSC).

Summary of Comments and Responses

We requested written comments from the public on the proposed rule and draft EA published on December 9, 2009 (74 FR 65045). We also contacted the appropriate Federal, State, and local agencies; Tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule. The comment period was open from December 9, 2009, to February 10, 2010.

We reviewed all comments received for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have either been addressed below or incorporated directly into this final rule.

We received comments from eight parties, including comments from natural resource management agencies, not-for-profit organizations, and private

entities. All commenters specifically expressed support for the reestablishment of the bull trout in the Clackamas River although three of the eight commenters expressed concerns regarding potential impacts to Federally threatened salmon and steelhead present in the Clackamas River.

Public Comments

(1) *Comment:* Several commenters suggested reintroduction of bull trout to the Clackamas River under section 10(j) of the Act may not provide ample protection to ensure the long-term viability of the population, and encouraged the Service to reintroduce bull trout to the Clackamas River under full protections of the Act, along with designated critical habitat.

Our Response: Any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective regulations with respect to that population pursuant to section 4(d) of the Act. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population. In addition, before authorizing the release of an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, the Service must consider the extent to which the introduced population may be affected by existing and anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

We have assessed existing or anticipated Federal or State actions and private activities within or adjacent to the experimental population area and, along with the applicable prohibitions in this final rule, we have determined these actions to be compatible with, and protective of, a reestablished population of bull trout in the Clackamas River. We believe, based on this assessment, that the protective regulations adopted by this rule are appropriate and provide adequate protections for a reintroduced population of bull trout.

Lastly, under 50 CFR 17.81(f), the Secretary may designate critical habitat as defined in section 3(5)(A) of the Act for an essential experimental population but not for a nonessential population.

(2) *Comment:* One commenter suggested reintroductions of bull trout to historical habitat are essential for the continued survival of the species, and thus encouraged the Service to designate the experimental population in the Clackamas River as an ''essential'' population under the Act, rather than a ''nonessential'' population.

Our Response: We have determined that restoring bull trout to the Clackamas River is not essential to the continued existence of the species. We maintain that releasing bull trout under the section 10(j) NEP provision of the Act is the most appropriate way to achieve conservation for this species in the Clackamas River and that this action is consistent with the purposes of the Act.

(3) *Comment:* One commenter suggested that the Service should consider removing the ''experimental nonessential'' designation under section 10(j) of the Act if the bull trout reintroduction project is successful.

Our Response: Our intent is for the section10(j) rule to remain in place until the status of the species improves to a point where listing is no longer necessary. Section 10(j) of the Act does not give us the authority to ''permanently'' declare an NEP. However, we have made it clear that it is not our intention to change this designation until the species meets the requirements for delisting, and we currently do not anticipate that any circumstances would warrant changing this designation. The proposed rule and this final rule contain language on this subject found in 50 CFR 17.85(a)(1)(iii), specifically: ''We do not intend to change the NEP designations to 'essential experimental,' 'threatened,' or 'endangered' within the NEP area. Additionally we will not designate critical habitat for the NEP, as provided by 16 U.S.C. 539(j)(2)(C)(ii).''

(4) *Comment:* Several commenters noted the lack of quantitative information on the distribution, abundance, and diversity of the native fish community in the upper Clackamas River and suggested the Service conduct an assessment prior to implementing the bull trout reintroduction project to affirm the sufficiency of a prey base to support the reestablishment of a viable bull trout population.

Our Response: We agree there is limited quantitative information on the native fish community in the upper Clackamas River. However, upper Clackamas River baseline foodweb surveys that were conducted in association with the action considered in this final rule (Lowery and Beauchamp 2010), along with an abundance of qualitative information collected by the USFS and State of Oregon (Shively *et al.* 2007, Appendix F, p. 24), confirm the full complement of native species (except for bull trout) in the upper Clackamas River. There is no evidence to suggest the upper Clackamas River forage base would not compare favorably with the abundance, distribution, and diversity of native fishes found in other major subbasins in the lower Columbia River that support viable populations of bull trout, including the McKenzie, Lewis, and Deschutes rivers. Although historical reductions in the anadromous forage base in the Clackamas River may have negatively impacted the historical bull trout population, as noted above in *Biological Information,* the primary factors leading to the extirpation of bull trout in the Clackamas River were migration barriers from hydroelectric and diversion dams, direct and incidental harvest in sport and commercial fisheries, targeted eradication through bounty fisheries (currently known as ''sport reward'' programs), and habitat and water quality degradation from forest management and agricultural activities not in accordance with best management practices (Shively *et al.* 2007, Ch. 1, pp. 18–22).

(5) *Comment:* In order to minimize and offset potential impacts to anadromous salmon and steelhead from bull trout predation and competition, one commenter suggested initiating habitat improvement actions such as adding refuge cover and distributing excess hatchery salmon and steelhead carcasses into the upper Clackamas River to increase marine-derived nutrients and stream productivity.

Our Response: Although we do not anticipate significant impacts from bull trout on threatened salmon and steelhead, if our monitoring program indicates bull trout are having population-level impacts, the Service and our project partners will implement actions to minimize and offset these impacts. While these actions may include habitat restoration projects such as those recommended, the most immediate management actions to reduce impacts will be modification of the bull trout reintroduction implementation strategy such as the numbers, life-stages, and locations of releases, and removal of individual bull trout if they are found occupying areas that artificially concentrate juvenile salmon and steelhead such as fish passage facilities associated with the Clackamas Hydroelectric Project.

(6) *Comment:* One commenter noted the presence of nonnative brook trout in a small portion of the suitable habitat identified for bull trout reintroduction, and suggested that they should be eradicated in order to prevent hybridization and competition with reintroduced bull trout.

Our Response: While we agree that nonnative brook trout can negatively affect bull trout through hybridization, predation, and competition, our literature review on the subject for the Clackamas Bull Trout Reintroduction Feasibility Assessment (Shively *et al.* 2007, Ch. 4. pp. 1–2) suggests negative effects are variable across the range these two species overlap. In some places, brook trout appear to have a strong negative impact, whereas in others there is no apparent impact (Dunham *et al.* 2002, pp. 384–385). The influence of nonnative brook trout on bull trout may depend in part on local habitat features. Rich *et al.* (2003, pp. 1059–1061) examined the influence of habitat features on the distribution and co-occurrence of nonnative brook trout and bull trout. This study suggested that bull trout and brook trout may partition themselves naturally based on habitat type and stream temperature, and that bull trout may be more susceptible to brook trout invasion in small, low-gradient streams where brook trout may have a competitive advantage (Paul and Post 2001, pp. 424–428). In areas of clean, cold water with complex habitat, bull trout may successfully compete with brook trout (Rieman *et al.* 2005, pp. 72–76).

Although systematic quantitative surveys for brook trout have not occurred in the upper Clackamas River, stream surveys and biological inventories by the USFS over the last several decades provide a reliable source for documenting observations of brook trout in particular river segments and streams (Shively *et al.* 2007, Appendix F, p. 24). Brook trout are present in a small portion of the habitat identified as suitable for bull trout reintroduction (less than 10 percent) in the upper Clackamas River (Shively *et al.* 2007, Ch. 4. p. 2). Given their limited distribution in the upper Clackamas River, we do not anticipate brook trout will adversely affect the success of this reintroduction project. Further, while we support the goal of eradication of nonnative species, our assessment of the feasibility of eradication of brook trout in the upper Clackamas River suggests the likelihood of complete eradication is low and the cost would likely be high. Consequently, it is unlikely we will pursue eradication efforts in the foreseeable future.

(7) *Comment:* Several commenters requested that the Federal rulemaking cause no additional requirements of Portland General Electric above and beyond those currently outlined in the multiparty settlement agreement for relicensing of the Clackamas Hydroelectric Project, nor that any potential ecological effects from the bull trout reintroduction project in and of itself trigger mitigation requirements outlined in the agreement.

Our Response: Language in the proposed rule was intended to convey our position on this issue, consistent with the request above. This final rule and the above background discussion in ''Addressing Causes of Extirpation'' contains additional language in several sections to clarify our support for this request. See also our response to Comment 9 below.

(8) *Comment:* One commenter indicated that the Draft Implementation, Monitoring and Evaluation Plan, appended to the draft EA, lacked detailed information and should be expanded. The same commenter suggested the monitoring portion of the draft plan did not provide adequate information for decisionmaking.

Our Response: While the general implementation strategy (transfer numbers, life stages, donor stock, release locations) has not changed from that outlined in the proposed rule and draft EA, the Service and our project partners have added specificity to the implementation component of the plan. Similarly, and based strongly on comments received on the proposed rule and draft EA, we developed a robust monitoring and evaluation component of the plan to document the effectiveness of the reintroduction, assess potential impacts to the bull trout donor stock in the Metolius River, and assess potential impacts to threatened salmon and steelhead. The monitoring and evaluation program, which will begin immediately upon initiation of the project, will feed directly into the adaptive management of the reintroduction project. Given the level of detail that has been added to the Implementation, Monitoring and Evaluation Plan since publication of the proposed rule and draft EA, we are confident the plan has sufficient detail to appropriately guide the project and provide necessary information for decisionmaking. The monitoring program is summarized above in the *Monitoring and Evaluation* section of this final rule and is appended to the final EA as a component of the Implementation, Monitoring, and Evaluation Plan. See also our response to Comment 12 below.

(9) *Comment:* One commenter suggested that the draft EA was insufficient and suggested the action proposed may warrant the development of an Environmental Impact Statement (EIS) due to the possibility of significant impacts to the Clackamas Hydroelectric Project settlement agreement and to Federally threatened salmon and steelhead through competition and predation by bull trout.

Our Response: An EIS is required only when a project is a major Federal action with significant impact(s) to the human environment, or alternatively where there is substantial controversy surrounding the potential for significant impacts to the human environment, such that the more limited analysis in an EA to support a ''Finding of No Significant Impact (FONSI)'' may not be appropriate. If an EA fully considers the potential direct, indirect and cumulative impacts of the project and that analysis is sufficient in reaching a FONSI, then the preparation of an EIS is not warranted. Our analysis in the EA did not suggest a likelihood of significant environmental effects; nor did it identify substantial controversy surrounding the potential for significant impacts to the human environment.

Scoping and public comments identified concerns with potential impacts to the Clackamas River hydroelectric project settlement agreement, as well as to salmon and steelhead populations from predation and competition by bull trout. We have addressed these concerns by: (1) Including clarifying language in several sections of this final rule and the final EA, (2) modifying components of the proposed action, and (3) developing a Stepwise Impact Reduction Plan as part of our adaptive management program to reduce risk and uncertainty with regards to impacts to listed anadromous salmonids, and to guide management of a Clackamas River bull trout population and future implementation of the project.

As noted elsewhere in this final rule, the designation of an NEP population of bull trout in the Clackamas River will not cause additional requirements of Portland General Electric above and beyond those currently outlined in the multiparty settlement agreement for relicensing of the Clackamas Hydroelectric Project, nor will any potential ecological effects from the bull trout reintroduction project in and of itself trigger mitigation requirements outlined in the agreement. While we acknowledge some uncertainty around the interactions between bull trout and anadromous salmon and steelhead, the preponderance of information does not suggest that significant population- level impacts will occur.

(10) *Comment:* One commenter suggested the adaptive management plan for the action lacked detail and needed improvement.

Our Response: We agree. As a result we added substantially to the adaptive

management plan for the action considered in this final rule. Most notably, we incorporated recommendations provided in the Department of the Interior's technical guidance manual on adaptive management (USDI 2009), and we developed a Stepwise Impact Reduction Plan specifically to assist in management decisions associated with potential impacts from the reintroduction of bull trout on threatened salmon and steelhead in the Clackamas River. Recommendations adopted from the Department of the Interior's technical manual on adaptive management, and the Stepwise Impact Reduction Plan to address potential impacts to threatened salmon and steelhead, are summarized in this final rule above in *Potential impacts to other Federally listed fish species,* and are presented in more detail in the final EA.

(11) *Comment:* One commenter suggested that the Service had not adequately consulted with the individual in developing the proposed rule per the procedural requirements of experimental population regulations, and further, that the proposed rule did not represent the required agreement between the Service and affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Our Response: Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

The language above does not require the Service to agree on all issues and concerns, nor are we required to have full agreement from potentially affected local, State, Federal, and private partners prior to finalizing section 10(j) experimental population rules. In development of the proposed and final rule, we coordinated closely with the appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners, to resolve as many concerns as possible. In addition, we assembled management and technical committees with representation from all major stakeholders in the reintroduction, to further ensure we addressed as many concerns as possible prior to finalization of the final rule. Given these efforts, it is clear that we have complied with the requirements of section 10(j) of the Act in the development of the proposed rule and this final rule. As during the development of this action, we are committed to working with project partners and stakeholders during and following implementation of the reintroduction to address concerns that may arise.

(12) *Comment:* Several commenters suggested that the assessment of potential impacts to threatened salmon and steelhead from the bull trout reintroduction was inadequate and suggested a more thorough risk assessment prior to implementing the project.

Our Response: While we disagree that our pre-project assessment of potential impacts to threatened salmon and steelhead was inadequate, we do recognize the concern for the recovery of these species in the Clackamas River and for their respective evolutionarily significant units/distinct population segments. In recognition of those concerns the Service has invested, and will continue to invest, significant resources toward assessing potential impacts from the bull trout reintroduction on salmon and steelhead in the Clackamas River.

The expert science panel workshop (Marcot *et al.* 2008), the final report of which was appended to the draft EA, was conceived and implemented precisely to investigate the potential impact of a bull trout reintroduction on threatened salmon and steelhead in the Clackamas River. In addition, we funded, together with our primary project partners and stakeholders, a pre-project baseline food Web investigation in the upper Clackamas River subbasin specifically to allow for greater precision in determining impacts to salmon and steelhead from bull trout during and following the reintroduction. Finally, a large component of our monitoring and evaluation program is designed to investigate impacts on salmon and steelhead.

(13) *Comment:* One commenter suggested the draft EA did not adequately consider the ability and capacity of the Clackamas River to support a reintroduced population of bull trout and as a result, the proposed reintroduction strategy is overly aggressive and population goals likely unattainable. The same commenter recommended that the Service modify the implementation strategy to eliminate the use of older life stages of bull trout to minimize the chance of exceeding the carrying capacity of the Clackamas River.

Our Response: The draft EA and proposed rule both summarized the conclusions of the feasibility assessment (Shively *et al.* 2007), which found that a reintroduction of bull trout to the Clackamas River is biologically feasible based in large part on habitat suitability for spawning and early juvenile rearing, reduction and elimination of threats that led to extirpation, and availability of a suitable donor stock. The amount and type of suitable habitat, as well as the available forage base, compares favorably to other river systems in the lower Columbia River with extant bull trout populations, such as the McKenzie, Lewis, and Deschutes rivers. The feasibility assessment (Shively *et al.* 2007), the conclusions of which were presented in the draft EA, clearly considered the ability and capacity of the Clackamas River to support a reintroduced population of bull trout.

The goal of the project is to reestablish a self-sustaining bull trout population of 300–500 spawning adults in the Clackamas River by 2030 that contributes to the recovery of bull trout in the Willamette basin and to overall recovery criteria outlined in the Service's 2002 draft recovery plan (USFWS 2002, Chapter 1, p. v). For this project we define a self-sustaining population as one that maintains a minimum adult annual spawner abundance of 100 individuals, contains a high level of genetic diversity representative of the donor stock, and requires little or no additional transfers. The numerical goal of 300–500 adult spawners is consistent with 2002 draft recovery planning targets for bull trout abundance in the Clackamas River subbasin. Although the amount of suitable habitat in the Clackamas River suggests there is sufficient capacity to support a population of this size, bull trout distribution across the species' range, even within areas of suitable habitat, is patchy; thus, the true capacity of the Clackamas River subbasin is unknown.

The Service and our project partners view the inclusion of older life stages of bull trout in the implementation strategy as an important component of the project. In addition, we believe that, given the limited number of these older-aged individuals that will be transferred, the risk of exceeding the carrying capacity of the Clackamas River is extremely low. We chose to use multiple life stages of bull trout in order to maximize our likelihood of success with the reintroduction, and to test whether older life stages of bull trout could be successfully moved from one

major watershed to another to promote reestablishment of extirpated populations in a less intensive and more timely effort than would occur if only fertilized eggs, fry, or juveniles were used. However, we acknowledge the uncertainty regarding whether translocated subadult and adult bull trout will adapt to the Clackamas River and contribute to successful natural reproduction. In response to this uncertainty, we plan to intensively monitor the behavior, distribution, movement, and reproductive success of these older life stages over the first 2 years of the project by utilizing passive integrated transponder tag and radio tag technology. Continued transfer of older life stages beyond the second year of the project would occur only if monitoring and evaluation indicates the translocated older life stages are adapting to the Clackamas River and contributing to successful natural reproduction.

(14) *Comment:* One commenter expressed concern with potential predation and competition impacts to threatened salmon and steelhead in the Clackamas River from reintroduced bull trout. In order to facilitate future management of the reintroduction project, and if successful, the bull trout population, the commenter recommended that the Service work with the State (Oregon Department of Fish and Wildlife) and National Marine Fisheries Service (NMFS) to assess and define an acceptable level of impact on salmon and steelhead.

Our Response: We support this recommendation. This Federal action requires that we formally consult with NMFS under section 7 of the Act due to potential impacts to Federally threatened salmon and steelhead under their jurisdiction. The Service initiated formal consultation with NMFS pursuant to section 7(a)(2) of the Act in December 2010 (USFWS 2010) and will ensure section 7(a)(2) compliance prior to releasing bull trout into the Clackamas River. This Federal action also required an amendment to the State's Clackamas River Subbasin Plan to include the reintroduction of bull trout (ODFW 2010); this process required a review of the project by the State's Fish and Wildlife Commission, who voted unanimously in September 2010 to support the action and the plan amendment. These two actions acknowledge the formal administrative role the State of Oregon and NMFS have had in the review of this Federal action. And just as importantly, the State of Oregon and NMFS have had full representation in the multiyear planning of this effort through the Clackamas Bull Trout Working Group, as well as the project's Manager's Committee and several technical committees.

The State and NMFS are jointly developing a formal recovery plan for the threatened salmon and steelhead in the lower Columbia River, which includes the threatened species of salmon and steelhead found in the Clackamas River. The current draft recovery plan, and the information utilized in development of the draft plan, does not include information that would allow the Service to define an ''acceptable level of impact'' as applied to recovery planning objectives for threatened salmon and steelhead. We expect NMFS may conduct this type of analysis as part of the section 7 consultation process in response to the biological assessment we submitted in December 2010.

Independent of the formal consultation process with NMFS, we have initiated discussions with technical staff from NMFS NW Region Science Center and the U.S. Geological Survey (USGS) to investigate the feasibility and utility of life-cycle and bioenergetics modeling to better predict the potential influence of the bull trout reintroduction project on threatened salmon and steelhead in the Clackamas River. We are committed to working closely with the State of Oregon, NMFS, and other project partners and stakeholders during and following project implementation to assess the potential impact of the bull trout reintroduction on threatened salmon and steelhead in the Clackamas River.

Findings

We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. We solicited public comment on the proposed NEP designation. We have considered all comments received on the proposed rule and the draft EA before making this final determination. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing bull trout into the Clackamas River subbasin will further the conservation of the species but that this population is not essential to the continued existence of the species in the wild.

Effective Date

The Director has determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication. The Service has previously provided an opportunity for public comment on the rule, and has consulted extensively with involved stakeholders. In addition, the seasonal window for implementing this reintroduction project is driven by the biology of the species. Collection of donor stock is best accomplished during the late spring and early summer when fish are most vulnerable to capture techniques, and late spring/early summer outplanting of donor stock is preferred given that seasonal productivity of aquatic systems is high that time of year and donor stock would be expected to have higher survival than if outplanted at other times of the year. In making this final rule effective immediately upon publication, it increases the likelihood that the Service and our primary partners will be able to successfully implement this project during the preferred window for implementation in 2011.

Peer Review

A final draft of the CRBTWG's Feasibility Assessment was provided to the State of Oregon Independent Multidisciplinary Science Team (IMST) for peer review. The IMST is an impartial scientific review panel charged with advising the State of Oregon on matters of science related to fish recovery, water quality improvements, and enhancing watershed health. The IMST, appointed by the Governor, provides independent, scientific analysis and evaluation of State actions and policies under the Oregon Plan for Salmon and Watersheds (Oregon Plan). The charge of the IMST is to focus on science, maintain its independence, operate by consensus, and report its findings and conclusions in written reports and reviews.

The Service, along with USFS and ODFW, presented a summary of the goals, analyses, and intended use of the Feasibility Assessment at the IMST's October 16, 2006, public meeting. The IMST received a draft of the Feasibility Assessment for review on November 28, 2006. The IMST review of the draft Feasibility Assessment was by an IMST subcommittee including four scientists. The subcommittee held a public meeting on December 13, 2006, to discuss the Feasibility Assessment and to prepare a draft review. The draft review was discussed and unanimously adopted (one member absent from vote) at the January 18, 2007, IMST public meeting. Comments on the draft Feasibility Assessment were provided to the Service, USFS, and ODFW on January 30, 2007. Comments were subsequently posted on the IMST Web site: *http://www.fsl.orst.edu/imst/,* and addressed in the final Feasibility

Assessment (Shively *et al.,* 2007, Appendix F).

The IMST peer review of the science in the final Feasibility Assessment, much of which was incorporated into this final rule, meets our responsibilities under our policy on peer review, published on July 1, 1994 (59 FR 34270).

Required Determinations

Regulatory Planning and Review (E.O. 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 (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal 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 effect 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 an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act 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. We certify that this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule includes the Clackamas River subbasin and the mainstem of the Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel, in Oregon. Because NEP designations do not establish substantial new regulation of activities, we do not expect this rule would have any significant effect on recreational, agricultural, hydropower generation, or development activities. Although the entire NEP boundary encompasses a large area, the section of the NEP area where we can anticipate the establishment of an experimental population of bull trout is mainly public land owned by the USFS. In addition, NEPs occurring outside the National Refuge System or the National Park System are treated as proposed for listing under the provisions of section 7 (other than section 7(a)(1)) of the Act. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2) of the Act. Section 7(a)(1) of the Act requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

The principal activities on private property near the expected reestablishment area in the NEP are agriculture, ranching, hydropower generation, and recreation. The presence of bull trout would likely not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of bull trout. Therefore, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, hydropower generation, or any development activities.

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.*):

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. Small governments would not be affected because the NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This NEP designation for bull trout would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630 (76 FR 6733), this final rule does not have significant takings implications. This rule allows for the take of reintroduced bull trout when such take is incidental to an otherwise legal activity, such as recreation (*e.g.,* fishing, boating, wading, swimming), forestry, agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder public use of the Clackamas River or its tributaries.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny any economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate public interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132 (70 FR 23775), we have considered whether this final rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in Oregon. Achieving the recovery goals for this species will contribute to its eventual delisting and return to State management. No intrusion on State

policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The final special rule operates to maintain the existing relationship between the State and the Federal governments and is being undertaken in coordination with the State of Oregon. We have cooperated with ODFW in the preparation of this final rule. Therefore, this final rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. This final rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact of this rule. Based on this analysis and information resulting from public comment on the proposed action, we determined that this action will not have significant impacts or effects. We have prepared a final EA on this action, which is available for public inspection: (1) In person at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section) and (2) online at *http://www.regulations.gov* or *http://www.fws.gov/oregonfwo/*. All appropriate NEPA documents were finalized before this rule was finalized.

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 229511), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on Federally recognized Indian Tribes and have determined that 2 percent of the acreage included in the Clackamas River subbasin, including the upper Clackamas and Oak Grove Fork drainage, is within the exterior boundaries of the reservation of the Confederated Tribes of the Warm Springs Reservation (CTWSRO). Furthermore, donor stock for the reintroduction will, in part, originate from a section of the Metolius River located within the exterior boundary of the CTWSRO reservation. Since 2007, the CTWSRO has been an active participant in the CRBTWG discussions on bull trout recovery in the Clackamas River basin. In August 2010, the CTWSRO Tribal Council passed a resolution supporting the utilization of bull trout from the Metolius River subbasin as donor stock for the Clackamas River bull trout reintroduction project. The resolution requested the Service and project partners consult with the CTWSRO on an annual basis regarding utilization of bull trout for the Clackamas reintroduction, and further, that annual schedules for donor stock collection, including locations, methodologies, precise numbers to be collected, and dates of collections, be coordinated with staff from the CTWSRO Natural Resources Program. The Service will continue to consult, on a government-to-government basis, with the CTWSRO for the duration of this Federal action.

Energy Supply, Distribution, or Use (E.O. 13211)

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, and 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 final rule is available at *http://www.regulations.gov* or upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this final rule is Chris Allen of the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby 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 ''Trout, bull'' 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							
*	*	*	*	*	*		*
Trout, bull	*Salvelinus confluentus.*	*U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).*	*U.S.A., coterminous (lower 48 states), except where listed as an experimental population.*	*T*	*637, 639E, 659, 670*	*17.95(e)*	*17.44(w), 17.44(x)*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	Clackamas River subbasin and the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.	XN	.....	NA	17.84(v)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by adding a new paragraph (w) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(w) Bull Trout (*Salvelinus confluentus*).

(1) *Where are populations of this fish designated as nonessential experimental populations (NEPs)?*

(i) The NEP area for the bull trout is within the species' historical range and is defined as follows: the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.

(ii) Bull trout are not currently known to exist in the Clackamas River subbasin or the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel, in Oregon. Should any bull trout be found in the Willamette River within the NEP boundary, the U.S. Fish and Wildlife Service (Service) will assume the fish to be part of the reintroduced population, unless the fish is tagged or otherwise known to be from another population. Given the presence of suitable overwintering and forage habitat in the upper portion of the Clackamas River, as well as the geographic distance from spawning and rearing habitat in the upper Clackamas River to any overwintering and foraging habitat in the lower Clackamas and Willamette Rivers, we do not expect the reintroduced fish to become established outside the NEP. Bull trout found outside of the NEP boundary, but known to be part of the NEP, will assume the status of bull trout within the geographic area in which they are found.

(iii) We do not intend to change the NEP designation to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for the NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed of this species in the NEP area?*

(i) Bull trout may be taken within the NEP area, provided that such take is:

(A) Not willful, knowing, or due to negligence.

(B) Incidental to and not the purpose of carrying out an otherwise lawful activity, such as recreation (*e.g.,* fishing, boating, wading, trapping, or swimming), agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations.

(C) Consistent with Oregon Department of Fish and Wildlife (ODFW) fishing regulations that have been coordinated with the Service, if due to fishing.

(D) Incidental to any activities related to or associated with the operation and maintenance of the Clackamas River Hydroelectric Project (FERC Project No. 2195) by Portland General Electric (PGE) as administered under a license issued by FERC. Acceptable forms of taking of bull trout include, but are not limited to, mortality, stranding, injury, impingement and entrainment at project facilities, or delay in up- or downstream passage associated with or caused by any of the following activities. Activities related to the operation and maintenance of Project 2195 include, but are not limited to:

(1) Hydroelectric generation at any project facility;

(2) Maintenance of project facilities;

(3) Provision of upstream and downstream fish passage, whether through fish passage facilities, powerhouses, bypass facilities, bypass reaches, or spillways;

(4) Fish handling at fish separation and counting facilities;

(5) Fish removal from fish passage facilities and areas critical to downstream migrant passage testing at the time of testing (Bull trout removed for this testing do not need to be returned to the Clackamas River subbasin.);

(6) Fish conservation activities;

(7) Fish handling, tagging, and sampling in connection with FERC-approved studies; and

(8) Approved resource protection, mitigation, and enhancement measures.

(E) Consistent with the adaptive management process identified for this project including:

(*1*) The targeted relocation or possible removal of bull trout by the Service or our project partners, if bull trout are documented staging at the entrance to, within, or below, juvenile fish passage facilities within the Clackamas Hydroelectric Project; and

(*2*) Discontinuation of the reintroduction project and complete removal of bull trout from the Clackamas River if the Service determines, in consultation and coordination with the State of Oregon,

NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts cannot be carried out in a manner consistent with the recovery of threatened salmon and steelhead.

(ii) Any person with a valid permit issued by the Service under § 17.32 and a valid State permit issued by ODFW may take bull trout for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(3) *What take of this species is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (w)(2) of this section, all the provisions of § 17.31(a) and (b) apply to the fish identified in paragraph (w)(1) of this section.

(ii) Any manner of take not described under paragraph (w)(2) of this section or Oregon Revised Statute (ORS) 498.002 and Oregon Angling Regulations pursuant to ORS 498.002 is prohibited in the NEP area. Should State statutes or regulations change, take prohibitions will change accordingly. Any changes to State recreational fishing regulations pertaining to the experimental population of bull trout in the Clackamas River subbasin will be made by the State in collaboration with the Service. We may refer unauthorized take of this species to ODFW law enforcement authorities or Service law enforcement authorities for prosecution.

(iii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (w)(2) of this section, or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any offense except the take expressly allowed in paragraph (w)(2) of this section.

(4) *How will the effectiveness of the reestablishment be monitored?*

(i) Effectiveness monitoring of the project will be conducted jointly by the Service and ODFW, with assistance from the U.S. Forest Service (USFS) and PGE.

(ii) We will monitor the effectiveness of the reintroduction during phase 1 of the project (2011–2017) by annually assessing: Distribution and movement, relative survival of translocated bull trout via presence and absence surveys, occurrence of spawning and reproduction, and genetic health, as measured against the donor population. These monitoring objectives will be accomplished by methodologies that include Passive Integrated Transponder (PIT) tagging of all fish translocated to the Clackamas River, radio tagging of the adult and subadult life stages, snorkel surveys, redd surveys, and minnow trapping.

(iii) If successful reproduction of reintroduced bull trout is detected, we will incorporate monitoring to assess the distribution, movement, growth, and survival of the initial cohorts of naturally produced bull trout.

(iv) Monitoring activities in phase 2 (2018–2024) and phase 3 (2025–2030) will be informed by phase 1 monitoring and evaluation.

(v) Annual reports that summarize the implementation and monitoring activities that occurred the previous year will be collaboratively developed by the Service, ODFW, and USFS.

(vi) We will evaluate the implementation strategy annually, and we will evaluate the reestablishment effort at the completion of phase 1 to determine whether to continue translocation of bull trout in phase 2.

(5) *What safeguards are in place to ensure the protection of Federally listed salmon and steelhead in the NEP area?*

(i) In consultation and coordination with the National Marine Fisheries Service (NMFS) and other project partners, we have developed a plan to facilitate management decisions associated with potential impacts from the bull trout reintroduction on listed anadromous salmonids. If specific bull trout and/or anadromous salmonid thresholds are triggered, we will follow the planned management actions to minimize impacts to salmon and steelhead from the reintroduction of bull trout in the Clackamas River.

(ii) Our management actions implemented and the frequency of those actions, will be informed by:

(A) The reintroduction project's monitoring and evaluation program, jointly implemented by the Service, ODFW, and USFS; and

(B) The conservation status of the listed Clackamas River anadromous salmonid populations.

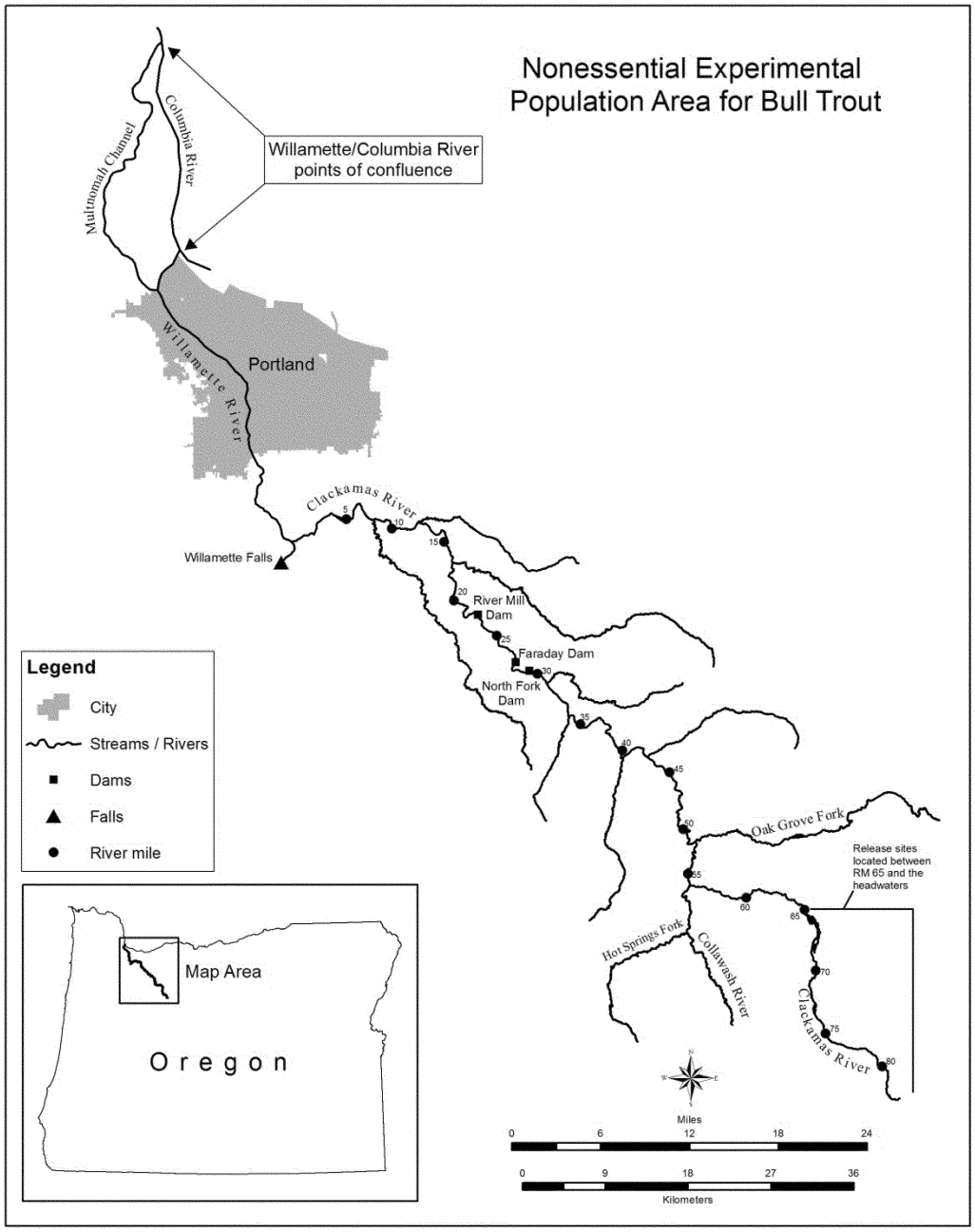
(iii) Because we cannot predict all likely impact scenarios and appropriate management responses, we will modify our plan as necessary, in consultation and coordination with NMFS, ODFW, and other project partners, consistent with the overall adaptive management of the project.

(iv) Although our analysis indicates a low likelihood for population-level impacts to Federally listed salmon and steelhead populations, if the Service determines, in consultation and coordination with the State of Oregon, NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts are not consistent with the recovery of salmon or steelhead, the reintroduction program will be discontinued and bull trout will be removed from the experimental population area.

(v) Prior to releasing bull trout into the Clackamas River, the Service will complete any required interagency cooperation with NMFS pursuant to section 7(a)(2) of the Act.

(6) *Note:* Map of the NEP area for bull trout in Oregon follows:

BILLING CODE 4310–55–P



Dated: June 13, 2011.

Rachel Jacobsen,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–15370 Filed 6–20–11; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

RIN 0648–AX09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility of Massachusetts; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS, upon application from Neptune LNG LLC (Neptune), issued regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port (the Port) in Massachusetts Bay for a period of 5 years. The final rule, which published in the **Federal Register** on June 13, 2011, contains an incorrect ending date