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FEDERAL REGISTER

Vol. 76 Thursday,

No. 184 September 22, 2011

Pages 58715–59002

OFFICE OF THE FEDERAL REGISTER

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0623; Airspace Docket No. 11–AEA–15]

Amendment of Class E Airspace; Wrightstown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class E airspace for the Wrightstown, NJ, area, by changing Allaire Airport to Monmouth Executive Airport, Belmar, NJ. This action also updates the airspace descriptions to be in concert with the FAAs aeronautical database.

DATES: Effective date 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace for the Wrightstown, NJ, area at the request of FAAs Aeronautical Products. Allaire Airport has been renamed Monmouth Executive Airport, Belmar, NJ. Also, minor changes to the airspace descriptions are being made for clarity, as well as updating the geographic coordinates. Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that his regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them, operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Wrightstown, NJ, Class E airspace area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Wrightstown, NJ [Amended]

Lakewood, Lakewood Airport, NJ
(Lat. 40°04′00″ N., long. 74°10′40″ W.)
McGuire AFB, NJ
(Lat. 40°00′56″ N., long. 74°35′30″ W.)
Robbinsville, Trenton-Robbinsville Airport, NJ
(Lat. 40°12′50″ N., long. 74°36′06″ W.)
Belmar, Monmouth Executive Airport, NJ
(Lat. 40°11′12″ N., long. 74°07′28″ W.)
Toms River, Robert J. Miller Airpark, NJ
(Lat. 39°55′39″ N., long. 74°17′33″ W.)
Lakehurst (Navy) TACAN
(Lat. 40°02′06″ N., long. 74°21′08″ W.)
Colts Neck VOR/DME
(Lat. 40°18′41″ N., long. 74°09′35″ W.)
Coyle VORTAC
(Lat. 39°49′02″ N., long. 74°25′54″ W.)
Robbinsville VORTAC
(Lat. 40°12′09″ N., long. 74°29′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within an 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville Airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials

extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Monmouth Executive Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Monmouth Executive Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from Monmouth Executive airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius to the VORTAC, excluding the portions that coincide with the Atlantic City, NJ, Princeton, NJ. Old Bridge NJ, Philadelphia, PA, Class E airspace areas.

Issued in College Park, Georgia, on September 9, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24348 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Trade Commission published a final amended Telemarketing Sales Rule in the **Federal Register** on August 10, 2010 (75 FR 48458), with new provisions to address the telemarketing of debt relief services. This document makes technical corrections in that final rule.

DATES: Effective on September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Karen S. Hobbs, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3587.

SUPPLEMENTARY INFORMATION: This document makes technical corrections in the Telemarketing Sales Rule.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, 16 CFR part 310 is corrected by making the following correcting amendments:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

§ 310.4 [Amended]

■ 2. In § 310.4:

■ a. Amend the last sentence of paragraph (a)(7) by removing ''(a)(6)(i)'' and adding in its place ''(a)(7)(i)''.

■ b. Amend paragraph (a)(7)(i)(B) by removing ''(a)(6)(i)(A)'' and adding in its place ''(a)(7)(i)(A)''.

■ c. Amend the introductory text of paragraph (a)(7)(ii) by removing ''(a)(6)(i)'' and adding in its place ''(a)(7)(i)''.

■ d. Amend paragraph (a)(7)(ii)(B) by removing ''(a)(6)(ii)(A)'' and adding in its place A(a)(7)(ii)(A)''.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–24361 Filed 9–21–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–6–000; Order No. 754]

Interpretation of Transmission Planning Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: On November 17, 2009, the North American Electric Reliability Corporation (NERC) submitted a petition requesting approval of NERC's interpretation of Requirement R1.3.10 of Commission-approved transmission planning Reliability Standard TPL–002–0 (System Performance Following Loss of a Single Bulk Electric System Element). In a March 2010 Notice of Proposed Rulemaking (NOPR), the Commission proposed to reject NERC's proposed interpretation, and instead proposed an alternative interpretation of Requirement R1.3.10 of Reliability Standard TPL–002–0. As a result of the comments received in response to the proposal, the Commission declines to adopt the NOPR proposal and approves NERC's proposed interpretation. In addition, as proposed by several commenters, the Commission directs NERC and Commission staff to initiate a process to identify any reliability issues, as discussed below.

DATES: *Effective Date:* This rule will become effective October 24, 2011.

FOR FURTHER INFORMATION CONTACT:

Ron LeComte (Legal Information), Office of General Counsel, 888 First Street, NE., Washington, DC 20426. *ron.lecomte@ferc.gov.*

Eugene Blick (Technical Information), Office of Electric Reliability, 888 First Street, NE., Washington, DC 20426. *eugene.blick@ferc.gov.*

Lauren Rosenblatt (Legal Information), Office of Enforcement, 888 First Street, NE., Washington, DC 20426. *lauren.rosenblatt@ferc.gov.*

SUPPLEMENTARY INFORMATION: 136 FERC ¶ 61,186

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued September 15, 2011

1. On November 17, 2009, the North American Electric Reliability Corporation (NERC) submitted a petition requesting approval of NERC's interpretation of Requirement R1.3.10 of Commission-approved transmission planning Reliability Standard TPL–002–0 (System Performance Following Loss of a Single Bulk Electric System Element). In a March 2010 Notice of Proposed Rulemaking (NOPR),[1] the Commission proposed to reject NERC's proposed interpretation, and instead proposed an alternative interpretation of Requirement R1.3.10 of Reliability Standard TPL–002–0. As a result of the comments received in response to the proposal, the Commission declines to adopt the NOPR proposal and approves NERC's proposed interpretation of Requirement R1.3.10 of Reliability Standard TPL–002–0. In addition, as proposed by several commenters, the Commission directs NERC and Commission staff to initiate a process to identify any reliability issues, as discussed below.

I. Background

2. Section 215 of the Federal Power Act (FPA) requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.[2] Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

[1] *Interpretation of Transmission Planning Reliability Standards,* 75 FR 14386 (March 25, 2010), FERC Stats. & Regs. ¶ 32,655 (2010).

[2] 16 U.S.C. 824 (2006).

[3] *Id.* 824o(d)(2).

[4] *Id.* 824o(e)(3).

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6] On April 4, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a final rule, Order No. 693,[7] approving 83 of the 107 Reliability Standards, including transmission planning Reliability Standards TPL–001–0 through TPL–004–0. In addition, pursuant to section 215(d)(5) of the FPA,[8] the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards, including TPL–002–0.[9]

4. NERC's Rules of Procedure provide that a person that is ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[10] In response, the ERO will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules of Procedure provide that, within 45 days, the team will draft an interpretation of the reliability standard and submit it to the ballot pool. If approved by the ballot pool and subsequently by the NERC Board of Trustees, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authorities for approval.

II. Transmission Planning Reliability Standards

5. Each of the TPL Reliability Standards, TPL–001–0 through TPL–004–0, requires the planning authorities and transmission planners (planner) to provide a ''valid assessment'' that would ''ensure that reliable systems are developed that meet specified performance requirements'' both in the near-term (years one through five) and in the longer-term (years six through ten, or as needed). For each of these TPL Reliability Standards, entities must adequately assess a range of operating conditions on their systems and plan to meet certain performance criteria that the TPL Reliability Standards specify for each of four classes of contingencies.[11] The principles that planners must apply to the design of the assessment and of the supporting studies are set forth in the Requirements of the specific TPL Reliability Standard.

6. Table I, which is incorporated into each of the TPL Reliability Standards, sets forth the different types of contingencies that planners must study in conjunction with critical system conditions. The performance that must be met before and after experiencing those contingencies is also defined in the Table I, including reliably meeting all projected customer demand and firm transfers for Category B contingencies.

7. Requirement R1 of Reliability Standard TPL–002–0 states:

> R1. The Planning Authority and Transmission Planner shall each demonstrate through a valid assessment that its portion of the interconnected transmission system is planned such that the Network can be operated to supply projected customer demands and projected Firm (non-recallable reserved) Transmission Services, at all demand levels over the range of forecast system demands, under the contingency conditions as defined in Category B.[12] To be valid, the Planning Authority and Transmission Planner assessments shall: * * *.

8. Requirement R1 proceeds with sub-Requirements R1.1 through R1.5, which provide the criteria that must be met to qualify the assessment directed by Requirement R1 as valid. In particular, Requirement R1.3 mandates that the assessment shall

> [b]e supported by a current or past study and/or system simulation testing that addresses each of the following categories, showing system performance following Category B. The specific elements selected (from each of the following categories) for inclusion in these studies and simulations shall be acceptable to the associated Regional Reliability Organization(s).

Further, Requirement R1.3.10 requires the planner to

> [i]nclude the effects of existing and planned protection systems, including any backup or redundant systems.

III. NERC Proposed Interpretation

9. In the NERC Petition, NERC explained that it received a request from PacifiCorp for an interpretation of Reliability Standard TPL–002–0, Requirement R1.3.10, addressing three specific questions. The PacifiCorp questions and NERC interpretations were as follows:

Question 1: Does TPL–002–0 R1.3.10 require that all elements that are expected to be removed from service through normal operation of the protection systems be removed in simulations?

Response 1: TPL–002–0 requires that System studies or simulations be made to assess the impact of single Contingency operation with Normal Clearing. TPL–002–0, R1.3.10 does require that all elements expected to be removed from service through normal operations of the Protection Systems be removed in simulations.

Question 2: Is a Category B disturbance limited to faults with [N]ormal [C]learing where the protection system operates as designed in the time expected with proper functioning of the protection system(s) or do Category B disturbances extend to protection system misoperations and failures?

Response 2: This standard does not require an assessment of the Transmission System performance due to a Protection System failure or Protection System misoperation. Protection System failure or Protection System misoperation is addressed in TPL–003–0—System Performance following Loss of Two or More Bulk Electric System Elements (Category C) and TPL–004–0—System Performance Following Extreme Events Resulting in the Loss of Two or More Bulk Electric System (BES) Elements (Category D).

Question 3: Does TPL–002–0, R1.3.10 require that planning for Category B [C]ontingencies assume a [C]ontingency that results in something other than a [N]ormal [C]learing event even though the TPL–002–0 Table I—Category B matrix uses the phrase ''SLG or 3-Phase Fault, with Normal Clearing?''

Response 3: TPL–002–0, R1.3.10 does not require simulating anything other than Normal Clearing when assessing the impact of a Single Line Ground (SLG) or 3-Phase (3Ø) Fault on the performance of the Transmission System.[13]

10. In support of its request for approval, NERC stated that the proposed interpretation directly supports the reliability purpose of TPL–002–0 because it clarifies what is required for the ''System simulations'' cited in the main requirement without expanding

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[8] 16 U.S.C. 824o(d)(5).

[9] Order No. 693, FERC Stats & Regs. ¶ 31,242 at P 1797.

[10] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 27–29 (2010).

[11] Reliability Standards TPL–001–0 through TPL–004–0 each includes the same Table I, titled ''Transmission System Standards—Normal and Emergency Conditions,'' which identifies the classes of contingencies as Category A through Category D. Reliability Standard TPL–002–0 addresses Category B contingencies.

[12] Category B contingencies are defined in Table I of the Reliability Standard.

[13] NERC Petition at 10. In support for its request for an interpretation, PacifiCorp states that ''[i]f TPL–002–0, R1.3.10 requires that planning for Category B Contingencies must assume failure or misoperation of all existing and planned protection systems, protection system failures previously identified as Category C [Ø] Contingencies or Category D [Ø] Contingencies would now become Category B Contingencies * * *.'' *Id.* at Appendix A at 1–2.

the reach of the standard.[14] NERC maintained that the proposed interpretation clearly identifies what needs to be done—that all elements expected to be removed from service through normal operation of the protection system must be removed in simulations and that only normal clearing is required in the simulations. NERC stated that the proposed interpretation clearly distinguishes that misoperations and failures of the protection system are not part of Reliability Standard TPL–002–0, but are addressed in other standards. NERC stated that the interpretation will result in ensuring that an adequate level of reliability for the Bulk-Power System will be achieved and maintained by providing clarity and certainty in support of the objective.

IV. Commission NOPR

11. The Commission proposed to reject NERC's proposed interpretation and proposed an alternative interpretation. The Commission's proposed interpretation would have required modeling of the non-operation of non-redundant primary protection systems to be in compliance with Requirement R1.3.10 of Reliability Standard TPL–002–0. In the NOPR, the Commission stated that a planner would perform an assessment of its portion of the interconnected transmission system through computer modeling and simulations, in which the planner first creates base cases. Using these base cases as a starting point, the planner then assesses the performance of the system and tests the base cases by subjecting them to various Category B Contingencies outlined in Table I with normal clearing. The Commission's proposed interpretation would have found that Requirement R1.3.10 of TPL–002–0 requires planners to study, in their system assessments, the non-operation of non-redundant primary protection systems in order to ascertain whether and how reliance on the as-designed backup or redundant protection systems affects reliability.[15]

12. The Commission proposed that its interpretation of R1.3.10 of Reliability Standard TPL–002–0 would apply prospectively from the effective date of any Final Rule and no entity will be subject to financial penalties for having operated in a manner inconsistent with this proposed interpretation prior to the effective date of any Final Rule.

[14] *Id.* at 11.

[15] *Interpretation of Transmission Planning Reliability Standards,* FERC Stats. & Regs. ¶ 32,655, at P 15 (2010).

V. Comments

13. Twenty-seven entities provided comments on the Commission's proposed interpretation.[16] Almost uniformly, comments support NERC's proposed interpretation.[17] In general, commenters [18] state that the non-operation of a primary protection system is not studied under TPL–002–0, but rather under TPL–003–0 and TPL–004–0 as an unplanned event with delayed clearing.[19] Commenters contend that only planned protection system outages (maintenance outages) should be addressed under TPL–002–0.[20] In addition, commenters assert that the Commission's interpretation would require the installation of fully redundant protection systems at an estimated cost of $24 billion and require significant construction efforts spanning 10 to 20 years.[21] Commenters contend that TPL–002–0 relates to Normal Clearing and not Delayed Clearing in which a protection system failure has occurred or fails to operate.

14. NERC explains that the pre-2007 voluntary transmission planning standard was broken into four mandatory Version 0 Standards linked by the performance categories of Table I. Thus, according to NERC, some continuity was lost and, as a result, sub-requirements such as Requirement R1.3.10 that appear in TPL–002–0 through TPL–004–0 have very limited applicability in the context of TPL–002–0. NERC explains that Requirement R1.3.10 of TPL–002–0 is a valid requirement for judging system performance, but only in those cases where the system is being studied to determine its ability to perform when a given primary protection system or one of its components is out of service for maintenance (Requirement R1.3.12).

A. Supplemental Comments

15. The Trade Associations submitted supplemental comments, with additional comments in support filed by NERC. The Trade Associations reiterate their request that the Commission approve, without change, NERC's proposed interpretation of Reliability Standard TPL–002–0 Requirement R1.3.10. The Trade Associations also state that, based on outreach meetings with Commission staff, there may be a system protection issue that merits further exploration by technical experts. Thus, the Trade Associations suggest that the Commission take the following two actions. First, instruct Commission Reliability Staff to meet with NERC and its appropriate subject matter experts to: (a) Explore Staff's concerns and identify whether there is a further system protection issue warranting additional actions, and (b) if so, define the issue's scope and assess its importance. The Trade Associations state such exchange of views among technical experts would be intended to facilitate the subject matter experts' ability to recommend appropriate actions within NERC. Second, direct NERC to submit an informational filing within six months to explain its view as to whether there is a further system protection issue that needs to be addressed and if so, what forum and process should be used to address that issue and what priority it should be accorded relative to other reliability initiatives planned by NERC.[22]

16. NERC supports the Trade Associations' proposal to give NERC, Commission staff, and technical experts the opportunity to further examine whether there may be a potential system protection issue that needs to be addressed. NERC states that it would make an informational filing with the Commission regarding whether there is a further system protection issue that needs to be addressed and if so, what forum and process should be used to address that issue and what priority it should be accorded relative to other reliability initiatives planned by NERC.

[16] A list of commenters is provided in Appendix 1.

[17] Commenters including NERC, Trade Associations (Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Association, Electric Power Supply Association, Transmission Access Policy Study Group, and Canadian Electricity Association), Florida Reliability Coordinating Council and others indicate support for NERC's interpretation of Requirement R1.3.10 of TPL–002–0. In contrast, the International Transmission Companies (ITC) commented that the Commission's proposal ''establishes an additional level of good utility practice'' and ''is a reasonable and rational approach to evaluate system consequences, under Requirement R1.3.10 of TPL–002–0, regarding element outages and clearing times associated with non-operation of the primary protection system.'' However, given the corrective actions that would be required to comply with the Commission's proposal, ITC requests that the Commission allow an appropriate amount of time for compliance.

[18] *See, e.g.,* NERC comments at 7–8; Trade Association Comments at 19–23.

[19] Planned outages are modeled as one of the base case conditions (categories) and studied to achieve the performance requirements of Category B (single contingencies), Table I. Protection system failures are addressed by performance requirements of Category C (two or more contingencies) and misoperations are addressed by Category D (extreme events).

[20] Requirement R.1.3.12 of TPL–002–0 requires the planner to consider the planned (including maintenance) outage of protection systems at demand levels for which such outages are performed.

[21] *See* Trade Associations comments at 31–34.

[22] Trade Associations Supplemental Comments at 3 (footnote omitted).

17. NERC requests that the Commission approve the proposed interpretation of Reliability Standard TPL–002–0 Requirement R1.3.10, as filed.

VI. Discussion

18. In the NOPR, the Commission proposed to find that Reliability Standard TPL–002–0, Requirement R1.3.10 requires the study of the non-operation of non-redundant primary protection systems. Based on the comments received, the Commission accepts NERC's interpretation of TPL–002–0, Requirement R1.3.10, that finds that the requirement does not require the study of non-operation of non-redundant primary protection systems. Because we find NERC's proposed interpretation to be just and reasonable, we, therefore, decline to adopt the NOPR proposal.

19. We agree with the Trade Associations that there may be a system protection issue that merits further exploration by technical experts. The comments received in response to the Commission's NOPR and Commission staff outreach discussions indicate that there may have been a misunderstanding that the Commission's proposed interpretation would have established a full redundancy requirement for all primary protection systems. The Commission clarifies that it did not intend to require full redundancy. Rather, the Commission believes that there is an issue concerning the study of the non-operation of non-redundant primary protection systems; *e.g.,* the study of a single point of failure on protection systems. The Commission agrees with commenters that this issue does not have to be addressed in TPL–002–0, Requirement R1.3.10.

20. Accordingly, consistent with the supplemental comments of the Trade Associations, we direct Commission staff to meet with NERC and its appropriate subject matter experts to explore this reliability concern, including where it can best be addressed, and identify any additional actions necessary to address the matter. Further, we direct NERC to make an informational filing within six months of the date of the issuance of this Final Rule explaining whether there is a further system protection issue that needs to be addressed and, if so, what forum and process should be used to address that issue and what priority it should be accorded relative to other reliability initiatives planned by NERC.[23]

VII. Information Collection Statement

21. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[24] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[25]

22. As stated above, the Commission previously approved, in Order No. 693, the Reliability Standard that is the subject of the current Final Rule. This Final Rule accepts an interpretation of the currently approved Reliability Standard and does not change this standard. The interpretation of the current Reliability Standard at issue in this final rule is not expected to change the reporting burden or the information collection requirements. The informational filing required of NERC is part of currently active collection FERC–725 and does not require additional approval by OMB.[26]

23. We will submit this final rule to OMB for informational purposes only.

24. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Office of the Executive Director, *e-mail: data.clearance@ferc.gov, phone:* (202) 502–8663, or fax: (202) 273–0873].

VIII. Environmental Analysis

25. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[27] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[28] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

IX. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA)[29] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[30] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[31] The RFA is not implicated by this Final Rule because the interpretation accepted herein does not modify the existing burden or reporting requirements. With no changes to the Reliability Standard as approved, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

X. Document Availability

27. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

28. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

29. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at

[23] This filing requirement has been approved by the Office of Management and Budget under FERC–725, OMB Control No. 1902–0225. This filing does not change the existing burden or reporting requirements imposed on NERC under FERC–725.

[24] 5 CFR 1320.11.

[25] 44 U.S.C. 3507(d).

[26] *See supra* n. 23.

[27] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[28] 18 CFR 380.4(a)(2)(ii).

[29] 5 U.S.C. 601–612.

[30] 13 CFR 121.201.

[31] *Id.* n. 1.

ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

XI. Effective Date and Congressional Notification

30. This final rule is effective 30 days from publication in **Federal Register**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Applicability, Mandatory reliability standards.

By the Commission.

Kimberly D. Bose,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1

List of Commenters

American Transmission Company LLC
Avista Corporation
Black Hills Power, Inc.
Bonneville Power Administration
Constellation Energy Group, Inc.[32]
Department of Interior, Office of Environmental Policy and Compliance
Entergy Services, Inc.
Exelon Corporation
Florida Reliability Coordinating Council
Independent Electricity System Operator and Hydro One Networks
International Transmission Company[33]
ISO/RTO Council
Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company
Manitoba Hydro
Modesto Irrigation District
National Grid
New England States Committee on Electricity
North American Electric Reliability Corporation
Pacific Gas and Electric Company
Public Power Council[34]
Reliability First Corporation
San Diego Gas & Electric Company
Southern Company Services, Inc.[35]
Trade Associations[36]
Tampa Electric Company
Virginia Electric and Power Company, doing business as Dominion Virginia Power
Wisconsin Electric Power Company

[32] Baltimore Gas & Electric Company, Constellation Energy Commodities Group, Inc., Constellation Energy Control and Dispatch, LLC, Constellation NewEnergy, Inc., and Constellation Power Source Generation, Inc., and Constellation Energy Nuclear Group, LLC.

[33] *ITCTransmission,* Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

[34] Public Power Council includes Washington Rural Electric Cooperative Association, Idaho Consumer-Owned Utilities Association, Oregon PUD Association, Northwest Public Power Association, Oregon Rural Electric Cooperative Association, PNGC Power, Western Public Agencies Group, Western Montana Electric G&T Cooperative, Inc., Oregon Municipal Electric Utilities Association, Washington PUD Association, Northwest Requirements Utilities.

[35] Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company.

[36] The Trade Association includes the Edison Electric Institute, the American Public Power Association, Canadian Electricity Association, the National Rural Electric Cooperative Association, the Transmission Access Policy Study Group, and the Electric Power Supply Association.

[FR Doc. 2011–24408 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0912281446–0111–02]

RIN 0648–XA709

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the third seasonal period (September 15–December 31) is projected to be reached by the effective date of this rule. From the effective date of this rule until January 1, 2012, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 30-percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 a.m. Pacific Daylight Time, on the date of closure.

DATES: Effective 12:01 a.m. Pacific Daylight Time Wednesday, September 21, 2011, through 11:59 p.m. Pacific Standard Time, December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the third allocation period (September 15–December 31) will be reached and therefore directed fishing for Pacific sardine is being closed until January 1, 2012. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 am on the date of closure through December 31, 2011, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1–December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken only incidental harvest is allowed, and for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and keep it closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with section 660.509, the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For

the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 19, 2011.

James P. Burgess,

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

[FR Doc. 2011–24381 Filed 9–19–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 184
Thursday, September 22, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0991; Directorate Identifier 2010–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, without a stretched upper deck or stretched upper deck modification. The existing AD currently requires repetitive inspections for cracks of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary. This proposed AD would also require, for certain airplanes, modifying the tension tie structure or tension tie and frame structure at certain stations; and a post-modification inspection of the modified area and post-modification repetitive inspections of the unmodified area, and repair if necessary. Doing the modification would terminate the repetitive inspection requirements in the existing AD. This proposed AD would reduce the compliance time and add inspections for certain airplanes. This proposed AD results from reports that certain airplanes have tension ties that are susceptible to widespread fatigue damage. This proposed AD also results from reports of cracks on the forward and aft tension tie channels at station (STA) 740 and STA 760, and a determination that initial inspection intervals need to be reduced. We are proposing this AD to prevent tension ties from becoming severed or disconnected from the frames, which could lead to rapid in-flight decompression.

DATES: We must receive comments on this proposed AD by November 7, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, 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 service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6425; *fax:* (425) 917–6590; *e-mail: steven.fox@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0991; Directorate Identifier 2010–NM–134–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On December 30, 2005, we issued AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), for certain Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes. That AD requires detailed and high-frequency eddy current (HFEC) inspections for cracks of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary. That AD resulted from a report of a crack in the tension tie at the body station (BS) 820 frame connection, and cracks found on the Boeing 747SR fatigue-test airplane in both the tension ties and frames at the tension tie to frame connections at BS 800, 820, and 840. We issued that AD to find and fix cracks in the tension ties, which could lead to cracks in the skin and body frame and result in rapid in-flight depressurization of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2006–01–07, Amendment 39 14446 (71 FR 1947, January 12, 2006), specifies that we consider the requirements to be ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explains that we might consider further rulemaking if a

modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

This proposed AD also results from reports of cracks on the forward and aft tension tie channels at station (STA) 740 and STA 760 on a Model 747–400F airplane, and a determination that initial inspection compliance times need to be reduced.

Relevant Service Information

AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), refers to Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, as the appropriate source of service information for doing the required actions. We have reviewed Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. For Group 2 airplanes, Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, reduces the compliance time for the detailed and HFEC inspections of the tension ties; adds a one-time general visual inspection of the tension ties for correct configuration; adds a detailed and open fastener-hole HFEC inspection for cracks in the tension tie and frame if an incorrect configuration is found; and adds repair of the cracked tension tie, or instructions to contact Boeing for repair instructions.

We have also reviewed Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, which is not applicable to Model 747SP airplanes. Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, describes procedures for modification of the left- and right-side tension tie structure or tension tie and frame structure at certain body stations, repetitive inspections of the modified area, repetitive detailed inspections for cracks on the unmodified area of the tension tie, and repair if necessary.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), and would retain the requirements of the existing AD with a reduced compliance time for certain airplanes. This proposed AD would also require accomplishing the actions specified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010; and Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010; as described previously. Doing the modification specified in this proposed AD ends the existing repetitive inspections in the existing AD.

No Repetitive Intervals for Post-Modification Inspections of the Modified Areas

Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, specifies to contact Boeing for the intervals for the repetitive post-modification inspections of the modified areas, nor does this proposed AD include those intervals. Post-modification inspection guidance for paragraph (j)(2) of this proposed AD may be defined in an approved alternative method of compliance (AMOC).

Changes to Existing AD

In this NPRM, we have identified the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces the previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (n) of this proposed AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance for certain repairs required by this AD.

We have added a new paragraph (d) to this NPRM to provide the Air Transport Association (ATA) of America subject code 53: Fuselage. This code is added to make this proposed AD parallel with other new AD actions. We have re-identified subsequent paragraphs accordingly.

Differences Between the Proposed AD and the Service Information

The service bulletins specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes ODA whom we have authorized to make those findings.

Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, includes a modification for all airplanes except for Model 747SP airplanes. This proposed AD requires that modification for Model 747SP airplanes.

Costs of Compliance

There are about 276 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)).	8 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration.	$85	$0	Between $5,440 and $8,160 per inspection cycle.	141	Between $767,040 and $1,150,560 per inspection cycle.
One-time inspection (new proposed action for Group 2 airplanes).	6	85	None	510	86	$43,860.
Modification (new proposed action).	Between 30 and 85, depending on airplane configuration.	85	Between $18,657 and $635,004.	Between $21,207 and 642,229.	86	Between $1,823,802 and $55,231,694.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection for unmodified area.	2 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration.	85	None	Between $1,360 and $2,040.	86	Between $116,960 and $175,440.
Inspection for modified area.	2 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration.	85	None	Between $1,360 and $2,040.	86	Between $116,960 and $175,440.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14446 (71 FR 1947, January 12, 2006) and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0991; Directorate Identifier 2010–NM–134–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2011.

Affected ADs

(b) This AD supersedes AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006).

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This proposed AD results from reports that certain airplanes have tension ties that are susceptible to widespread fatigue damage. This proposed AD also results from reports of cracks on the forward and aft tension tie channels at station (STA) 740 and STA 760, and a determination that initial inspection compliance times need to be reduced. The Federal Aviation Administration is issuing this AD to prevent tension ties from becoming severed or disconnected from the frames, which could lead to rapid in-flight decompression.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), With Reduced Compliance Time for Certain Airplanes

Repetitive Inspections and Corrective Actions

(g) For Group 1, and Groups 3 through 6 airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; at the applicable time in paragraph (g)(1) or (g)(2) of this AD: Do detailed and high-frequency eddy current inspections for cracking of each affected tension tie and of the surrounding structure. If any cracking is found: Before further flight, do all applicable corrective and related investigative actions. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. Where Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010; specifies to contact Boeing for repair instructions: Before further flight, repair the area using a method approved in accordance with paragraph (n) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–53A2502, Revision 1,

dated June 17, 2010, may be used for the actions required in this paragraph.

(1) For airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, as Groups 1, 3, and 6 airplanes: Do the first inspections before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006 (the effective date of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)), whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, as Group 4 and 5 airplanes: Do the first inspections before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006, whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

Inspection for Group 2 Airplanes With Reduced Compliance Times

(h) For Group 2 airplanes identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010: At the applicable times specified in paragraphs (h)(1) and (h)(2) of this AD, do detailed and high-frequency eddy current inspections for cracking of each affected tension tie and of the surrounding structure, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. If any cracking is found: Before further flight, do all applicable corrective and related investigative actions. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. Where Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010; specify to contact Boeing for repair instructions: Before further flight, repair the area using a method approved in accordance with paragraph (n) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, may be used. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

(1) For STA 780 through 940: Before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006, whichever occurs later.

(2) For STA 720, 740, and 760: At the earlier of the times of paragraph (h)(2)(i) or (h)(2)(ii).

(i) Before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006, whichever occurs later.

(ii) Before the accumulation of 8,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

New Requirements of This AD

One-Time Inspection for Group 2 Airplanes

(i) For airplanes identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, as Group 2 airplanes: Before the accumulation of 8,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do a general visual inspection for correct configuration, as identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, of each affected tension tie and of the surrounding structure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(1) If all tension ties match the correct configurations specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, no further work is required by this paragraph.

(2) If any incorrect configuration is found, before further flight, do detailed and open fastener-hole HFEC inspections for cracks in the tension tie and frame, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(i) If no crack is found during the inspection required by paragraph (i)(2) of this AD, before further flight, install the correct configuration for the tension ties at locations where the incorrect configuration was found, using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(ii) If any crack is found during the inspection required by paragraph (i)(2) of this AD, before further flight, do the actions in paragraphs (i)(2)(ii)(A) and (i)(2)(ii)(B) of this AD.

(A) Repair the crack in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, except where Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(B) Install the correct configuration for the tension ties at locations where the incorrect configuration was found, using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Modification

(j) Before the accumulation of 30,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, modify the left- and right-side tension tie structure or left- and right-side tension tie and frame structure, at specified stations, in accordance with the applicable method specified in paragraph (j)(1) or (j)(2) of this AD. Accomplishment of the modification in this paragraph terminates the repetitive inspection requirements in paragraphs (g)(1), (g)(2), and (h) of this AD.

(1) For airplanes identified in Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010: Do the modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010.

(2) For airplanes not identified in Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010: Do the modification, using a method approved in accordance with paragraph (n) of this AD.

Note 1: For airplanes identified in paragraph (j)(2) of this AD, post-modification inspection guidance may be defined in an approved alternative method of compliance (AMOC) for paragraph (j)(2) of this AD.

Post-Modification Inspection of the Modified Areas

(k) For airplanes identified in paragraph (j)(1) of this AD, within 20,000 flight cycles after doing the modification required by paragraph (j) of this AD, do an inspection for cracks of the modified areas of the left- and right-side tension tie structure and frame structure, in accordance with a method approved with the procedures specified in paragraph (n) of this AD. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Post-Modification Repetitive Inspections of the Unmodified Areas

(l) For airplanes identified in paragraph (j)(1) of this AD, within 6,000 flight cycles after doing the modification required by paragraph (j) of this AD, do a detailed inspection for cracks on the unmodified areas of the left- and right-side tension tie structure and frame structure, at certain stations, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Repeat the inspection of the unmodified areas thereafter at intervals not to exceed 6,000 flight cycles.

Note 2: Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, refers to Section 51–10–02 of the Boeing 747–400F Structural Repair Manual (SRM) and Section 51–10–01 of the Boeing 747–100/200/300 SRM as additional sources of guidance for removing small cracks and fatigue damage material from the existing holes in the unmodified center section of the tension tie channels. Where those SRM sections state that ''zero-timing must only be used where specifically permitted in an SRM chapter-section-repair,'' this AD allows the zero-timing procedures specified in those SRM sections.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Actions done in accordance with Boeing Alert Service Bulletin 747–53A2605,

dated October 8, 2009, before the effective date of this AD are acceptable for compliance with the corresponding actions required by paragraphs (j), (k), and (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Certain actions required by paragraph (g) of this AD are approved as AMOCs for the requirements specified in paragraphs (n)(4)(i), (n)(4)(ii), and (n)(4)(iii) of this AD. All provisions of the referenced ADs in paragraphs (n)(4)(i), (n)(4)(ii), and (n)(4)(iii) of this AD, including applicable post-modification inspection thresholds, remain fully applicable and must be complied with.

(i) Repairs or modifications of the aft tension tie channels done in accordance with this AD are AMOCs for the repair requirements of paragraph A. of AD 84–19–01, Amendment 39–4913 (49 FR 35365, September 17, 1984), and paragraphs (a)(2) and (b)(2) of AD 94–13–06, Amendment 39–8946 (59 FR 32879, June 27, 1994).

(ii) The inspection requirements of this AD are AMOCs for the post-modification inspection requirements of paragraph B. of AD 84–19–01, Amendment 39–4913 (49 FR 35365, September 17, 1984), and paragraph (b) of AD 94–13–06, Amendment 39–8946 (59 FR 32879, June 27, 1994).

(iii) The inspection requirements of this AD are AMOCs for the inspections of Structural Significant Item (SSI) F–19A of Boeing Supplemental Structural Inspection Document D6–35022, Revision G, dated December 2000, as required by paragraphs (h) and (i) of AD 2004–07–22 R1, Amendment 39–15326 (73 FR 1052, January 7, 2008), corrected on February 14, 2008 (73 FR 8589).

Related Information

(o) For more information about this AD, contact Steven Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590; e-mail: *steven.fox@faa.gov.*

(p) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24356 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0591; Airspace Docket No. 11–ASO–26]

Proposed Amendment of Class E Airspace; Springfield, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace in the Springfield, TN area. Aydelotte Airport has been abandoned and controlled airspace is no longer needed. Airspace reconfiguration is necessary for the continued safety and management of instrument flight rules (IFR) operations within the Springfield, TN airspace area.

DATES: 0901 UTC. Comments must be received on or before November 7, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–0591; Airspace Docket No. 11–ASO–26, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0591; Airspace Docket No. 11–ASO–26) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0591; Airspace Docket No. 11–ASO–26.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation

Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface in the Springfield, TN area. Aydelotte Airport has been abandoned making it necessary to remove controlled airspace serving the airport. Airspace reconfiguration is necessary for the continued safety and management of IFR operations within the Springfield, TN, airspace area.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace in the Springfield, TN, area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward rrom 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Springfield, TN [Amended]

Springfield Robertson County Airport, TN
(Lat. 36°32′24″ N., long. 86°55′24″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Springfield Robertson County Airport.

Issued in College Park, Georgia on September 9, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24346 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0762; Airspace Docket No. 10–AEA–22]

Proposed Amendment of Class E Airspace; Cumberland, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Cumberland, MD, as the Cumberland Non-Directional Beacon (CBE) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed at Greater Cumberland Regional Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective date 0901 UTC. Comments must be received on or before November 7, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–0762; Airspace Docket No. 10–AEA–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0762; Airspace Docket No. 10–AEA–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to

Docket No. FAA–2011–0762; Airspace Docket No. 10–AEA–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures developed at Greater Cumberland Regional Airport, Cumberland, MD. Airspace reconfiguration is necessary due to the decommissioning of the Cumberland NDB and cancellation of the NDB approach. Controlled airspace is necessary to support for the safety and management of SIAPs at Greater Cumberland Regional Airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Greater Cumberland Regional Airport, Cumberland, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Cumberland, MD [Amended]

Greater Cumberland Regional Airport, MD
(Lat. 39°36′55″ N., long. 78°45′43″ W.)

That airspace extending upward from 700 feet above the surface within a 11.4 mile radius of the Greater Cumberland Regional Airport and within 1.2 miles each side of the 039° bearing from the airport extending from the 11.4 mile radius to 14.2 miles northeast of the airport.

Issued in College Park, Georgia, on September 9, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24347 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0744; Airspace Docket No. 11–ASO–33]

Proposed Establishment of Class E Airspace; Oneonta, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Oneonta, AL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Robbins Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 7, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2011–0744; Airspace Docket No. 11–

ASO–33, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0744; Airspace Docket No. 11–ASO–33) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0744; Airspace Docket No. 11–ASO–33.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Oneonta, AL, providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Robbins Field. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Robbins Field, Oneonta, AL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Oneonta, AL [New]

Robbins Field, AL

(Lat. 33°58′16″ N., long. 86°22′49″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5- mile radius of Robbins Field Airport.

Issued in College Park, Georgia, on September 9, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24345 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM11–11–000]

Version 4 Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) proposes to approve eight modified Critical Infrastructure Protection (CIP) Reliability Standards, CIP–002–4 through CIP–009–4, developed and submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization certified by the Commission. In general, the CIP Reliability Standards provide a cybersecurity framework for the identification and protection of ''Critical Cyber Assets'' to support the reliable operation of the Bulk-Power System. Proposed Reliability Standard CIP–002–4 requires the identification and documentation of Critical Cyber Assets associated with Critical Assets that support the reliable operation of the Bulk-Power System. The ''Version 4'' CIP Reliability Standards propose to modify CIP–002–4 to include ''bright line'' criteria for the identification of Critical Assets. The proposed Version 4 CIP Reliability Standards would replace the currently effective Version 3 CIP Reliability Standards. The Commission also proposes to approve the related Violation Risk Factors and Violation Severity Levels with modifications, the implementation plan, and effective date proposed by NERC.

DATES: Comments are due November 21, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, *e.g.,* the ''Quick Reference Guide for Paper Submissions,'' available at *http://www.ferc.gov/docs-filing/efiling.asp* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Jan Bargen (Technical Information), Office of Electric Reliability, Division of Logistics and Security, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6333.

Edward Franks (Technical Information), Office of Electric Reliability, Division of Logistics and Security, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6311.

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6840.

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8408.

SUPPLEMENTARY INFORMATION:

September 15, 2011.

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve eight modified Critical Infrastructure Protection (CIP) Reliability Standards, CIP–002–4 through CIP–009–4. The proposed ''Version 4'' CIP Standards were developed and submitted for approval to the Commission by the North American Electric Reliability Corporation (NERC), which the Commission certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards.[2] In general, the CIP Reliability Standards provide a cybersecurity framework for the identification and protection of ''Critical Cyber Assets'' to support the reliable operation of the Bulk-Power System.[3] In particular, the Version 4 CIP Reliability Standards propose to modify CIP–002–4 to include ''bright line'' criteria for the identification of Critical Assets, in lieu of the currently-required risk-based assessment methodology that is developed and applied by applicable entities. In addition, NERC developed proposed conforming modifications to the remaining cybersecurity Reliability Standards, CIP–003–4 through CIP–009–4.

2. The Commission proposes to approve Version 4, the Violation Risk Factors (VRFs),the Violation Severity Levels (VSLs) with modifications, the implementation plan, and effective date proposed by NERC. The Commission also proposes to approve the retirement of the currently effective Version 3 CIP Reliability Standards, CIP–002–3 to CIP–009–3. The Commission seeks comments on these proposals to approve.

3. While we propose to approve the Version 4 CIP Standards, like NERC, we recognize that the Version 4 CIP Standards represent an ''interim step'' [4] to addressing all of the outstanding directives set forth in Order No. 706.[5] We believe that the electric industry, through the NERC standards development process, should continue to develop an approach to cybersecurity that is meaningful and comprehensive to assure that the nation's electric grid is capable of withstanding a Cybersecurity Incident.[6] Below, we reiterate several topics set forth in Order No. 706 that pertain to a tiered approach to identifying Cyber Assets, protection from misuse, and a regional perspective. We expect NERC will continue to improve the CIP Standards to address these and other outstanding matters addressed in Order No. 706.

4. Moreover, as discussed below, the Commission seeks comments from NERC and other interested persons on establishing a reasonable deadline for NERC to satisfy the outstanding directives in Order No. 706 pertaining to the CIP Standards, using NERC's development timeline.

[1] 16 U.S.C. 824o (2006).

[2] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[3] The NERC Glossary of Terms defines Critical Assets to mean ''Facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.''

[4] NERC Petition at 6.

[5] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 122 FERC ¶ 61,040, order on reh'g, Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No. 706–B, 126 FERC ¶ 61,229 (2009).

[6] Section 215(a) of the FPA defines Cybersecurity Incident as ''a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the Bulk-Power System.''

I. Background

A. Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[7]

6. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO [8] and, subsequently, certified NERC as the ERO.[9] On January 18, 2008, the Commission issued Order No. 706 approving eight CIP Reliability Standards proposed by NERC.

7. In addition, pursuant to section 215(d)(5) of the FPA,[10] the Commission directed NERC to develop modifications to the CIP Reliability Standards to address various concerns discussed in the Final Rule. In relevant part, the Commission directed the ERO to address the following issues regarding CIP–002–1: (1) Need for ERO guidance regarding the risk-based assessment methodology for identifying Critical Assets; (2) scope of Critical Assets and Critical Cyber Assets; (3) internal, management, approval of the risk-based assessment; (4) external review of Critical Assets identification; and (5) interdependency between Critical Assets of the Bulk-Power System and other critical infrastructures. Subsequently, the Commission approved Version 2 and Version 3 of the CIP Reliability Standards, each version including changes responsive to some but not all of the directives in Order No. 706.[11]

B. Current Version 3 CIP Reliability Standards

8. Reliability Standard CIP–002–3 addresses the identification of Critical Assets and associated Critical Cyber Assets. Pursuant to CIP–002–3, a responsible entity must develop a risk-based assessment methodology to identify its Critical Assets. Requirement R1 specifies certain types of assets that an assessment must consider for Critical Asset status and also allows the consideration of additional assets that the responsible entity deems appropriate. Requirement R2 requires the responsible entity to develop a list of Critical Assets based on an annual application of the risk-based assessment methodology developed pursuant to Requirement R1. Requirement R3 provides that the responsible entity must use the list of Critical Assets to develop a list of associated Critical Cyber Assets that are essential to the operation of the Critical Assets.

9. In addition, the Commission approved the following ''Version 3'' CIP Standards:

- CIP–003–3 (Security Management Controls);
- CIP–004–3 (Personnel & Training);
- CIP–005–3 (Electronic Security Perimeter(s));
- CIP–006–3 (Physical Security of Critical Cyber Assets);
- CIP–007–3 (Systems Security Management);
- CIP–008–3 (Incident Reporting and Response Planning);
- CIP–009–3 (Recovery Plans for Critical Cyber Assets).

II. Proposed Version 4 CIP Reliability Standards

A. NERC Petition

10. On February 10, 2011, NERC filed a petition seeking Commission approval of proposed Reliability Standards CIP–002–4 to CIP–009–4 and requesting the concurrent retirement of the currently effective Version 3 CIP Reliability Standards, CIP–002–3 to CIP–009–3.[12] The principal differences are found in CIP–002, where NERC replaced the risk-based assessment methodology for identifying Critical Assets with 17 uniform bright line criteria for identifying Critical Assets. NERC does not propose any changes to the process of identifying the associated Critical Cyber Assets that are then subject to the cyber security protections required by CIP–003 through CIP–009. NERC also submitted proposed VRFs and VSLs and an implementation plan governing the transition to Version 4. NERC proposed that the Version 4 CIP Reliability Standards become effective the first day of the eighth calendar quarter after applicable regulatory approvals have been received.

11. On April 12, 2011, NERC made an errata filing correcting certain errors in the petition and furnishing corrected exhibits and the standard drafting team minutes. In the errata, NERC also replaced the VRFs and VSLs in the February 10 petition with new proposed VRFs and VSLs.[13]

12. In its Petition, NERC states that the Version 4 CIP Standards satisfy the Commission's criteria, set forth in Order No. 672, for determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[14] According to NERC, CIP–002–4 achieves a specified reliability goal by requiring the identification and documentation of Critical Cyber Assets associated with Critical Assets that support the reliable operation of the Bulk-Power System. NERC opines that the Reliability Standard ''improves reliability by establishing uniform criteria across all Responsible Entities for the identification of Critical Assets.'' [15] Further, NERC states that CIP–002–4 contains a technically sound method to achieve its reliability goal by requiring the identification and documentation of Critical Assets through the application of the criteria set forth in Attachment 1 of CIP–002–4.

13. NERC states that CIP–002–4 establishes clear and uniform criteria for identifying Critical Assets on the Bulk-Power System.[16] NERC also states that CIP–002–4 does not reflect any differentiation in requirements based on size of the responsible entity. NERC asserts that CIP–002–4 will not have negative effects on competition or restriction of the grid. NERC also contends that the two-year implementation period for CIP–002–4 is reasonable given the time it will take responsible entities to determine

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[7] *See* 16 U.S.C. 824o(e).

[8] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[9] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[10] 16 U.S.C. 824o(d)(5).

[11] *North American Electric Reliability Corp.,* 128 FERC ¶ 61,291 (2009), *order denying reh'g and granting clarification,* 129 FERC ¶ 61,236 (2009) (approving Version 2 of the CIP Reliability Standards); *North American Electric Reliability Corp.,* 130 FERC ¶ 61,271 (2010) (approving Version 3 of the CIP Reliability Standards).

[12] NERC Petition at 1. The proposed Reliability Standards are not attached to the NOPR. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM11–11–000 and are available on the ERO's Web site, *http://www.nerc.com.* Reliability Standards approved by the Commission are not codified in the CFR.

[13] NERC states that the Version 4 VRFs and VSLs are carried over in part from the VRFs and VSLs in the Version 3 CIP Reliability Standards. NERC Petition at 46. The Commission approved the Version 2 and 3 VRFs and VSLs in Docket Nos. RD10–6–001 and RD09–7–003 on January 20, 2011 but required NERC to make modifications in a compliance filing due by March 21, 2011. *North American Electric Reliability Corporation,* 134 FERC ¶ 61,045 (2011). The February 10 petition did not carry over the modified Version 3 VRFs and VSLs since it was filed before the March 21 compliance filing. NERC submitted new Version 4 VRFs and VSLs that carried over the modified Version 3 VRFs and VSLs in the April 12 errata. On June 6, 2011, NERC filed the March 21, 2011 compliance filing in the present docket, Docket No. RM11–11–000.

[14] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 323–337.

[15] NERC Petition at 4.

[16] *Id.* at 38.

whether assets meet the criteria included in Attachment 1 and to implement the controls required in CIP–003–4 through CIP–009–4 for the newly identified assets.

14. Finally, NERC acknowledges that CIP–002–4 addresses some, but not all, of the Commission's directives in Order No. 706. NERC explains that the standard drafting team limited the scope of requirements in the development of CIP Version 4 ''as an interim step'' limited to the concerns raised by the Commission regarding CIP–002.[17] NERC states that it has taken a ''phased'' approach to meeting the Commission's directives from Order No. 706 and, according to NERC, the standard drafting team continues to address the remaining Commission directives. According to NERC, the team will build on the bright line approach of CIP Version 4.[18]

B. Proposed Reliability Standard CIP–002–4

15. Proposed Reliability Standard CIP–002–4 contains 3 requirements. Requirement R1, which pertains to the identification of Critical Assets, provides:

> The Responsible Entity shall develop a list of its identified Critical Assets determined through an annual application of the criteria contained in CIP–002–4 Attachment 1—Critical Asset Criteria. The Responsible Entity shall update this list as necessary, and review it at least annually.

Attachment 1 provides seventeen criteria to be used by all responsible entities for the identification of Critical Assets pursuant to Requirement R1. The thresholds pertain to specific types of facilities such as generating units, transmission lines and control centers. For example, Criterion 1.1 provides ''[e]ach group of generating units (including nuclear generation) at a single plant location with an aggregate highest rated net Real Power capability of the preceding 12 months equal to or exceeding 1500 MW in a single Interconnection.'' With regard to transmission, Criterion 1.6 provides ''Transmission Facilities operated at 500 kV or higher,'' and Criterion 1.7 provides ''Transmission Facilities operated at 300 kV or higher at stations or substations interconnected at 300 kV or higher with three or more other transmission stations or substations.''

16. Reliability Standard CIP–002–4, Requirement R2 requires responsible entities to develop a list of Critical Cyber Assets associated with the Critical Assets identified pursuant to Requirement R1. As in previous versions, the Requirement further states that to qualify as a Critical Cyber Asset, the Cyber Asset must: (1) Use a routable protocol to communicate outside the Electronic Security Perimeter; (2) use a routable protocol within a control center; or (3) be dial-up accessible. In the proposed version, in the context of generating units at a single plant location, the Requirement limits the designation of Critical Cyber Assets only to Cyber Assets shared by a combination of generating units whose compromise could within 15 minutes result in the loss of generation capability equal to or higher than 1500 MW.

17. Requirement R3 requires that a senior manager or delegate for each responsible entity approve annually the list of Critical Assets and the list of Critical Cyber Assets, even if the lists contain no elements. As mentioned above, proposed Reliability Standards CIP–003–4 to CIP–009–4 only reflect conforming changes to accord with the CIP–002–4 Reliability Standard.

C. Additional Information Regarding Attachment 1 Criteria

18. In response to a Commission data request, NERC provided additional information regarding the bright line criteria for identifying Critical Assets.[19] NERC provided some information regarding the development of the criteria. Further, based on an industry survey, NERC provided information regarding the estimated number of Critical Assets and the number of Critical Assets that have associated Critical Cyber Assets located in the United States that would be identified pursuant to CIP–002–4. For example, NERC indicates that the Version 4 CIP Standards would result in the identification of 532 control centers as Critical Assets with Critical Cyber Assets, and another 21 control centers as Critical Assets without any associated Critical Cyber Assets.[20] Further, 201 control centers would not be identified as Critical Assets. With regard to Blackstart Resources, NERC's survey results indicate that CIP–002–4 would result in the identification of approximately 234 Blackstart Resources as Critical Assets with associated Critical Cyber Assets, 273 identified as Critical Assets without Critical Cyber Assets, and 35 Blackstart Resources not classified as Critical Assets.[21]

III. Discussion

19. Pursuant to FPA section 215(d)(2), the Commission proposes to approve CIP–002–4 to CIP–009–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission proposes to approve the VRFs and VSLs, implementation plan, and effective date proposed by NERC. The Commission also proposes to approve the retirement of the currently effective Version 3 CIP Reliability Standards CIP–002–3 to CIP–009–3 upon the effective date of CIP–002–4 to CIP–009–4. The Commission seeks comments on these proposals.

20. Further, as discussed below, the Commission seeks comments from NERC and other interested persons on the proposal to establish a reasonable deadline for NERC to satisfy the outstanding directives in Order No. 706. Specifically, as explained in detail later, the Commission requests comments on: (1) The proposal to establish a deadline using NERC's development timeline for the next version of the CIP Reliability Standards; (2) how much time NERC needs to develop and file the next version of the CIP Reliability Standards; (3) other potential approaches to Critical Cyber Asset identification; and (4) whether the next version is anticipated to satisfy all of the directives in Order No. 706.

A. The Commission Proposes To Approve the Version 4 CIP Reliability Standards

21. The Commission, in giving due weight to NERC's Filing, proposes to approve the Version 4 CIP Reliability Standards. The Commission also proposes to approve the implementation plan and effective date proposed by NERC. Version 4 provides a change in three respects: (1) Version 4 will result in the identification of certain types of Critical Assets that may not be identified under the current approach; (2) Version 4 uses bright line criteria to identify Critical Assets, eliminating the use of existing entity-defined risk-based assessment methodologies that generally do not adequately identify Critical Assets; and (3) Version 4 provides a level of consistency and clarity regarding the identification of Critical Assets lacking under Version 3. We

[17] NERC Petition at 6 (citing Order No. 706, 122 FERC ¶ 61,040 at P 236).

[18] NERC Petition at 6.

[19] *See* April 17, 2011 Commission staff data request issued in Docket No. RM11–11–000. NERC responded to the data request in staggered filings, on May 27, 2011 and June 30, 2011.

[20] NERC June 30, 2011 Data Response at 2–3.

[21] *Id.* at 3–4. In the June 30, 2011 Data Response, NERC stated that with respect to Blackstart Resources some responsible entities indicated that they had not performed a complete analysis of their systems based on CIP–002–4 and are unsure whether some units may be classified as Critical Assets. *Id.* at 4.

separately address each of these reasons for proposing to approve Version 4 below.

1. Critical Asset Identification

22. In its Petition, NERC indicates that, after conducting reviews of CIP–002 compliance, NERC ''determined that the existing methodologies generally do not adequately identify all Critical Assets.'' [22] While recognizing that CIP version 4 is intended as an ''interim step,'' it appears that the proposed bright line criteria will result in the identification of certain types of Critical Assets (*e.g.* 500 kV substations) that may not be identified by the approach that is currently in effect. This is reflected in NERC's June 30, 2011 data response, in which NERC presented industry survey data reflecting the application of the bright line criteria in Version 4. To facilitate an analysis of the data, NERC also provided observations and data from several of its earlier industry surveys, including the 2009 ''CIP Self-Certification Survey'' and 2010 ''CIP–002 Critical Asset Methodology Data Request.''. For example, NERC states in the June 30, 2011 data response that in the 2009 survey only 50 percent of substations rated 300 kV and above are classified as Critical Assets while that figure would increase to 70 percent under Version 4.[23]

23. The NERC petition indicates that 270 transmission substations rated 500 kV and above are classified as Critical Assets under Version 3 while, according to the data response, the figure would rise to 437 under Version 4.[24] This increase is consistent with Criterion 1.6 of Attachment 1 to CIP–002–4, which identifies all transmission substations rated 500 kV as Critical Assets. According to the data response, the 25 percent of generation units rated 300 MVA and above would be identified as Critical Assets under Version 4. Moreover, the proportion of total Blackstart Resources classified as Critical Assets increases due to the required 100 percent coverage of these under Version 4.[25] Further, the number of control centers identified as Critical Assets increases from 425 under Version 3 to 553 under Version 4, the latter figure representing 74 percent of all control centers. These figures represent increases in certain categories in Critical Asset identification among generation, transmission, and control centers. We also note that NERC's industry survey data indicates decreases in the number of generation and blackstart resources identified as Critical Assets with Critical Cyber Assets. While the bright line thresholds result in the identification of a significant number of additional generation plants rated above 1500 MVA as Critical Assets, the thresholds also result in the identification of less generation below 300 MVA.

24. As NERC recognizes in its filing, the improvements in Critical Asset identification under Version 4 represent an interim step in complying with the directives in Order No. 706.[26] As we discuss below, Version 4 should not be viewed as an endpoint but as a step towards eventual full compliance with Order No. 706.

2. Version 4 Removes Discretion in Identifying Critical Assets

25. The proposed Version 4 CIP Reliability Standards discards the current risk-based methodology for identifying Critical Assets. Under the current CIP–002–3, responsible entities are tasked with identifying Critical Assets based on their own risk-based methodology. In the Petition NERC points out that in Order No. 706 the Commission directed NERC to ''provide reasonable technical support to assist entities in determining whether their assets are critical to the Bulk-Power System.'' [27] NERC explains that it responded to the Commission's direction by developing guidance documents to assist entities in developing their risk-based methodologies and Critical Asset identification.[28]

26. In its Petition, NERC states that it ''conducted various reviews of risk-based methodologies developed by many entities of varying sizes * * * and determined that the existing methodologies generally do not adequately identify all Critical Assets.'' [29] To address this, NERC proposes to replace the current risk-based methodology with uniform, bright line criteria, which will be used by all responsible entities to identify Critical Assets.

27. While risk-based assessment methodologies have merit, we share NERC's concerns about the existing application of the currently effective CIP–002–3, Requirement 1. Thus, in this context, we believe that a shift away from responsible entity-designed risk-based methodologies for identifying Critical Assets, which NERC has found to be inadequate, to the use of NERC-developed criteria is an improvement.

3. Version 4 Provides Consistency and Clarity in the Identification of Critical Assets

28. In its June 30, 2011 data response, NERC states that the survey results from 2009 generated concern ''about the apparent inconsistency in the application of the standards across the system, as evidenced by the apparent variation from region to region.'' [30] NERC states that it subsequently engaged with the Regional Entities and stakeholders to better understand the data, with these efforts resulting in the development of Version 4.

29. We believe that the application of uniform criteria is an improvement over the current approach because they add greater consistency and clarity in identifying Critical Assets. The risks posed by cyber threats suggest a different approach than the possibly inconsistent, inadequate methodologies for identifying Critical Assets, as evidenced by NERC's conclusion that insufficient numbers of Critical Assets were identified using the risk-based assessment methodology. As an integrated system, the protection afforded for Critical Assets and their Critical Cyber Assets is only as strong as its weakest link. In this respect, allowing responsible entities to devise their own methodologies for identifying Critical Assets, especially if these methodologies prove to be weak, may compromise the Critical Assets and Critical Cyber Assets of other responsible entities even if they have adopted a more stringent methodology. The uniform system of Critical Asset identification proposed by NERC in Version 4 helps to address this weakness and places all responsible entities on an equal footing with respect to Critical Asset identification.

30. In addition, clear, bright line criteria should make it easier for Regional Entities, NERC and the Commission to monitor responsible entities and evaluate how they are identifying Critical Assets. A single set of bright line criteria, as opposed to

[22] NERC Petition at 11.

[23] *Id.* at 4.

[24] *Id.* at 5.

[25] NERC Petition at 17 (explaining that each Blackstart Resource identified in a Transmission Operator's restoration plan is a Critical Asset). In the June 30, 2011 Data Response, NERC's survey found that responsible entities identified 93 percent of Blackstart Resources as Critical Assets. NERC stated that confusion over the term Blackstart Resource may have contributed to the lower percentage, and that responsible entities will be educated on the definition of Blackstart Resource prior to the effective date of CIP–002–4. NERC June 30, 2011 Data Response at 4.

[27] *Id.* at 10–11 (citing Order No. 706, 122 FERC ¶ 61,040 at P 255).

[28] *Id.* at 11.

[29] *Id.*

[30] NERC June 30, 2011 Data Response at 3.

myriad entity-designed risk-based methodologies, should improve the CIP compliance process.

31. However, under the currently-effective CIP–002–3, an entity that applies its risk-based assessment methodology considers specific types of assets identified in Requirement R1, as well as ''any additional assets that support the operation of the Bulk Electric System that the Responsible Entity deems appropriate to include in its assessment.'' Thus, currently, a responsible entity has the flexibility to consider any assets it deems appropriate. The Commission also notes that there are assets currently identified as Critical Assets which would no longer be identified as Critical Assets under the Proposed Reliability Standard CIP–002–4 bright line criteria for Critical Asset identification. The Commission seeks comment whether, under CIP Version 4, a responsible entity retains the flexibility to identify assets that, although outside of the bright line criteria, are essential to Bulk-Power System reliability. Further, we seek comment whether the ERO and/or Regional Entities would have the ability, either in an event-driven investigation or compliance audit, to identify specific assets that fall outside the bright-line criteria yet are still essential to Bulk-Power System reliability and should be subject prospectively to compliance with the CIP Reliability. If so, on what basis should that decision be made?

32. In addition, the Commission is cognizant of one caution that remains concerning a binary bright line criteria protection philosophy, *i.e.,* either an asset satisfies the threshold and is subject to compliance or is below the threshold and not subject to compliance (as opposed to a tiered approach to compliance as discussed below), in terms of applying cybersecurity protections to Cyber Assets. Specifically, bright line criteria that limit legally-mandated cybersecurity protections to certain classes of Bulk-Power System assets may indicate to an adversary the types of assets that fail to meet the threshold and, therefore, are not subject to mandatory CIP compliance. Therefore, the Commission encourages NERC to accelerate development of the next version of the CIP Reliability Standards and to address the concerns discussed herein in Section B.

4. Violation Risk Factors/Violation Severity Levels

33. NERC states that the proposed VRFs and VSLs are consistent with those approved for the Version 3 CIP Reliability Standards.[31] NERC explains that each requirement in Version 4 is assigned a VRF and a set of VSLs and that these elements support the determination of an initial value range for the base penalty amount regarding violations of requirements in Commission-approved Reliability Standards, as defined in the ERO Sanction Guidelines.[32]

34. The principal changes in the proposed Version 4 VRFs and VSLs relate to CIP–002–4. NERC proposes to carry forward the Version 3 VRFs and VSLs for all other Requirements (in CIP–003–4 through CIP–009–4), for which no substantive revisions are proposed. CIP–002–4 no longer contains sub-Requirements and, instead, each of three main Requirements has a single VRF and set of VSLs, consistent with the methodology proposed by NERC and approved by the Commission.[33] The VRF designations for the three Requirements in CIP–002–4 are consistent with those assigned to similar Requirements in previous versions of the CIP Reliability Standards and satisfy our established guidelines. Therefore, the Commission proposes to approve the Version 4 VRFs proposed by NERC and incorporate appropriately the modifications directed to prior versions.

35. With regard to the proposed Version 4 VSLs for CIP–002–4, we are concerned that the VSLs for Requirement R1 and Requirement R2, while carrying forward the wording from corresponding Version 3 VSLs, do not adequately address the purpose of NERC's proposed bright line criteria: To ensure accurate and complete identification of all Critical Assets, so that all associated Critical Cyber Assets become subject to the protections required by the CIP Standards.

36. More importantly, neither set of VSLs address the failure to properly identify either Critical Assets or Critical Cyber Assets in the first place. The failure to identify a Critical Asset, whether inadvertently or through misapplication of the bright line criteria, is paramount because if an Asset is not identified and included on the Critical Asset list, its associated Cyber Assets will not be considered under Requirement R2. Failure to identify those Cyber Assets as Critical Cyber Assets under Requirement R2 then creates the ''weakest link'' circumstance discussed in the Commission's order establishing two CIP VSL Guidelines for analyzing the validity of VSLs pertaining to cyber security.[34]

37. Therefore, the Commission proposes to direct the ERO to modify the VSLs for CIP–002–4, Requirements R1 and R2, to address a failure to identify either Critical Assets or Critical Cyber Assets, as shown in Appendix 1.[35] The Commission proposes to approve the Version 4 VSLs proposed by NERC, as modified, because they would then satisfy our established guidelines, fully address the purpose of NERC's bright line criteria, and incorporate appropriately the modifications directed to prior versions.

5. Implementation Plan and Effective Date

38. NERC proposes an effective date for full compliance with the Version 4 CIP Standards of the first day of the eighth calendar quarter after applicable regulatory approvals have been received. In addition, NERC provides a detailed implementation plan for newly identified Critical Assets and newly registered entities. NERC also presents a number of scenarios intended to explain how CIP–002–4 will be implemented. Depending on the situation, the implementation plan establishes timelines and milestones for entities to reach full compliance with CIP–002–4.

39. The Commission proposes to approve the effective date and implementation plan for CIP–002–4. Under the scenarios presented by NERC, we understand that entities with existing CIP compliance implementation programs will effectively no longer use CIP–002–3 to identify Critical Assets after approval of CIP–002–4 but rather will apply the criteria in Attachment 1 of CIP–002–4. While some responsible entities have already installed the necessary equipment and software to address

[31] *North American Electric Reliability Corp.,* 134 FERC ¶ 61,045 (2011) (approving Version 2 and 3 CIP Reliability Standards VRFs and VSLs but requiring modifications in a compliance filing).

[32] NERC Petition at 37.

[33] *North American Electric Reliability Corp.,* 135 FERC ¶ 61,166, at 8 (2011).

[34] CIP VSL Guideline 1 states, ''Requirements where a single lapse in protection can compromise computer network security, *i.e.,* the ''weakest link'' characteristic, should apply binary rather than gradated VSLs.''

[35] NERC proposes to assign a Severe VSL for a violation of Requirement R1 if a responsible entity does not develop a list of its identified Critical Assets ''even if such list is null.'' NERC does not propose to assign a VSL for a violation of Requirement R1 when a responsible entity fails to identify a Critical Asset that falls within any of the Critical Asset Criteria in Attachment 1, or fails to include an identified Critical Asset in its Critical Asset list. NERC further proposes to assign a Severe VSL to a responsible entity's violation of Requirement R2 only when it fails to include in its list of Critical Cyber Assets a Critical Cyber Asset it has identified. NERC does not propose to assign a VSL for a violation of Requirement R2 resulting from a responsible entity's failure to identify as a Critical Cyber Asset a Cyber Asset that qualifies as a Critical Cyber Asset.

cybersecurity, we recognize that other responsible entities may need to purchase and install new equipment and software to achieve compliance for assets that are brought within the scope of the protections under the CIP–002–4 bright line criteria. Based on these considerations, the Commission believes that the implementation plan proposed by NERC sets reasonable deadlines for industry compliance.

B. Ongoing Development Efforts To Satisfy Directives Set Forth in Order No. 706

40. As acknowledged by NERC, the proposed Version 4 CIP Reliability Standards do not address all of the directives set forth in Order No. 706. Although the Commission proposes to approve CIP–002–4, we highlight the need for NERC, working through the Reliability Standards development process, to address all outstanding Order No. 706 directives as soon as possible.

41. Below, we discuss several directives in Order No. 706 that have yet to be satisfied and propose to give guidance regarding the next version of the CIP Reliability Standards, such as the need to address the NIST framework, data network connectivity, and the potential misuse of control centers or control systems and the adoption of a regional perspective and oversight. Our guidance is intended to more fully ensure that all Cyber Assets serving reliability functions of the Bulk-Power System are within scope of the CIP Reliability Standards. In addition, as discussed below, we seek comments from NERC and other interested persons on a proposal to establish a deadline for NERC to submit modified CIP Reliability Standards that address the outstanding directives set forth in Order No. 706, using NERC's development timeline.

42. The stated purpose of Reliability Standard CIP–002 is the accurate identification of Critical Cyber Assets. Both the currently-effective and proposed CIP–002 Reliability Standards, along with guidance NERC provided to industry,[36] are structured in a staged approach. First, an entity must identify Critical Assets. NERC defines Critical Assets as ''facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System.'' [37] Second, based on the Critical Assets identified in the first step, an entity must identify Cyber Assets supporting the Critical Assets. The NERC Glossary defines Cyber Assets as ''programmable electronic devices and communication networks including hardware, software, and data.'' [38] Third, an entity should identify the Critical Cyber Assets by determining, in accordance with the NERC Glossary, the ''Cyber Assets essential to the reliable operation of the Critical Assets.'' [39] In Order No. 706, the Commission did not address whether or not the staged approach outlined above was the only method for identifying Critical Cyber Assets. Rather at that time, focus was placed on addressing specific concerns with the first step—the identification of Critical Assets. Recognizing CIP–002 as the cornerstone of the CIP Reliability Standards,[40] a failure to accurately identify Critical Assets could greatly impact accurate Critical Cyber Asset identification and the overall applicability of the protection measures afforded in CIP–003 through CIP–009.

43. In light of recent cybersecurity vulnerabilities, threats and attacks that have exploited the interconnectivity of cyber systems,[41] the Commission seeks comments regarding the method of identification of Critical Cyber Assets [42] to ensure sufficiency and accuracy. The Commission recognizes that control systems that support Bulk-Power System reliability are ''only as secure as their weakest links,'' and that a single vulnerability opens the computer network and all other networks with which it is interconnected to potential malicious activity.[43] Accordingly, the Commission believes that any criteria adopted for the purposes of identifying a Critical Cyber Asset under CIP–002 should be based upon a Cyber Asset's connectivity and its potential to compromise the reliable operation [44] of the Bulk-Power System, rather than focusing on the operation of any specific Critical Asset(s). The Commission seeks comments on this approach.

44. Further, the Commission seeks comments on how to ensure that the directives of Order No. 706 relative to CIP–002 with respect to the concerns discussed below are addressed, resulting in a method that will lead to sufficient and accurate Critical Cyber Asset identification.

45. The Commission believes that NERC should consider the following three strategies to meet the outstanding directives and seeks comments on these strategies. First, NERC should consider applicable features of the NIST Risk Management Framework to ensure protection of all cyber systems connected to the Bulk-Power System, including establishing CIP requirements based on entity functional characteristics rather than focusing on Critical Asset size. Second, such as in the consideration of misuse, NERC should consider mechanisms for identifying Critical Cyber Assets by examining all possible communication paths between a given cyber resource and any asset supporting a reliability function. Third, NERC should provide a method for review and approval of Critical Cyber Asset lists from external sources such as the Regional Entities or NERC. Each of these strategies is discussed below.

1. NIST Framework

46. In Order No. 706, the Commission directed NERC to ''monitor the development and implementation'' of cybersecurity standards then being developed by the National Institute of Standards and Technology (NIST).[45] The Commission also directed NERC to consider the effectiveness of the NIST standards.[46] At that time, the Commission directed NERC to address any NIST provisions that will better protect the Bulk-Power System in the Reliability Standards development process.[47] While the Commission determined not to require NERC to adopt or incorporate elements of the NIST standards, Order No. 706 left open the option of revisiting the NIST standards at a later time.[48] The Commission is not here proposing to direct that NERC use elements of the NIST standards. However, we continue

[36] North American Reliability Corporation Security Guideline for the Electric Sector: ''*Identifying Critical Cyber Assets*'' Version 1.0, Effective June 17, 2010, at 4–5, and North American Reliability Corporation Security Guideline for the Electric Sector: ''*Identifying Critical Assets*'' Version 1.0, Effective September 17, 2009.

[37] NERC Glossary of Terms at 11.

[38] *Id.*

[39] *Id.*

[40] Order No. 706, 122 FERC ¶ 61,040 at P 234.

[41] These include the discovery of Stuxnet, Night Dragon and RSA breaches from advanced persistent threats in July 2010, February 2011 and March 2011 respectively, where systems were compromised.

[42] In Order No. 706, the Commission declined to direct a method for identifying Critical Cyber Assets, but stated that it may revisit this circumstance in a future proceeding. *See* Order No. 706, 122 FERC ¶ 61,040 at P 284.

[43] *North American Electric Reliability Corp.,* 130 FERC ¶ 61,211, at P 15 (2010).

[44] 16 U.S.C. 824o(a)(4). The term ''reliable operation'' means ''operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.''

[45] Order No. 706, 122 FERC ¶ 61,040 at P 233.

[46] *Id.*

[47] *Id.*

[48] *Id.*

to believe that the NIST framework could provide beneficial input into the NERC CIP Reliability Standards and we urge NERC to consider any such provisions that will better protect the Bulk-Power System.

47. The NIST Risk Management Framework was developed to manage the risks associated with all information systems, and offers a structured yet flexible approach that can now be applied to the electric industry. The NIST Risk Management Framework guides selection and specification of cybersecurity controls and measures necessary to protect individuals and the operations and assets of the organization, while considering effectiveness, efficiency, and constraints due to applicable laws, directives, policies, standards, or regulations. Each of the activities in the Risk Management Framework has an associated NIST security standard and/or guidance document that can be used by organizations implementing the framework. The management of risk is a key element.

48. Two primary features of the NIST Framework are: (1) Customizing protection to the mission of the cyber systems subject to protection (similar to the role identified by the NERC Functional Model); and (2) ensuring that all connected cyber systems associated with the Bulk-Power System, based on their function, receive some level of protection.[49] The Bulk-Power System could benefit from each of these tested approaches.

a. NIST Approach and the NERC Functional Model

49. The purpose of the NERC CIP Reliability Standards is to specify mandatory Requirements for responsible entities to establish, maintain, and preserve the cybersecurity of key information technology systems' assets, the use of which is essential to reliable operation of the Bulk-Power System. The CIP Reliability Standards include Requirements which are based upon the functional roles of the responsible entities as specified in the NERC Functional Model.[50] The identification of cyber systems and assets used to execute these functional roles should be the first step in identifying the systems for coverage under the CIP Reliability Standards for protection. The Functional Model should be used as a starting point when considering the applicability of the NIST Framework for securing the operation of cyber assets to provide for the Reliable Operation of the Bulk-Power System.

b. NIST Tiered Approach

50. If applied to the Bulk-Power System, the NIST Framework would specify the level of protection appropriate for systems based upon their importance to the reliable operation of the Bulk-Power System. Cyber systems connected to the Bulk-Power System require availability, integrity, and confidentiality to effectively ensure the reliability of the Bulk-Power System.

51. The NIST Framework provides for a tiered approach to cybersecurity protection where protection of some type would be applied to all cyber assets connected to the Bulk-Power System. Under the NIST Framework, cyber assets whose compromise or loss of operability could result in a greater risk to Bulk-Power System reliability would be subject to more rigorous cybersecurity protections compared to a less important asset. The NIST Framework recognizes that all connected assets require a baseline level of protection to prevent attackers from gaining a foothold to launch further, even more devastating attacks on other critical systems.

52. Using the NIST framework, all cyber assets would also be reviewed to determine the appropriate level of cyber protection. The level of protection required for a given cyber asset is based upon its mission criticality and its innate technological risks.

2. Misuse of Control Systems

53. In Order No. 706, the Commission directed NERC to consider the misuse of control centers and control systems in the determination of Critical Assets.[51] If a perpetrator is able to misuse an asset, the attacker may navigate across and between control system data networks in order to gain access to multiple sites, which could enable a coordinated multi-site attack. Recent cybersecurity incidents[52] illustrate the importance of restricting connectivity between control systems and external networks, emphasizing the inherent risk exposure created by networking critical cyber control systems. Future mechanisms for identifying when cyber assets require protection will have to examine all possible paths between a given cyber resource and any asset supporting a reliability function.

54. In Order No. 706, the Commission expressed concerns regarding the classification of control centers and the potential misuse of control systems.[53] With regard to control centers, the Commission noted that responsible entities should be required to ''examine the impact on reliability if the control centers are unavailable, due for example to power or communications failures, or denial of service attacks.'' [54] In addition, the Commission stated that ''[r]esponsible entities should also examine the impact that misuse of those control centers could have on the electric facilities they control and what the combined impact of those electric facilities could be on the reliability of the Bulk-Power System.'' [55] The Commission stated that ''when these matters are taken into account, it is difficult to envision a scenario in which a reliability coordinator, transmission operator or transmission owner control center or backup control center would not properly be identified as a critical asset.'' [56]

55. In addition, the Commission raised concerns about the misuse of a control system that controls more than one asset.[57] Specifically, the Commission noted that multiple assets, whether multiple generating units, multiple transmission breakers, or perhaps even multiple substations, could be taken out of service simultaneously due to a failure or misuse of the control system. The Commission stated that even if one or all of the assets would not be considered as a Critical Asset on a stand alone basis, a simultaneous outage resulting from the single point of control might affect the reliability or operability of the Bulk-Power System. The Commission stated ''[i]n that case, the common control system should be considered a Critical Cyber Asset.'' [58]

56. The Commission is concerned that the proposed CIP–002–4 bright line criteria do not adequately address the Commission's prior directive regarding the classification of control centers or take the potential misuse of control systems into account in the identification of Critical Assets. For example, the proposed bright line criteria leave a number of Critical Assets

[49] NIST SP800–53, Section 1.4, Organizational Responsibilities.

[50] Reliability Functional Model, Function Definitions and Functional Entities, Version 5, approved by NERC Board of Trustees May 2010; and, Reliability Functional Model Technical Document Version 5, approved by NERC Board of Trustees May 2010.

[51] Order No. 706, 122 FERC ¶ 61,040 at P 282.

[52] These include the discovery of Stuxnet, Night Dragon and RSA breaches from advanced persistent threats in July 2010, February 2011 and March 2011 respectively, where systems were compromised.

[53] Order No. 706, 122 FERC ¶ 61,040 at P 280–281.

[54] *Id.* P 280.

[55] *Id.*

[56] *Id.*

[57] *Id.* P 281.

[58] *Id.*

with potentially unprotected cyber assets, including a total of 222 [59] control centers with no legal obligation to apply cybersecurity measures. These potentially unprotected control centers involve an unknown number of associated control systems.

57. Consider the following example: Electric grid control system operation in part consists of the collection of raw data needed to run the grid, collected by a SCADA system from intelligent electronic devices (IEDs) (*e.g.,* RTUs and synchrophasors). The SCADA data is typically aggregated by an energy management system (EMS). The EMS may, in some cases, calculate area control error (ACE) and transmit it to a balancing authority, which in turn makes computer based decisions about balancing load and generation. Those decisions are then used by the balancing authority or generation operator as part of an automated generation control (AGC) process. At each of these one or more sites, there are many data network interconnection points with other entities, (*e.g.,* neighboring transmission operators, generation operators, and reliability coordinators) and additional connectivity to corporate data networks and elsewhere, employing several communications technologies. This results in a complex interconnection of cyber assets (including the data of those cyber assets) demanding vigilant protection.[60] These cyber systems require comprehensive protection because the interconnected system is only as strong as its weakest link.

58. Any failure to take into account the interconnectivity of control systems represents a significant reliability gap. Where modern data networking technology is used for operation of the Bulk-Power System (*e.g.,* control systems, synchrophasors, smart grid), a network-based cyber attack could result in multiple simultaneous outages of grid equipment and cyber systems alike through misuse of a single point of control (*e.g.,* a SCADA control host system). Such an attack could take place by way of a cyber system associated with an asset that falls outside the CIP–002–4 bright line criteria yet is connected in common with other cyber systems on the Bulk-Power System. The risk of a cyber attack is greater now than when Order No. 706 was issued, as borne out by the recent increased frequency and sophistication of cyber attacks. It is critical, therefore, that the Commission's concerns regarding the potential misuse of control centers and associated control systems be addressed in the CIP Reliability Standards.

3. Regional Perspective

59. In Order No. 706, the Commission directed NERC to ''develop a process of external review and approval of critical asset lists based on a regional perspective.'' [61] The Commission found that ''Regional Entities must have a role in the external review to assure that there is sufficient accountability in the process [and] * * * because the Regional Entities and ERO are ultimately responsible for ensuring compliance with Reliability Standards.'' [62]

60. The Commission is concerned that the lack of a regional review in the identification of cyber assets might result in a reliability gap. In Order No. 706, the Commission expressed concerns regarding the need for developing a process of external review and approval of Critical Asset lists based on a regional perspective, and that such lists are considered from a wide-area view. This process would help to identify trends in Critical Asset identification. Further, while we recognize that individual circumstances may likely vary, an external review will provide an appropriate level of consistency.[63] For example, reliability coordinators may communicate through a common system and compromise of that system could propagate across multiple regions. A cyber compromise can easily propagate across these data and control networks with potential adverse consequences to the Bulk-Power System on multi-region basis.

61. This problem may become exacerbated by any future revisions to the CIP Reliability Standards that opt to reserve a high level of independent authority to the registered entity to categorize and prioritize its cyber assets. Looking forward, it will be essential for NERC and the Regional Entities to actively review the designation of cyber assets that are subject to the CIP Reliability Standards, including those which span regions, in order to determine whether additional cyber assets should be protected.

4. Summary

62. In summary, the Commission proposes to approve NERC's proposed Version 4 CIP Standards pursuant to section 215(d)(2) of the FPA. As discussed above, it appears that the Version 4 CIP Standards represent an improvement in three respects in that they: (1) Will result in the identification of certain types of Critical Assets that may not be identified under the current approach; (2) use bright line criteria to identify Critical Assets, thus limiting the discretion of responsible entities when identifying Critical Assets; and (3) provide a level of consistency and clarity regarding the identification of Critical Assets.

63. While we believe that the Version 4 CIP Reliability Standards satisfy the statutory standard for approval, we also believe that more improvement is needed. As NERC explains in its Petition, the Version 4 CIP Reliability Standards are intended as ''interim'' and future versions will build on Version 4. We believe that the electric industry, through the NERC standards development process, should continue to develop an approach to cybersecurity that is meaningful and comprehensive to assure that the nation's electric grid is capable of withstanding a Cybersecurity Incident.[64] As discussed above, we believe that some of the essential components of such a meaningful and comprehensive approach to cybersecurity are set forth in Order No. 706.

[59] NERC June 30, 2011 Data Response at 3.

[60] *See* generally, Ron Ross, Managing Enterprise Risk in Today's World of Sophisticated Threats, National Institute of Standards and Technology (2007).

[61] Order No. 706, 122 FERC ¶ 61,040 at P 329.

[62] *Id.* P 327.

[63] *Id.* P 322.

[64] Section 215(a) of the FPA defines Cybersecurity Incident as ''a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the Bulk-Power System.''

5. Reasonable Deadline for Full Compliance With Order No. 706

64. The Commission issued Order No. 706 on January 18, 2008. In Order No. 706, the Commission approved Version 1 of the CIP Reliability Standards while also directing modifications pursuant to section 215(d)(5) of the FPA, some of which are described above. Later approved versions of the CIP Reliability Standards, and now the proposed Version 4 CIP Reliability Standards, addressed some of the directives in Order No. 706, but other directives remain unsatisfied.

65. Over three years have elapsed since the Commission issued the Final Rule in January 2008. As discussed above, we believe that it is important for the successful implementation of a comprehensive approach to cybersecurity that NERC timely addresses the modifications directed by the Commission in Order No. 706. Accordingly, the Commission proposes to set a deadline for NERC to file the next version of the CIP Reliability Standards, which NERC indicates will address all outstanding Order No. 706 directives.[65] This proposal is consistent with the views expressed in the January 2011 Audit Report of the Department of Energy's Inspector General, who found ''that the Commission could have, but did not impose specific deadlines for the ERO to incorporate changes to the CIP standards.'' [66] Similarly, our proposal is responsive to the Audit Report finding that ''the CIP standards implementation approach and schedule approved by the Commission were not adequate to ensure that systems-related risks to the Nation's power grid were mitigated or addressed in a timely manner.'' [67]

66. The Commission understands that, under NERC's timeline for the ongoing effort to address all outstanding Order No. 706 directives, it anticipates submitting the next version of the CIP Reliability Standards to the NERC Board of Trustees by the second quarter of 2012, and filing that version the Commission by the end of the third quarter of 2012.[68]

67. The Commission proposes to establish NERC's current development timeline above as a deadline for compliance with the outstanding Order No. 706 CIP Standard directives. The Commission seeks comments from NERC and other parties concerning this proposal. Further, NERC and other parties may propose and support an alternative compliance deadline.

IV. Information Collection Statement

68. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[69] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[70] We will submit this proposed rule to OMB for review.

69. As stated above, the Commission previously approved Reliability Standards similar to the proposed Reliability Standards that are the subject of the current rulemaking.[71]

70. The principal differences in the information collection requirements and resulting burden imposed by the proposed Reliability Standards in this rule are triggered by the proposed changes in Reliability Standard CIP–002–4. The previous risk-based assessment methodology for identifying Critical Assets will be replaced by 17 uniform ''bright line'' criteria for identifying Critical Assets (in CIP–002–4, Attachment 1, ''Critical Asset Criteria''). Proposed Reliability Standard CIP–002–4 would require each responsible entity to use the bright line criteria as a ''checklist'' to identify Critical Assets, initially and in an annual review, instead of performing the more technical and individualized risk analysis involved in complying with the currently-effective CIP Reliability Standards. As in past versions, each Responsible Entity will then identify the Critical Cyber Assets associated with its updated list of Critical Assets. If application of the bright line criteria result in the identification of new Critical Cyber Assets, such assets become subject to the remaining standards (proposed CIP–003–4, CIP–004–4, CIP–005–4a, CIP–006–4c, CIP–007–4, CIP–008–4, and CIP–009–4), and the information collection requirements contained therein.

71. We estimate that the burden associated with the annual review of the assets (by the estimated 1,501 entities) will be simplified by the ''Critical Asset Criteria'' in proposed Reliability Standard CIP–002–4. Rather than each entity annually reviewing and updating a Risk-Based Assessment Methodology that frequently required technical analysis and judgment decisions, the proposed bright line criteria will provide a straight forward checklist for all entities to use. Thus, we estimate that the proposal will reduce the burden associated with the annual review, as well as provide a consistent and clear set of criteria for all entities to follow.

72. The estimated changes to burden as contained in the proposed rule in RM11–11 follow.

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[65] *See* NERC's May 27, 2011 Responses to Data Requests, Response 1 (''[t]he standard drafting team expects that the filing for the next version of the CIP Reliability Standards will address the remaining FERC Order No. 706 directives'').

[66] Department of Energy Inspector General Audit Report, *Federal Energy Regulatory Commission's Monitoring of Power Grid Cybersecurity* at 6 (January 2011).

[67] *Id.* at 2.

[68] *See* NERC's May 27, 2011 Responses to Data Requests, Response 1. *See also North American Electric Reliability Corporation Reliability Standards Development Plan 2011–2013 Informational Filing Pursuant to Section 310 of the NERC Rules of Procedure,* Docket Nos. RM05–17–000, RM05–25–000, RM06–16–000 at 14 (filed April 5, 2011).

[69] 5 CFR 1320.11.

[70] 44 U.S.C. 3507(d).

[71] *North American Electric Reliability Corporation,* 130 FERC ¶ 61,271 (2010).

FERC–725B Data collection (per proposed Version 4)	Number of respondents [72] (1)	Average number of annual responses per respondent (2)	Average number of burden hours per response [73] (3)	Effect of NOPR in RM11–11, on total annual hours (1) × (2) × (3)	Annual burden hours upon implementation of RM11–11
Entities that (previously and now) will identify at least one Critical Cyber Asset [category a].	345 [no change]	1	1,880 [reduction of 40 hours from 1,920 to 1,880 hours].	reduction of 13,800 hours.	648,600
Entities that (previously and now) will not identify any Critical Cyber Assets [category b].	1,144 [reduction of 12 entities from 1156 to 1,144].	1	120 [no change]	Reduction of 1,440 hours [for the 12 entities].	137,280
Entities that will newly identify a Critical Asset/Critical Cyber Asset due to the requirements in RM11–11 [74] [category c].	increase of 12 [formerly 0].	1	3,840 [75]	increase of 46,080	46,080
Net Total	1,501 [72]	.....	.....	+30,840	831,960

The revisions to the cost estimates based on requirements of this proposed rule are:

• Each entity that has identified Critical Cyber Assets has a reduction of 40 hours (345 entities × 40 hrs. × @$96/hour = $1,324,800 reduction).

• 12 Entities that formerly had not identified Critical Cyber Assets, but now will have them, has

○ A reduction of 120 hours and an increase of 3,840 hours (for a net increase of 3,720 annual hours), giving 12 entities × 3,720 hrs.@$96/hour = $4,285,440.

○ Storage costs = 12 entities@$15.25/entity = $183.

Total Net Annual Cost for the FERC–725B requirements contained in the NOPR in RM11–11 = $2,960,823 ($4,285,440 + $183 −$1,324,800).

The estimated hourly rate of $96 is the average cost of legal services ($230 per hour), technical employees ($40 per hour) and administrative support ($18 per hour), based on hourly rates from the Bureau of Labor Statistics (BLS) and the 2009 Billing Rates and Practices Survey Report.[76] The $15.25 per entity for storage costs is an estimate based on the average costs to service and store 1 GB of data to demonstrate compliance with the CIP Standards.[77]

Title: Mandatory Reliability Standards, Version 4 Critical Infrastructure Protection Standards.

Action: Proposed Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule proposes to approve the requested modifications to Reliability Standards pertaining to critical infrastructure protection. The proposed Reliability Standards help ensure the reliable operation of the Bulk-Power System by providing a cybersecurity framework for the identification and protection of Critical Assets and associated Critical Cyber Assets. As discussed above, the Commission proposes to approve NERC's proposed Version 4 CIP Standards pursuant to section 215(d)(2) of the FPA because they represent an improvement to the currently-effective CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

73. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, phone:* (202) 502–8663, *fax:* (202) 273–0873].

74. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs,

[72] The NERC Compliance Registry as of 9/28/2010 indicated that 2,079 entities were registered for NERC's compliance program. Of these, 2,057 were identified as being U.S. entities. Staff concluded that of the 2,057 U.S. entities, approximately 1,501 were registered for at least one CIP related function. According to an April 7, 2009 memo to industry, NERC noted that only 31% of entities responding to an earlier survey reported that they had at least one Critical Asset, and only 23% reported having a Critical Cyber Asset. Staff applied the 23% (an estimate unchanged for Version 4 standards) to the 1,501 figure to estimate the number of entities that identified Critical Assets under Version 3 CIP Standards.

[73] Calculations for figures prior to applying reductions:

Respondent category b:

3 employees × (working 50%) × (40 hrs/week) × (2 weeks) = 120 hours.

Respondent category c:

20 employees × (working 50%) × (40 hrs/week) × (8 weeks) = 3200 hours.

20 employees × (working 20%) × (3200 hrs) = 640 hours.

Total = 3840.

Respondent category a:

50% of 3840 hours (category d) = 1920.

[74] We estimate 12 (or 1%) of the existing entities that formerly had no identified Critical Cyber Assets will have them under the proposed Reliability Standards. This proposed rule does not affect the burden for the 6 new U.S. Entities that were estimated to newly register or otherwise become subject to the CIP Standards each year in FERC–725B, and therefore are not included in this chart.

[75] This estimated burden estimate applies only to the first three year audit cycle. In subsequent audit cycles these entities will move into category a, or be removed from the burden as an entity that no longer is registered for a CIP related function.

[76] Bureau of Labor Statistics figures were obtained from *http://www.bls.gov/oes/current/naics2_22.htm,* and 2009 Billing Rates figure were obtained from *http://www.marylandlawyerblog.com/2009/07/average_hourly_rate_for_lawyer.html.* Legal services were based on the national average billing rate (contracting out) from the above report and BLS hourly earnings (in-house personnel). It is assumed that 25% of respondents have in-house legal personnel.

[77] Based on the aggregate cost of an advanced data protection server.

Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, *phone:* (202) 395–4638, *fax:* (202) 395–7285]. For security reasons, comments to OMB should be submitted by e-mail to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM11–11 and OMB Control Number 1902–0248.

V. Environmental Analysis

75. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[78] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[79] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VI. Regulatory Flexibility Act Certification

76. The Regulatory Flexibility Act of 1980 (RFA) [80] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[81] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[82]

77. The Commission analyzed the affect of the proposed rule on small entities. The Commission's analysis found that the DOE's Energy Information Administration (EIA) reports that there were 3,276 electric utility companies in the United States in 2009,[83] and 3,015 of these electric utilities qualify as small entities under the Small Business Administration (SBA) definition. Of these 3,276 electric utility companies, the EIA subdivides them as follows: (1) 875 Cooperatives of which 843 are small entity cooperatives; (2) 1,841 municipal utilities, of which 1,826 are small entity municipal utilities; (3) 128 political subdivisions, of which 115 are small entity political subdivisions; (4) 171 power marketers, of which 113 individually could be considered small entity power marketers; [84] (5) 200 privately owned utilities, of which 93 could be considered small entity private utilities; (6) 24 state organizations, of which 14 are small entity state organizations; and (7) 9 federal organizations of which 4 are small entity federal organizations.

78. Many of the entities that have not previously identified Critical Assets and Critical Cyber Assets are considered small entities. The new CIP version 4 bright line criteria generally result in the identification of relatively larger Bulk-Power System equipment as Critical Assets. For the most part, the small entities do not own or operate these larger facilities. There is a limited possibility that these entities would have facilities that meet the bright line criteria and therefore be subject to the full CIP standards (CIP–002 through CIP–009). The Commission expects only a marginal increase in the number of small entities that will identify at least one Critical Asset under the Version 4 CIP Reliability Standards that have not done so previously.

79. The Commission estimates that only one percent (12) of the small and medium-sized entities that have not previously identified Critical Assets and Critical Cyber Assets will have an increased cost due to the proposed Reliability Standards and their identification of new Critical Cyber Assets. For each of those 12 entities, we anticipate a cost increase associated with creating a cyber security program along with the actual cyber security protections associated with the identified Critical Cyber Assets. The Commission requests comment on the potential implementation cost and subsequent cost increases that could be experienced by such small entities. Small and medium-sized entities that continue to have no Critical Assets will not see any change in their burden.

80. In general, the majority of small entities are not required to comply with mandatory Reliability Standards because they are not regulated by NERC pursuant to the NERC Registry Criteria. Moreover, a small entity that is registered but does not identify critical cyber assets pursuant to CIP–002–4 will not have compliance obligations pursuant to CIP–003–4 through CIP–009–4.

81. The Commission also investigated possible alternatives. These included the Commission's adoption in Order No. 693 of the NERC definition of bulk electric system, which reduces significantly the number of small entities responsible for compliance with mandatory Reliability Standards. The Commission also noted that small entities could join a joint action agency or similar organization, which could accept responsibility for compliance with mandatory Reliability Standards on behalf of its members and also may divide the responsibility for compliance with its members.

82. Based on the foregoing, the Commission certifies that the proposed Reliability Standards will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

83. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 21, 2011. Comments must refer to Docket No. RM11–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

84. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

85. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

[78] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[79] 18 CFR 380.4(a)(2)(ii).

[80] 5 U.S.C. 601–612.

[81] 13 CFR 121.101.

[82] 13 CFR 121.201, Sector 22, Utilities & n.1.

[83] *See* Energy Information Administration Database, Form EIA–861, Dept. of Energy (2009), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[84] Most of these small entity power marketers and private utilities are affiliated with others and, therefore, do not qualify as small entities under the SBA definition.

86. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

87. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

88. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

89. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–24102 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM11–4–000]

Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to eliminate the semi-annual storage reporting requirements for Interstate and Intrastate Natural Gas Companies that are currently codified in our regulations. The Commission finds that the reports now proposed for elimination are largely duplicative with other reporting requirements.

DATES: Comments are due November 21, 2011.

ADDRESSES: Comments, identified by docket number, may be filed in the following methods:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT: Vince Mareino (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6167, *Vince.Mareino@ferc.gov.*

Thomas Russo (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8792, *Thomas.Russo@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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September 15, 2011.

1. The Commission proposes to eliminate the semi-annual storage reporting requirements for: (1) Interstate natural gas companies subject to the Commission's jurisdiction under the Natural Gas Act (NGA), as codified in 18 CFR 284.13(e); (2) intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),[1] as codified in 18 CFR 284.126(c); and (3) Hinshaw [2] pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations, as also codified in 18 CFR

[1] 15 U.S.C. 3372.

[2] Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include § 1(c). *See ANR Pipeline Co.* v. *Federal Energy Regulatory Comm'n,* 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

284.126(c). The Commission finds that the reports now proposed for elimination are largely duplicative with other reporting requirements.

I. Background

A. Current Regulations

2. Section 284.13(e) of the Commission's regulations requires interstate pipelines to file semi-annual storage reports at the end of each complete storage injection and withdrawal season. Section 284.126(c) requires similar semi-annual reports by section 311 and Hinshaw pipelines providing interstate storage service. The reports by the two sets of pipelines must include:

(1) The identity of each customer injecting gas into storage and/or withdrawing gas from storage (including, for interstate pipelines, any affiliate relationship),

(2) The rate schedule (for interstate pipelines) or docket number (for intrastate pipelines) authorizing the storage injection or withdrawal service,

(3) The maximum storage quantity and maximum daily withdrawal quantity applicable to each storage customer,

(4) For each storage customer, the volume of gas (in dekatherms) injected into and/or withdrawn from storage during the period,

(5) The unit charge and total revenues received during the injection/withdrawal period from each storage customer (including, for interstate pipelines, any discounts), and

(6) For intrastate pipelines, any related docket numbers under which the intrastate pipeline reported storage related injection/withdrawal transportation services.

The pipelines must file these reports within 30 days of the end of each complete storage injection and withdrawal season, and the reports must be signed under oath by a senior official. The Commission has not adopted any standardized electronic form for pipelines to submit the semi-annual storage reports, nor has the Commission expressly required that the reports be public.

3. The Commission adopted the existing semi-annual storage reporting requirements for both interstate and intrastate pipelines in 1992 as part of Order No. 636,[3] and there have been only minor modifications in the semi-annual storage reporting requirements since that date.[4] However, the Commission has added other reporting requirements for both sets of pipelines, which include much of the same information as is included in the semi-annual storage reports.

4. First, in 2000, the Commission issued Order No. 637,[5] revising the reporting requirements for interstate pipelines in order to require them to post on their internet websites basic information on the terms of each transportation and storage contract with individual shippers, no later than the first nomination under a transaction.[6] These posting requirements are set forth in section 284.13(b) of the Commission's regulations.[7] That section requires interstate pipelines to make daily postings of the same types of information about both firm and interruptible storage transactions as is contained in the interstate pipelines' semi-annual storage reports, except for (1) The amount of gas injected and withdrawn from storage by each individual customer, (2) storage revenues from each individual customer, and (3) the rate schedule authorizing the injection or withdrawal service.[8] Order No. 637 also retained the existing requirement that interstate pipelines post an index of their firm customers each quarter and expanded the information that must be included in that index.[9] Among other things, that index must include the rate schedule under which service under each firm contract is provided. However, Order No. 637 did not significantly modify the semi-annual storage reporting requirement for interstate pipelines.[10]

5. Order No. 637 did not modify any of the reporting requirements for section 311 and Hinshaw pipelines. However, in 2010, the Commission issued Order No. 735 to bring the transactional reporting requirements for section 311 pipelines and Hinshaw pipelines closer in line with the 18 CFR 284.13(b) posting requirements for interstate pipelines.[11] Before Order No. 735, section 284.126(b) required section 311 and Hinshaw pipelines to make an annual report of their transportation transactions excluding storage transactions. Thus, the semi-annual storage report required by section 284.126(c) was the only place where section 311 and Hinshaw pipelines reported their storage transactions. However, Order No. 735 made a number of changes in the former annual transportation reporting requirements at 18 CFR 284.126(b), including requiring that the report cover storage transactions and be filed quarterly. As amended by Order No. 735, section 284.126(b) requires that section 311 and Hinshaw pipelines file the quarterly reports of their transportation and storage transactions in a standardized electronic format, and requires that those reports be public. As revised in a December 2010 order on rehearing, Order No. 735–A, the new quarterly reports must contain the following information on each transportation and storage transaction, aggregated by contract:

i. The full legal name and identification number of the shipper receiving the service, including whether there is an affiliate relationship between the pipeline and the shipper;

ii. The type of service performed (*i.e.,* firm or interruptible transportation, storage, or other service);

iii. The rate charged under each contract, specifying the rate schedule/name of service and docket where the rates were approved. The report should separately state each rate

[3] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g,* Order No. 636–B, 61 FERC ¶ 61,272 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos.* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[4] In 1995 in Order No. 581, the Commission held that it would ''retain the semi-annual storage reports,'' and ''not exempt intrastate storage companies charging market-based rates from the requirement to file semi-annual storage reports,'' and made minor changes to the regulatory text. *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies,* Order No. 581, 60 FR 53019, 53049–51, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g,* Order No. 581–A, FERC Stats. & Regs. ¶ 31,032 (1996).

[5] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified,* Order No. 637–A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied,* Order No. 637–B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002), *order on remand,* 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC,* 428 F.3d 255 (D.C. Cir. 2005).

[6] The information to be posted includes the name of the shipper, the contract number (for firm service), the rate charged, the maximum rate, the duration (for firm service), the receipt and delivery points and zones covered, the quantity of natural gas covered, any special terms or details (such as any deviations from the tariff), and whether any affiliate relationship exists.

[7] 18 CFR 284.13(b).

[8] Because the semi-annual reporting periods are tied to the injection and withdrawal season, the time periods covered by that report do not correspond with the time periods covered by the interstate pipelines' reports.

[9] Order No. 637 moved the index of customers requirement from § 284.106(c) to § 284.13(c).

[10] Order No. 637 moved the interstate semi-annual storage reporting requirement from § 284.106(b) to § 284.13(e), and eliminated the requirement that interstate pipelines identify in their semi-annual storage reports any related docket numbers under which the interstate pipeline reported storage related injection/withdrawal transportation services.

[11] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 75 FR 29404, FERC Stats. & Regs. ¶ 31,310, 131 FERC ¶ 61,150, *order on reh'g,* Order No. 735–A, 75 FR 80685, 133 FERC ¶ 61,216 (2010).

component set forth in the contract (*i.e.,* reservation, usage, and any other charges);

iv. The primary receipt and delivery points covered by the contract, identified by the list of points that the pipeline has published with the Commission, which shall include the industry common code for each point where one has already been established;

v. The quantity of natural gas the shipper is entitled to transport, store, or deliver under each contract;

vi. The duration of the contract, specifying the beginning and (for firm contracts only) ending month and year of the current agreement;

vii. Total volumes transported, stored, injected, or withdrawn for the shipper; and

viii. Annual revenues received for each shipper, excluding revenues from storage services. The report should separately state revenues received under each component, and need only be reported every fourth quarter.

6. Thus, the revised quarterly reports require section 311 and Hinshaw pipelines to report the same types of information about firm and interruptible storage transactions as is contained in their semi-annual storage reports, except for storage revenues from each individual storage customer. In addition, because the semi-annual reporting periods are tied to the injection and withdrawal season, the time periods covered by each report do not correspond precisely. Order No. 735 did not modify the existing semi-annual storage reporting requirement for section 311 and Hinshaw pipelines in section 284.126(c) of the Commission's regulations in any way.

B. Notice of Inquiry

7. On rehearing of Order No. 735, several parties argued that the semi-annual storage reporting requirement for section 311 and Hinshaw pipelines at 18 CFR 284.126(c) should be eliminated. The parties argued that Order No. 735 has made the existing semi-annual storage reporting requirement for those pipelines duplicative. In response, in December 2010, the Commission issued a Notice of Inquiry (NOI) to consider whether and how the semi-annual storage reports required of both interstate and intrastate pipelines should be modified.

8. In the NOI, the Commission noted that the semi-annual storage reports overlapped significantly, but not entirely, with the new reporting requirement for intrastate pipelines. The NOI also noted that interstate pipelines, which are not affected by Order No. 735, file semi-annual storage reports as well. Accordingly, the Commission sought comment from all interested parties on the future of the semi-annual storage reports, in light of changes in the natural gas market since the Commission originally adopted the requirements and in light of recent improvements in the Commission's other reporting requirements.

C. Comments to the Notice of Inquiry

9. Twelve companies and associations, listed in the Appendix to this order, filed comments in response to the NOI. APGA states that it supports increased transparency, and specifically advocates that all pipelines should report revenues received from each storage customer. IOGA comments that it ''supports the maximum reasonable level of transparency,'' [12] and specifically recommends that (1) Form 549D be expanded to collect information on storage compressor fuel and lost and unaccounted-for gas, (2) interstate pipelines be required to show the rate components in each storage customer's contracts separately and also ''show recourse rates, the customers under such rates, and any discounted or negotiated rate customer separately,'' [13] and (3) cost-of-service storage providers be required to provide individual customer revenue.

10. No other parties advocate any expansion of the current reporting requirements. The other industry associations that filed comments, AGA, INGAA, NGSA, and TPA, are all in consensus that ''the Commission should focus its efforts on ensuring that the transparency requirements that are already in place for pipelines are effectively applied.'' [14] AGA, INGAA, and TPA, who generally represent the Hinshaw, interstate, and section 311 pipelines, respectively, urge the Commission to eliminate the semi-annual storage report. The remaining comments, all from storage companies (Enstor, Jefferson, Niska, Northern, Spectra, and DTE) were either partly opposed [15] or totally opposed [16] to continuing the existing semi-annual storage report. These commenters point out that, with respect to section 311 and Hinshaw pipelines, the existing semi-annual storage reports largely duplicate the new Order No. 735 quarterly reports, and with respect to interstate pipelines, semi-annual storage reports largely duplicate the section 284.13(b) Web site posting requirements. Therefore, they contend, the Commission should reduce or eliminate the semi-annual reporting requirements.

D. Executive Orders

11. On January 18, 2011, President Obama issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' (EO 13563) [17] and a presidential memorandum on regulatory flexibility, small business, and job creation (Regulatory Flexibility Memo).[18] The Commission, as an independent agency, is not subject to requirements of those presidential documents. Nonetheless, Chairman Wellinghoff directed Commission staff to perform an internal assessment of the effectiveness of Commission regulations. Subsequently, on July 11, 2011, the President issued an executive order asking independent regulatory agencies such as the Commission to take steps to reassess and streamline existing regulations.[19]

12. The Commission continually seeks to streamline its regulations in order to foster competitive markets, facilitate enhanced competition, and avoid imposing undue burdens on regulated entities or unnecessary costs on those entities or their customers. We note that the NOI in this proceeding was issued in December 2010, before issuance of the above-noted executive orders. In analyzing the comments received in response to the NOI, the Commission considered the goals of those Executive Orders. In this Notice of Proposed Rulemaking, the Commission is seeking to streamline our natural gas pipeline reporting requirements, as part of our continuing efforts to ensure Commission regulations are effective, timely, and up to date.

II. Discussion

13. In this Notice of Proposed Rulemaking, the Commission is proposing to delete both sections 284.13(e) and 284.126(c) from our regulations. The semi-annual storage reporting requirements in those regulations appear for the most part to duplicate other reporting requirements. To the extent those reports do include information not reported elsewhere, the burden of requiring pipelines to report that information appears to outweigh any benefits to the Commission or the public of requiring such information to continue to be reported on a regular basis. If such information is needed in a particular case, the Commission

[12] IOGA comments at 1.

[13] IOGA comments at 5.

[14] NGSA comments at 2.

[15] *E.g.,* Northern comments at 3 (''The report should not duplicate any information already provided publicly elsewhere.'')

[16] *E.g.,* Jefferson comments at 3 (''Jefferson Island believes that the Commission should eliminate the requirement for semi-annual storage reports.'')

[17] 76 FR 3,821 (Jan. 21, 2011).

[18] 76 FR 3,827 (Jan. 21, 2011).

[19] *Regulation and Independent Regulatory Agencies,* Exec. Order 13579, 76 FR 41587 (2011). The Commission is in the process of implementing this executive order.

retains the ability to seek such information through a data request to the pipeline in question.

A. Interstate Storage Reports

14. The Commission proposes eliminating 18 CFR 284.13(e), which requires semi-annual storage reports from interstate pipelines. That report is no longer necessary for shippers to make informed decisions about their capacity purchases, or for the Commission and shippers to monitor storage transactions to determine if market power is being exercised.

15. As described above, since Order No. 637 took effect over ten years ago, interstate pipelines have been required to post on their internet Web sites basic information, in downloadable file formats, on the terms of each transportation and storage contract with individual shippers, no later than the first nomination under a transaction. As detailed in 18 CFR 284.13(b), for every transaction, including capacity release transactions, the pipeline must post:

a. The full legal name, and identification number, of the shipper receiving service;

b. The rate charged;

c. The maximum rate;

d. The receipt and delivery points covered between which the shipper is entitled to transport gas at the rate charged, including the industry common code for each point, zone, or segment;

e. The quantity of gas the shipper is entitled to transport;

f. Special details pertaining to the agreement, including conditions applicable to a discounted transportation contract and all aspects in which the agreement deviates from the pipeline's tariff; and

g. Whether the shipper is affiliated with the pipeline.

In addition, for firm or capacity release contracts, the pipeline must post:

h. The contract number,

i. The duration of the contract, and

j. Whether the transaction involves a capacity release to an asset manager or a retail access program.[20]

16. As the Commission held in Order No. 637, the transactional information included in the interstate pipelines' daily postings of both transportation and storage contracts ''provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of the possible abuse of market power.'' [21] There appears no need to require interstate pipelines to continue filing an additional semi-annual report of their storage transactions containing much the same information Order No. 637 requires them to post on a daily basis to accomplish the goal of price transparency. The Commission does not require interstate pipelines to file any comparable additional report of their non-storage transportation transactions. Thus, since the issuance of Order No. 637 in 2000, industry participants have been relying primarily on the pipelines' daily postings required by section 284.13(b) to obtain information about individual non-storage transportation transactions.[22] There appears to be nothing unique about storage transactions which requires more stringent reporting requirements than for other transportation transactions in order to accomplish the goal of price transparency.

17. The Commission recognizes that the semi-annual storage reports do provide certain information that is not provided by the interstate pipelines' daily 18 CFR 284.13(b) Web site postings. This information includes:

i. the volume of gas actually injected into and/or withdrawn from storage for each customer during each complete storage injection and withdrawal period, and

ii. the total revenues received during the injection/withdrawal period from each storage customer, including any discounts.[23]

18. These two elements are not available to the public on a per-customer basis in any other report. However, the primary value of information about volumes of gas injected into and withdrawn from storage is to permit shippers to monitor the availability of storage capacity and whether shippers or the pipeline are withholding storage capacity.[24] Section 284.13(d) requires interstate pipelines to provide on their websites ''equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled, including * * * in storage fields, whether the capacity is available directly from the pipeline or through capacity release.'' [25] While these postings do not provide individual shipper injection and withdrawal information, they appear far more useful to shippers because they provide information about the availability of capacity at the time shippers are seeking to schedule capacity. By contrast, the semi-annual storage reports are not filed until up to 30 days after the completion of each injection and withdrawal season. The Commission also notes the commenters opposing elimination of the semi-annual storage reports have not explained how the after-the-fact customer-by-customer storage injection and withdrawal information significantly benefits the market. This suggests that the alternative reporting requirements do indeed meet the market's needs, and that the semi-annual storage report is duplicative.

19. On the per-customer revenue reporting requirement, which is not collected by other reporting requirements, only APGA and IOGA support its retention. APGA argues this requirement is useful to ''indicate whether * * * providers * * * should have their market-based authorization reviewed.'' [26] IOGA supports revenue reporting for cost-of-service interstate storage providers, but, in contrast to APGA, IOGA agrees that market-based storage providers need not have the same reporting obligations with respect to revenues.[27]

20. APGA has not explained how per-customer revenue information would significantly enhance the Commission and the parties' ability to determine whether a market-based interstate storage provider should have its authorization to charge market-based

[20] Section 284.13(c) also requires interstate pipelines to post at the beginning of each quarter an index of their firm transportation and storage customers, including information about the shippers' contractual entitlements and the duration of their contracts, but not the rates to be paid by the shipper.

[21] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,320.

[22] The Commission also requires interstate pipelines to file each of their negotiated rate transactions with the Commission for its approval, thereby providing other shippers notice and an opportunity to comment on each such transaction. *See Natural Gas Pipeline Negotiated Rate Policies and Practices,* 104 FERC ¶ 61,134, at P 31–34 (2003). Similarly, the Commission requires interstate pipelines to file all contracts which materially deviate from the form of service agreements in their tariffs. *See Southern Star Central,* 125 FERC ¶ 61,082 (2008); *Natural Gas Pipeline Negotiated Rate Policies and Practices,* 104 FERC ¶ 61,134 (2003), *order on rehearing and clarification,* 114 FERC ¶ 61,042 (2006); *Columbia Gas Transmission Corp.,* 97 FERC ¶ 61,221, at 62,010 (2001).

[23] The daily postings also do not include the rate schedule authorizing the injection or withdrawal service. However, section 284.13(c) requires that this information be included in the Index of Customers for firm shippers, and no commenter has expressed concern about not collecting this information for interruptible storage service.

[24] *See* Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,320.

[25] In addition, the Energy Information Administration publishes weekly underground storage data, including base gas, working gas in storage, and injection and withdrawal volumes by storage facility type and region. Available at *http://www.eia.gov/naturalgas/data.cfm#storage.*

[26] APGA comments at 4.

[27] IOGA comments at 5.

rates reviewed. The determination whether a storage provider lacks market power, thus justifying market-based rates, turns on the available competitive alternatives to the storage provider in its relevant markets, the market concentration in those markets, and the storage providers' market share.[28] In addition, section 284.504(b) of the Commission's regulations requires storage providers with market-based rates to notify the Commission within 10 days of acquiring knowledge of significant changes occurring in its market power status. Such changes are generally matters affecting the storage provider's market share, as opposed to the revenues the storage provider has collected from individual shippers. In any event, while the section 284.13(b) daily postings do not require interstate storage providers with market-based rates to post the revenues collected from each customer, that section does require such storage providers to post the per-unit rates they charge to each customer, thus enabling shippers to monitor the storage provider's actions for potentially discriminatory practices.

21. With regard to IOGA's concerns about the reporting of per-customer revenue information by cost-based interstate storage providers, the Commission similarly finds that IOGA has not shown that the benefit of reporting such per-customer revenue information in addition to the per-unit rate information already posted on a daily basis outweighs the burden of such a reporting requirement. Sections 260.1 and 260.2 of the Commission's regulations require cost-based interstate storage providers to file either a Form 2 or a Form 2–A each year containing extensive revenue and cost data. This enables the Commission and shippers to review whether the pipeline is significantly over-recovering its costs. The Commission also notes that neither party has shown that customers are using the revenue data already available through the existing semi-annual storage reports.

22. IOGA recommends that interstate pipelines also be required to show their recourse rates, the customers under such rates, and any discounted or negotiated rate separately. However, section 284.13(b)(1)(iv) and (b)(2)(iii) already requires interstate pipelines to post both the maximum rate applicable to each contract and the actual rate charged under that contract. Moreover, pursuant to standards adopted by NAESB, those postings must separately state the components of the contract rate, including surcharges.[29] In addition, section 284.13(c)(2)(vii) requires that the Index of Customers posted by the interstate pipeline indicate whether each firm shipper's rate is a negotiated rate.

23. Finally, the Commission notes that it retains its ability to obtain any of the above discussed information in response to individual filings under sections 4 and 5 of the Natural Gas Act, and through its investigative authority. No party, however, has provided comments explaining how storage customers would benefit from having this information from all pipelines on a generic basis rather than a case-by-case basis. Nor has any party provided comments explaining how this benefit would outweigh the filers' burden. Thus, the Commission proposes in this notice to eliminate 18 CFR 284.13(e), and does not propose to introduce any new reporting requirements for interstate storage facilities at this time.

B. Intrastate and Hinshaw Storage Reports

24. The Commission also proposes eliminating 18 CFR 284.126(c), which requires semi-annual storage reports from section 311 and Hinshaw pipelines for much the same reasons as the Commission proposes to eliminate the corresponding reporting requirement for interstate pipelines. In Order Nos. 735 and 735–A, the Commission specifically copied all the substantive elements of the semi-annual storage reports in developing the requirements for the new quarterly transportation for both transportation and storage transactions, except that the Commission did not require section 311 and Hinshaw storage providers to report the revenues collected from each storage customer. In addition, because the semi-annual reporting periods are tied to the injection and withdrawal season, the time periods covered by each report do not correspond precisely.

25. Accordingly, as numerous commenters have pointed out, for section 311 and Hinshaw pipelines, the semi-annual storage reports are now largely duplicative. As discussed in the preceding section, APGA and IOGA have both expressed concern about eliminating the requirement for pipelines to report per-customer storage revenues. In Order Nos. 735 and 735–A, the Commission considered requiring individual customer storage revenue in the quarterly reports, as IOGA and APGA request, but chose not to implement that requirement pending the present proceeding. As discussed in the preceding section, APGA argues this requirement is useful for purposes of determining whether a storage provider should have its market-based authorization reviewed; however, APGA has not explained how per-customer revenue information would significantly enhance the Commission's and the parties' ability to determine whether a market-based storage provider should have its authorization to charge market-based rates reviewed. IOGA supports requiring storage providers with cost-based rates to report per-customer revenues, but states it is more concerned with interstate storage providers than with section 311 or Hinshaw storage providers. In the present proceeding, no new evidence or arguments have come to light that compel us to require section 311 and Hinshaw storage providers to report per-customer storage revenue. The pipelines commenting in this proceeding have provided detailed arguments that providing the public with individual customer storage revenue is burdensome, while proponents of collecting this information have only offered basic statements of support.

26. IOGA recommends that the Form 549D be expanded to collect information on ''storage compressor fuel and lost and unaccounted-for gas * * * to better understand what is reasonable in the industry and as an alert to potential problems.'' [30] The Commission does collect this information for interstate pipelines on Form 2,[31] but does not currently collect it for section 311 and Hinshaw pipelines. Where section 311 and Hinshaw pipelines apply a separate charge in their rates, the Commission generally either requires the pipeline to establish a tracker and true-up mechanism in their statements of operating conditions (*e.g.,* for fuel and lost or unaccounted-for gas), or else the Commission reviews the charge as part of its periodic rate review every five years. In its regularly scheduled tracker filings, the pipeline bears the burden to demonstrate that its proposed updated reimbursement percentages are fair and equitable. This established method allows the Commission and customers to scrutinize fuel use on a case-by-case basis, taking into account the unique operational

[28] *See* 18 CFR 284.503(b) (adopted by Order No. 678, *Rate Regulation of Certain Natural Gas Storage Facilities,* 71 FR 36636, 115 FERC ¶ 61, 343 (2006)).

[29] NAESB WGQ Standards 5.4.20–5.4.22.

[30] IOGA at 4.

[31] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines* Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008) (Order No. 710); *order on reh'g and clarification,* Order No. 710–A, 123 FERC ¶ 61,278 (2008), Order No. 710–B, 76 FR 4516 (Jan. 26, 2011), 134 FERC ¶ 61,033 (2011), *order on reh'g,* Order No. 710–C 136 FERC ¶ 61,109 (2011).

characteristics of each storage facility. Accordingly, we decline to impose the added burden of collecting this information again on a generic basis in Form 549D.

27. Finally, no commenter has indicated that there is a continuing need for section 311 and Hinshaw transactional information to be reported by injection and withdrawal seasons, as opposed to on a quarterly basis.

28. Accordingly, the Commission proposes in this notice to eliminate 18 CFR 284.126(c), and does not propose to introduce any new reporting requirements for section 311 and Hinshaw storage facilities at this time.

III. Regulatory Requirements

A. Information Collection Statement

29. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.[32] Therefore, the Commission is providing notice of its proposed elimination of the information collections.[33] This proposed rule will be submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995.[34]

30. Under the Paperwork Reduction Act and OMB's implementing regulations, OMB clearance for information collections in current rules should be current and active. In separate Docket No. IC11–549–000, the Commission is requesting comments on the need for and burden related to the FERC–549 in order to ensure OMB approval continues while the Commission obtains comments and completes action in Docket No. RM11–4.[35]

31. The Commission is proposing to eliminate two reporting requirements and to remove the burden of those requirements from jurisdictional entities.

Information Collections:

Information collection (or part of) proposed for deletion in NOPR in RM11–4	Part of OMB control No.	Number of respondents (a)	Number of filings per respondent per year (b)	Burden hrs. per filing (c)	Annual burden hrs. per respondent (b × c)	Total annual burden hrs., proposed for deletion (a × b × c)
FERC–549, for the requirements in 18 CFR 284.13(e) ..	1902–0086	155	2	12	24	3720
FERC–537, for the requirements in 18 CFR 284.126(c)	1902–0060	50	2	27	54	2700
Grand Total	.....	205	.....	.....	.....	6420

Title: Semi-annual storage reporting requirements for Interstate and Intrastate Natural Gas Companies (currently codified in 18 CFR 284.13(e) and 18 CFR 284.126(c)).

Respondents: Interstate and Intrastate Natural Gas Companies.

32. *Internal review:* The Commission has reviewed the semi-annual storage reporting requirements for Interstate and Intrastate Natural Gas Companies that are currently codified in 18 CFR 284.13(e) and 18 CFR 284.126(c). The Commission has determined that the reports now proposed for elimination are largely duplicative of other reporting requirements.

33. Interested persons may obtain information on the reporting requirements proposed for deletion by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, Phone:* (202) 502–8663, *fax:* (202) 273–0873]. Comments on the requirements proposed for deletion in this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control Nos. 1902–0169 and 1902–0089 in your submission.

B. Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[36] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[37] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[38] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

C. Regulatory Flexibility Act [Analysis Or Certification]

35. The Regulatory Flexibility Act of 1980 (RFA) [39] generally requires a description and analysis of proposed rules and final rules that will have significant economic impact on a substantial number of small entities. Most of the natural gas companies regulated by the Commission do not fall within the RFA's definition of a small entity.[40] Any economic impact from the

[32] 5 CFR 1320.

[33] In the Notice of Inquiry in Docket No. RM11–4, the Commission referred to the FERC Form No. 549B reporting requirements (in 18 CFR 284.13(e), OMB Control No. 1902–0169) and the Form No. 549 reporting requirements (in 18 CFR 284.126(c), OMB Control No. 1902–0089). After further review, we have determined that the affected reporting requirements are included instead in FERC–549 (18 CFR 284.13(e), OMB Control No. 1902–0086) and in FERC–537 (18 CFR 284.126(c), OMB Control No. 1902–0060).

[34] 44 U.S.C. 3507(d).

[35] FERC–549 includes the Semi-Annual Storage Reports for Interstate Pipelines, in 18 CFR 284.13(e), and several other reporting requirements. The Notice in Docket IC11–549–000 was issued July 28, 2011 (76 FR 46783, August 3, 2011) as part of the OMB clearance process for the entire set of requirements under FERC–549. In Docket No. IC11–549–000, the Commission is seeking to continue the OMB clearance for the Semi-Annual Storage Reports for Interstate Pipelines in 18 CFR 284.13(e) until the resolution of the final rule in Docket No. RM11–4.

[36] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[37] 18 CFR 380.4.

[38] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27).

[39] 5 U.S.C. 601–612.

[40] *See* 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that

proposed rulemaking would be due to the elimination of unnecessary filing burdens and costs on small and large entities. Accordingly, the Commission certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

D. Comment Procedures

36. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 21, 2011. Comments must refer to Docket No. RM11–4–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

37. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

38. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

39. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

E. Document Availability

40. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

41. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

42. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–(866) 208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

§ 284.13 [Amended]

2. In § 284.13, remove paragraph (e) and paragraph (f) is redesignated as paragraph (e).

§ 284.126 [Amended]

3. In § 284.126, remove paragraph (c).

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

List of Commenters and Abbreviations

Commenter	Abbreviation
American Gas Association	AGA
American Public Gas Association	APGA
Enstor Operating Company, LLC	Enstor
Independent Oil and Gas Association of West Virginia	IOGA
Interstate Natural Gas Association of America	INGAA
Jefferson Island Storage & Hub, LLC	Jefferson
Natural Gas Supply Association	NGSA
Niska Gas Storage LLC	Niska
Northern Natural Gas Company	Northern
Spectra Energy Transmission, LLC & Spectra Energy Corp	Spectra
Texas Pipeline Association	TPA
Washington 10 Storage Corp. & Michigan Consolidated Gas Co	DTE

[FR Doc. 2011–24166 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed $7 million for the previous year).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0638; FRL–9470–4]

Approval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements for the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove submittals from the state of Texas pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Texas State Implementation Plan (SIP) meets the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS at 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), (M), and portions of (C), (D)(ii) and (J). We are proposing to find that the current Texas SIP does not meet the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS at 110(a)(2) for portions of (C), (D)(ii) and (J) because Texas has stated it cannot issue permits for and does not intend to regulate greenhouse gas (GHG) emissions. (See letter from Bryan W. Shaw and Greg Abbott to Lisa Jackson and Al Armendariz, dated August 2, 2010, in the docket for this rulemaking). EPA is also proposing to partially approve and partially disapprove SIP revisions submitted by the state of Texas for the purpose of addressing the ''good neighbor'' provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. These SIP revisions address the requirement that the Texas SIP have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is proposing to partially approve and partially disapprove the provisions of these SIP submissions that emissions from sources in Texas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, with regard to the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The partial disapproval is again because Texas cannot issue permits for emissions of GHG. For purposes of the 1997 8-hour ozone NAAQS, EPA is also proposing to approve SIP revisions that modify the Texas SIP for Prevention of Significant Deterioration (PSD) to include nitrogen oxides (NO_x) as an ozone precursor. This action is being taken under section 110 and part C of the Act.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0638, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://www.epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

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The Texas submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue,

Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–6521; fax number 214–665–7263; e-mail address *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background

A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare,'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally enforceable SIP. Another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that provision, each state's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in any other state. Such EPA-approved SIPs protect air quality primarily by addressing air pollution at its point of origin.

C. What is the background for this rulemaking?

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1, listing all 14 infrastructure elements, is included in Section D of this proposed rulemaking.[1] EPA refers to the requirements of section 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M) as the ''infrastructure'' SIPs. Additionally, EPA refers to the requirements of section 110(a)(2)(D)(i) as the ''interstate transport'' SIPs. EPA provided separate guidance to states on each type of SIP, infrastructure and interstate transport, and these actions are on separate tracks and timelines.

1. Section 110(a)(1) and (2) Infrastructure SIP Eelements

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted $PM_{2.5}$). The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$). The 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$. On October 17, 2006, we published revised standards for PM (71 FR 61144). For $PM_{2.5}$ the annual standard of 15 $\mu g/m^3$ was retained and the 24-hour standard was revised to 35 $\mu g/m^3$. For PM_{10} the annual standard was revoked and the 24-hour standard (150 $\mu g/m^3$) was retained. For more information on these standards please see the 1997 and 2006 **Federal Register** notices (62 FR 38856, 62 FR 38652, and 71 FR 61144).

Thus states were required to submit such SIPs for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS to EPA no later than June 2000.[2] However, intervening litigation over the 1997 8-hour ozone and $PM_{2.5}$ NAAQS created uncertainty about how to proceed and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an

[1] Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172 of the CAA. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

[2] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). The final reconsidered ozone NAAQS have yet to be promulgated. This rulemaking does not address the 2008 ozone standard.

extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency had received from each state as of January 7, 2008. With regard to the 1997 $PM_{2.5}$ NAAQS, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and $PM_{2.5}$ standards (73 FR 62902). In the March 27, 2008 action, we found that Texas had not made the necessary submission for ozone. This finding established a 24-month deadline for the promulgation by EPA of a Federal Implementation Plan (FIP) addressing these specific SIP elements for ozone, in accordance with section 110(c)(1) of the Act. On April 4, 2008 the Texas Commission on Environmental Quality (TCEQ) submitted a letter stating that Texas has addressed any potential infrastructure issues associated with the 1997 ozone and $PM_{2.5}$ NAAQS and fulfilled its infrastructure SIP obligations. An enclosure to the letter provided information on Texas SIP provisions supporting the 110(a)(2) elements for the 1997 ozone and $PM_{2.5}$ standards. Thus, in the October 22, 2008 action, we found that Texas had made a complete submission that provides for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 $PM_{2.5}$ NAAQS.

On October 2, 2007, we issued ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' Memorandum from William T. Harnett, Director, Air Quality Policy Division (AQPD), Office of Air Quality Planning and Standards (OAQPS).[3] On September 25, 2009, we issued ''Guidance on SIP Elements Required Under Sections 110(a)(l) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On November 23, 2009, the TCEQ submitted a letter to fulfill its infrastructure SIP obligations for the 2006 $PM_{2.5}$ NAAQS. An enclosure to the letter provided information on Texas SIP provisions supporting the 110(a)(2) elements for the 2006 $PM_{2.5}$ standards. The submittal became complete by operation of law.

Additional information: EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[4] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP submittals for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS submissions from Texas.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Texas.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the

[3] This and any other guidance documents referenced in this action are in the docket for this rulemaking.

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[8] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] See, e.g., Id., 70 FR 25162, at 63—65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. [10] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[14] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP submittals for Texas.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or

[10] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[11] Id., at page 2.

[12] Id., at attachment A, page 1.

[13] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on the infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

2. 110(a)(2)(D)(i) Interstate Transport SIP Elements

Section 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its ''Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 $PM_{2.5}$ standards. As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On May 1, 2008, we received a SIP revision from the State of Texas intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone and 1997 $PM_{2.5}$ standards. On November 23, 2009 we received a SIP revision [18] from the State intended to address the requirements of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS. In this rulemaking, we are addressing only the requirement that pertains to preventing sources in Texas from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states.[19] In its submission, Texas indicated that its current New Source Review (NSR) SIP is adequate to prevent such interference.

3. Revisions to the Texas PSD SIP

To meet the infrastructure requirements of section 110(a)(2)(C) of the Act for the 1997 ozone standard, the EPA believes the State must have updated its rules for PSD to treat NO_X as a precursor to ozone (70 FR 71612, November 29, 2005). PSD rules to treat NO_X as a precursor to ozone are also required to meet the third interstate transport prong, interference with provisions to prevent significant deterioration of air quality in other states.

On March 11, 2011, the TCEQ submitted two revisions to its NSR program to meet the requirements of the ''NSR Reform'' published on December 31, 2002 (67 FR 80186), the 1997 8-hour ozone NAAQS, and the revocation of the 1-hour ozone NAAQS. On May 26, 2011, the TCEQ submitted a correction to the March 2011 revisions. The March 11, and May 26, 2011 submissions include, but are not limited to, revisions that provide for NO_X to be treated as a precursor to ozone formation in the state's preconstruction permitting program for PSD, found in Title 30 of the Texas Administrative Code, Chapter 116, Section 12 (denoted 30 TAC 116.12).[20] We are proposing action on a limited number of revisions to the PSD program that implement the provisions for NO_X as a precursor. At this time, EPA is not taking action on other portions of the NSR SIP revisions submitted by Texas together with the PSD revision. EPA intends to act on the other revisions submitted together with the PSD program revisions at a later time.

4. Greenhouse Gas (GHG) Component of PSD Programs

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, impact today's proposed action on the Texas SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[21] the ''Johnson Memo Reconsideration,'' [22] the ''Light-Duty Vehicle Rule,'' [23] and the ''Tailoring Rule.'' [24] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] This is the same submittal that addresses the 110(a)(2) infrastructure SIP elements for the 2006 $PM_{2.5}$ NAAQS.

[19] EPA published a finding on April 25, 2005 (70 FR 21147) that all states had failed to submit SIPs addressing interstate transport for the 1997 ozone and $PM_{2.5}$ standards, as required by section 110(a)(2)(D)(i). EPA proposed a FIP on August 2, 2010 (75 FR 45210) to limit emissions of ozone precursors and PM that contribute significantly to nonattainment of the 1997 ozone and 1997 and 2006 PM NAAQS in other states and interfere with maintenance of these three NAAQS in other states. EPA finalized the FIP on July 6, 2011; known as the Cross-State Air Pollution Rule, it requires that Texas (and 26 other states in the eastern half of the United States) must significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. See 76 FR 48208 (published August 8, 2011) and *http://www.epa.gov/crossstaterule.*

[20] The Texas Administrative Code (TAC) is a compilation of all state agency rules in Texas. Each title represents a subject category and related agencies are assigned to the appropriate title; Title 30 is environmental quality and contains the TCEQ rules.

[21] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[22] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[23] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[24] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

January 2, 2011, subjected GHGs emitted from stationary sources to permitting requirements for PSD; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

However, the approved Texas SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Texas. On this basis, on December 30, 2010, EPA corrected its previous full approval of Texas's PSD program to be a partial approval and partial disapproval (75 FR 82430). Further, as required following the partial disapproval, EPA in this same action promulgated a FIP to establish a PSD permitting program in Texas for GHG-emitting sources (75 FR 82430). EPA took these actions through interim final rulemaking, effective upon publication, to ensure the availability of a permitting authority—EPA—in Texas for GHG-emitting sources when they became subject to PSD on January 2, 2011. The interim FIP allowed those sources to proceed with plans to construct or expand. The interim rule expired on April 30, 2011 and is replaced by the final rule (76 FR 25178, May 3, 2011).

As we discuss further in this proposal and in the TSD, Texas currently does not have adequate legal authority to address the new GHG PSD permitting requirements at or above the levels of emissions set in the Tailoring Rule, or at other appropriate levels, and thus, the Texas SIP does not satisfy portions of elements within the infrastructure and transport requirements. EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

5. $PM_{2.5}$ SIP Revisions

To implement section 110(a)(2)(C) for the 1997 $PM_{2.5}$ standard, states must provide revisions to implement the $PM_{2.5}$ standard due May 16, 2011 under 73 FR 28321.[25] On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the $PM_{2.5}$ NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

D. What elements are required under Section 110(a)(2)?

Pursuant to the October 2, 2007, EPA guidance for addressing the SIP infrastructure elements required under section 110(a)(2) for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, there are 14 essential components that must be in the SIP. These are listed in Table 1 below.

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPS

Clean Air Act citation	Brief description
Section 110(a)(2)(A)	Enforceable emission limits and other control measures.
Section 110(a)(2)(B)	Ambient air quality monitoring/data system.
Section 110(a)(2)(C)	Program for enforcement of control measures.
Section 110(a)(2)(D)	International and interstate transport.
Section 110(a)(2)(E)	Adequate resources.
Section 110(a)(2)(F)	Stationary source monitoring system.
Section 110(a)(2)(G)	Emergency power.
Section 110(a)(2)(H)	Future SIP revisions.
Section 110(a)(2)(J)[26]	Consultation with government officials.
Section 110(a)(2)(J)	Public notification.
Section 110(a)(2)(J)	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K)	Air quality modeling/submission of such data.
Section 110(a)(2)(L)	Permitting fees.
Section 110(a)(2)(M)	Consultation/participation by affected local entities.

II. What action is EPA proposing?

A. Section 110(a)(1) and (2)

The EPA is proposing to partially approve and partially disapprove the Texas SIP submittals that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP specified in section 110(a)(2) of the Act. The Texas infrastructure SIP submittals do not include revisions to the SIP, but document how the current Texas SIP already includes the required infrastructure elements. In today's action, we are proposing to determine and approve that the following section 110(a)(2) elements are contained in the current Texas SIP and provide the infrastructure for implementing the 1997 ozone and 1997 and 2006 $PM_{2.5}$ standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures, except for the portion that addresses GHGs (section 110(a)(2)(C)); international and interstate pollution abatement, except for the portion that addresses GHGs (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection, except for the PSD portion that addresses GHGs (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)). In addition, we are proposing to determine that portions of three section 110(a)(2) elements are

[25] The **Federal Register** action at 73 FR 28321 was published May 16, 2008.

[26] Section 110(a)(2)(I) is omitted from the list. Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

not contained in the current Texas SIP and thus do not provide the infrastructure for implementing the 1997 ozone and 1997 and 2006 $PM_{2.5}$ standards. We are proposing to disapprove the GHG portion of the element addressing the program for enforcement of control measures (section 110(a)(2)(C)); the GHG portion of the element addressing international and interstate pollution abatement (section 110(a)(2)(D)(ii)); and the GHG portion of the element addressing PSD (section 110(a)(2)(J)).

We are also proposing to approve portions of the May 1, 2008 (the Texas Interstate Transport SIP) and the November 23, 2009 submissions from Texas, demonstrating that Texas has adequately addressed one of the four required elements (or prongs) of the CAA section 110(a)(2)(D)(i), the element that requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.[27] We are proposing to determine that emissions from sources in Texas do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 8-hour ozone NAAQS or the 1997 and 2006 $PM_{2.5}$ NAAQS (CAA section 110(a)(2)(D)(i)(II)), except for the portion that addresses GHGs. We are proposing to disapprove the portion of the Texas Interstate Transport SIP element that prohibits GHG emissions from sources within Texas from interfering with measures required to prevent significant deterioration of air quality in any other state (section 110(a)(2)(D)(i)). As noted previously in this action, we are not addressing the three remaining prongs of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, that pertain to prohibiting air emissions within Texas from: (1) Significantly contributing to nonattainment in any other state, (2) interfering with maintenance of the relevant NAAQS in any other state and (3) interfering with measures required to protect visibility in any other state. We will take action on the three remaining prongs of section 110(a)(2)(D)(i) for these three NAAQS, which addresses interstate transport, in separate rulemakings (see footnote 19).

In conjunction with our proposed finding that the Texas SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements listed above for the three NAAQS, we are also proposing to approve severable[28] portions of the SIP revisions submitted by the TCEQ to EPA on March 11, 2011 and a correction submitted on May 26, 2011. These portions contain rule revisions by TCEQ to: (1) Add PSD to the title of the section, such that the section will address Nonattainment and PSD Review Definitions; (2) add the definition of Federally Regulated NSR Pollutant, which identifies volatile organic compounds (VOCs) and NO_X as precursors in all attainment and unclassifiable areas; and (3) revise the section title, so the definitions for *Major stationary source, Major modification,* and the table identifying the *Significant Level* for emission thresholds for major sources and major modifications will apply under PSD. These revisions addressing PSD also specify that a major source that is major for VOCs or NO_X shall be considered major for ozone and provide that the significant emission threshold for ozone (identified as VOC, NO_X) is 40 tons per year (tpy). The actions proposed herein are described in greater detail in Section III of this rulemaking and in the TSD. In this proposal, EPA is not taking action on other submitted NSR revisions; EPA intends to act on the other NSR SIP revisions at a later date.

B. Why is EPA proposing a partial approval, partial disapproval?

Section 110(k)(3) of the Act states that EPA may partially approve and partially disapprove a SIP submittal if it finds that only a portion of the submittal meets the requirements of the Act. We believe that the Texas SIP meets a majority of the requirements of section 110(a)(2) of the Act and that specific portions of three elements of section 110(a)(2) are not met.[29] Because the portions proposed for disapproval are independent from those proposed for approval, we believe that the Texas Infrastructure SIP can be partially approved and partially disapproved.

C. What are the implications of a partial approval, partial disapproval?

Enforcement of a state regulation (or rule) before and after it is incorporated into the federally approved SIP is primarily a state responsibility. However, after the rule is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Act. If a state rule is disapproved, it is not incorporated into the federally approved SIP, and is not enforceable by EPA or by citizens under section 304. Disapproval of any of the Texas infrastructure SIP elements would not trigger sanctions under section 179 of the Act, because the submittals are not required by part D of Title I of the Act and are not required by a call for a SIP revision under section 110(k)(5) of the Act. However, as noted earlier, EPA published a finding on March 27, 2008 (73 FR 16205) regarding whether or not states had made the section 110(a)(2) submissions for ozone and found that Texas had failed to make a complete submission. This finding started a 24-month deadline for promulgation by EPA of a FIP. This FIP obligation will be met for the 110(a)(2) elements that EPA has proposed approval, if, after considering public comment, EPA finalizes the approval. For the proposed disapproved infrastructure elements (the portions of section 110(a)(2)(C), section 110(a)(2)(D)(ii), and section 110(a)(2)(J) described in section III of this action), EPA remains obligated to implement a FIP if disapproval is finalized. EPA's disapproval here, however, does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178). As noted earlier, we will take action on the remaining three prongs of section 110(a)(2)(D)(i), which addresses interstate transport, in a separate rulemaking.

D. SIP Revisions to 30 TAC 101.1

As described elsewhere in this rulemaking, EPA is acting on revisions to 30 TAC 116.12 submitted on March 11, 2011. One of the revisions upon which we are taking action, i.e., Table I under the definition for Major modification at 30 TAC 116.12(18)(A), makes a reference to 30 TAC 101.1(70).[30] Since the cross-referenced paragraphs must correlate, we had to broaden our review to include revisions to several paragraphs in 30 TAC 101.1. Thus, EPA is proposing to approve the following portions of the March 11, 2011 SIP revisions: (1) The non-

[27] As noted in Section I.C.2 of this action, the May 1, 2008 submittal addresses the 1997 ozone and $PM_{2.5}$ standards; it does not address the 2006 $PM_{2.5}$ standard. The November 23, 2009 submittal addresses the 110(a)(2) infrastructure and interstate transport elements for the 2006 $PM_{2.5}$ NAAQS.

[28] By severable, we mean that the portions of the SIP revision that address NO_X as a precursor can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing NO_X as a precursor.

[29] The three elements refer to the infrastructure and interstate transport SIP elements discussed in section II above.

[30] Footnote 1 in Table I under 30 TAC 116.12(18) reads: Texas nonattainment area designations as defined in 30 TAC 101.1(70) of this title.

substantive revisions to the definition of *Nonattainment area* at 30 TAC 101.1(70) to reflect the current status of ozone nonattainment areas in Texas as identified in 40 CFR part 81 and make the definition consistent with changes proposed for 30 TAC 116.12(18)(A); (2) the non-substantive revisions to the definition of *Reportable quantity* at 30 TAC 101.1(88) to make the definition consistent with changes proposed for 30 TAC 101.1(70); and (3) the non-substantive revisions to the definition of *Maintenance area* at 30 TAC 101.1(54) to reflect the current status of maintenance areas in Texas as identified in 40 CFR 81. We are also proposing to approve non-substantive revisions to 30 TAC 101.1(115) submitted on May 26, 2011, which make the definition of *Volatile organic compound* consistent with the EPA's definition for VOCs, as amended January 21, 2009 (74 FR 3437) [31] and codified at 40 CFR 51.100(s)(1).

III. How has Texas addressed the elements of Section 110(a)(2)?

The Texas submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Texas infrastructure and transport SIP elements in the TSD.

Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A): Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ standards. Those regulations are due later as part of attainment demonstrations. Additionally, as explained earlier (see footnote 1), EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Texas has included some SIP provisions originally submitted in response to part D in its submission documenting its compliance with the infrastructure requirements of section 110(a)(1) and (2). Texas has continually updated the elements of its SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D. For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the state has met the basic infrastructure requirements under section 110(a)(2).

The Texas Clean Air Act (TCAA), which named the Texas Air Control Board (TACB) as the state's air pollution control agency, provided enforcement authority to the TACB. In its approval of the Texas 1972 SIP, EPA approved the State's Section V of the SIP Narrative as showing that the Board had the legal authority to implement and enforce the SIP (37 FR 10842, 10895, May 31, 1972). Later, in 1981 EPA approved a replacement of Section V into the SIP as support showing the Board continued to have the legal authority to implement and enforce the SIP.[32] The State has continued to submit updates in its SIP Narratives concerning its legal authorities.[33] Pursuant to Acts 1989, 71st Legislature, chapter 678, Section 1, effective September 1, 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code (THSC). The TACB was abolished in 1993 and its powers, duties, responsibilities and functions were transferred to the Texas Natural Resource Conservation Commission, which was renamed in 2001, to the Texas Commission on Environmental Quality (TCEQ). The Texas Water Code (TWC) under Section 5.013 provides the TCEQ with authority over the responsibilities assigned by the THSC (which may be cited as the TCAA). The THSC under Section 382.017 authorizes the TCEQ to adopt rules for the control of air pollution.

The TCEQ has promulgated rules to limit and control emissions of among other things, PM, sulfur compounds (including sulfur dioxide or SO_2), nitrogen compounds (including NO_X), and VOCs.[34] These rules include emission limits, control measures, programs for banking and trading of emissions, emission reduction incentive programs, permits, fees, and compliance schedules and are found within 30 TAC, chapters 101, 106, and 111–118.

EPA promulgated a partial approval and partial disapproval of the Texas provisions regarding excess emissions occurring during startup, shutdown, and malfunction (SSM) of operations at a facility on November 10, 2010 (75 FR 68989).[35] In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states may have SSM SIP provisions which are contrary to the Act and inconsistent with existing EPA guidance,[36] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, this proposed action does not include a review of and also does not propose to take any action to approve or disapprove any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of SIPs have such provisions which are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987) [37] and the Agency plans to take action in the future to address such SIP regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP which is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable rules at 30 TAC, listed above, is provided in the TSD. The Texas SIP contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is proposing to determine that the Texas SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to

[31] The state's rule at 30 TAC 101.1(115) cites 74 FR 3441. EPA identifies a **Federal Register** action by the first page of the rulemaking, thus our reference to 74 FR 3437.

[32] See 46 FR 61124, published December 15, 1981.

[33] For examples, see the Houston Attainment Plan (71 FR 52670, September 6, 2006), the Dallas/Fort Worth Attainment Plan (74 FR 1903, January 14, 2009), and the Beaumont/Port Arthur Redesignation (75 FR 64675, October 20, 2010).

[34] NO_X and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO_X and SO_2 precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

[35] EPA approved the provisions that clarify existing reporting requirements; clarify that the rule does not allow exemptions from compliance with Federal requirements, including any requirements in the federally-approved SIP; provide for an affirmative defense from unplanned startup, shutdown, or maintenance (*i.e.,* malfunctions), consistent with the CAA as interpreted by EPA; and provide for a corrective action plan and written notification concerning excessive emission events. EPA disapproved the provisions that provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities and related provisions that contain non-severable cross-references to the affirmative defense provision. For more information, see 75 FR 68989.

[36] ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

[37] The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Ambient air quality monitoring/data analysis system, pursuant to section 110(a)(2)(B): Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The TCEQ operates and maintains a state-wide network of air quality monitors; data are collected, results are quality assured and the data are submitted to EPA's Air Quality System [38] on a regular basis. The Texas Statewide Air Quality Surveillance Network was approved by EPA (37 FR 10842, 10895) and revised on March 7, 1978 (43 FR 9275). Texas's air quality surveillance network consists of stations that measure ambient concentrations of the criteria pollutants, including ozone [39] and $PM_{2.5}$. EPA also approved Texas's enhanced ambient air quality monitoring network of Photochemical Assessment Monitoring Stations (PAMS) on October 4, 1994 (59 FR 50502).[40] The TCEQ Web site provides the ozone and $PM_{2.5}$ monitor locations and current and historical data, including ozone design values for current [41] and past trienniums. On June 30, 2010, TCEQ submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that addresses each of the criteria pollutants, including 8-hour ozone and $PM_{2.5}$ and thus allows the state to measure its air quality for compliance with the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS; EPA approved the AAMNP on December 23, 2010.[42]

In summary, Texas meets the requirements to establish, operate, and maintain an ambient air monitoring network, collect and analyze the monitoring data, and make the data available to EPA upon request. EPA is proposing to find that the current Texas SIP meets the requirements of section 110(a)(2)(B) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

*Program for enforcement of control measures and regulation of the modification and construction of stationary sources * * * including a permit program, pursuant to section 110(a)(2)(C):* The THSC and the TWC, as stated previously, provide the state with enforcement authority for rules adopted under the TCAA. The rules in 30 TAC 101 provide for enforcement of emissions inventories. The rules in 30 TAC 106, 112, 115 and 117 provide for allowable emission rates, and control, monitoring and testing requirements; they clarify the boundaries beyond which regulated entities in Texas can expect enforcement action.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required by Parts C and D, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. As discussed previously, we are not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these three NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

PSD programs apply in areas that are meeting the NAAQS or are unclassifiable, referred to as areas in attainment. PSD applies to new major sources and major modifications at existing sources. The Texas PSD SIP (found at 30 TAC 116, Division 6) was initially approved on June 24, 1992 (57 FR 28093). Subsequent revisions to the Texas PSD program were approved into the SIP on September 9, 1994 (59 FR 46556); August 19, 1997 (62 FR 44083); September 18, 2002 (67 FR 58697); July 22, 2004 (69 FR 43752); March 20, 2009 (74 FR 11851); and September 15, 2010 (75 FR 55978). As noted earlier in this proposal, part D of the Act addresses nonattainment area provisions, which are not governed by the three-year submission deadline for section 110(a)(2) and thus will not be addressed in this action.[43]

EPA's PSD permitting regulations are found at 40 CFR 51.166 and 40 CFR 52.21. PSD requirements for SIPs are found in 40 CFR 51.166 and 40 CFR Part 51 Appendix W. Similar PSD requirements for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. To meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_X as a precursor for ozone (70 FR 71612, November 29, 2005). On March 11, 2011, Texas submitted the provisions for NO_X as a precursor consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612) as part of its revisions to address NSR Reform. EPA proposes to approve the following portions of the March 11, 2011 SIP revisions to 30 TAC 116.12: (1) The non-substantive revision to the title of 30 TAC 116.12, changing the title from Nonattainment Review Definitions to Nonattainment *and Prevention of Significant Deterioration* Review Definitions; (2) the non-substantive and administrative revisions to the introductory paragraph at 30 TAC 116.12; (3) the substantive revisions that add *Federally Regulated NSR pollutant* as a new definition [44] at 30 TAC 116.12(14); (4) the non-substantive changes to rename and renumber the definition of Major facility/stationary source at 30 TAC 116.12(10) to *Major stationary source* at 30 TAC 116.12(17) and provide minor editorial revisions; (5) the substantive changes to the definition of Major stationary source at 30 TAC 116.12(17) to make the definition consistent with 40 CFR 51.166(b)(1); (6) the non-substantive changes to renumber the definition of Major modification at 30 TAC 116.12(11) to 30 TAC 116.12(18) and provide minor editorial revisions to Table I (Major Source/Major Modification Emission Thresholds), including non-substantive edits to footnotes 1–3 in Table I; (7) the substantive changes to the definition of Major modification at 30 TAC 116.12(18) to make the definition consistent with 40 CFR 51.166(b)(1) and (2); and (8) the substantive changes that remove footnotes 6 and 7 from Table I under 30 TAC 116.12(18)(A) to make the Table consistent with the *South Coast* decision (*South Coast Air Quality Management District, et al.,* v. *EPA,* 472

[38] The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

[39] With the exception of maintenance and malfunctions, the ozone monitors are constantly running and recording one-hour ozone averages. Texas submits the hourly data into AQS, where the 8-hour averages are computed. Texas also computes the 8-hour averages and posts the data at *http://www.tceq.state.tx.us/cgi-bin/compliance/monops/8hr_monthly.pl.*

[40] The PAMS network undergoes review and approval by EPA whenever there are significant changes to the network. A copy of the most recent approval, dated October 30, 2009, is in the docket for this rulemaking.

[41] The current design values reflect the 2008–2010 ozone season data.

[42] A copy of our approval letter is in the docket for this rulemaking. At the time of this writing, the review of the 2011 AAMNP has not been completed.

[43] See footnote 1.

[44] Texas did not address GHGs under the definition for Federally Regulated NSR pollutant. See discussion in section I.C.4 of this action.

F.3d 882 (DC Cir. 2006)).[45] As noted earlier, 30 TAC 116.12 previously addressed Nonattainment Review Definitions and identified NO_X as a precursor, but only applied to nonattainment NSR. By revising the title of this subchapter to include Nonattainment *and Prevention of Significant Deterioration* Review Definitions, the submitted revisions provide that NO_X is an ozone precursor for PSD and thus address that aspect of the requirements at 110(a)(2)(C) for the 1997 ozone standard.

The March 11, 2011 revisions to the definitions in the Texas rules for ''major modification'' and ''major stationary source'' meet the Federal definition in 40 CFR 51.166(b)(1) to identify a major source of NO_X as a major source for ozone. The March 11, 2011 revisions to the Texas rules also meet the Federal definition in 40 CFR 51.166(b)(49) for inclusion of NO_X as an ozone precursor. The March 11, 2011 revisions to the emission rate for ozone in 30 TAC 116.12(18) under Table I for Major Source/Major Modification Emission Thresholds, under the column for Significant Level in the Texas rules meet the Federal requirements in 40 CFR 51.166(b)(23)(i), which establishes these emission thresholds as 40 tpy. Because of their consistency with 40 CFR part 51, which provides the requirements for an approvable PSD program, EPA believes these revisions are consistent with 110(l) and the revisions would not interfere with any applicable CAA requirement concerning attainment of any applicable standard. Therefore, EPA is proposing to approve these revisions as meeting the requirements of section 110 of the Act and 40 CFR 51.166 for establishing NO_X emissions as a precursor for ozone.

The revisions to 30 TAC 116.12 and EPA's evaluation of these revisions are discussed in greater detail in the TSD. The provisions that address NO_X as a precursor are severable from the March 11, 2011 submittal and EPA is proposing to approve these provisions in today's action.

Permits that are major for Ozone: EPA's PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m)). The Texas rules at 30 TAC 116.160–.163 meet these requirements for PSD and were approved into the SIP on June 24, 1992 (57 FR 28093), as revised September 9, 1994 (59 FR 46556), September 27, 1995 (60 FR 49781), August 19, 1997 (62 FR 44083), July 22, 2004 (69 FR 43752); March 20, 2009 (74 FR 11851); and September 15, 2010 (75 FR 55978). The Texas PSD SIP meets these requirements by incorporating by reference 40 CFR 52.21(k) and (m) and including the following rule at 116.160(d) that EPA found meets 40 CFR 51.166(l): ''All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.'' The Texas rule does not name 40 CFR part 51, Appendix W, as 40 CFR 51.166(l) does, but Appendix W codifies the *Guideline on Air Quality Models,* which is named in the Texas rule, and Section 1.0.a of Appendix W states, in part: ''The *Guideline* recommends air quality modeling techniques that should be applied to [SIP] revisions for existing sources and to [NSR], including [PSD]. Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, state and local agencies and by industry. [* * *] The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.''

Appendix W Section 5.2.1 includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c: ''Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users[46] should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).'' Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method ''depends on the nature of the source and its emissions.'' (Appendix W Section 5.2.1.c.) Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including sections 3.0.b and c, 3.2.2 and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation. Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state and local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.[47] We note in other recent EPA actions, some have raised concerns that the lack of a preferred model for ozone has resulted in the belief that no modeling is required or use of inappropriate models is allowed.[48] This underscores the need for consultation with the EPA Regional office. EPA agrees that states should not be using inappropriate analytical tools in this context. The use of ''Scheffe Tables'' and other particular screening techniques, which involve ratios of NO_X to VOC that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source's ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe states should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis

[45] See the TSD for more detail or the action at 75 FR 56424 for a full explanation.

[46] EPA notes ''model users'', as referenced in Appendix W Section 5.2.1.c, include state and local permitting authorities, and permitting applicants and their representatives.

[47] EPA has received a national administrative petition entitled, ''Sierra Club's Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and $PM_{2.5}$ (July 28, 2010).'' The petition is in the docket for this rulemaking.

[48] See the November 26, 2010 final action at 75 FR 72695, pages 72697–72699, ''Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure.''

to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact of a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions.

The Texas SIP satisfies the Federal PSD SIP modeling requirements for sources that are major for ozone because the state rules approved by EPA into the SIP include the Federal requirements. EPA has previously commented to TCEQ on PSD permits regarding concerns with technical inadequacies in ozone impact analyses and/or a lack of consultation with the Regional Office on the development of an adequate ozone modeling protocol for single source ozone impacts.[49] EPA may address implementation of the SIP through separate action and is not precluded by approval of the infrastructure SIP. EPA reaffirms that the assessment of ozone impacts should be done in consultation with the EPA Regional Office.

$PM_{2.5}$ permitting: To implement section 110(a)(2)(C) for the 1997 $PM_{2.5}$ standard, states must provide revisions to implement the $PM_{2.5}$ standard due May 16, 2011 under 73 FR 28321.[50] On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the $PM_{2.5}$ NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

Minor Source Permitting: Section 110(a)(2)(C) creates ''a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved'' (70 FR 71612, 71677). EPA provides states with a ''broad degree of discretion'' in implementing their minor NSR programs (71 FR 48696, 48700, August 21, 2006). The ''considerably less detailed'' regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. EPA has determined that the Texas minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors and PM. The Texas minor source permitting requirements are contained at 30 TAC 116 (Subchapter B, Division 1). In its initial SIP approved by EPA on May 31, 1972 (37 FR 10842, 10895), Texas provided for review of new sources and modification of existing sources and for preventing construction or modification if it would result in violations of applicable portions of a control strategy or interfere with attainment or maintenance of the NAAQS, without distinguishing between minor and major sources. Upon EPA's conditional approval of the Texas nonattainment NSR (NNSR) requirements for major sources and major modifications in nonattainment areas, March 25, 1980 (45 FR 19231), the Texas SIP continued to address minor sources and minor modifications. There have been numerous revisions approved for the Texas Minor NSR SIP since 1980. Among many others, they include August 13, 1982 (47 FR 35193); September 18, 2002 (67 FR 58697); November 14, 2003 (68 FR 64543); August 28, 2007 (72 FR 49198); March 8, 2010 (75 FR 10416); and April 2, 2010 (75 FR 16671).

In this action, EPA is proposing to approve the Texas infrastructure SIP for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the general requirement of section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program in this action; we are not evaluating this program for consistency with EPA's regulations governing minor NSR herein. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements. As noted earlier, on March 11, 2011, the TCEQ submitted revisions to their NSR program to meet the requirements of the NSR Reform. We are acting on a limited portion of that submittal, as described earlier in this discussion of 110(a)(2)(C) and interstate transport[51] and in Section I.C.3 of this action. EPA will act on the remainder of the March 11, 2011 SIP submittals through separate rulemakings.

As noted in Section I.C.4 of this proposal, Texas currently does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions at or above the emissions thresholds established in the Tailoring Rule, or at other appropriate levels, and thus the Texas SIP does not satisfy this portion of section 110(a)(2)(C). We are proposing to disapprove the Texas SIP for failing to meet the infrastructure requirements for the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS with respect to the GHG requirement of section 110(a)(2)(C). EPA is proposing to find that the Texas SIP meets the PSD requirement of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(C) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the PSD requirement of section 110(a)(2)(C) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. However, EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

Interstate transport, pursuant to section 110(a)(2)(D): Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to

[49] See letter from Carl E. Edlund to Richard Hyde, dated February 10, 2010 and letter from Lawrence E. Starfield to Mark Vickery, dated January 24, 2011, in the docket for this rulemaking.

[50] The **Federal Register** action at 73 FR 28321 was published May 16, 2008.

[51] See also the discussion on interstate transport under section 110(a)(2)(D)(i) in this rulemaking.

include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

PSD and interstate transport, pursuant to section 110(a)(2)(D)(i):

As previously described, one of the four elements or prongs in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) on which EPA is proposing approval in this action. EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent significant deterioration of air quality in accordance with section 110(a)(2)(D)(i)(II). EPA believes that Texas's May 1, 2008 submission is consistent with the 2006 Guidance, when considered in conjunction with the State's PSD program and other PSD program revisions that EPA is proposing to approve in this action. The submittal states that all major sources in Texas are subject to PSD and nonattainment NSR permitting programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the State's PSD program is in the SIP (57 FR 28093, 62 FR 44083, 67 FR 58697, 69 FR 43752, 74 FR 11851 and 75 FR 55978). Please see the TSD and our discussion of section 110(a)(2)(C) in this rulemaking for additional information.

Consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612), the State submitted SIP revisions to modify its PSD provisions to address NO_X as an ozone precursor. These revisions have been discussed previously. EPA believes that the PSD revision for the 1997 8-hour ozone NAAQS that makes NOx a precursor for ozone for PSD purposes, taken together with the PSD SIP and the interstate transport SIP, satisfies the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, i.e., there will be no interference with any other state's required PSD measures.

As discussed previously in our analysis of section 110(a)(2)(C) for this rulemaking, EPA's PSD regulations also require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m)). Our affirmation that the Texas SIP addresses the Federal PSD modeling requirements is discussed in more detail under section 110(a)(2)(C) for this rulemaking.

For the 1997 $PM_{2.5}$ NAAQS, Texas stated in its section 110(a)(2)(D)(i) submission that its NSR program is being implemented in accordance with EPA's interim guidance regarding the use of PM_{10} as a surrogate for $PM_{2.5}$. Furthermore, as indicated earlier, on April 20, 2011 the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the 1997 $PM_{2.5}$ NAAQS. These revisions became effective and enforceable by the state on May 12, 2011 and the state submitted these revisions to EPA on May 19, 2011 for approval as a SIP revision. They effectively supersede the interim guidance allowing the use of PM_{10} as a surrogate for $PM_{2.5}$. Instead, as announced in EPA's May 16, 2008 rulemaking, the 1997 PM_{10} Surrogate Policy may not be used for any state PSD permits after the 3 years allowed for SIP development (ending May 16, 2011).[52] With the end of the 1997 PM_{10} Surrogate Policy in SIP-approved states on May 16, 2011, and the repeal of the grandfather provision in this final action, the 1997 PM_{10} Surrogate Policy may only be relied on as specified in the May 18, 2011 rulemaking (see 76 FR 28646) for any pending or future applications.

EPA is proposing to find that the Texas SIP meets the PSD requirement of section 110(a)(2)(D)(i) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(D)(i) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the PSD requirement of section 110(a)(2)(D)(i) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. We will act on the remaining three prongs regarding interstate transport, per section 110(a)(2)(D)(i) of the Act in a separate rulemaking.

EPA is not proposing to approve the PSD program in full because Texas does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions pursuant to section 110(a)(2)(D)(i). EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

As aforementioned, EPA is not proposing action on the remaining three prongs of section 110(a)(2)(D) here (see footnote 19). We note however, that EPA approved into the Texas SIP the Clean Air Interstate Rule (CAIR) NOx Annual Trading Program on July 30, 2007 (72 FR 41453). The intended effect of this SIP action implementing the CAIR is to reduce NOx emissions from within Texas that contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in downwind states. In addition, Texas submitted revisions to its CAIR SIP on March 4, 2010 to address Phase II of the CAIR (which addresses 2015 and thereafter). The CAIR was overturned by the court. Therefore, the first two prongs of Section 110(a)(2)(D)(i)(I)—which limit emissions that contribute significantly to nonattainment and interfere with maintenance of the NAAQS in other states—will be evaluated in light of the EPA's Cross-State Air Pollution Rule, which found that Texas (and 26 other states in the eastern half of the United States) must significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states.[53] The protection of visibility requirement of 110(a)(2)(D)(i)(II) will be evaluated when EPA completes its review of the Texas interstate transport SIP submitted on May 1, 2008 and the Texas regional haze SIP revision submitted on March 19, 2009.

Interstate and international pollution abatement, pursuant to section 110(a)(2)(D)(ii):

Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115 addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115(a), the Administrator has not been made aware of submissions indicating reports, surveys, or studies from any duly constituted international agency regarding air pollution emitted in Texas which may reasonably be anticipated to

[52] See 73 FR 28321.

[53] See 76 FR 48208.

endanger public welfare or health in Mexico. Furthermore under section 115(a), the Administrator has not been requested by the Secretary of State to issue formal notification to Texas that emissions originating in the State are endangering public health or welfare in Mexico.

Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Texas SIP requires that each major proposed new or modified source provide such notification (see 67 FR 58697). The State also has no pending obligations under section 126 of the Act. For additional detail, please refer to the TSD. However, as previously discussed in this rulemaking, Texas does not have adequate legal authority to implement the PSD program with respect to GHG emissions. Therefore, EPA is not proposing to approve Texas's interstate pollution abatement provisions in full because Texas cannot require each major proposed or modified new source to notify neighboring states of potential impacts from GHGs emitted by such sources.

EPA is proposing to find that the Texas SIP meets the interstate and international pollution abatement requirements of section 110(a)(2)(D)(ii) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(D)(ii) as it relates to the GHG notification component of the interstate pollution abatement requirement.

EPA is proposing to find that the Texas SIP does not meet the interstate and international pollution abatement requirements of section 110(a)(2)(D)(ii) with respect to the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS, as it relates to the GHG notification component of the interstate pollution abatement requirement. EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

Adequate resources and authority, pursuant to section 110(a)(2)(E): Texas statutes contain basic structural provisions that provide TCEQ with generic authority for enforcement of the SIP. The TWC at Section 5.012 declares that ''[t]he commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.'' In addition, the TCEQ has general jurisdiction over the responsibilities assigned under the TCAA (see THSC at section 382). The general powers and duties of the TCEQ, pursuant to the TCAA (382.011) include administering the TCAA, controlling the quality of the state's air, and accomplishing the purposes of the TCAA ''through the control of air contaminants by all practical and economically feasible methods.'' In Section 382.011, the THSC also states that the TCEQ ''has the powers necessary or convenient to carry out its responsibilities.'' Enforcement authority is provided under the TWC, Chapter 7 (section 7.002).

We propose to find that the generic authority concerning enforcement evinced by these state statutory provisions cumulatively are sufficient to assure enforcement of the NAAQS in Texas, in accordance with the requirements of section 110(a)(2)(E). While EPA proposes to find that these provisions confirm that the TCEQ has adequate authority pursuant to 110(a)(2)(E), EPA is aware of Texas legislation that may have altered the ambit of the state's enforcement authority with respect to the federally approved Texas Title V program. Senate Bill 12, codified at TWC Section 7.00251, by its own statutory terms alters TCEQ's enforcement authority for ''violations based on information [TCEQ] receives as required by Title V of the Clean Air Act'' upon first infraction. Senate Bill 12 alters TCEQ's enforcement authority with respect to self-certified violations documented in a Title V deviation report. EPA believes it is important to note that Senate Bill 12 does not affect, restrict, or alter the authority ascribed to EPA, citizens, or parties other than TCEQ to enforce the provisions of the SIP with respect to violations of the requirements of the SIP, nor does it preclude TCEQ from seeking injunctive relief for the violations or penalties for a repeat infraction. In conjunction with Texas's generic statutory enforcement authority provisions cited previously, EPA concludes that this legislation does not impede EPA's approval of Texas's infrastructure SIP for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS under the requirements of CAA 110(a)(2).

However, EPA's proposed approval of the Texas infrastructure SIP submission as meeting the requirements of 110(a)(2)(E) does not include evaluation of adequate enforcement authority under the Title V program, as Title V is subject to statutory and regulatory mechanisms outside those provided within the scope of section 110(a). EPA is currently, under Title V statutory and other regulatory mechanisms, evaluating Senate Bill 12 for potential impacts on Texas's enforcement authority to collect penalties with respect to the types of violations covered by this legislation. EPA believes Senate Bill 12 may affect TCEQ's enforcement authority under its federally approved Title V program to collect penalties with respect to a subset of self-reported violations upon the first infraction. Section 502 of Title V under the CAA requires that a permitting authority have adequate authority in part, to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation. This Federal statutory requirement is codified in regulations governing the Title V program. 40 CFR 70.11 requires that an agency administering a Title V program shall have enforcement authority, in part, to recover civil penalties for the violation of any applicable requirement. 40 CFR 70.4(i) establishes procedures to address a state's Title V revisions, and authorizes EPA to request, and the state must provide, a supplemental Attorney General's statement, program description, or other such documents or other information as the EPA determines are necessary when the agency has reason to believe the circumstances with respect to a state's approved Title V program have changed. In conformity with the statutory and regulatory process for review of a state's Title V program, EPA has initiated this process by a formal letter to TCEQ requesting a supplemental Attorney General's statement and information EPA believes necessary to evaluate the impact of Senate Bill 12 on Texas's Title V program. A copy of this letter is included in the docket for this rulemaking.[54]

Because EPA considers evaluation of a state's Title V program outside the statutory and regulatory parameters of section 110(a), our evaluation of Texas's enforcement authority and consequent approval under 110(a)(2)(E) for infrastructure SIP purposes also does not preclude EPA's future actions with respect to Texas's enforcement authority pursuant to the Title V program. The scope of this action is limited to determining whether the existing Texas SIP meets certain infrastructure and interstate transport requirements of CAA 110(a)(2) with respect to the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

With regard to whether the State has adequate resources to carry out its

[54] See letter from Lawrence E. Starfield to Mark R. Vickery, dated May 19, 2011, in the docket for this rulemaking.

duties as required by 110(E), the commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter (TCAA, section 382.0335). This section also requires the TCEQ to establish fees not less than 50 percent of the TCEQ's actual annual expenditures to review and act on permits or special permits; amend and review permits, inspect permitted, exempted, and specially permitted facilities; and enforce the rules and orders of certain adopted permits, special permits, and exemptions issued. Furthermore under section 382.0622 of the TCAA, the TCEQ may request appropriations of sufficient money to contract for services of local units of government meeting certain eligibility criteria to ensure that the combination of Federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The Texas SIP provides for the collection of fees at 30 TAC 106.50 (Registration Fees) and 30 TAC 116 (Determination of Fees, Payment of Fees, PSD Permit Fees, Renewal Application Fees, Standard Permit Fees, and Permit Fees). Most of these provisions have been in the Texas SIP for many decades and revisions to them were approved on March 20, 2009 (74 FR 11851) and the Permit Fees at 30 TAC 116.926 were approved on January 11, 2011 (76 FR 1525). The state also has the authority to collect fees for vehicle inspection and maintenance (I/M) programs in several nonattainment areas and in the Austin area under THSC sections 382.202 and 382.302. These rules are approved in the Texas SIP and are found at 30 TAC 114.53 (71 FR 52670) and 114.87 (70 FR 45542). See the TSD for more detail.

There are Federal sources of funding for the implementation of the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS through, for example, the CAA sections 103 and 105 grant funds. The TCEQ receives Federal funds on an annual basis, under section 105 of the Act, to support its air quality programs. Fees collected for motor vehicle inspections, the Title V and non-Title V permit programs, and other inspections, emissions and renewal fees required of other air pollution sources also provide necessary funds to help implement the State's air programs. More specific information on permitting fees is provided in the discussion for 110(a)(2)(L) below and in the TSD.

Texas has routinely submitted SIP revisions with assurances that TCEQ has adequate personnel, funding, and authority under state law to implement the SIP. The State has provided these assurances in SIP submittals approved by EPA.[55]

Section 110(a)(2)(E)(ii) requires that the state comply with section 128. Section 128 requires: (1) That the majority of members of the state body which approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1981, the EPA approved into the SIP the Standards of Conduct of State Officers and Employees (Texas Revised Civil Statute Annotated, Article 6252–9b) (46 FR 61124). The TWC addresses these requirements in the Standards of conduct of state officers and employees. See TWC Title 2, Subtitle A, Chapter 5, Subchapter C, § 5.053: Eligibility for Membership; § 5.054: Removal of Commission Members; § 5.059: Conflict of Interest; § 5.060: Lobbyist Prohibition; and Subchapter D (General Powers and Duties of the Commission), § 5.111: Standards of Conduct.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(E) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Stationary source monitoring system, pursuant to section 110(a)(2)(F): 30 TAC chapters 101, 106, 111, 112, and 115–117 require that stationary sources monitor for compliance, provide recordkeeping and reporting, and provide for enforcement for ozone, $PM_{2.5,}$ and precursors to these pollutants (NO_X, SO_2 and VOCs). These source monitoring requirements also generate data for these pollutants.

Under the Texas SIP rules, the TCEQ is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The TCEQ uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Texas and EPA requirements. Emissions data are available electronically: *http://www.tceq.texas.gov/nav/main/air_main.html#report.* Texas's point source emission inventory (EI) is available at *http://www.tceq.texas.gov/airquality/point-source/psei/psei.html.* These rules are in the federally approved SIP. A list of the chapters and **Federal Register** citations is provided in the TSD.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(F) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Emergency power, pursuant to section 110(a)(2)(G): Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The TCAA and TWC provide the TCEQ with authority to address such activities[56] and the TCEQ has contingency plans to implement emergency episode provisions in the SIP. The Texas Air Pollution Emergency Episode Contingency Plan was initially approved into the SIP on October 7, 1982 (47 FR 44260). Subsequent revisions were approved on September 6, 1990 (55 FR 36632) and July 26, 2000 (65 FR 45915). The episode criteria and contingency measures are found in 30 TAC 118. The rules at 30 TAC 118 (Renamed ''Control of Air Pollution Episodes'') provide for air pollution emergency episodes and preplanned abatement strategies. The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the federally approved SIP.

The 2009 Infrastructure SIP Guidance for $PM_{2.5}$ recommends that a state with at least one monitored 24-hour $PM_{2.5}$ value exceeding 140.4 $\mu g/m^3$ since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2010 ambient air quality monitoring data[57] for Texas do not exceed 140.4 $\mu g/m^3$. The $PM_{2.5}$ levels have consistently remained below this level (140.4 $\mu g/m^3$), and furthermore, the state has appropriate general emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given the state's monitored $PM_{2.5}$ levels, EPA is proposing that Texas is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards.

[55] The DFW Reasonable Further Progress SIP to address the 1997 ozone moderate nonattainment area was approved on October 7, 2008 (73 FR 58475). See also the approved SIPs for the three Early Action Compact (EAC) areas on August 19, 2005, (70 FR 48640 and 70 FR 48642) and August 22, 2005 (70 FR 48877).

[56] See TCAA at 382.026 and TWC Chapter 5, Subchapter L (5.514).

[57] The ozone and PM data are available through AQS and the State Web site (*http://www.tceq.texas.gov/agency/air_main.html*). The AQS data for PM are provided in the docket for this rulemaking.

Additional detail is provided in the TSD.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(G) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Future SIP revisions, pursuant to section 110(a)(2)(H): The TCAA directs the TCEQ to prepare and develop the SIP and provides TCEQ with the power to amend any rule or regulation it makes (TCAA Section 382.0173). In addition, the TCAA in Section 382.036 provides that ''[t]he board shall: [* * *] advise, consult and cooperate with [* * *] the federal government, [* * *] in regard to matters of common interest in air control.'' Thus, Texas has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Texas also has the authority under these TCAA provisions to revise its SIP in the event the EPA pursuant to the Act finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(H) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Consultation with government officials, pursuant to section 110(a)(2)(J):[58] The TCAA provides under Section 382.017 that ''[t]he commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.'' In addition, the TCAA provides under Section 382.036 that ''[t]he commission shall: [* * *] advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the Federal government, and interested persons or groups concerning matters of common interest in air quality control.'' The TCAA under Section 382.035 also authorizes the TCEQ to adopt by rule any Memorandum of Understanding (MOU) between the TCEQ and any other state Agency. Accordingly, the TCEQ has provisions to establish a Memorandum of Agreement (MOA) with one or more agencies in order to clarify areas of responsibility. Several of these MOAs are in the federally approved SIP.[59]

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J): Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone[60] and $PM_{2.5}$ NAAQS. The air quality forecasts can be found on the TCEQ Web site: for 8-hour ozone, the forecast includes 9 regions[61] in the State; for $PM_{2.5}$, the forecast includes 14 regions[62] in the State. Ozone forecasts are made daily during the ozone season for each of the nine forecast areas.[63] The ozone forecasts are made, in most cases, a day in advance by 2 p.m. local time and are valid for the next day. The only exception is for the Houston area, where the forecast can be updated as late as 9 a.m. local time on the same day that the forecast is in effect. When the forecast indicates that ozone levels will be above the 8-hour ozone standard, the State notifies the National Weather Service, who then broadcasts the information across its weather wire. In addition, four areas receive ''ozone warnings'' when monitors measure levels above the 8-hour ozone standard.[64] Ozone warnings for these areas are generated automatically, approximately 20 minutes after the hour when high ozone is measured for that particular area. The ozone forecasts and warnings are available through e-mail notification.[65]

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

PSD and visibility protection, pursuant to section 110(a)(2)(J): This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the State's PSD program is in the SIP (57 FR 28093, 62 FR 44083, 67 FR 58697, 69 FR 43752, 74 FR 11851 and 75 FR 55978). In addition to the approved program and to meet the requirements of 110(a)(2)(C) and 110(a)(2)(D)(i) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_X as a precursor for ozone. Thus, we are proposing to approve portions of SIP revisions (submitted March 11, 2011) to implement NO_X as a precursor to ozone. These revisions are proposed for the definitions at 30 TAC 116 and 30 TAC 101, as discussed previously in this rulemaking with regards to section 110(a)(2)(C) and 110(a)(2)(D)(i). To implement section 110(a)(2)(C) for the 1997 $PM_{2.5}$ standard, states must provide revisions due May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321). On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the $PM_{2.5}$ NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

EPA is not proposing to approve the PSD program in full pursuant to section 110(a)(2)(J) because, as stated previously in our discussion of the PSD program under section 110(a)(2)(C), Texas does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions. The PSD program related to permitting GHGs at or above the Tailoring Rule thresholds for the State is currently under a FIP. More detail is provided in the discussion for section 110(a)(2)(C) in this rulemaking and in the TSD. EPA is proposing to find that the Texas SIP does not meet the portion of section

[58] Section 110(a)(2)(J) is divided into three segments: Consultation with government officials; public notification; and PSD and visibility protection.

[59] For example, see the Memorandum of Understanding (MOU) with the Texas Department of Transportation, 70 FR 73380 (December 12, 2005).

[60] The TCEQ forecasts for 8-hour ozone are based on the 2008 ozone standard, which is 75 ppb.

[61] The 9 forecast areas for 8-hour ozone are Austin, Beaumont-Port Arthur, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, San Antonio, Tyler-Longview, and Victoria. See *http://www.tceq.texas.gov/cgi-bin/compliance/monops/ozone_actionday.pl.*

[62] The 14 forecast areas for $PM_{2.5}$ are Austin, Beaumont-Port Arthur, Brownsville-McAllen, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Laredo, Lubbock, Midland-Odessa, San Antonio, Tyler-Longview, Victoria, and Waco-Killeen. See *http://www.tceq.texas.gov/airquality/monops/forecast_today.html.*

[63] Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between NO_X and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. For South Texas, the ozone season runs from January 1 through December 31. For North Texas, the ozone season runs from March 1 through October 31 (see 40 CFR 58, Appendix D, Table D–3). The Texas air quality control regions are defined at 62 FR 30270 (June 3, 1997).

[64] The ozone warning areas: Austin, Dallas-Fort Worth, Houston-Galveston-Brazoria, and San Antonio.

[65] See *http://www.tceq.texas.gov/airquality/monops/ozone_email.html.*

110(a)(2)(J) that relates to permitting GHGs with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. However, EPA's disapproval here does not engender any additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

EPA approved the Texas SIP Revision for Visibility Protection and long-term strategy for visibility into the Texas SIP on February 23, 1989 (57 FR 28093). The State's most recent SIP revision of their Regional Haze program was submitted to EPA on March 19, 2009, and we will take action on it in a separate rulemaking. With regard to the applicable requirements for visibility protection, EPA recognizes that States are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the Texas SIP meets this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS with the exception of section 110(a)(2)(J) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the requirements of section 110(a)(2)(J) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Air quality modeling and submission of data, pursuant to section 110(a)(2)(K): The TCAA prescribes at Section 382.012 that the TCEQ ''shall prepare and develop a general, comprehensive plan for the proper control of the state's air.'' Texas has extensive modeling in numerous submitted SIP revisions. As examples, Texas submitted modeling in SIP revisions for the Austin and Northeast Texas Early Action Compact (EAC) Areas to demonstrate attainment of the 1997 8-hour ozone standard. The modeling in these SIP revisions was approved by EPA and adopted into the SIP.[66]

This section of the Act also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. As indicated above, section 382.036 of the TCAA requires the TCEQ to cooperate with the Federal government, allowing it to make this submission to the EPA.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(K) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Permitting fees, pursuant to section 110(a)(2)(L): The TCAA under section 382.062 provides authority for the TCEQ to charge and collect fees for Title V and non-Title V permit applications, revisions, renewals and inspections. The non-Title V rules that address permit fees found at 30 TAC 106 and 116 are in the federally approved SIP.[67] A detailed list of the applicable chapters listed herein is provided in the TSD. EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(L) with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Consultation/participation by affected local entities, pursuant to section 110(a)(2)(M): As indicated above, the TCAA directs the TCEQ to hold a public hearing before adopting a rule. In addition, the TCAA provides that the TCEQ shall ''advise, consult and cooperate with [* * *] political subdivisions of the state, industries, [* * *] and interested persons or groups concerning matters of common interest in air control.'' The TCEQ has a MOA with each of five local entities: the cities of Dallas and Fort Worth, the Houston and DFW airports, and the North Central Texas Council of Governments.[68] These agreements are in the federally approved SIP. EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS with respect to the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

[66] The Austin and Northeast Texas areas were designated as attainment and participated in the EAC program. EPA approved the modeling for these areas on August 19, 2005 at 70 FR 48640 and 70 FR 48642, respectively.

[67] See 62 FR 44083, 67 FR 58697, 74 FR 11851 and 76 FR 1525 (January 11, 2011).

[68] See MOA with the Houston Airport System, 66 FR 57222 (November 14, 2001); MOAs with the cities of Dallas and Fort Worth and the DFW International Airport Board, 67 FR 19516 (April 22, 2002); and MOA with the NCTCOG, 70 FR 20816 (April 22, 2005).

IV. Proposed Action

We are proposing to partially approve and partially disapprove the submittals provided by the State of Texas to demonstrate that the Texas SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

We are proposing to find that the current Texas SIP meets the infrastructure elements for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act), except for the portion that addresses GHGs;

Interstate transport, pursuant to section (110(a)(2)(D)(ii) of the Act), except for the portion that addresses GHGs;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration (110(a)(2)(J) of the Act), except for the portion that addresses GHGs;

Visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are proposing to find that the current Texas SIP does not meet the infrastructure elements for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS listed below:

Program for enforcement of control measures (110(a)(2)(C) of the Act), only as it relates to GHGs;

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act, only as it relates to GHGs; and

Prevention of significant deterioration (110(a)(2)(J) of the Act), only as it relates to GHGs.

We are also proposing to approve the Texas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Texas do not interfere with measures required in the

SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, except as they relate to GHGs for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

We are proposing to disapprove the portion of the Texas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II), as it relates to GHGs, that emissions from sources in Texas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. We will act on the remaining three SIP elements regarding interstate transport, per section 110(a)(2)(D)(i) of the Act in separate rulemakings.

We are also proposing to approve the following revisions to 30 TAC 101.1 and 30 TAC 116.12, submitted by TCEQ on March 8, 2011, as part of the Texas NSR SIP:

1. The substantive revisions to the definition of Maintenance area at 30 TAC 101.1(54).
2. The substantive revisions to the definition of Nonattainment area at 30 TAC 101.1(70).
3. The substantive revisions to the definition of Reportable quantity at 30 TAC 101.1(88).
4. The non-substantive revisions to the definition of Volatile organic compound at 30 TAC 101.1(115).
5. The non-substantive revision to the title of 30 TAC 116.12 from Nonattainment Review Definitions to Nonattainment *and Prevention of Significant Deterioration* Review Definitions.
6. The non-substantive revisions to the introductory paragraph at 30 TAC 116.12.
7. The substantive revisions that add *Federally Regulated NSR pollutant* to the definitions at 30 TAC 116.12(14).
8. The non-substantive changes to rename and renumber the definition of Major facility/stationary source at 30 TAC 116.12(10) to *Major stationary source* at 30 TAC 116.12(17) and the substantive changes making the definition consistent with 40 CFR 51.166(b)(1).
9. The non-substantive changes to renumber the definition of Major modification at 30 TAC 116.12(11) as 30 TAC 116.12(18) and provide editorial revisions, and the substantive changes making the definition consistent with 40 CFR 51.165(a)(1) and 40 CFR 51.166(b)(1) and (2), and which address the grounds for the September 15, 2010 disapproval of this definition.

EPA is proposing these actions in accordance with section 110 and part C of the Act and EPA's regulations and consistent with EPA guidance.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is proposing neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. EPA will respond to relevant comments in the final rulemaking action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–24384 Filed 9–21–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 76, No. 184

Thursday, September 22, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 1 p.m. to 5 p.m. on October 11, 2011 at the Downtown Des Moines Marriott located at 700 Grand Avenue, Des Moines, Iowa. ''*The Next Generation: Global Food Security through Human and Institutional Capacity Building''* will be the central theme of this year's fall meeting.

Prior to the public meeting USAID, BIFAD and the Association of Land Grant Universities (APLU) will co-host a luncheon from 11 a.m. to 12:45 p.m. featuring Dr. Calestous Juma of Harvard as keynote speaker.

Dr. Brady Deaton, BIFAD Chair, will preside over the proceedings. Dr. Deaton is the Chancellor of the University of Missouri at Columbia.

Held in conjunction with the 2011 World Food Prize Symposium, this year's meeting sets the stage for a robust dialogue on the range of challenges typically associated with building human capital and the local institutions that support them. The meeting will include the participation of the full BIFAD. Including Dr. Deaton, the Board is comprised of Jo Luck, past President of Heifer International, Marty McVey of McVey & Associates, LLC, Gebisa Ejeta of Purdue University, Catherine Bertini of Syracuse University, Elsa Murano of Texas A&M University and William DeLauder, formerly of Delaware State University.

Prior to the public Board meeting USAID/BIFAD/APLU will host a luncheon on Human and Institutional Capacity Development. The luncheon starts at 11 a.m. and will feature Dr. Calestous Juma of Harvard University as keynote speaker. Those interested in attending the luncheon prior to the Board meeting must register in advance at (*http://humanandinstitutional capacitybuildingluncheon. eventbrite.com*). The lunch is free and open to the public.

The public meeting will begin promptly at 1 p.m. with opening remarks by BIFAD Chair Brady Deaton. Immediately following is a panel featuring young scientists focused on their U.S. fellowship experience, host country institutional issues, and their perspectives on what is needed to support and promote the scientists and leaders of tomorrow. Panelists will include representatives from the Norman Borlaug LEAP Fellowship program, the USDA Borlaug Fellowship program, an AWARD fellow, a lecturer from Makerere University in Uganda, and a graduate student of a Collaborative Research Support Program. The second panel, moderated by Board member Gebisa Ejeta, will feature noted experts in the field of human and institutional capacity development (HICD) and their perspectives on tomorrow's approaches to HICD. USAID will then provide updates to the BIFAD on the Feed the Future Research Strategy. The Board members next will provide updates on the activities of their working groups on Haiti and Minority Serving Institutions. The last 30 minutes of the meeting will comprise the public comment period of the meeting.

The Board meeting is open to the public and the Board members benefits greatly in hearing from the stakeholder community and others. To ensure that as many people as possible have the opportunity to contribute to the morning's discussions, comments will be restricted to 3 minutes for each commenter. At the conclusion of the public comment period, the Board will adjourn the meeting.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD. Interested persons may write her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue, NW., Room 7.8–061, Washington, DC 20523–2110 or telephone her at (202) 712–0218 or fax (202) 216–3124.

Susan J. Owens,

USAID Designated Federal Officer for BIFAD, Bureau for Food Security, U.S. Agency for International Development.

[FR Doc. 2011–24385 Filed 9–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 16, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP. GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Agricultural Research Service

Title: SNAP-Ed Connection Recipe Finder Sharing and Review Form.

OMB Control Number: 0518–0043.

Summary of Collection: The National Agricultural Library's SNAP–Ed Connection (formerly the Food Stamp Nutrition Connection), *http://www.snap.nal.usda.gov*) resource system developed an on-line recipe database, the Recipe Finder in Fiscal Year 2005. The purpose of the Recipe Finder database is to provide our target audience, Supplemental Nutrition Assistance Program Education (SNAP-ED) providers, with low-cost, easy to prepare, healthy recipes for classes and demonstrations with SNAP-Ed participants. We rely on these same educators to submit their best recipes to us for review, analysis and posting in the database. Data collected using the ''SNAP-Ed Connection Recipe Review Form'' will help identify a recipe's eligibility for inclusion in this database. Data collected using the SNAP-Ed Connection Recipe Review Form will help identify the success or value of the recipe during use with SNAP-Ed participants.

Need and Use of the Information: The voluntary ''SNAP-Ed Connection Recipe Submission Form'' allows SNAP-Ed providers the opportunity to submit recipes on-line and saves contributors time and money in photocopying and mailing/faxing recipes. SNAP-ED staff reviews submissions to determine for appropriateness and eligibility for inclusion into the Recipe Finder database. The voluntary ''SNAP-Ed Connection Recipe Submission Form'' allows SNAP-Ed providers and other Recipe Finder users the opportunity to review recipes on-line and share their feedback, including recipe photographs, with other Recipe Finder users. Failure of the SNAP–Ed Connection to this information would inhibit the ability of the target audience to participate in a valuable resource that will assist them and in turn the SNAP-Ed participants.

Description of Respondents: Individual or households; Not-for Profit Institutions; State, Local or Tribal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 30.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–24299 Filed 9–21–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting location change.

SUMMARY: The Hood/Willamette Resource Advisory Committee will meet in Sweet Home, Oregon. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is have a field trip review of Title II projects by the committee.

DATES: The meeting will be held on September 26, 2011, and begin at 10 a.m

ADDRESSES: The meeting location has been changed since the last notice to Sweet Home Ranger District Office, 4431 Highway 20, Sweet Home, Oregon; (541) 367–5168. Written comments should be sent to Connie Athman, Mt.Hood National Forest, 16400 Champion Way, Sandy, OR 97055. Comments may also be sent via e-mail to *cathman@fs.fed.us,* or via facsimile to 503–668–1413.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mt.Hood National Forest, 16400 Champion Way, Sandy, Oregon.

FOR FURTHER INFORMATION CONTACT: Connie Athman, Mt.Hood National Forest, 16400 Champion Way, Sandy, OR 97055; (503) 668 1672; *E-mail: cathman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Public Forum and; (2) Field Trip to Review Title II Projects. The Public Forum is tentatively scheduled to begin at 10:05 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the September 26th meeting by sending them to Connie Athman at the address given above.

Dated: September 15, 2011.

Tom Torres,

Acting Deputy Forest Supervisor.

[FR Doc. 2011–24391 Filed 9–21–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Tuesday, September 20, 2011; 4 p.m. EDT.

PLACE: Via Teleconference, Public Dial in: 1–800–597–7623, Conference ID # 11909439.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda.
II. Discussion of the Agency's 2012 Appropriations Status.
III. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8591.

Dated: September 20, 2011.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2011–24487 Filed 9–20–11; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801]

Ball Bearings and Parts Thereof From France, Germany, and Italy; Amended Final Results of Antidumping Administrative Reviews

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

EFFECTIVE DATE: September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2011, the Department of Commerce (the Department) published the final results of the

administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy. *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Administrative and Changed Circumstances Reviews,* 76 FR 52937 (August 24, 2011) (*Final Results*). The period of review is May 1, 2009, through April 30, 2010.

There were inadvertent typographical errors in certain company names in the *Final Results.* Therefore, these amended final results are different from the *Final Results* only with respect to the corrections of the following company names:

France: ''Volkswagon AG'' has been changed to ''Volkswagen AG.'' The weighted-average margin we determined for this company continues to be 5.47 percent.

Germany: ''BSH Bosch and Siemens Hausgerate GmbH'' has been changed to ''BSH Bosch und Siemens Hausgerate GmbH;'' ''Volkswagon AG'' has been changed to ''Volkswagen AG''; ''Robert Bosch GmbH Power Tools and Hagglunds Drives'' has been changed to ''Robert Bosch GmbH Power Tools'' and ''Hagglunds Drives.'' The weighted-average margin we determined for these companies continues to be 6.25 percent.

Italy: ''Perkin Engines Company Limited'' has been changed to ''Perkins Engines Company Ltd.'' The weighted-average margin we determined for this company continues to be 10.27 percent.

We intend to issue liquidation instructions to U.S. Customs and Border Protection 15 days after publication of these amended final results of reviews.

These amended final results of administrative reviews are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 15, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–24368 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ports and Maritime Technology Trade Mission to India

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce (DOC), International Trade Administration (ITA), U.S. and Foreign Commercial Service (CS), is organizing an executive-led Ports and Maritime Technology Trade Mission to India from February 20 to 24, 2012. The purpose of the mission is to introduce U.S. firms to India's rapidly expanding port and maritime technology market and to assist U.S. companies pursue export opportunities in this sector. The mission to India is intended to include representatives from leading U.S. companies that provide state-of-the-art cargo handling equipment, port security and maritime technology equipment. The mission will visit three cities, Chennai, Ahmedabad and Mumbai, where participants will receive market briefings and participate in customized meetings with key port officials and prospective partners. In Mumbai the trade mission will coincide with Reed Exhibitions' Shipping, Transport & Logistics (SITL) trade show, which takes place February 23 to 25. Trade mission participants will also have the option to begin their trip with a visit to Kolkata, where CS Kolkata will arrange meetings with public sector port officials from the states of West Bengal and Orissa.

The mission will help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to India. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with national and regional government officials; and networking events. Participating in an official U.S. industry delegation, rather than traveling to India on their own, will enhance the companies' ability to secure meetings in India.

Commercial Setting

India, one of the world's fastest growing economies, presents lucrative opportunities for U.S. companies that offer products and services in the maritime transport industry. Maritime transport is key to India's external trade. There are 13 major (national government control) and 187 minor (local state/private control) ports across India's extensive, 7,000 kilometers coastline. Traffic at these ports has been steadily increasing and is expected to continue growing. To meet the anticipated growth in traffic the major and minor ports have formulated plans for the development of new terminals, upgrading existing berths and modernizing operations by including state of the art cargo handling equipment, tracking systems, deepening of channels, and widening of roads. According to an Ernst and Young report, the majority of cargo-handling equipment at Indian ports was commissioned long ago and has outlived its life span.[1] In January 2011 the Government of India announced a new shipping sector policy that entails an investment of $66 billion in the port sector and $27 billion for the shipping sector. This new policy proposes to increase India's port capacity from 1 billion tons to 3.2 billion tons by 2020. To explore these opportunities the trade mission will visit three cities as described below.

Chennai, Tamil Nadu

The state of Tamil Nadu has 3 major ports (Chennai, Tuticorin and Ennore) and 17 minor ports. The major ports are under the control of Government of India. The minor ports are under the control of Tamil Nadu Maritime Board. Port development plans in the state of Tamil Nadu include:

- The Ennore Port announced an investment plan of over $1.2 billion.
- The Chennai Port has an investment plan of over $2.3 billion.
- The Tuticorin Port announced an investment plan of $1.4 billion.
- The Kattupalli Shipyard is a mega project with the first phase aiming to be operational by January 2012. The first phase will have a 1.2 million TEU capacity through two 350-m-long berths and a total terminal area of approximately twenty hectares. The terminal has an option to increase to 1.8 million TEU capacity during the second phase of development.
- The Thirukkuvalai Port is a deep-water multi-modal port being developed as a part of an integrated port and power project in Nagapattinam. The entire project will entail an investment of approximately $2 billion.

Ahmedabad, Gujarat

The state of Gujarat has one major port (Mundra) and 41 minor ports. Gujarat is an industrial powerhouse where many multinational corporations have established manufacturing facilities. Gujarat is strategically located with India's longest coastline of 1600 km and is the nearest maritime outlet to the Middle East, Africa and Europe. Gujarati has two privately managed LNG terminals and one of the world's largest

[1] *The Indian Ports and Shipping Sector.* Rep. Ernst and Young, Aug. 2010. Web. 12 Sept. 2011. *http://www.ey.com/Publication/vwLUAssets/Ports_and_shipping_-_August_2010/$FILE/Ports-and-shipping-August-2010.pdf.*

ship recycling yards at Alang. Gujarat ports handle almost 33% of India's cargo. Ahmedabad is the home of Gujarat's State Maritime Board. Minor ports in Gujarat have a total capacity of 244 million tons (mt) and handle a cargo volume of 206 mt. This is 70% of the volume handled by all minor ports in the country. Gujarat plans to expand its private port capacity to 586 mt in five years.

Mumbai, Maharashtra

Mumbai, located in the state of Maharashtra, is the commercial and financial capital of India. In Mumbai there are two ports: The Mumbai Port Trust (MPT) and Jawaharlal Nehru Port Trust (JNPT). In addition, there are 53 minor ports located throughout Maharashtra. JNPT is the country's largest container port, with container traffic of over 4.1 million 20-foot-equivalent unit (TEUs) in 2009–2010. It also ranks among the top 30 container ports in the world. JNPT is now proposing the development of a fourth terminal through private partnership. This fourth terminal is crucial as the other three terminals are working beyond capacity and its development will take the port's capacity to 10.35 million TEUs from 4 million TEUs. Currently JNPT has invited bids to award the contract to operate the fourth terminal. In addition, JNPT is planning a new mega port project at Nhava Island (near Mumbai) which will have a capacity of 6 to 9 million TEUs per annum. The project plans also include other facilities including a ship repair yard.

Kolkata, West Bengal

As an optional stop, delegates can elect to visit Kolkata prior to the official start of the trade mission. A minimum five companies will be required to organize the stop in Kolkata. A description of the Kolkata Port and expansion plans is below.

- The Kolkata Port Trust (*http://www.kolkataporttrust.gov.in*) consists of Kolkata dock system and Haldia Dock System. The infrastructure includes 33 berths, 5 dry docks, 6 petroleum wharfs, 3 barge jetties and 3 oil jetties. It is the largest dry dock facility in India and handled 46.5 million tons of cargo in year 2010.
- Over 3,500 vessels were handled at the Kolkata Port during 2009–2010, which was the highest amongst all Indian major ports (17% of the total number of vessels at Indian ports).
- Upcoming projects include: A new proposed river port for handling 20 MT to meet the demand of imported coal; a container terminal at Diamond Harbor having potential to handle 1 million TEU per annum and a trans-loading facility; and, a plan for deep sea port with 10–12 berths for handling 60 million tons.
- The Kolkata Port spends over $130 million per annum for dredging of the river and sea mouth. Only European companies currently participate in this project, and the Kolkata Port would like to see U.S. participation.
- Opportunities exist for U. S. companies in consulting, equipment supply, barge facility, dredging services and vessel traffic management systems.
- The adjoining state of Orissa in the east coast is also part of the Kolkata Port Trust area. In Orissa, the Paradeep Port (*http://www.paradipport.gov.in*) is the largest port in terms of bulk cargo handling and Dhamra (*http://www.dhamraport.com*) is the minor port. Planned projects include Gopalpur (*http://www.gopalpurports.com*) and Posco.

Mission Goals

The goal of the Ports and Maritime Technology Trade Mission to India is to provide U.S. participants with first-hand market information, one-on-one meetings with business contacts, including potential agents, distributors and partners so they can position themselves to enter or expand their presence in the Indian market. Subject to prior consultation and confirmations, mission participants will have the opportunity to explore contacts with local firms active in India. Also, to help U.S. equipment and service providers initiate and/or expand their exports to India the U.S. Commercial Service will introduce Trade Mission participants to:

- Officials at major ports who are seeking to upgrade their container-handling equipment and decision makers responsible for port security, port management services and maritime technology.
- Officials at privately-owned minor ports who are seeking to procure equipment such as cargo handling equipment, security equipment including scanners, cranes, navigational aids, as well as developing ship repair and ship building facilities.

Mission Scenario

The mission will start in Chennai, where participants will meet with officials from the state of Tamil Nadu, the Tamil Nadu Maritime Board, potential private sector partners and visit a major port. Next, the participants will visit Ahmedabad where they will meet with private sector port developers and officials from the Gujarat Maritime Board. In Mumbai the participants will meet with the Maharashtra Maritime Board, JNPT officials and private sector port developers.

In Mumbai the delegates will have the option of participating in the SITL trade show, which will take place February 23–25. SITL India aims to provide a much needed platform for the industry. The event features 5 sectors of activity covering the complete chain:

- Transport and logistics services,
- Logistics infrastructure,
- Logistics real estate,
- Transport and logistics information systems and technologies,
- And materials handling equipment and systems.

The matchmaking meetings in Mumbai will not be held at SITL. Companies may elect to have a half-day of matchmaking meetings *and* attend SITL for the other half of the day, or they can choose to only participate in one of these activities. The mission fee will not cover registration fees for SITL.

Trade mission delegates will have the option of visiting Kolkata before the official start of the mission in Chennai. In Kolkata, they will meet with Kolkata Port Authorities, port operators and private companies involved in the port business. They will also meet with other American companies operating in Kolkata and with Consulate representatives for an overview.

The participants will also attend policy, market and commercial briefings by the U.S. Commercial Service as well as networking events offering further opportunities to speak with private and government port officials as well as potential distributors and agents. U.S. participants will be counseled before and after the mission by CS India staff. Participation in the mission will include the following:

- Pre-travel briefings on subjects ranging from business practices in India to security;
- Pre-scheduled meetings with port officials (government and private), potential partners distributors, end users, and local industry contacts in Chennai, Ahmedabad, and Mumbai;
- Airport transfers in Chennai, Ahmedabad, and Mumbai;
- Meetings with state maritime boards and government officials;
- Participation in a networking reception in Chennai and Mumbai; and participation in one-on-one business meetings with potential clients, partners and distributors.

PROPOSED TIMETABLE

Thursday, February 16, 2012 (Optional)	Kolkata • Delegates arrive in Kolkata/check-in and rest overnight.
Friday, February 17, 2012 (Optional)	Kolkata • Meeting with AMCHAM and the U.S. Consulate. • Port visit.
Saturday, February 18, 2012 (Optional)	Kolkata • Meetings with Kolkata Port Authorities and port operators. • Evening travel to Chennai—check-in and rest overnight.
Sunday, February 19, 2012	Chennai • Open Schedule.
Monday, February 20, 2012	Chennai • Briefing with U.S. Consulate. • Meetings with State Maritime Board. • Business matchmaking sessions. • Networking reception.
Tuesday, February 21, 2012	Chennai/Ahmedabad • Site visit to Chennai port. • Evening travel to Ahmedabad.
Wednesday, February 22, 2012	Ahmedabad/Mumbai • Briefing/meeting with State Maritime Board. • Business matchmaking sessions. • Evening travel to Mumbai.
Thursday, February 23, 2012	Mumbai • Briefing with U.S. Consulate. • Meeting with Indian Private Ports and Terminals Association. • Business matchmaking sessions. • Networking Reception. • Optional participation in SITL.
Friday, February 24, 2012	• Site visit to JNTP port. • Optional participation in SITL. • Official program concludes.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. U.S. companies already doing business with India as well as U.S. companies seeking to enter to the Indian market for the first time may apply. A minimum of 15 and a maximum of 20 companies will be selected for participation in this mission.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The participation fee is $3,760 for large firms and $3,560 for a small or medium-sized enterprise (SME),[2] which covers one representative. The fee for each additional representative is $750. The fee for the optional stop in Kolkata is $600 for large firms and $450 for SMEs, which covers one representative. The fee for additional representatives in Kolkata is $200.

Participants in SITL in Mumbai will pay show-related expenses directly to the show organizer. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

• Suitability of the company's products or services to the market.

• Applicant's potential for business in India and in the region, including likelihood of exports resulting from the mission.

• Consistency of the applicant's goals and objectives with the stated scope of the mission.

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other

[2] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will conclude no later than November 18, 2011. All applicants will be vetted by the Department of Commerce after November, 18. Applications received after November 18, 2011 will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service India

Aliasgar Motiwala, U.S. Commercial Service, Mumbai, India, *Tel:* +91–22–2265–2511, *E-mail: aliasgar.motiwala@trade.gov*.

U.S. Commercial Service Washington, DC

David McCormack, U.S. Commercial Service, Washington, DC, *Tel:* 202–482–2833, *E-mail: david.mccormack@trade.gov*.

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–24296 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Safety & Security Trade Mission; Mexico City and Monterrey, Mexico

AGENCY: International Trade Administration.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an executive-led Safety and Security trade mission to Mexico City and Monterrey, Mexico, for January 30–February 2, 2012. This mission is intended to focus on a variety of U.S. industry and service providers, particularly those related to residential and industrial facility safety/security, personal protection, logistics and supply chain protection, law enforcement and public security. This mission specifically excludes munitions and items intended for military and defense purposes.

The mission will introduce mission participants to end-users and prospective partners whose needs and capabilities are targeted to the respective U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to Mexico independently, will enhance the companies' ability to secure meetings with potential partners and buyers. The mission will include meetings with Federal, state and local government representatives; Mexican customs officials; airport and transportation authorities; police and law enforcement officials; and private sector industrial groups.

Commercial Setting

The nearly $4 billion in annual trade between the United States and Mexico is fueled in large part by industrial manufacturing centers located throughout northern and central Mexico, which is also supported by an ever-growing national cargo transportation industry. With growing concerns over drug cartel related violence, particularly along the border, U.S. and Mexican companies alike have taken steps to protect their business investments, specifically in terms of safety and security of personnel, physical assets and supply chain logistics. Public and private sector investment in safety and security services and equipment is growing, particularly as companies are taking extra measures to ensure protection for their employees, such as the use of private security companies and armored vehicles. For a variety of products and services related to safety and security, U.S. companies can expect excellent sales prospects in both the public and private sectors of the Mexican market.

Given its dominance in this sector, Mexico City is the main stop on the mission. Many of the country's top distributors are based in this market, as well as procurement decision makers at the Federal level. The timing of this mission will allow new to market companies the chance to identify sales representatives and distributors in time for ExpoSeguridad (April 24–26, 2012), Mexico's leading security trade show. The second stop of this trade mission will be Monterrey, Mexico's northern financial and manufacturing heartland. Mexico's largest industrial groups are headquartered in Monterrey, including manufacturers of beer, steel, glass, and cement, as well as national manufacturing industries such as automotive, electronics, household goods and software. The corporate response to security threats in Monterrey, as in other regions, has been increased investment in safety and security solutions to protect company assets, particularly employees, both within the plant as well as beyond facility perimeters.

Best Prospects: Opportunities in the public security and personal protection markets could include protective gear (bullet-proof vests and clothing), forensics, trace detection equipment, armoring, specialty vehicles, metal detectors, non-intrusive scanning equipment, mobile command centers and communications equipment, *etc.* Residential and corporate hot prospects include alarm systems, CCTV and surveillance, perimeter protection, locks and safes, home automation and fire protection, and ''safe room'' design and construction. For the industrial manufacturing sector, best prospects would include protective clothing (such as gloves, goggles, hazmat suits, safety footwear, anti-static protection, and particulate respirators), as well as facilities access controls, surveillance equipment, hazardous materials handling, logistics protection and supply chain tracking (RFID, GPS). Training and capacity building services (*e.g.* security guards, drivers) are in high demand for all sub-sectors.

Mission Goals

The short term goals of the Safety & Security Trade Mission to Mexico are, (1) To introduce U.S. companies to potential end-users, joint-venture partners and other industry representatives in Mexico City, Monterrey, and their surrounding areas, and (2) to introduce U.S. companies to the industry leaders and government officials in Mexico City and Monterrey to learn about various opportunities in the safety and security industries.

Mission Scenario

Upon arrival in Mexico City on January 30, participants will check into the hotel, and participate in a commercial briefing on Central Mexico, followed by a networking welcome reception at the residence of the U.S. Ambassador, where they will meet key government and industry contacts in the Mexico City area. The morning of January 31 begins with a breakfast event to present the U.S. trade mission companies to a wide audience, including Federal/state/municipal government and law enforcement representatives from several states and cities across Central Mexico, as well as airport operators and transportation authorities, industrial manufacturing groups, and other potential buyers and end-users. The event will also feature short technical presentations from national security experts, as well as an update on the Merida Initiative by U.S. Embassy representatives. The morning event concludes with one-on-one matchmaking at the hotel with invited

guests from outside of Mexico City, followed by additional appointments in and around Mexico City throughout the remainder of the day. That evening, mission participants have the option of participating in a no-host dinner at a local restaurant—group transportation will be provided.

On February 1, participants will depart Mexico City and travel to Monterrey, where they will be welcomed with a commercial briefing focused on the unique market that is Northern Mexico and the border region, followed by a networking reception with key contacts at the Consul General's official residence. Gold Key matchmaking appointments will be scheduled throughout the day on February 2, primarily at the hotel or other centralized location, to ensure participant security.

The following items are included in the price of the trade mission:

- Pre-travel webinar briefing, covering Mexican business practices and security;
- National promotion of trade mission, including wide circulation of printed company directory;
- Welcome reception at Ambassador's residence in Mexico City on January 30;
- Continental breakfast during the Mexico City event on January 31;
- Networking reception with industry contacts in Monterrey on February 1;
- Group transportation to all receptions, and optional no-host dinner in Mexico City;
- Preferential hotel rates in Mexico City and Monterrey;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Mexico City, Monterrey and surrounding cities;
- A designated escort/translator to provide assistance during scheduled matchmaking meetings.

Proposed Timetable

The mission program will begin on the evening of Monday, January 30, 2012, and continue through the evening of February 2, 2012.

January 30	Mexico City.
	Commercial Briefing: Central Mexico market, Federal/state government procurement.
	Welcome reception at Ambassador's Residence.
January 31	Mexico City.
	Breakfast Event with Federal, State and Local Representatives.
	One-on-one meetings with potential clients, distributors/representatives.
	Group dinner at local restaurant (no host).
February 1	Mexico City/Monterrey.
	Breakfast (no host).
	Depart Mexico City.
	Arrival/Hotel check-in Monterrey.
	Evening Reception at Consul General's Residence.
February 2	Monterrey.
	Breakfast (no host).
	Commercial Briefing: Northern Mexico market, industrial security, border business.
	Gold Key matchmaking meetings with potential clients, distributors/representatives.
	Late departure Monterrey or overnight stay (recommended).

Participation Requirements

All parties interested in participating in the Safety & Security Trade Mission to Mexico must complete and submit an application for consideration by U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to satisfy the selection criteria as outlined below. This mission has a goal of a minimum of 15 and a maximum of 20 companies to be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Mexico as well as U.S. companies seeking to enter the market for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be US $ 3,500 for large firms and $3,000 for a small or medium-sized enterprise (SME).[1] The fee for each additional firm representative (large firm or SME) is $300. Expenses for air travel (to Mexico City, Monterrey, and return), lodging, meals and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals.
- Applicant's potential for business in Mexico, including likelihood of exports resulting from the trade mission.
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission (*i.e.,* the sectors indicated in the mission description).

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions/eg_main_023185.asp*) and other Internet Web sites, press releases to general and trade media, direct mail, industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than November 15, 2011. CS Mexico will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after November 15, 2011. Applications received after that

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Mexico Contacts

Ms. Dinah McDougall, Commercial Officer, U.S. Commercial Service Mexico—Mexico City, *Tel:* (011–52–55) 5140–2620, *dinah.mcdougall@trade.gov*.

Ms. Silvia Cardenas, Commercial Specialist, U.S. Commercial Service Mexico—Mexico City, *Tel:* (011–52–55) 5140–2670, *silvia.cardenas@trade.gov*.

Mr. John Howell, Commercial Officer, U.S. Commercial Service Mexico—Monterrey, *Tel:* (011–52–81) 8047–3223, *john.howell@trade.gov*.

Mr. Mario Vidaña, Commercial Specialist, U.S. Commercial Service Mexico—Monterrey, *Tel:* (011–52–81) 8047–3118, *mario.vidana@trade.gov*.

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–24289 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to Southeast Asia in Conjunction With Trade Winds—Asia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

I. Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a trade mission to Southeast Asia, to take place in conjunction with the Trade Winds—Asia business forum (which is also open to U.S. companies not participating in the trade mission) in Singapore next May. U.S. trade mission members will participate in the Trade Winds—Asia business forum in Singapore (which is also open to U.S. companies not participating in the trade mission). Trade mission participants may participate in up to three trade mission stops. On the first leg of the trade mission, prior to the Singapore trade mission stop, participants may choose to participate in a trade mission stop in either: Vietnam (Hanoi and/or Ho Chi Minh City) or Thailand (Bangkok). Trade mission participants may then choose to participate in a trade mission stop in Singapore, during which trade mission participants may participate in the Trade Winds—Asia business forum. Following the trade mission stop in Singapore, trade mission participants may choose to participate in a trade mission stop in either: Malaysia (Kuala Lumpur) or Indonesia (Jakarta).

Each trade mission stop will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint-venture partners; and networking events. Trade mission participants electing to participate in the Trade Winds—Asia business forum may attend regional and industry-specific sessions and consultations with CS Senior Commercial Officers based in Asia.

This mission is open to U.S. companies from a cross section of industries with growth potential in Singapore, Vietnam, Thailand, Malaysia and Indonesia, including, but not limited to energy (mining, oil and gas, electric power generation, renewable), defense and aerospace, telecommunications and information technology, environmental technologies, medical equipment, safety and security equipment, automotive parts and service equipment, and logistics and transportation.

II. Commercial Setting

Singapore: In 2010, the Singapore economy rebounded with exceptional performance, expanding by 14.5% to become the second-fastest-growing economy in the world. Inflation was 2.8% in 2010 and is projected to rise to 3.0–4.0% in 2011. Analysts expect the Singapore currency to strengthen as the government uses monetary policy to fight inflation.

In 2010, Singapore remained our 13th-largest trading partner. Singapore was the United States' 10th largest export market (up from 11th largest in 2009) and the United States was the second largest supplier of imports to Singapore. The city-state, which is a regional trade hub, was the second busiest container port in the world in 2010. The World Economic Forum's ''Global Enabling Trade Report 2010,'' which assesses border administration, transportation and communications, and general business environment in individual countries, ranked Singapore number one, which illustrates Singapore's open economy with respect to international trade and investment.

Best market prospects for Singapore include: Electronics components; oil and gas; aircraft and parts; pollution control equipment; computer hardware/software/peripherals; telecommunication equipment and services; laboratory and scientific instruments; medical devices; education/training services; and franchising.

Vietnam: Vietnam's economic growth rate has been among the highest in the world in recent years, expanding at an average of about 7.2% per year from 2001 to 2010, while industrial production grew at an average of about 12% per year. Vietnam's GDP increased by 6.7% in 2010 and was one of only a handful of countries around the world to experience such significant growth.

In 2010, Vietnam joined the United States, Peru, Chile, Malaysia, Singapore, Brunei, New Zealand, and Australia to participate as a full member in the Trans-Pacific Economic Partnership negotiations to conclude a high-standard, 21st century Asia-Pacific free trade agreement.

The 2001 U.S.-Vietnam Bilateral Trade Agreement transformed the commercial relationship between the United States and Vietnam. Despite the continuing global economic recession in 2010, U.S. exports to Vietnam grew by an impressive 19.8% to $3.7 billion and Vietnam's exports to the U.S. increased 21.0% to $14.9 billion, resulting in an $11.2 billion bilateral trade deficit with Vietnam. Agricultural exports to Vietnam grew significantly and accounted for roughly one-third of U.S. exports to Vietnam. Vietnam continues to import machinery, chemicals, instrumentation and software to support its growing industrial sector. The industrial/manufacturing, real estate/tourism and construction sectors continued to attract a major share of new capital flowing into the country, while utilities projects gained increased interest from investors in 2010.

Best market prospects for Vietnam include: Power generation, transmission and distribution; telecommunications equipment and services; oil and gas machinery and services; information technology hardware and software; airport and ground support equipment, air traffic management systems, and aircraft landing parts; environmental and pollution control equipment and services; medical equipment; safety and security; education and training; franchising; plastic materials, equipment and machinery; and architecture, construction and engineering.

Thailand: In 2010, the GDP of Thailand grew almost 8%, supported by an increase in exports and the Government's increased spending on its ''Thai Khem Khaeng'' economic stimulus program. This stimulus package was estimated to have resulted

in a 2.3% increase to the 2010 GDP of Thailand. The Thai GDP per capita is approximately $4,620 (2010 est.).

U.S.-Thai trade in 2010 was approximately $33 billion, an increase of 24% from 2009, with $23.6 billion in Thai exports to the U.S. and $9 billion in U.S. exports to Thailand.

Following total Thai exports to the member countries of ASEAN, the United States, Japan and China are the next three largest destinations for Thai exports, each accounting for 11% of Thailand's total exports.

Best market prospects for Thailand include: Automotive parts and services/equipment; broadcast equipment; defense equipment; education services; electronic components; electrical power systems; food processing and packaging equipment; medical devices; printing/graphic arts equipment; security and safety equipment; telecommunications equipment; and water pollution control equipment.

Malaysia: For centuries, Malaysia has profited from its location at a crossroads of trade between the East and West. Geographically blessed, peninsular Malaysia stretches the length of the Strait of Malacca, one of the most economically and politically important shipping lanes in the world. Capitalizing on its location, Malaysia transitioned from an agriculture and mining-based economy to a high-tech economy, with 6.7% growth in GDP in 2010.

In 2010, U.S.-Malaysia trade was $36.43 billion (up from $33.7 billion in 2009), ranking Malaysia as America's 17th-largest trade partner. U.S. trade in services with Malaysia totaled $2.8 billion in 2009; services exports from the U.S. were $1.7 billion, services imports from Malaysia were $1.1 billion. The United States has consistently been one of the largest foreign investors in Malaysia, with significant presence in the oil and gas sector, manufacturing, and financial services. U.S. foreign direct investment in Malaysia was $13.5 billion in 2009.

Best market prospects for Malaysia include: aircraft & parts; oil and gas equipment; renewable energy and efficient energy; digital broadcasting and product content; broadband; franchising; medical and dental healthcare.

Indonesia: Indonesia is Southeast Asia's largest economy and continues to grow. Despite the challenging global conditions, Indonesia's economy grew 4.5% in 2009, 6.1% in 2010 and is expected to increase by 8% in 2011.

The number of households in Indonesia with $5,000 to $15,000 in annual disposable income is expected to expand from 36% of the population to more than 58% by 2020. More than 60 million low-income Indonesian workers are projected to join the middle class in the coming decade, which signals increased spending on consumer goods, which continues to lead the growth in Indonesia. The world's fourth-largest country has a population of 237.5 million citizens, 50% of whom are under the age of 30. Indonesia is a top-ten market for U.S. agricultural products and a top-30 market for U.S. exports overall. Indonesia has ratified the Cape Town Treaty, which facilitates the cross-border financing and leasing of aircraft, aircraft engines, and helicopters.

Best market prospects for Indonesia include: Aircraft and parts; computer and peripherals; education and trainings; electrical power system; franchises; industrial chemicals; medical equipment and supplies; mining equipment; oil and gas equipment; retail; and telecommunications.

III. Mission Goals

The goal of the Southeast Asia trade mission is to help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Singapore, Vietnam, Thailand, Malaysia and Indonesia. The delegation will have access to CS Senior Commercial Officers and Commercial Specialists during the mission, learn about the many business opportunities in Asia, and gain first-hand market exposure. U.S. trade mission participants already doing business in Singapore, Vietnam, Thailand, Malaysia and/or Indonesia will have opportunities to further advance business relationships and projects in those markets.

IV. Scenario & Timetable

May 12–13—Travel Days

May 14–15—Trade Mission stops in Hanoi, Vietnam, Ho Chi Min City, Viet Nam, or Bangkok, Thailand (Choice of one stop)

May 16—Singapore: Asia Business Forum

May 17–18—Singapore: Asia Business Forum, consultations with CS Senior Commercial Officers and Trade Mission one-on-one meetings (Schedule will vary among participating firms, depending on their needs and interests)

May 19–20—Travel Days

May 21–22—Trade Mission stops in Kuala Lumpur, Malaysia or Jakarta, Indonesia (Choice of one stop)

V. Participation Requirements

All parties interested in participating in the U.S. and Foreign Commercial Service Trade Mission to Southeast Asia must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below.

A maximum of 65 companies will be selected to participate in the mission from the applicant pool on a first-come, first-served basis. Each of the trade mission stops (Vietnam, Thailand, Singapore, Indonesia, and Malaysia) is designed for participation of a maximum of 30 participants. U.S. companies already doing business in, or seeking to enter Singapore, Vietnam, Thailand, Malaysia or Indonesia for the first time may apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required.

For one mission stop, the participation fee will be $1,950 for a small or medium-sized enterprise (SME)* and $2,850 for large firms.*

For two mission stops, the participation fee will be $2,950 for a small or medium-sized enterprise (SME)* and $3,850 for large firms. *

For three missions stops, the participation fee will be $3,950 for a small or medium-sized enterprise (SME)* and $4,850 for large firms.*

There will be a $500 fee for each additional firm representative (large firm or SME) participating in one mission stop plus an additional fee of $250 for each additional mission stop. There is no additional fee for participants opting to participate in Trade Winds—Asia Business Forum.

Expenses for travel, lodging, meals, and incidentals (e.g., local transportation) will be the responsibility of each mission participant.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. Applicant should specify in their application and supplemental materials which trade mission stops they are interested in participating in. If the Department of Commerce receives an incomplete application, the

Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the U.S., or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

• Suitability of the company's products or services to each of the markets the company has expressed an interest in visiting as part of this trade mission.

• Company's potential for business in each of the markets the company has expressed an interest in visiting as part of this trade mission.

• Consistency of the applicant's goals and objectives with the stated scope of the mission

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

VI. Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the Federal Register, posting on the Commerce Department trade mission calendar, and other Internet Web sites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than March 30, 2012. The U.S. Department of Commerce will review applications and select the participants from the applicant pool on a first come first-served basis. After March 30, 2012, companies will be considered only if space and scheduling constraints permit.

An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008. For additional information see *http://www.export.gov/newsletter/march2008/initiatives.html).*

U.S. Contact Information

Shannon Christenbury, U.S. Export Assistance Center—Charlotte. *Shannon.Christenbury@trade.gov. Tel:* 704–333–4886 x225.

Leslie Drake, U.S. Export Assistance Center—Charleston. *Leslie.Drake@trade.gov. Tel:* 304–347–5123.

Bill Burwell, U.S. Export Assistance Center—Baltimore. *Bill.Burwell@trade.gov. Tel:* 410–962–3097.

Singapore Contact Information

Patrick Santillo, Senior Commercial Officer, U.S. Commercial Service—Singapore. *Patrick.Santillo@trade.gov.*

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–24294 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Aerospace Supplier & Investment Mission

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a U.S. Aerospace Supplier & Investment Mission to Montreal, Canada, May 6–9, 2012. This aerospace mission is an ideal opportunity for U.S. aerospace companies to gain valuable international business leads in a low risk, highly important international aerospace market. Canada has the fifth largest aerospace industry in the world; in 2009 it generated over $22 billion in revenues. Participating U.S. companies will receive market briefings by Canadian industry experts, seminars on exporting best practices, participate in one-on-one meetings with Canadian aerospace supply chain contacts, engage in networking activities and visit key Canadian aerospace OEM plants such as Bombardier. This mission is designed to provide U.S. aerospace companies with a highly effective and unique opportunity to establish supplier relations with major Canadian aerospace companies.

Commercial Setting

The United States and Canada share the largest and most dynamic commercial relationship in the world; U.S. trade with Canada exceeds total U.S. trade with the 27 countries of the European Union combined. Canada also represents the number one export market for 36 of our 50 states and is among the top five export markets for another ten states. The aerospace sector is one of Canada's best prospects for U.S. exporters.

Canada is a world leader in business and regional aircraft, commercial helicopters, turbine engines, flight simulators, avionics, a broad range of aircraft systems and components. The United States is Canada's largest supplier of aircraft parts and components; on average, Canadian aerospace companies purchase more than 50% of their inputs from the United States. In 2010, U.S.-Canada aerospace bilateral trade exceeded $10 billion, and total U.S. aerospace exports to Canada were slightly more than $5.5 billion. Canada was the United States' 5th largest aerospace export market, and in many aerospace sub-markets was often in the top 5. Industry estimates expected Canada's aerospace sector to continue growing slowly in the second half of 2011, and post more aggressive growth rates in 2012; by 2015 the Canadian aerospace industry is expected to reach pre-2008 growth rates. Furthermore, industry analysts are predicting long term growth in commercial aircraft production over the next 20 years; since Canada's aerospace sector is 83% civil, this anticipated trend will bode well for Canada and for U.S. companies exporting to this market.

Quebec and Ontario are at the heart of the Canadian aerospace industry with about 51% and 29% of local production respectively. Montreal is the world's third largest aerospace cluster after Toulouse and Seattle, and is the only place in the world where an entire aircraft can be assembled within a 30-mile radius. Montreal is home to renowned industry leaders such as Bombardier Aerospace, Bell Helicopter Textron, Pratt & Whitney Canada, and CAE. To this exceptional concentration of world leaders, we can add other big names such as Rolls-Royce Canada, Héroux Devtek, Messier-Dowty, CMC Electronics—Esterline, Thales Canada, and many other suppliers.

Canada's geographic proximity, open market economy, stable business climate and receptivity to U.S. goods and services make it an ideal market for achieving the National Export Initiative goals. The North American Free Trade Agreement (NAFTA) allows for U.S. products to enter Canada duty-free and therefore further contributes to the relatively low-cost, low-risk, access that U.S. SMEs can use to prosper and grow in this foreign marketplace.

Mission Goals

The trade mission's goal is to advance the National Export Initiative by providing U.S. suppliers of aerospace products the opportunity to meet with key potential customers such as Canadian aerospace OEMs, sales agents and distributors and obtain export successes in Canada.

Mission Scenario

Participants in the mission to Canada will benefit from a full range of business facilitation and trade promotion services provided by the U.S. Commercial Service in Canada. Participants will receive a briefing by a panel of experts on the Canadian, Quebec and Ontario aerospace markets, an overview of doing business in Canada, and seminars with additional key information for U.S. exporters. It will also include one-on-one business meetings between U.S. participants and potential Canadian business partners, networking opportunities, and tours of some of the largest aerospace OEMs, where companies will have the opportunity to meet senior representatives and learn about planned projects and expected procurement needs. Please see the timetable below with detailed information on the program. Prior to the end of the mission, Commercial Service staff will counsel participants on follow-up.

Proposed Timetable

The proposed schedule allows for three days in Montreal and describes the programming planned for participating U.S. companies.

Sunday, May 6	Participants arrive in Montreal. 6 p.m. No-Host Ice Breaker and No-Host Dinner.
Monday, May 7	8:00–8:30 Mission Welcoming Remarks by Consul General/SCO & Mission Logistics Briefing. 8:30–9:30 Presentation: Doing Business in Canada. 9:30–10:30 Presentations: Trends in the Canadian Aerospace Sector Panel. 10:30–11:00 Coffee Break—Networking. 11:00–12:30 Presentations: Canada's Aerospace Market, Quebec's Aerospace Market, Ontario's Aerospace Market. 12:30–13:30 Lunch Break (on their own). 14:00–16:00 Seminars: Exporting to Canada Best Practices.
Tuesday, May 8	Program for U.S. Companies. 8:30–12:00 Business Matchmaking Appointments. 12:00—14:00 General Event Networking Lunch. 14:00–16:30 Business Matchmaking Appointments. 17:30–19:30 General Event Reception hosted by CG.
Wednesday, May 9	9:00–15:00 Plant Tours of Canadian aerospace OEMs for U.S. Companies. 16:00–16:30 Mission Debriefing at Hotel. Program End.

Participation Requirements

All parties interested in participating in the U.S. aerospace trade and investment mission must complete and submit an application form for consideration by the Department of Commerce. All applicants will be evaluated on their ability to satisfy the selection criteria as outlined below. This mission has a goal of a minimum of 15 and maximum of 18 companies.

Fees and Expenses: After a company has been selected to participate on the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee will be $2,800 for large firms and $2,200 for a small or medium-sized enterprise (SME)*, for up to two company representatives. The fee for any additional representative is $250. Expenses for travel, lodging, in-country transportation (except for bus transportation to visit local aerospace OEMs on the third day of the mission), meals and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed Trade Mission application and a completed Market Interest Questionnaire, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

For Companies:

- Suitability of the company's products or services for the Canadian aerospace market.
- Applicant's potential for business in Canada, including the likelihood of exports resulting from the mission.
- Consistency in the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Recruitment will be conducted in an open and public manner, including publication in the **Federal Register**,

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions/eg_main_023185.asp*) and other Internet Web sites, press releases to general and trade media, direct mail, industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Canada intends to conduct a webinar on ''Opportunities in the Canadian Aerospace Market'' to supplement recruitment efforts in January 2012.

The mission recruitment will be open on a first-come, first-served basis. Recruitment for the mission will begin immediately and close on February 1, 2012. Applications received after February 1, 2012 will be considered only if space and scheduling constraints permit. Applications will be available online on the mission Web site at: *http://www.buyusa.gov/Canada.*

Information can also be obtained by contacting the mission contacts listed below.

Contacts: A Gina Rebelo Bento, Commercial Specialist—Aerospace, U.S. Consulate General in Montreal, PO Box 65, Desjardins Station, Montreal, QC H5B 1G1, *Tel:* 514–908–3660, *E-mail: Gina.Bento@mail.doc.gov.*

Elnora Moye,

Commercial Servicie Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–24297 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Automotive Parts and Components Business Development Mission to Russia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), is organizing an Automotive Parts and Components Business Development Mission to Russia on April 23–28, 2012. Led by a senior Department of Commerce official, this mission is designed to provide an opportunity to explore Russia's rapidly expanding car and truck assembly market to a diverse cross section of companies selling goods and services into the automotive sector, including but not limited to: components for vehicle manufacture, replacement parts, aftermarket products, repair equipment, capital equipment used for vehicle manufacture, testing equipment, and software and engineering services.

Mission participants will benefit from expert briefings on the Russian market as well as on current developments in Russia's emerging auto sector. The mission program will include opportunities to meet key Russian Government officials and decision-makers, one-on-one meetings with potential business partners and site visits to automotive assembly plants and component manufacturers. The U.S. and Foreign Commercial Service is targeting a minimum of 15 and a maximum of 20 U.S. companies.

Commercial Setting

During Soviet times, average citizens spent years on waiting lists for the 4 or 5 models of available cars, most based on 1960s technology. Quality control was minimal.

In 2010, automobile ownership in Russia—a country of 140 million consumers—grew to more than 244 vehicles per 1,000 inhabitants, 70% higher than the 2001 rate of 140 vehicles per 1,000 inhabitants. This compares to around 850 cars for every 1,000 Americans. Sales of cars and trucks in Russia are currently growing at an annual rate of 30 percent. Approximately 34 million cars are on Russian roads today, of which 14 million are foreign brands.

While sales of Russian automobiles declined in 2008, due to the world-wide financial crisis and recession, car sales have picked up again as the Russian economy recovers. In 2010, Russian customers purchased 1.9 million cars. This figure includes 646,000 new Russian cars and 1.25 million foreign cars, both imported and produced in Russia. Importers forecast continued rapid growth of approximately 20 percent in 2011. If these trends continue, most experts project Russia will be the largest automotive market in Europe in the next few years.

Prior to the global financial crisis that started in 2008, Russia's economy was growing at a healthy pace. Annual GDP growth averaged 7.5 percent from 2001–2007. In 2008 and 2009, Russia experienced negative GDP growth. However, Russia's economy began to grow again in late 2010, experiencing GDP growth of 3.8% in the last two quarters of 2010. Economists now forecast Russia's economy, supported by higher prices for oil, gas and raw materials, to continue growing at around 4% annually in the near term.

Russia's giant auto plants remained largely unaffected by the economic turmoil that followed the collapse of the Soviet Union. During the inflationary 1990s, auto parts became a valuable barter commodity. As the Russian market opened to imports, the few wealthy Russians able to afford imported vehicles opted for new foreign cars. At the same time, imported used cars began to compete with new Russian cars in the rapidly expanding mass market. The financial crisis of 1998 and the significant devaluation of the Russian ruble made imports more expensive and thus provided a stimulus to Russian manufacturers.

Russia's auto industry has largely been centered in the city of Togliatti in the Samara region and in Nizhny Novgorod. The giant AvtoVaz factory, one of Russia's largest industrial enterprises, is located in the city of Togliatti. The plant reported output of 517,000 cars in 2010 and accounted for 30 percent of Russia's automotive output. AvtoVaz produces cars in the $5,000 to $15,000 range for the Russian market and exports about 8% of its output to the former Soviet republics.

The GAZ plant in Nizhny Novgorod has ceased production of passenger vehicles. The last Volga Sibir—a modified version of the Chrysler Sebring sedan—rolled off the assembly line October 31, 2010. The factory continues to produce the popular Gazelle line of light trucks and minivans, and the company also produces general purpose heavy trucks that are used in a variety of industries.

UAZ in Ulyanovsk produces light utility and military vehicles. The UAZ–469 all terrain vehicle was the standard off-road vehicle for the Soviet armed forces and was used by armies around the world due to its reputation for reliability and ease of maintenance. Today, the company's UAZ Hunter is a successor vehicle to the 469 made for the consumer market, and it has also introduced the UAZ Patriot—a mid-size SUV with an economical price. UAZ produced 49,000 vehicles in 2010.

Russia's largest automotive corporation KAMAZ is ranked 13th among the world's heavy truck producers and is number 8 in the production of diesel engines. Its trucks have won the Dakar Rally a record 10 times. It is the largest manufacturer of heavy trucks in the former Soviet Union. Its massive factory in Naberezhny Chelny, Tatarstan has production capacity for over 100,000 vehicles. The company's diesel engine plants include wholly-owned subsidiary Kamaz-Diesel and Cummins-Kama, a

joint venture with the U.S. company Cummins.

Foreign automakers have taken notice of the Russian automotive market's potential for significant growth and are building assembly plants to meet the increasing Russian demand for high quality automobiles. General Motors has a $335 million plant in Togliatti, a joint venture with Russian auto giant AvtoVaz that produces an inexpensive SUV, under the Chevrolet-Niva brand, which is based on an AvtoVaz-designed platform. The GM/AvtoVaz joint venture manufactures 60,000 vehicles for the Russian market and for export through AvtoVaz's dealerships throughout the former Soviet Union and GM's distribution network. GM's newest plant was built in St. Petersburg in 2008. It has a production capacity of 50,000 cars, and currently produces four models: two SUVs—Chevrolet Captiva and Opel Antara—and two sedans—Chevrolet Cruze and Opel Astra.

Both GM and AvtoVaz have an interest in working with the more than 200 automotive component manufacturer suppliers in the Samara region to improve the quality of their products and upgrade their technology.

Ford opened its first assembly plant in Russia in 2002 near St. Petersburg. The plant has a capacity of 125,000 vehicles and currently produces two models—Ford Focus and Ford Mondeo. In 2010, the Ford Focus was Russia's most popular foreign car, and its 5th top seller overall. Assembled in Russia from foreign-made parts and with a sticker price of $16,000–$25,000, the Russian-made Ford Focus is significantly less expensive than the price of similar imports. Consequently, Ford is working with local components manufacturers to develop their capabilities as suppliers, and is encouraging Western manufacturers to consider establishing facilities in Russia. In February 2011, Ford announced its intention to form a joint venture with Sollers OJSC to produce cars in Russia under the Ford nameplate. This proposed joint venture will produce cars under the Ford brand at the Ford plant outside St. Petersburg and at Sollers's plant in Tartarstan. It will also produce engines; operate a stamping facility that will provide a higher level of local parts content for Ford vehicles built in Russia; and establish research and development activities.

In addition to Ford and GM, major international OEMs have made significant investments in St. Petersburg and surrounding Leningrad Oblast, turning it into a new automotive assembly ''cluster.'' Nissan, Toyota and Hyundai opened new plants in St. Petersburg or in Leningrad oblast between 2007 and 2009. Toyota's facility, located near the GM plant in Shushary, was built in 2009, and has a capacity of 50,000 vehicles. It currently produces the Toyota Camry. Nissan opened its 50,000 vehicle plant to produce the Nissan X-Trail and the Nissan Teanna in St. Petersburg's Kamenka district in 2009. Hyundai is the latest arrival. It opened its 100,000 car plant also in the Kamenka district in 2010 to produce the Solaris, a sub-compact car designed specifically for the Russian market. Significantly, Hyundai has also brought with it a number of Korean automotive suppliers that will help it to meet Russian government demands for increased localization of foreign automotive assembly in Russia.

Investments by European manufacturers have also created another automotive ''cluster'' in Kaluga. Volkswagen Group has invested more than 500 million Euro in its 150,000 capacity plant where it produces the Volkswagen Passat and the Skoda Octavia. Volvo's truck assembly plant, which opened in 2009, has an annual capacity of 10,000 Volvo and 5,000 Renault trucks. PSA Peugeot Citroen opened its plant in March 2010 to build Peugeot 308s for the Russian market, as well as Citroen and Mitsubishi brand cars.

There are also a number of smaller international automotive ventures in Russia. In the Russian ''exclave'' of Kaliningrad, the Autotor joint venture with KIA and BMW assembled 170,211 cars in 2010 and plans to assemble 240,000 in 2011. In Taganrog, Tagas is assembling several Hyundai models: The Accent and Sonata sedans, the Porter LCV and Aerotown and County buses. Tagas produced 31,000 vehicles in 2010, and plans to double production to 60,000 in 2011. Scania's plant in St. Petersburg has capacity to produce 1,500 trucks per year.

Western tire makers are also operating in Russia. The French Michelin built a plant outside Moscow in 2004 that makes 2 million tires per year. Finland's Nokian Tyres is expanding its plant near St. Petersburg to produce 10 million tires per year by the end of 2011. Goodyear has a joint venture with a Russian tire maker in Yaroslavl and has explored building a tire factory there. Michelin's plant was built with the help of a $20 million investment from the EBRD, which has targeted the Russian automotive sector for strategic investment.

Bosch, with its Russian joint venture partner, supplies 82 percent of the Russian ignition plug market from its 30 million-unit capacity plant in Saratov. Lear manufactures car seats in a facility within GAZ's plant in Nizhny Novgorod. Outside of that town, Ingersoll Rand makes power tools and steering columns. Delphi produces wire harnesses at its plant in Samara, while in St. Petersburg Johnson Controls and Tenneco make, respectively, car seats and exhaust systems.

Given the current dynamics in this automotive sector, the U.S. Commercial Service strongly believes that significant opportunities for growth and expansion exist in Russia for U.S. manufacturers of automotive parts and components. Russians are prepared to pay for quality vehicles, while at the same time the Russian automotive manufacturers and the Russian government are seeking technology and business partnerships to meet this demand.

Industry experts have indicated that there are especially good prospects for manufacturers of engines, electric and electronic components, trim, exhaust systems, plastic parts and instrumentation. In addition, there are increasing opportunities for export of air conditioners, ABSs, airbags, power steering and automatic transmissions, that are currently not manufactured in Russia.

Mission Goals

The U.S. Automotive Parts and Components Business Development Mission to Russia will provide U.S. original equipment parts manufacturers a timely, efficient and cost effective opportunity to explore current business prospects in Russia.

Mission Scenario

The Mission program will begin in Moscow and include site visits and consultations in St. Petersburg and in Samara and Togliatti. In addition to market briefings by industry experts, mission members will have the opportunity to meet key Russian Government officials responsible for formulating and implementing the government's automotive industry policies and plans and for one-on-one meetings with potential business partners that match their market interests.

TIMETABLE

Sunday, April 22, Moscow, Russia	Arrive Moscow. Evening: Welcome event.
Monday, April 23, Moscow, Russia	Briefings/Presentations/Meetings with key Russian and American automotive industry executives, consultants and officials followed by an evening VIP Reception.
Tuesday, April 24, Moscow, Russia	Presentations by major automotive companies, followed by one-on-one meetings. Depart for St. Petersburg.
Wednesday, April 25, St. Petersburg, Russia	Meetings with auto industry representatives and regional government officials and plant visits in St. Petersburg and Leningrad Oblast. Evening networking event and/or cultural program.
Thursday, April 26, Samara, Russia	Depart for Samara/Togliatti. Meetings with auto industry representatives and regional government officials and plant visits in Samara followed by evening networking event.
Friday, April 27, Moscow, Russia	Meetings with auto industry representatives and regional government officials and plant visits in Togliatti, followed by return to Moscow.
Saturday, April 28	Depart Moscow for U.S.

Participation Requirements

All parties interested in participating in this mission to Russia must complete and timely submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 companies and a maximum of 20 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses: After a company has been selected to participate in the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee for one company representative will be $4,952 for small or medium-sized enterprises (SME) [1] and $5,701 for large companies, which will cover one representative.[2] The fee for each additional firm representative (large firm or SME) is $1,220. The participation fee covers all in-country travel—airport transfers and bus transportation to/from group meetings and site visits, train fare from Moscow to St. Petersburg, airfare from St. Petersburg to Samara and from Samara back to Moscow, as well as one-on-one meetings with potential Russian business partners. The Commercial Service will assist in booking hotels at favorable rates, but lodging costs, meals and incidental expenses will be the responsibility of each mission participant.

Conditions for Participation: An applicant must submit a completed and signed mission Application and a completed Market Interest Questionnaire, which must include adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

- Suitability of the company's products or services to the market;
- Applicant's potential for business in Russia and in the region, including likelihood of exports resulting from the mission; or investments that will lead to exports.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and will not be considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.trade.gov/trade-missions*) and other internet Web sites, press releases to general and trade media, e-mail, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS St. Petersburg will conduct a webinar on automotive opportunities in the Russian market in November 2011; the mission will be promoted during the webinar as well.

Recruitment for the mission will begin immediately and will close on January 6, 2012. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Contacts

Eduard Roytberg, Senior International Trade Specialist, CS Ontario, CA, *Tel:* 1 (909) 466–4138. *Fax:* 1 (909) 466–4140. *Eduard.Roytberg@trade.gov.*

Alexander Kansky, Commercial Specialist, CS St. Petersburg, *Tel:* 7 (812) 331–2881, *Fax:* 7 (812) 331–2861, *Alexander.Kansky@trade.gov.*

Vladislav Borodulin, Commercial Specialist, *Tel:* 7 (495) 728 –5235, *Fax:* 7 (495) 728–5585, *Vladislav.Borodulin@trade.gov.*

Kenneth C. Duckworth, Principal Commercial Officer, CS St. Petersburg, *Tel:* 7 (812) 326–2560, *Tel:* 7 (812) 326–2561, *Kenneth.Duckworth@trade.gov.*

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–24290 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations.

[2] Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS00

Endangered and Threatened Species; Recovery Plans; Recovery Plan for the Kemp's Ridley Sea Turtle

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

ACTION: Notice of availability.

SUMMARY: We, NMFS and USFWS, announce the availability of the Bi-National Recovery Plan (Recovery Plan) for the Kemp's Ridley Sea Turtle (*Lepidochelys kempii*). The Recovery Plan is a bi-national plan developed by the NMFS and USFWS and the Secretary of Environment and Natural Resources, Mexico. The revised Recovery Plan includes specific recovery objectives and criteria to be met in order to down and delist this species under the Endangered Species Act of 1973, as amended.

ADDRESSES: The Bi-National Recovery Plan for the Kemp's Ridley Sea Turtle (*Lepidochelys kempii*) is available on the Internet at *http://www.nmfs.noaa.gov/pr/recovery/plans.htm* or *http://www.fws.gov/kempsridley/.* Copies also may be obtained by contacting NMFS Office of Protected Resources 1315 East-West Highway, Room 13535, Silver Spring, MD 20910 or USFWS 6300 Ocean Drive, Unit 5837, Corpus Christi, TX 78412.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–427–8456, fax 301–713–0376) or Tom Shearer (ph. 361–994–9005, fax 361–994–8626).

SUPPLEMENTARY INFORMATION:

Availability of the Recovery Plan

Interested persons may obtain the Recovery Plan for review on the Internet at *http://www.nmfs.noaa.gov/pr/recovery/plans.htm* or *http://www.fws.gov/kempsridley/* or by contacting Therese Conant or Tom Shearer [see **FOR FURTHER INFORMATION CONTACT**.]

Background

The Endangered Species Act of 1973 (15 U.S.C. 1531 *et seq.*) requires that NMFS and USFWS develop and implement recovery plans for the conservation and survival of threatened and endangered species under their jurisdiction, unless it is determined that such plans would not promote the conservation of the species. This Recovery Plan discusses the natural history, current status, and the known and potential threats to the Kemp's ridley. The Recovery Plan lays out a recovery strategy to address the potential threats based on the best available science and includes recovery goals and criteria. The Recovery Plan is not a regulatory action, but presents guidance for use by agencies and interested parties to assist in the recovery of Kemp's ridley turtles. The Recovery Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. Recovery of Kemp's ridleys has and will continue to be a long-term effort between the U.S. and Mexico and will require cooperation and coordination of Federal, state, local government agencies and nongovernment organizations.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 14, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24386 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA717

Notice of Intent To Prepare an Environmental Impact Statement for the Establishment of Annual Quotas for the Subsistence Harvest of Bowhead Whales by Alaska Natives

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

ACTION: Notice of intent; announcement of public scoping period; request for written comments.

SUMMARY: NMFS announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), in order to assess the impacts of issuing annual quotas for the subsistence harvest of bowhead whales by Alaska Natives from 2013 through 2017. Publication of this document begins the official scoping period that will help identify issues and alternatives to be considered in the EIS. The scoping process will end October 31, 2011.

ADDRESSES: To request inclusion on a mailing list of persons interested in the EIS, please contact Steve Davis, NMFS, 222 W 7th Avenue, Box 43, Anchorage, AK 99513. Comments on this action and the scoping process for this action must be submitted by one of the following methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. Any comments on this document must be identified by [NOAA–NMFS–2011–0225]. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

- *Mail:* P.O. Box 21668, Juneau, AK 99802–1668.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.
- *Fax:* 907–586–7557.
- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter [NOAA–NMFS–2011–0225] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line. Include in the subject line the following document identifier: Bowhead Whale Quota EIS.

FOR FURTHER INFORMATION CONTACT: Steve Davis or Brad Smith, NMFS Alaska Region, Anchorage Field Office, (907) 271–5006.

SUPPLEMENTARY INFORMATION: NMFS is initiating this EIS process in order to comprehensively assess impacts of the subsistence harvest of Western Arctic bowhead whales by Alaska Natives from 2013 through 2017.

Background

Eskimos have hunted bowhead whales for over 2,000 years as the whales migrate in the spring and fall

along the coast line of Alaska. Their traditional subsistence hunts for these whales have been regulated by catch limits and other limitations under the authority of the International Whaling Commission (IWC) since 1977. Alaska Native subsistence hunters, from 11 northern Alaskan communities, take less than one percent of the stock of bowhead whales per year. Since 1977, the number of strikes has ranged between 14 and 72 animals per year, depending in part on changes in IWC management strategy due to higher estimates of bowhead whale abundance in recent years, as well as hunter efficiency. The IWC sets an overall aboriginal subsistence catch limit for this relevant stock, based on the request of Contracting Governments on behalf of the aboriginal hunters. In the case of Alaska Eskimo and Russian Native subsistence hunts, the United States and the Russian Federation make a joint request for subsistence catch limits for bowhead whales to the IWC.

NMFS must annually publish a notice of aboriginal subsistence whale hunting quotas and any other limitations on such hunting in the **Federal Register** (50 CFR 230.6). The subsistence hunt is directly managed by the Alaska Eskimo Whaling Commission (AEWC), and the quotas are issued through annual amendments to a cooperative agreement between the AEWC and NOAA. In order to comprehensively assess the effects of these annual quotas, NMFS is proposing to set the term of this analysis to extend over a 5-year period, beginning in 2013.

Alternatives

NMFS preliminarily anticipates three alternatives:

Alternative 1 (no action): Do not grant the AEWC any annual quotas.

Alternative 2: Grant the AEWC annual quotas amounting to 255 landed whales over 5 years (2013 through 2017), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the quota for any one year.

Alternative 3: Grant the AEWC annual quotas amounting to 255 landed whales over 5 years (2013 through 2017), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year. This is the agency's preferred alternative and reflects past IWC action and current management practices.

NOAA prepared an EIS in 2008 that analyzed issuing annual quotas to the Alaska Eskimo Whaling Commission for a subsistence hunt on Bowhead whales during 2008 through 2012. That analysis concluded that the overall effects of human activities associated with subsistence whaling results in only minor impacts on the western Arctic bowhead whale stock. In light of the stability of the IWC subsistence harvest allocations and the subsistence bowhead harvests by Alaska Natives over the last ten years, NMFS anticipates that the new EIS can estimate environmental consequences for a 10- to 25-year period, subject to an Environmental Assessment in 2017 (and every five years thereafter) to determine whether any new circumstances would result in significant environmental impacts warranting a new EIS.

Major issues to be addressed in this EIS include: the impact of subsistence removals on the Western Arctic stock of bowhead whales; the impacts of these harvest levels on the traditional and cultural values of Alaska Natives, and the cumulative effects of the action when considered along with climate change and past, present, and future actions potentially affecting bowhead whales.

Public Involvement

We begin this NEPA process by soliciting input from the public and interested parties on the type of impacts to be considered in the EIS, the range of alternatives to be assessed, and any other pertinent information. Specifically, this scoping process is intended to accomplish the following objectives:

1. Invite affected federal, state, and local agencies, Alaska Natives, and other interested persons to participate in the EIS process.

2. Determine the potential significant environmental issues to be analyzed in the EIS.

3. Identify and eliminate issues determined to be insignificant or addressed in other documents.

4. Allocate assignments among the lead agency and cooperating agencies regarding preparation of the EIS, including impact analysis and identification of mitigation measures.

5. Identify related environmental documents being prepared.

6. Identify other environmental review and consultation requirements.

The official scoping period is from the date of publication in the **Federal Register** of this document until October 31, 2011. Please visit NMFS Alaska Region web page at *http://www.fakr.noaa.gov* for more information on this EIS. NMFS estimates the draft EIS will be available in April 2012.

Authority

The preparation of the EIS for the subsistence harvest of Western Arctic bowhead whales by Alaska Natives will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR 1500–1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: September 16, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–24392 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA721

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Research Set-Aside (RSA) Committee, its Squid, Mackerel, Butterfish (SMB) Committee, its Executive Committee, and its Spiny Dogfish Committee will hold public meetings.

DATES: The meetings will be held Tuesday, October 11 through Thursday, October 13, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Dolce Seaview, 401 South New York Road, Galloway, NJ 08205; *telephone:* (609) 652–1800.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901–3910; *telephone:* 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council; *telephone:* (302) 674–2331 ext. 255.

SUPPLEMENTARY INFORMATION: On Tuesday, October 11, the RSA Committee will meet from 8:30 a.m. until 10:30 a.m. The SMB Committee will meet from 10:30 a.m. until 5 p.m. There will be a Public Listening Session from 5 p.m. until 6 p.m. On Wednesday,

October 12, the Executive Committee will meet from 8:30 a.m. until 9:30 a.m. The Council will convene at 9:30 a.m. Swearing in of the new Council member will be from 9:30 a.m. until 9:45 a.m. From 9:45 a.m. until 11 a.m., SMB Amendment 14 DEIS Alternatives will be discussed. From 11 a.m. until 12 p.m., the Council will receive a Standardized Bycatch Reporting Methodology (SBRM) Report. Amendment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) will be discussed from 1 p.m. until 3 p.m. From 3 p.m. until 4:30 p.m., Spiny Dogfish Specifications will be approved as a Committee of the Whole. From 4:30 p.m. until 5:30 p.m., there will be a Scoping Presentation on Consolidation of the Highly Migratory Species (HMS) FMP. On Thursday, October 13, the Council will convene at 8:30 a.m. The RSA Program Review Report will be heard from 8:30 a.m. until 9:30 a.m. From 9:30 a.m. until 1 p.m., the Council will conduct its regular Business Session, receive Organizational Reports, Council Liaison Reports, Executive Director's Report, Science Report, Committee Reports, and any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are: On Tuesday, October 11, the RSA Committee will review the staff evaluation of the RSA Program and recommend changes to the RSA Program to address scientific and administrative issues. The SMB Committee will review Amendment 14 analyses and develop recommendations for preferred alternatives. On Wednesday, October 12, the Executive Committee will meet in a closed session to discuss the Ricks E Savage Award followed by the Council convening to swear in the new Council member. The Council will approve the SMB Amendment 14 document for public hearings. Dr. Paul Rago of NMFS will provide the Council with a report of the 3-year SBRM review. The Council will review draft alternatives of Amendment 17 to the Summer Flounder, Scup, and Black Sea Bass FMP to address spatial/regional management of the recreational black sea bass fishery. The Spiny Dogfish Committee will meet as a Committee of the Whole to review the SSC and the Spiny Dogfish Monitoring Committee recommendations for 2012 and adopt the recommendations for 2012 management measures. There will be a NMFS Scoping Presentation on the Consolidated HMS FMP. On Thursday, October 13, the Council will convene to discuss and adopt recommended changes to the RSA Program. The Council will hold its regular Business Session to approve the August 2011 minutes and address any outstanding actions from the August 2011 meeting, Organizational Reports, Liaison Reports, the Executive Director's Report, the Science Report, Committee Reports, and any continuing and/or new business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251 at least 5 days prior to the meeting date.

Dated: September 19, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–24355 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA720

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Reef Fish Advisory Panel.

DATES: The meeting will convene at 1 p.m. on Thursday, October 13, 2011 and conclude by 12 p.m. on Friday, October 14, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Reef Fish Advisory Panel (AP) will review actions by the Scientific and Statistical Committee (SSC) which meets immediately prior to the AP meeting. The AP will also receive presentations from representatives of the SSC on how acceptable biological catch is set, and on how stock assessments are done. The AP will then review presentations on update assessments for vermilion snapper and gray triggerfish, and will make recommendations on management of those stocks. The AP will also review draft Reef Fish Amendment 35, which contains actions to modify the rebuilding plan and management measures for greater amberjack. The AP will also discuss red snapper issues relating to the five year review of the red snapper individual fishing quota program, and to the data collection programs for the recreational red snapper fishery.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 16, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–24303 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA719

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Shrimp and Special Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meeting will convene at 1 p.m. on Tuesday, October 11, 2011 and conclude by 12 p.m., Thursday, October 13, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Standing and Special Shrimp SSC will meet jointly on Tuesday, October 11, 2011 to review benchmark stock assessments on brown shrimp, white shrimp and pink shrimp, and may consider recommending definitions of overfishing limit (OFL) and acceptable biological catch (ABC) based on those assessments. The remainder of the meeting will be a joint meeting of the Standing and Special Reef Fish SSC. The Standing and Special Reef Fish SSC will review and make recommendations on the SEDAR stock assessment schedule. The SSC will then review update assessments of gray triggerfish and vermilion snapper, and will recommend OFL and ABC for those stocks based on the assessments. The SSC will also discuss data needs from the Southeast Fisheries Science Center in order to reevaluate the 2012 red snapper annual catch limit during their next meeting. A representative from the Southeast Regional Office will present the methodology used to calculate the length of the red snapper recreational season, and will review a set of Excel spreadsheets used as decision tools for evaluating commercial and recreational greater amberjack management measures under Reef Fish Amendment 35. SSC members who attended the October 4–6, 2011 National SSC meeting in Williamsburg, VA will give a report on that meeting, and the Chair of the Ecosystem SSC will present a summary of the September 15, 2011 Ecosystem SSC webinar. The SSC will then discuss possible revisions to the definition of optimum yield based on the revised National Standard 1 guidelines, and will review the tentative schedule of SSC meetings planned for 2012.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 16, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–24302 Filed 9–21–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0011]

Bad Boy Enterprises, LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Bad Boy Enterprises, LLC, containing a civil penalty of $715,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 7, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0011, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 16, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Bad Boy Enterprises, LLC (''Bad Boy'') and staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act (''CPSA''). The Agreement and the incorporated attached Order resolve Staff's allegations set forth below.

The Parties

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Bad Boy is a corporation, organized and existing under the laws of the State of Mississippi, with its principal corporate office located at 413 Liberty Road, Natchez, Mississippi 39120.

Staff Allegations

4. Between 2003 and October 2009, Bad Boy manufactured and distributed approximately nine thousand three hundred (9,300) off-road utility buggy vehicles (''Buggies''). Buggies distributed by Bad Boy between 2003 and 2007, were manufactured with the Series motor, and an accelerator and controller system designed for the Series motor (''Series Buggies''). Buggies distributed by Bad Boy between 2007 and 2009, were manufactured with a ''separately excited'' motor, and an accelerator and controller system designed for the separately excited

motor (''SePex Buggies''). Retailers and authorized Bad Boy distributors sold the Series and SePex Buggies nationwide for approximately between $8,000 and $12,000.

5. The Buggies are ''consumer products'' and, at all relevant times, Bad Boy was a ''manufacturer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (11).

6. The Buggies are defective because they can accelerate suddenly during use or when the ignition is in the idle position, creating a runaway vehicle situation.

7. Bad Boy received its first complaint involving sudden acceleration of a Series Buggy in April 2005.

8. In spring 2007, Bad Boy began manufacturing and distributing SePex Buggies.

9. By spring 2008, Bad Boy was aware of at least 10 reports of sudden acceleration Buggies.

10. In May 2008, Bad Boy developed new software to remedy the sudden acceleration problem exhibited by the SePex Buggies. Bad Boy implemented the software repair program without notifying the Commission of the sudden acceleration problem. Despite knowledge of the information set forth in Paragraphs 5 through 9, Bad Boy did not report to the Commission until August 13, 2009. At that time, Bad Boy reported to the Commission about the SePex Buggies only. By that date, Bad Boy was aware of at least thirty two (32) reports involving sudden acceleration of the SePex Buggies and aware of at least twenty two (22) sudden acceleration reports of the Series Buggies. Bad Boy recalled the SePex Buggies on October 21, 2009.

11. In May 2010, Bad Boy developed a second repair program for the SePex Buggies to address continued reports of sudden acceleration. On May 28, 2010, Bad Boy finally reported the Series Buggies and notified the Commission that the Firm was including them in the expanded repair program. By this time, Bad Boy was aware of thirty-three (33) reports of sudden acceleration involving the Series Buggies. On December 22, 2010, Bad Boy announced the recall of the Series Buggies along with the second SePex Buggy recall.

12. Although Bad Boy had obtained sufficient information to reasonably support the conclusion that the Buggies contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Bad Boy failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to inform the Commission immediately of the defect or advising that the defect involved the Buggies, Bad Boy knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Bad Boy is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Bad Boy Enterprises LLC

14. Bad Boy denies the allegations of Staff that the Buggies contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Bad Boy.

16. In settlement of Staff's allegations, Bad Boy shall pay a civil penalty in the amount of seven hundred fifteen thousand dollars ($715,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *http://www.pay.gov*.

17. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Bad Boy or a determination by the Commission that Bad Boy violated the CPSA's reporting requirements.

18. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Bad Boy knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) An administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Bad Boy failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Bad Boy and each of its successors and/or assigns until the obligations described in Paragraph 16 have been fulfilled to the satisfaction of the Commission.

22. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Bad Boy and each of its successors and/or assigns to appropriate legal action until the obligations described in Paragraph 16 have been fulfilled to the satisfaction of the Commission.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms or the Agreement and the Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Bad Boy agree that severing the provision materially affects the purpose of the Agreement and Order.

Bad Boy Enterprises LLC

Dated: July 26, 2011.

By: _____

John Dale, IV,

Managing Member, Bad Boy Enterprises, LLC, 413 Liberty Road, Natchez, Mississippi 39120.

Dated: July 26, 2011.

By: _____

Patrick P. Burns, Jr.,

Managing Member, Bad Boy Enterprises, LLC, 413 Liberty Road, Natchez, Mississippi 39120.

Dated: August 1, 2011.

By: _____

Erika Z. Jones, Esquire,

Mayer Brown LLP, 1999 K Street, NW., Washington, DC 20006–1101, Counsel for Bad Boy Enterprises LLC.

U.S. Consumer Product Safety *Commission Staff.*

Cheryl A. Falvey, *General Counsel.*

Mary B. Murphy, *Assistant General Counsel.*

Dated: September 6, 2011.

By: _____

Belinda V. Bell, *Trial Attorney, Division of Compliance, Office of the General Counsel.*

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No.: *11–C0011]*

In the Matter of: *Bad Boy Enterprises, LLC*

Order

Upon consideration of the Settlement Agreement entered into between Bad Boy Enterprises, LLC. (''Bad Boy''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Bad Boy, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered that the Settlement Agreement be, and is, hereby, accepted; and it is

Further Ordered, that Bad Boy shall pay a civil penalty in the amount of seven hundred fifteen thousand dollars ($715,000.00) within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement upon counsel for Bad Boy identified in the Settlement Agreement. The payment shall be made electronically to the CPSC via *http://www.pay.gov.* Upon the failure of Bad Boy to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bad Boy at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 16th day of September, 2011.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–24343 Filed 9–21–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Acquisition University Board of Visitors

AGENCY: Defense Acquisition University, Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Thursday, October 13, 2011, from 8:30 a.m.–11:45 a.m.

ADDRESSES: Hirsch Center, Building 226, Defense Acquisition University, 9820 Belvoir Rd., Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU: *Phone:* 703–805–5134, *Fax:* 703–805–5940, *E-mail: christen.goulding@dau.mil.*

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda:

8:30 a.m.—Welcome and approval of minutes.

8:35 a.m.—Certification to Qualification.

9:15 a.m.—Distinguished Faculty.

10:15 a.m.—Mission Assistance.

11 a.m.—DCMA Partnership Agreement.

11:45 a.m.—Adjourn.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

Committee's Designated Federal Officer or Point of Contact: Ms. Kelley Berta, 703–805–5412.

Dated: September 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–24351 Filed 9–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0101]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/ Central Security Service, Department of Defense (DoD).

ACTION: Notice to Amend a System of Records.

SUMMARY: The National Security Agency (NSA) is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 24, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.
- *Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill, National Security Agency/ Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security System systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.**

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the

purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 16

SYSTEM NAME:

NSA/CSS Drug Testing Program (October 1, 2008, 73 FR 57064)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), an assigned identification code (I.D. code), organization, work phone number, and records relating to the selection, notification, and testing of covered individuals as well as urine specimens and drug test results.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''The system is used to maintain NSA/CSS Drug Program Coordinator records on the selection, notification, and testing for illegal drug use (*i.e.,* urine specimens, drug test results, chain of custody records, etc.) of employees and applicants for employment.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials having authority to take adverse personnel action against such employee.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by name, SSN, or I.D. code.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''NSA Drug Program Coordinator, National Security Agency/Central Security Service, 9800 Savage Road, Fort George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial agency determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act (FOIA)/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

GNSA 16

SYSTEM NAME:

NSA/CSS Drug Testing Program

SYSTEM LOCATION:

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Security Agency/Central Security Service (NSA/CSS) applicants for employment and employees tested for the use of illegal drugs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), an assigned identification code (I.D. code), organization, work phone number, and records relating to the selection, notification, and testing of covered individuals as well as urine specimens and drug test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7302 note; 5 U.S.C. 7361, Drug abuse; E.O. 12564, Drug Free Workplace; DoD Directive 1010.9, DoD Civilian Employee Drug Abuse Testing Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The system is used to maintain NSA/CSS Drug Program Coordinator records on the selection, notification, and testing for illegal drug use (*i.e.,* urine specimens, drug test results, chain of custody records, etc.) of employees and applicants for employment.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT OF 1974, THESE RECORDS MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

In order to comply with provisions of 5 U.S.C. 7301, DoD 'Blanket Routine Uses' do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, SSN, or I.D. code.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper

and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Records relating to the selection of specific employees/applicants for testing, the scheduling of tests and negative test results are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive test records are permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

NSA Drug Program Coordinator, National Security Agency/Central Security Service, 9800 Savage Road, Fort George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial agency determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act (FOIA)/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Contents of the record are obtained from the individual about whom the record pertains, from laboratories that test urine specimens for the presence of illegal drugs, from supervisors and managers and other NSA/CSS employees, from confidential sources, and from other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–24341 Filed 9–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0102]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, Department of Defense, (DoD).

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 24, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150, or by phone at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 14, 2011, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 2996, 61 FR 6427).

Dated: September 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T–4500b

SYSTEM NAME:

Transportation Support System (TSS).

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, Mechanicsburg, Building 308, North End, 5450 Carlisle Pike, Mechanicsburg, PA 17050.

Defense Finance & Accounting Service (DFAS), Cleveland, Systems Management Directorate, Transportation Support System, 1290 E. 9th Street, Cleveland, OH 44199.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Navy and Navy reserve members whose household goods claims are processed by the Defense Finance and Accounting Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), grade, rank, address and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR), 7000.14–R, Vol. 5, Chapter 20; 31 U.S.C. Sections 3511, 3512, and 3513, Accounting Requirements, Systems, and Information; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system provides a front-end invoice input capability to the One Pay entitlement system for Navy Bill of Lading payments. Bills of Lading are multiuse documents that are essential to conduct day to day Government operations when transportation of supplies, materials, freight, and personal property is required. This system also serves as a transportation management information system for Navy transportation bills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Social Security Number (SSN) and name.

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records are temporary in nature, cut off at the end of the fiscal year and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, System Management Directorate, Transportation Support System, 1290 E. 9th Street, Cleveland, OH 44199.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number, and provide a reasonable description of the record they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number, and provide a reasonable description of the record they are seeking.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

From the individual concerned DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–24342 Filed 9–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2011–0022]

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice to add a system of records; correction.

SUMMARY: On September 6, 2011 (76 FR 55057–55059), DoD published a notice announcing its intent to add a Privacy Act System of Records. The system identifier was incorrectly written. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, *telephone:* (703) 428–6185.

SUPPLEMENTARY INFORMATION: On September 6, 2011, DoD published a notice announcing its intent to add a system in its inventory of Privacy Act System of Records: Student Loan Repayment Program Records. Subsequent to the publication of that notice, DoD discovered that the system identifier on page 55058 was incorrectly published.

Correction

In the notice (FR Doc. 2011–22612) published on September 6, 2011 (76 FR 55057–55059), make the following correction: On page 55058, in the first column, ''A0621–1a'' should read ''A0621–1a DAPE''.

Dated: September 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–24357 Filed 9–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

DATES: October 14, 2011.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: 80 F Street, NW., Room 100, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Monica Herk, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 602 K, Washington, DC 20208; *phone:* (202) 208–3491; *fax:* (202) 219–1466; *e-mail: Monica.Herk@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA), 20 U.S.C. 9516. The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishment of activities to be supported by the Institute and the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On October 14, 2011, starting at 8:30 a.m., the Board will approve the agenda and hear remarks from the chair, Jon Baron. John Easton, IES Director, will introduce Deborah Speece, the newly appointed Commissioner of the National Center for Special Education Research. The Commissioners of the national centers will give an overview of recent developments at IES. From 9:30 to 10:45 a.m., Board members will consider the topic of ''Peer Review of Research Proposals: The IES approach, and possible refinements to increase findings of policy importance.'' Opening remarks by Anne Ricciuti, the IES Deputy Director for Science, will be followed by Board discussion. A break will take place from 10:45 to 11:00 a.m.

From 11:00 a.m. to 12:00 noon, the Board will take up the topic, ''The Administration's 'Tiered' Evidence Initiatives in Education and Other Areas.'' Following a brief presentation by Kathy Stack, Deputy Associate Director for Education and Human Resources, Office of Management and Budget, Board members will engage in a roundtable discussion of the issues raised by the presentation. The meeting will break for lunch from 12:00 to 1:00 p.m.

Following lunch the Board will turn to the topic, ''The Congressionally-established Committee on Science, Technology, Engineering and Math Education (CoSTEM)'' from 1:00 to 2:00 p.m. After opening remarks by Carl Wieman, Associate Director for Science at the White House Office of Science and Technology Policy, and Co-Chair of CoSTEM, the Board will discuss the issues raised.

Next, from 2:00 to 3:20 p.m., the Board will address ''Continuous Improvement Research: Is it a path for achieving program effectiveness in large-scale implementation?'' Following opening remarks by Gilbert Botvin of Weill Cornell Medical College and Anthony Bryk, an NBES member and President of the Carnegie Foundation for the Advancement of Teaching, the Board will engage in roundtable discussion.

An afternoon break from 3:20 to 3:30 p.m. will precede a discussion of ''NBES Annual Reports'' from 3:30 to 4:10 p.m. Monica Herk, NBES's Executive Director, will kickoff the discussion by laying out the statutory requirements for the annual report and describing how they have been produced in the past. Her remarks will be followed by Board discussion.

From 4:10 to 4:40 p.m., the Board will elect Board leaders. At approximately 4:40 p.m., there will be closing remarks and a consideration of next steps from the IES Director and NBES Chair, with adjournment scheduled for 5:00 p.m.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistance listening devices, or materials in alternative format) should notify Monica Herk no later than September 30. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

There will not be an opportunity for public comment. However, members of the public are encouraged to submit written comments related to NBES to Monica Herk (see contact information above). A final agenda will be available from Monica Herk (see contact information above) on September 30 and will be posted on the Board Web site: *http://ies.ed.gov/director/board/agendas/index.asp.*

Records are kept of all Committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 602 K, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–24409 Filed 9–21–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of interim approval for Southeastern Power Administration Cumberland System.

SUMMARY: The Deputy Secretary of Energy confirmed and approved, on an interim basis, Rate Schedules CBR–1–H, CSI–1–H, CEK–1–H, CM–1–H, CC–1–I, CK–1–H, CTV–1–H, CTVI–1–A, and Replacement-3. The rates were approved on an interim basis through September 30, 2013. The new rates take effect on October 1, 2011, and are subject to confirmation and approval on a final basis by the Federal Energy Regulatory Commission (Commission).

DATES: Approval of the rate schedules on an interim basis is effective October 1, 2011, through September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Virgil G. Hobbs, III, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: On May 6, 2009, the Commission confirmed and approved on a final basis Wholesale Power Rate Schedules CBR–1–G, CSI–1–G, CEK–1–G, CM–1–G, CC–1–H, CK–1–G, and CTV–1–G for the period from October 1, 2008, to September 30, 2013 (127 FERC ¶ 62,115). Rate Schedule CTVI–1 was approved by the Administrator, Southeastern Power Administration, for a period ending September 30, 2013.

The power marketing policy provides peaking capacity, along with 1500 hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operations of the Wolf Creek and Center Hill Projects imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern has not been able to provide peaking capacity to these customers. An interim operating plan for the Cumberland System provides these customers with energy that does not include capacity.

A current repayment study using present rates shows that revenues will not be adequate to meet repayment criteria. A revised study with a revenue requirement increase of $9,570,000, or about eighteen percent, shows that these rates will be adequate to meet repayment criteria. Because the estimated annual energy delivered to the customers has been reduced, the rate increase under the interim operating plan is about 40 percent.

The rate schedules have been developed to cover the differing marketing arrangements in the Cumberland System under normal operation conditions. The Rate Schedules CBR–1–H, CSI–1–H, and

CM–1–H, include rates for customers who receive 1500 kilowatt-hours of energy annually for each kilowatt of capacity. The transmission and scheduling arrangements under each of these rate schedules are different. Rate Schedule CEK–1–H is for East Kentucky Power Cooperative, which receives a fixed quantity of energy annually from projects connected to the TVA transmission system plus the output of the Laurel Project. Rate Schedule CK–1–H is for customers in Kentucky who receive 1800 kilowatt-hours of energy annually for each kilowatt of capacity. Rate Schedule CC–1–I is for customers on the Carolina Power & Light Western Division, (or Progress Energy Carolinas Western Division).

Rate Schedule CTV–1–H is for TVA and TVPPA. Rate Schedule CTVI–1–A is for customers inside the TVA system who choose a power supplier other than TVA.

Dated: September 12, 2011.

Daniel B. Poneman,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

[Rate Order No. SEPA–55]

In the Matter of: Southeastern Power Administration Cumberland System Rates; Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern or SEPA) were transferred to and vested in the Secretary of Energy. DOE Delegation Order No. 00–037.00, issued on December 6, 2001, granted the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to this delegation.

Background

On May 9, 2009, the Commission issued an order approving Rate Schedules CBR–1–G, CSI–1–G, CEK–1–G, CM–1–G, CC–1–H, CK–1–G, and CTV–1–G on a final basis for the sale of power from the Cumberland System (127 FERC ¶ 62,115). The Administrator of Southeastern Power Administration approved Rate Schedule CTVI–1 for a period ending September 30, 2013.

The power marketing policy provides peaking capacity, along with 1500 hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operations of the Wolf Creek and Center Hill Projects imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern has not been able to provide peaking capacity to these customers. An interim operating plan for the Cumberland System provides these customers with energy that does not include capacity.

Public Notice and Comment

Notice of a proposed rate adjustment was published in the **Federal Register** March 7, 2011 (76 FR 12354). The notice advised interested parties of a public information and comment forum to be held in Nashville, Tennessee on May 3, 2011. By notice published in the **Federal Register** May 20, 2011 (76 FR 29235), Southeastern extended the comment period to July 1, 2011. Written comments were received from six sources pursuant to this notice.

The comments have been condensed into the following seven major categories:

1. Replacement costs.
2. Average energy estimate/energy true-up.
3. Corps Operation and Maintenance (O&M).
4. Forced payments/repayment study method.
5. Energy shaping.
6. Dam safety.
7. SEPA Rates versus Market Cost of Power.

Southeastern's response follows each comment.

Category 1: Replacement Costs

Comment: SEPA should remove opportunity projects from projected replacements. In future studies, only those opportunity projects that are approved by the Project Coordinating Committee (PCC) for funding through the Long-Term Memorandum of Agreement (MOA) will be included in capitalized investments. It is premature to include opportunity projects in the current study.

Comment: SEPA should consider revising the cost for the 20-year rehabilitation plan so that renewals are completed over a 30-year period of time. To account for the differences between proposed and actual capital expenditures, a true-up mechanism for capital expenses could be implemented.

Comment: SEPA rates must be based on a realistic estimate of replacement costs actually expected to be incurred.

Response: Southeastern is required to include estimates of replacements and additions in the repayment study to support the proposed rate schedules. As a result of the comments received, Southeastern has removed the opportunity projects from the plan of replacements. Southeastern expects future replacements and rehabilitation of the Cumberland Projects will be accomplished through customer funding. Because the customers are expected to control customer funding, they are not expected to fund the opportunity projects through the rate adjustments established in this document.

The proposed rate schedules are to be effective for a two-year period, from October 1, 2011 to September 30, 2013. Any true-up mechanism incorporated into the proposed rate schedules would be implemented beyond the term of the proposed rate schedules. As such, the proposed rate schedules do not include a true-up mechanism.

The rehabilitation plan for the Cumberland System is expected to be implemented over twenty years. It is possible that the implementation of the plan may extend to thirty years. However, the proposed rate schedules have been developed with the present twenty-year plan of implementation, as Southeastern considers this the best estimate currently available.

Category 2: Average Energy Estimate/ Energy True-Up

Comment: SEPA should consider revising the energy sales starting in the year 2014 to 3,000,000 hours to account for an improved generation due to head improvements once Wolf Creek and Center Hill project lake levels return to normal.

Comment: Annual energy sales for 2009 and 2010 were 2,654,328 MWh and 2,706,215 MWh respectively. In addition, the Tennessee Valley Authority (TVA) prepared an independent estimate of 2,707,500 MWh for energy sales in 2012 and 2013. SEPA's projected energy sales of 2,538,434 MWh are below actual energy sales for 2009 and 2010 and are below TVA's estimate. We recommend SEPA utilize TVA's estimated energy sales of 2,707,500 MWh for 2012–14.

Comment: SEPA should not base the proposed rate adjustment on an arbitrarily determined annual system generation amount.

Response: Based on the comments received from the customers in the Cumberland System, Southeastern has revised the energy estimate used in the repayment study. Based on the continued Interim operations due to the ongoing work at Wolf Creek and Center Hill, Southeastern does not use normal system generation for the term of the Interim Operating Plan and the development of rates under the Interim

Operating Plan. Southeastern revised the proposed rate under the interim Operating Plan to include the energy estimate determined in TVA's energy model. The primary difference between the estimates was that the period of record used by TVA is 24 years longer than the period of record used by Southeastern. This additional data allows for multiple year of additional river basin hydrology to be considered when analyzing system operations and in the determination of statistical average generation for the system. Both the TVA model and Southeastern's records are comprised of actual project generation averaged over the respective periods of record. The TVA model also includes reductions at Wolf Creek and Center Hill.

Category 3: Corps O&M Costs

Comment: Corps O&M expenses included in the repayment study should be verified in a detailed accounting.

Comment: SEPA should conduct a more intensive study and analysis of the Corps' request for increased revenues, and engage in collaboration with the Corps to make further introspective study and analysis of the scope and need of the Corps' request. SEPA and the Corps through a collaborative effort can help ameliorate the extreme impact of SEPA's proposed rate increase by both using more aggressive cost controls and applying the correct accounting procedures to capital expenditures as capital assets, thus amortizing those over the life of the cost-effective improvements to the Corps' facilities. This approach is used in private sector accounting principles for capital additions.

Comment: SEPA should reexamine Corps operation and maintenance (''O&M'') cost because these costs are projected to be higher than a realistic forecast would indicate.

Response: Southeastern recognizes that the customers have an interest in the maintenance and operation expenses and funding of the Cumberland Projects. Southeastern shares the customers concern over the estimated Corps O&M expense included in the repayment study to support the proposed rate schedules. The estimates used to develop the current rate schedules in the Cumberland System were about 33 percent lower than the actual costs incurred. The estimates used to develop the proposed rate schedules were provided to Southeastern and the customers in April of 2010. Any variance of the actual costs incurred from these estimates will impact repayment of the federal investment and will be accounted for in the next rate adjustment. Southeastern will work in collaboration with the Corps, the customers, and the O&M Committee to ensure that operation and maintenance is properly funded and charged consistent with generally accepted accounting principles.

Category 4: Forced Payments/ Repayment Study Method

Comment: Following sound business principles would dictate that a revenue requirement for the last two years of a 50-year repayment study should not be driven by pinch points in years 49 and 50 of the study.

Comment: SEPA should consider spreading out forced payments for the Barkley and Cordell Hull projects over multiple years to reduce the required payments of these two projects in the years 2016 and 2024 respectively.

Comment: SEPA should revisit its ratemaking methodology to reflect a more common practice of meeting future revenue requirements through a series of rate adjustments versus a one-time rate adjustment for the entire study period.

Comment: Utilizing a series of rate adjustments will more accurately reflect the change in river operations that will occur after force majeure conditions are lifted in 2014 or 2015.

Comment: Instead of a single rate adjustment to meet a 50-year study period, three rate adjustments should be made to meet increasing revenue requirements in future years.

Comment: Forced payments for Barkley and Cordell Hull should be added to the repayment study if they will result in lower rates for 2012 and 2013 (*e.g.* two years of forced payments prior to the Barkley required payment in 2016, and five years of forced payments prior to the Cordell Hull required payment in 2024).

Response: The methodology the power marketing administrations are required to use is set forth in DOE Order RA 6120.2. It describes, among other things, the highest interest first method of amortization. Section 8c.(3) of the Order describes the priority of revenue application.

The power marketing administrations adopted highest interest bearing first amortization method because it resulted in the lowest possible rates. Under this method, annual revenues are applied first to operating expenses and interest. Remaining revenues are then applied first to any deferred or unpaid annual expense, and then to the Federal investment. To the extent possible, while still complying with the repayment periods established for each increment of investment, amortization is accomplished by application to the highest interest-bearing investment first. Southeastern is not required to make any payments until the year that an investment is due for repayment. Southeastern includes early, or ''forced,'' payments in a repayment study to override the normal priority of repayment and to comply with the repayment period for the investment.

Revising the schedule of forced payments as the customers have requested would result in a slight, though not material, increase in the revenue requirement than the proposed rate schedules were designed to recover. This is caused by the increase in expensed interest from the later payment of high interest rate investment.

Section 7 b. of DOE Order RA6120.2 defines the ''Cost Evaluation Period'' for the repayment study. The Cost Evaluation Period is the period of time during which estimates of future costs and revenues may be modified to reflect changing conditions. For these proposed rate schedules, the cost evaluation period is two years, fiscal year 2012 and fiscal year 2013. Any changes to the rates or estimates outside the cost evaluation period, as commenters have requested, are not permitted under DOE Order RA6120.2.

Category 5: Energy Shaping

Comment: While this is not expected to change over the next two years, the affected Customers would encourage SEPA to take steps to work with the Corps to encourage ''shaping'' of the available resource to provide delivery at times when energy markets recognize higher demand. This step alone would increase the value of the energy-only resource that is currently available from the Cumberland River basin Corps projects.

Comment: SEPA should press the Corps for increased coordination of stream flow water management and run-of-river energy scheduling to provide more on-peak energy and less off-peak energy to the extent possible.

Response: Because of the loss of storage operations at the Wolf Creek and Center Hill Projects Southeastern is unable to provide peaking operations for the Cumberland Projects. This is expected to continue until the rehabilitation work is complete and the reservoirs have refilled. Southeastern will work with the Corps to provide more on-peak energy and less off-peak energy to the extent feasible.

Category 6: Dam Safety

Comment: The customers want to express their concern that the seepage

repair costs for Wolf Creek and Center Hill as currently classified would present another rate hurdle.

Comment: Proper classification of costs for dam safety repairs at Wolf Creek and Center Hill is a significant concern for SEPA hydropower customers. Currently, combined costs for these two projects are expected to be over $850 million, and, if not properly classified under provisions of the Dam Safety Act, will result in a significant rate increase for hydropower. This creates a significant concern that SEPA rates may become non-competitive with other energy resources available to SEPA's customers. Indeed, the proposed rates are already uneconomical at times over the next two-year time period. To protect the viability of the federal power program, SEPA should fully exercise its authority under the Flood Control Act of 1944 to develop the lowest possible rates to consumers consistent with sound business principles.

Comment: With the projected recovery of the investment needed to complete the projects in the Master Plan and potential inclusion of the costs related to the dam safety repairs at the Wolf Creek and Center Hill Projects, the affected customers recognize that the cost of the SEPA resource may soon become uneconomical.

Comment: The expenditures for repairs at the Wolf Creek and Center Hill Dam Projects should be classified as a dam safety project and therefore subject to reimbursement rates in accordance with the Dam Safety Act (Section 1203 of the WRDA 1986) rather than as maintenance costs.

Response: The rehabilitation work at the Wolf Creek and Center Hill Projects is currently expected to be complete in fiscal year 2014, which is beyond the two-year term of these proposed rate schedules. The cost associated with this rehabilitation work is not included with this rate adjustment.

Southeastern expects to receive from the Corps reports on the cost of the rehabilitation work that the Corps has determined should be allocated to power for cost recovery. After Southeastern has received these reports, Southeastern will develop proposed rate schedules to recover the costs.

Category 7: SEPA Rates Versus Market Cost of Power

Comment: If SEPA is seeking to recover from the additional funds required to pay for the dam safety repairs, the cost of power will likely exceed prevailing market rates. If this occurs, there's some speculation that some customers will relinquish their SEPA allocations. In light of this potential scenario, has SEPA performed any modeling to calculate how costs will be recovered if the customer base continues to shrink?

Comment: In the instance that the eventual rate does exceed market rates, is there anything that would prevent SEPA from considering the option of exercising its authority under the Flood Control Act to ensure that the rates remain the lowest possible consistent with sound business principles?

Response: The provisions of section 5 of the Flood Control Act of 1944 require that Southeastern's ''Rate Schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years.'' As such, Southeastern is required to develop and propose rate schedules that recover the cost. If such rates prove to be above market, Southeastern will make a determination of the appropriate steps necessary to market the power and meet its repayment obligation.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July, 2011, for the Cumberland System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Order RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2011, attached Wholesale Power Rate Schedules CBR–1–H, CSI–1–H, CEK–1–H, CM–1–H, CC–1–I, CK–1–H, CTV–1–H, CTVI–1–A, and Replacement-3. The rate schedules shall remain in effect on an interim basis through September 30, 2013, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: September 12, 2011.
Daniel B. Poneman,
Deputy Secretary.

Wholesale Power Rate Schedule CBR–1–H

Availability:

This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky (hereinafter called the Customer).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery:

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service:

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission:

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
Big Rivers Electric Corporation	32.660
City of Henderson, Kentucky	2.202

Energy to be Furnished by the Government:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$4.245 per kilowatt/month of total contract demand.

Energy Charge:

None.

Energy to be Furnished by the Government:

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption:

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CSI–1–H

Availability:

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery:

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission Charge:

The Customer will pay 5.138 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

Energy to be Furnished by the Government:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$4.245 per kilowatt/month of total contract demand.

Energy Charge:

None.

Energy to be Furnished by the Government:

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption:

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CEK–1–H

Availability:

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and power available from the Laurel Project and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery:

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service:

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Tennessee Valley Authority (TVA) on its side of the delivery point.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission Charge:

The Customer will pay 31.192 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

Energy to be Furnished by the Government:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered from Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$2.950 per kilowatt/month of total contract demand.

Energy Charge:

10.358 mills per kilowatt-hour.

Energy to be Furnished by the Government:

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's

contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption:

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CM–1–H

Availability:

This rate schedule shall be available to the South Mississippi Electric Power Association, Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority (TVA) system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission Charge:

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
Mississippi Delta Energy Agency	2.058
Municipal Energy Agency of Mississippi	3.447
South Mississippi EPA	9.358

Energy to be Furnished by the Government:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$4.245 per kilowatt/month of total contract demand.

Energy Charge:

None.

Energy to be Furnished by the Government:

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Service Interruption:

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CC–1–I

Availability:

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery:

The points of delivery will be at interconnecting points of the Tennessee Valley Authority (TVA) system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

TVA Transmission Charge:

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
French Broad EMC	1.713
Haywood EMC	0.501
Town of Waynesville	0.355

CP&L Transmission Charge:

The Customer will pay a ratable percent listed below of the charge for transmission service furnished by Carolina Power & Light Company, Western Division.

	Percent
French Broad EMC	66.667
Haywood EMC	19.512
Town of Waynesville	13.821

Energy to be Furnished by the Government:

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less applicable losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's Western Division transmission system.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$4.832 per kilowatt/month of total contract demand.

Energy Charge:

None.

CP&L Transmission Charge:

$1.3334 per kilowatt/month of total contract demand (As of July 2011 and provided for illustrative purposes.).

The CP&L transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Carolina Power & Light Company contract.

Energy to be Furnished by the Government:

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent [6%] losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Wholesale Power Rate Schedule CK–1–H

Availability:

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.).

Applicability:

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery:

The points of delivery will be at interconnecting points between the Tennessee Valley Authority (TVA) system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission Charge:

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
City of Barbourville	0.404
City of Bardstown	0.412
City of Bardwell	0.099
City of Benham	0.046
City of Corbin	0.477
City of Falmouth	0.108
City of Frankfort	2.866
City of Madisonville	1.432
City of Nicholasville	0.469
City of Owensboro	4.587
City of Paris	0.250
City of Providence	0.226

Energy to be Furnished by the Government:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement

under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$4.245 per kilowatt/month of total contract demand.

Energy Charge:

None.

Additional Energy Charge:

10.358 mills per kilowatt-hour.

Energy to be Furnished by the Government:

The Government shall make available each contract year to the Customer from the Projects and the Customer will accept an allocation of 1500 kilowatt-hours of energy for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Wholesale Power Rate Schedule CTV–1–H

Availability:

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability:

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month:

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year:

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Power Factor:

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rates:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Energy to be Made Available:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$2.779 per kilowatt/month of total contract demand.

Energy Charge:

None.

Additional Energy Charge:

10.358 mills per kilowatt-hour.

Energy to be Made Available:

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 768,000 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project). The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 240 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) An adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two percent [2%], and (4) station service energy furnished by TVA.

Each kilowatt of capacity will include 1500 kilowatt-hours of energy per year, which is defined as base energy. Energy received in excess of 1500 kilowatt-hours per kilowatt will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Service Interruption:

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

Wholesale Power Rate Schedule CTVI–1–A

Availability:

This rate schedule shall be available to customers (hereinafter called the Customer) who are or were formerly in the Tennessee Valley Authority (hereinafter called TVA) service area.

Applicability:

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and the Customer.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month:

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year:

For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have a revenue requirement of $59,600,000.

Rate Scenario 1—Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Wolf Creek Project and the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dams, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity. The rates under Scenario 1 will remain in effect for the duration of the Interim Operating Plan.

Monthly Rates:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

None.

Energy Charge:

17.69 mills per kilowatt-hour.

Transmission Charge:

The initial charge for transmission and Ancillary Services will be the

Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) or other overseeing entity involving the TVA's and other transmission provider's Open Access Transmission Tariff (OATT).

Proceedings before FERC or other overseeing entity involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Energy to be Made Available:

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Rate Scenario 2—Cost Recovered From Capacity and Energy

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The revenue requirement under this alternative is $59,600,000, the same as the revenue requirement in Scenarios 1 and 3. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. This rate alternative will be in effect when the Corps modifies operation of the Wolf Creek Project and the Center Hill Project to allow some of the capacity scheduled. When the lake level rises and capacity is available, the capacity will be allocated on an interim basis to the customers. The Customer will pay the same rate for capacity and energy as TVA. The Customer will pay their ratable share of any transmission charges paid in behalf of the Customer.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Wolf Creek Dam and Center Hill Dam and Southeastern returns to operations that support the published marketing policy.

Monthly Rate:

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge:

$2.779 per kilowatt/month of total contract demand.

Energy Charge:

None.

Additional Energy Charge:

10.358 mills per kilowatt-hour.

Transmission Charge:

The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC or other overseeing entity involving the TVA's and other transmission provider's Open Access Transmission Tariff (OATT).

Proceedings before FERC or other overseeing entity involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Energy To Be Made Available:

The energy will be scheduled by TVA and the Customer will receive their ratable share, in accordance with the Government-Customer Contract. Energy shall be accounted for, in accordance with agreements with TVA.

The Customer will receive a ratable share of their capacity, in accordance with the Government-Customer Contract.

Service Interruption:

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available. The customer will receive a ratable share of this capacity.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to the Customer will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{l}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

Wholesale Rate Schedule Replacement-3

Availability:

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia, North Carolina, Tennessee, Georgia, Alabama, Mississippi, Kentucky and southern Illinois to whom power is provided pursuant to contracts between the Government and the customer from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, Cordell Hull, and Laurel Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') .

Applicability:

This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy sold under appropriate contracts between the Government and the Customer.

Character of Service:

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Charge:

The rate for replacement energy will be a formulary capacity charge based on the monthly cost to the Government to

purchase replacement energy necessary to support capacity in the Cumberland System divided by the capacity available from the Cumberland System, which is 950,000 kilowatts in the published power marketing policy. The capacity rate will be adjusted for any capacity retained by the Customer's transmission facilitator.

Conditions of Service:

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system.

[FR Doc. 2011–24224 Filed 9–21–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–4–000]

Commission Information Collection Activities (FERC–725A); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (76 FR 23801, 04/28/2011) requesting public comments. FERC received no comments on the FERC–725A and has made this notation in its submission to OMB.

DATES: Comments in consideration of the collection of information are due October 24, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. RD11–4–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a username and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. RD11–4–000. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the order in Docket No. RD11–4–000 under the requirements of FERC–725A, ''Mandatory Reliability Standards for the Bulk-Power System'' (OMB No. 1902–0244), is required by Commission-approved Reliability Standard EOP–008–1 (Loss of Control Center Functionality) that requires reliability coordinators, transmission operators, and balancing authorities to have an operating plan and facilities for backup functionality to ensure Bulk-Power System reliability in the event that a control center becomes inoperable. The standard consists of eight requirements.

Requirement R1 requires each applicable entity to have a current operating plan describing the manner in which it will continue to meet its functional obligations in the event that its primary control center functionality is lost. Requirement R2 instructs each applicable entity to have a copy of its current plan for backup functionality at its primary control center and at the location providing backup functionality. Requirement R3 mandates that each reliability coordinator have a backup control center that provides functionality sufficient to maintain compliance with all Reliability Standards that depend on primary control center functionality.

Requirement R4 directs balancing authorities and transmission operators to have a backup functionality, either through a facility or contracted services, to maintain compliance with all Reliability Standards that depend on their primary control center functionality. Requirement R5 requires each applicable entity to review annually and approve its plan for backup functionality. Requirement R6 mandates that primary and backup functionality cannot depend on each other, and Requirement R7 requires each applicable entity to annually test and document the results of its plan demonstrating the transition time between the simulated loss of the primary control center and the full implementation of the backup functionality. Finally, each reliability coordinator, balancing authority or transmission operator that experiences a loss of either primary or backup functionality anticipated to last for more than six months must, in accordance with Requirement R8, provide a plan to its Regional Entity within six calendar months of the date when functionality is lost showing how it will re-establish such functionality.

Rather than creating entirely new obligations with respect to the loss of control center functionality, Reliability Standard EOP–008–1 upgrades existing planning requirements. The standard does not impose entirely new burdens on the effected entities, but it does impose new requirements regarding the approval, placement, documentation and updating of plans as well as requires entities that may not already possess backup functionality to obtain, possibly through contractual arrangements, backup capabilities.

Burden Statement: Public reporting burden resulting from the approval of Reliability Standard EOP–008–1 is estimated as:

Changes to FERC–725A data collection	Number of respondents annually (A)	Number of responses per respondent (B)	Average burden hours per response (C)	Total annual hours (A × B × C)
Review and possible revision of plan (one-time)	215	1	20	4,300

Changes to FERC–725A data collection	Number of respondents annually (A)	Number of responses per respondent (B)	Average burden hours per response (C)	Total annual hours (A × B × C)
Updating, approving, and maintaining records	215	1	Compliance: 6 Recordkeeping: 2	1,290 430
Balancing authorities and transmission operators contracting for backup functionality (one-time).	27	1	120	3,240
Total one-time				7,540
Total recurring				1,720
Total				9,260

Estimated one-time cost burden to respondents is $904,800; [*i.e.,* 7540 hours @ $120 an hour (compliance cost) for the first year equals $904,800)]. In subsequent years, respondents will incur an estimated cost burden of $166,840; [*i.e.,* (1290 hours @ $120 an hour (compliance cost)) + 430 hours @ $28 an hour (recordkeeping cost) equals $166,840 [1]]. The average annual recurring cost burden per respondent is $776 ($166,840/215 = $776).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

[1] The order approving Reliability Standard EOP–008–1 mistakenly used the $120 an hour figure for all the reoccurring hours. This caused an overstatement of the reoccurring cost burden by $39,560 ($206,400 reported in the order minus the corrected figure of $166,840 equals 166,840), because 430 hours should have been calculated at the lower recordkeeping figure of $28 an hour. Additionally, the order approving the standard listed the total recordkeeping cost as $10,240 and it should have been $12,040.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: September 15, 2011 .

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24304 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–63–000]

Notice of Complaint; Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, Entergy Texas, Inc.

Take notice that on September 14, 2011, the Louisiana Public Service Commission (Complainant) filed a formal complaint against Entergy Corporation., Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy Texas, Inc. pursuant to sections 205, 206 and 306 of the Federal Power Act, 16 USC 824e and 825(e) and 18 CFR 386.206 of the Commission's Rules of Practice and Procedures, seeking a determination that the allocation by Entergy Corporation of the costs for required transmission upgrades associated with the Ouachita power plant to Entergy Louisiana, LLC, violates the Federal Power Act, Entergy's Open Access Transmission Tariff and constitutes affiliate abuse. In addition, the Complainant claims that the failure to recognize post-2012 benefits flowing from the Settlement Agreement between Entergy Arkansas, Inc. and Union Pacific Corporation of a contractual dispute over the delivery of coal supplies in the MSS–3 rough equalization calculation or some other remedy is unjust, unreasonable and unduly discriminatory.

The Complainant certifies that copies of the complaint were served on the contacts for Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, Inc., and Entergy Texas, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 6, 2011.

Dated: September 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24309 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13381–001–VT]

Notice of Availability of Environmental Assessment; Jonathan and Jayne Chase

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a small hydropower project exemption for the Troy Hydroelectric Project, to be located on the Missisquoi River, in the Town of Troy in Orleans County, Vermont, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzed the potential environmental effects of the project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.*

You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 13381–001 to all comments.

For further information, contact Tom Dean at (202) 502–6041.

Dated: September 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24305 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–9–000]

Western Area Power Administration; Notice of Filing

Take notice that on September 7, 2011, the Western Area Power Administration submitted its Rate Order No. WAPA–156, concerning power, transmission, and ancillary service formula rates for the Central Valley Project, The California-Oregon Transmission Project, the Pacific Alternating Current Intertie Transmission, and Information on the Path 15 Transmission Upgrade, for confirmation and approval on a final basis effective October 1, 2011, and ending September 30, 2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 7, 2011.

Dated: September 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24306 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–10–000]

Western Area Power Administration; Notice of Filing

Take notice that on September 7, 2011, the Western Area Power Administration submitted its Rate Order No. WAPA–155 and certain Rate Schedules concerning formula rates adjustment for Loveland Area Projects transmission and Western Area Colorado Missouri Balancing Authority ancillary services, for confirmation and approval on a final basis effective

October 1, 2011, and ending September 30, 2016.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 7, 2011.

Dated: September 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24307 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–61–000]

Notice of Petition for Declaratory Order; Southern Cross Transmission LLC

Take notice that on September 6, 2011, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207(a)(2) (2011), Southern Cross Transmission LLC (Southern Cross), filed a Petition for Declaratory Order, requesting the Commission find that Southern Cross may allocate up to 1,500 MW of its 400 mile, bi-directional, high voltage direct current transmission project (Project) to anchor customers through long-term firm negotiated rate transmission service agreements with whatever capacity that is not committed to anchor customers be made available through an open season auction but in no event less than 25 percent of the Project's final contemplated capacity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 6, 2011.

Dated: September 15, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–24308 Filed 9–21–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0852; FRL–9470–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pollutant Discharge Elimination System (NPDES) Permits for Point Source Discharges From the Application of Pesticides to Waters of the United States (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 24, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2010–0852, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, EPA Headquarters, Office of Water, Office of Wastewater Management, Mailcode 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–0768; *fax number:* 202–564–6384; *e-mail address: faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2010 (75 FR 67713), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 13 comments during the comment period, which are addressed in the ICR. Any additional comments on

this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2010–0852, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: National Pollutant Discharge Elimination System (NPDES) Permits for Point Source Discharges from the Application of Pesticides to Waters of the United States.

ICR numbers: EPA ICR No. 2397.01, OMB Control No. 2040–New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with information collection and reporting activities from EPA and State NPDES general permits for point source discharges from the application of pesticides to waters of the United States. On November 27, 2006, EPA issued a final rule (hereinafter called the ''2006 NPDES Pesticides Rule'') clarifying circumstances in which an NPDES permit was not required to apply pesticide to, or over, including near, waters of the U.S. On January 9, 2009, the Sixth Circuit Court vacated EPA's 2006 NPDES Pesticides Rule. As a result of the Court's decision, beginning October 31, 2011 NPDES permits will be required for discharges to waters of the U.S. from the application of biological pesticides and chemical pesticides that leave a residue. Regulations governing permit requirements for NPDES discharges are codified at 40 CFR parts 122. This ICR includes information submitted or recorded by permittees as well as information used primarily by permitting authorities. The permitting authority will use the information to assess permittee compliance and modify/add new permit requirements as appropriate. The estimated burden in this ICR is based on EPA's NPDES Pesticide General Permit (PGP). EPA posted the final draft PGP on the Agency's Web site on April 1, 2011.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Industries potentially covered by the general permits include but are not limited to the following NAICS (North American Industry Classification System) codes: 111 Crop Production; 113110 Timber Tract Operations; 113210 Forest Nurseries Gathering of Forest Products; 221310 Water Supply for Irrigation; 923120 Administration of Public Health Programs; 924110 Administration of Air and Water Resource and Solid Waste Management Programs; 924120 Administration of Conservation Programs; and 221 Utilities.

Estimated Number of Respondents: 365,000 permittees, 45 permitting authorities (44 states and Virgin Islands).

Frequency of Response: varies from once every 5 years to occasionally as needed.

Estimated Total Annual Hour Burden: 847,652 hours (841,037 hrs for permittees and 6,615 hrs for permitting authorities).

Estimated Total Annual Cost: $48,034,676 ($47,783,297 for permittees and $251,379 for permitting authorities), includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 847,652 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to a change in NPDES program requirements as result of the Sixth Circuit Court's decision.

Dated: September 19, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–24377 Filed 9–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9469–9]

An Assessment of Decision-Making Processes: Evaluation of Where Land Protection Planning Can Incorporate Climate Change Information—Release of Final Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is releasing a final report entitled *An Assessment of Decision-Making Processes: Evaluation of Where Land Protection Planning can Incorporate Climate Change Information,* (EPA/600/R–09/142F). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

This report is a review of decision-making processes of selected land protection programs. The goal of this report is to evaluate where land protection planning can incorporate climate change impacts information into programs. The assessment revealed that there are several strategies that might be

useful for incorporating climate change information into decision making. As part of a portfolio of adaptation strategies, land protection may become more important for jurisdictions, particularly to ameliorate climate change impacts on watersheds and wildlife.

DATES: The report was posted publically on September 22, 2011.

ADDRESSES: The report, *An Assessment of Decision-Making Processes: Evaluation of Where Land Protection Planning can Incorporate Climate Change Information,* is available via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA, *telephone:* 703–347–8561; *facsimile:* 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: For additional information, contact the National Center for Environmental Assessment; Britta Bierwagen: *telephone:* 703–347–8613; *facsimile:* 703–347–8694; or *e-mail: bierwagen.britta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

The report, *An Assessment of Decision-Making Processes: Evaluation of Where Land Protection Planning can Incorporate Climate Change Information,* describes a review of the decision-making processes of selected programs that protect land to evaluate how information about climate change impacts information can be incorporated. The review focuses on a sample of programs with goals to protect wildlife and watersheds. This review demonstrates that while the land protection programs sampled in this paper did not make acquisition decisions based on climate change considerations directly, many of the criteria and processes reviewed are sensitive to climate change impacts. Incorporating adaptive strategies into existing decision-making processes would not involve changing existing criteria so much as incorporating climate change information into the evaluation of existing criteria. Mechanisms for incorporating such information include: (1) Developing decision-support tools for advisory committees; (2) providing a variety of methods to preserve lands; (3) educating elected officials who approve land protection decisions about the climate change benefits; (4) engaging in strategic parcel selection; (5) coordinating with land-use planning processes; and (6) developing tools for evaluating and prioritizing land parcels for protection. Incorporating climate change information in these decision-making processes can assist with maintaining land protection goals over time, such as wildlife, habitat and high water quality, as well as contribute to climate change mitigation and adaptation.

Dated: September 9, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–24365 Filed 9–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9470–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *EPA,* No. 1: 10-cv-1541 (CKK). Plaintiff filed a complaint alleging that EPA failed to perform mandatory duties under sections 110(c)(1) and (k)(2) of the CAA, 42 U.S.C. 7410(c)(1), (k)(2), to: (1) Promulgate a federal implementation plan (''FIP'') for the State of Texas that meets the requirements of CAA section 110(a)(2)(D)(i) for the 1997 fine particulate matter (''PM2.5'') and the 1997 8-hour ozone national ambient air quality standards (''NAAQS''); (2) promulgate a FIP for the State of Texas that meets the requirements of CAA Section 110(a)(2) for the 1997 8-hour ozone NAAQS; and (3) take final approval/disapproval action pursuant to CAA section 110(k)(3) on the state implementation plan (''SIP'') that Texas submitted for implementation of the 1997 PM2.5 NAAQS. The partial proposed consent decree establishes deadlines for EPA to take these actions.

DATES: Written comments on the proposed consent decree must be received by *October 24, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0785, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; *telephone:* (202) 564–1744; *fax number* (202) 564–5601; *e-mail address: wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The partial proposed consent decree would resolve a lawsuit seeking to compel the Administrator to take various actions under sections 110(c)(1) and 110(k) of the CAA with respect to the State of Texas. These required actions are: (1) To take an action or actions in accordance with section 110(c)(1) to promulgate a federal implementation plan (''FIP''), or an unconditional approval of a SIP, that meets certain specified requirements of CAA section 110(a)(2) for the 1997 8-hour ozone NAAQS; (2) to take an action or actions in accordance with section 110(c) to promulgate a FIP, or an unconditional approval of a SIP, that meets the requirements of section 110(a)(2)(D)(i)(II) concerning interference with prevention of deterioration of air quality for the 1997 $PM_{2.5}$ NAAQS; (3) to take an action or actions in accordance with section 110(k) approving or disapproving a SIP submission regarding certain specified requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS; and (4) to take an action or actions in accordance with section 110(c) to promulgate a FIP, or an unconditional approval of a SIP, that meets the requirements of section 110(a)(2)(D)(i)(II) concerning interference with measures required in other states related to protection of

visibility for 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS. Sierra Club and EPA have jointly moved to stay Plaintiff's claim with respect to EPA's obligation to promulgate a FIP for the State of Texas that satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.

The proposed consent decree provides various dates by which EPA must take action on the claims that are not stayed. No later than 10 business days following signature of a final rule or determination as described in the proposed consent decree, EPA is required to send the notice to the Office of the Federal Register for review and publication in the **Federal Register**. The proposed consent decree also states that after EPA fulfills its obligations, this case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting On the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC- 2011–0785) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 16, 2011.

Kevin W. McLean,

Acting Associate General Counsel.

[FR Doc. 2011–24369 Filed 9–21–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 24, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0511.

Title: ARMIS Access Report, FCC Report 43–04.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 76 respondents; 76 responses.

Estimated Time per Response: 153 hours.

Frequency of Response: Annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 161, 219 and 220.

Total Annual Burden: 11,628 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not involved in the ARMIS 43–04 Access Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the Commission instructs the respondent on the appropriate procedures to follow to safeguard sensitive data. See 47 CFR 0.459 of the Commission's rules on the procedures for requesting confidential treatment of data.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting requirements).

There is no change in the Commission's previous burden estimates.

The Access Report, 43–04, is used to administer the Commission's accounting, jurisdictional separations and access charge rules; to analyze revenue requirements and rates of return, and to collect financial data from large Class A carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–24379 Filed 9–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 24, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov <mailto:Nicholas_A._Fraser@omb.eop.gov>* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov <mailto:PRA@fcc.gov>.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program/Rural Health Care Pilot Program.

Form No.: FCC Forms 465, 466, 466–A and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 6,500 respondents; 48,895 responses.

Estimated Time per Response: .10 hours to 20 hours.

Frequency of Response: On occasion, one time, quarterly, month and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–154(i), 201–205, 214, 254 and 403.

Total Annual Burden: 57,796 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information

collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them.

The purpose of the revision is to seek OMB approval for eight templates, samples and spreadsheets provided to program participants to facilitate the reporting, recordkeeping and/or third party disclosure requirements under this OMB control number. These attachments include the following: (1) Attachment 1—Community Mental Health Center Verification Template; (2) Attachment 2—Invoice Template; (3) Attachment 3—FCC Form 465 Attachment Spreadsheet; (4) Attachment 4—Letter of Agency Template; (5) Attachment 5—Transfer of Letter of Agency; (6) Attachment 6—Network Cost Worksheet; (7) Attachment 7—Certification of Program Participant Template; and (8) Attachment 8—Vendor Certification Template.

For more details on this revision, see the 60 day notice that was published on July 22, 2011 (76 FR 44006).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–24378 Filed 9–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 7, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Teresa N. Pfaff,* Lancaster, South Carolina; as a member of a group acting in concert, to acquire voting shares of First National Fairbury Corporation, and thereby indirectly acquire voting shares of The First National Bank of Fairbury, both in Fairbury, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *James Gaines McCullar and Carolyn Jean McCullar,* both of Soap Lake, Washington; to acquire voting shares of Riverbank Holding Company, and thereby indirectly acquire Riverbank, both in Spokane, Washington.

Board of Governors of the Federal Reserve System, September 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–24389 Filed 9–21–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. NBC Bancshares, Inc., NHI Financial Services Partners, LLC, and NHI III, LLC, all of Lincoln, Nebraska, to become a bank holding company by acquiring 50.05 percent of the voting shares of Mountain View Bank of Commerce, Westminster, Colorado.

In connection with this application, Applicants have also applied to retain 76.44 percent of the voting shares of Nebraska Bank of Commerce, Lincoln, Nebraska, and thereby operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System.

Dated: September 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–24390 Filed 9–21–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2011.

A. *Federal Reserve Bank of Philadelphia* (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Polonia MHC,* Huntingdon Valley, Pennsylvania; to convert to stock form and merge with Polonia Bancorp, Inc., Baltimore, Maryland, which proposes to become a savings and loan holding company by acquiring Polonia Bank, Huntingdon Valley, Pennsylvania.

In connection with this application, Polonia Bancorp, Inc., has applied to become a bank holding company.

B. *Federal Reserve Bank of Cleveland* (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Cheviot Mutual Company,* Cheviot, Ohio; to convert to stock form and acquire Cheviot Savings Bank, Cheviot, Ohio. Pursuant to the conversion, Cheviot, Mutual Holding Company and Cheviot Financial Corp., the existing federal mid-tier corporation, will cease to exist, and Cheviot Savings Bank will become a wholly owned subsidiary of Cheviot Financial Corp., Cheviot, Ohio, a Maryland corporation.

In addition, Cheviot Financial Corp., the Maryland corporation, has applied to acquire Cheviot Savings Bank.

Board of Governors of the Federal Reserve System, September 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–24388 Filed 9–21–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*), and Regulation LL (12 CFR part 238) or Regulation MM (12 CFR part 239) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is described in §§ 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 10a(c)(4)(B) of HOLA (12.U.S.C. 1467a(c)(4)(B)).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *AF Mutual Holding Company, and Alamogordo Financial Corp,* both of Alamogordo, New Mexico; to engage *de novo* through Bank'34, Alamogordo, New Mexico, in acquiring and holding foreclosed property, nonperforming assets, and/or substandard assets currently held by Bank '34, pursuant to section 238.54 of Regulation MM.

Board of Governors of the Federal Reserve System, September 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–24387 Filed 9–21–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Delisting for Cause of Patient Safety Organization One, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: Patient Safety Organization One, Inc.: AHRQ has delisted Patient Safety Organization One, Inc. as a Patient Safety Organization (PSO) pursuant to 42 CFR 3.108(b). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Pub. L. 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing.

A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule.

DATES: The delisting was effective at 12 Midnight ET (2400) on July 5, 2011.

ADDRESSES: The directories of both listed and delisted PSOs can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

Patient Safety Organization One, Inc. failed to respond to two findings of deficiency contained in a Notice of Proposed Revocation and Delisting: (1) Failure to provide required notification to AHRQ that the PSO has complied with the requirement of entering into two Patient Safety Act contracts within 24-months of the date of initial listing, as required by 42 U.S.C. 299b–24(b)(1)(C); and (2) failure to submit information necessary for AHRQ to conduct a compliance assessment of the PSO, as required by 42 CFR 3.110. Patient Safety Organization One, Inc. has not responded to either preliminary notice of deficiency sent by AHRQ pursuant to 42 CFR 3.108(a)(2), nor provided any evidence of a good faith effort to correct either deficiency. Accordingly, pursuant to 42 CFR 3.108(b), AHRQ delisted Patient Safety Organization One, Inc., PSO number P0059, effective at 12:00 Midnight ET (2400) on July 5, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html*.

Dated: September 8, 2011

Carolyn M. Clancy,

Director.

[FR Doc. 2011–24100 Filed 9–21–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0271]

Guidance for Industry; Measures to Address the Risk for Contamination by Salmonella Species in Food Containing a Pistachio-Derived Product as an Ingredient; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Pistachio-Derived Product as an Ingredient.'' The guidance clarifies for manufacturers who produce foods containing a pistachio-derived product as an ingredient that there is a risk that *Salmonella* species may be present in the incoming pistachio-derived product, and recommends measures to address that risk.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Plant and Dairy Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2022.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 29, 2009 (74 FR 31038), FDA announced the availability of a draft guidance entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Pistachio-Derived Product as an Ingredient'' and gave interested parties an opportunity to submit comments by August 28, 2009. The Agency reviewed and evaluated these comments and has modified the guidance where appropriate.

The guidance clarifies for manufacturers who produce foods containing a pistachio-derived product as an ingredient that there is a risk that *Salmonella* species may be present in the incoming pistachio-derived product, and recommends measures to address that risk. Pistachio-derived products include roasted in-shell pistachios and shelled pistachios (also called kernels) that are roasted or raw. FDA is issuing this guidance as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on measures to address the risk for contamination by *Salmonella* spp. in food containing a pistachio-derived product as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the guidance. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.*

Dated: September 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24317 Filed 9–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0096]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of open teleconference Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing and deliberating on recommendations by the HSAC's Southwest Border Task Force.

DATES: The HSAC conference call will take place from 4 p.m. to 5 p.m. EDT on Monday, October 17, 2011. Please be advised that the meeting is scheduled for one hour and may end early if all business is completed before 5 p.m.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating in this teleconference meeting may do so by following the process outlined below (see ''Public Participation''). Written comments must be submitted and received by October 14, 2011. Comments must be identified by Docket No. DHS–2011–0096 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSAC@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 282–9207
- *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0445, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2011–0096, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pat McQuillan at *hsac@dhs.gov* or 202–447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aid in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC will meet to review and approve the Southwest Border Task Force's report of findings and recommendations.

Public Participation: Members of the public will be in listen-only mode. The public may register to participate in this HSAC teleconference via afore mentioned procedures. Each individual must provide his or her full legal name, e-mail address and phone number no later than 5 p.m. EDT on October 14, 2011, to Pat McQuillan via e-mail at *HSAC@dhs.gov* or via phone at (202) 447–3135. HSAC conference call details and the draft Southwest Border Task Force report will be provided to interested members of the public at the time they register.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference, contact Pat McQuillan (202) 447–3135.

Dated: September 16, 2011.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2011–24393 Filed 9–21–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, DHS.

ACTION: Notice of Publication of Privacy Impact Assessments (PIA).

SUMMARY: The Privacy Office of DHS is making available twenty-six PIAs on various programs and systems in DHS. These assessments were approved and published on the Privacy Office's Web site between June 1, 2011 and August 31, 2011.

DATES: The PIAs will be available on the DHS Web site until November 21, 2011, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or *e-mail: pia@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Between June 1, 2011 and August 31, 2011, the Chief Privacy Officer of the DHS approved and published twenty-six Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy,* under the link for ''Privacy Impact Assessments.'' These PIAs cover twenty-six separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

System: DHS/USCIS/PIA–029(a) Eligibility Risk and Fraud Assessment Testing Environment (EFRA) Update.

Component: United States Citizenship and Immigration Services (USCIS).

Date of approval: June 1, 2011.

The Office of Transformation Coordination of USCIS is planning to update the EFRA Testing Environment. This update describes the next phase of this tool to develop, test, and refine the tool's risk and fraud business rules and to load biographic data from legacy systems before deploying to a full production environment.

System: DHS/USCIS/PIA–037 Standard Lightweight Operational Programming Environment—Rules-Based Tools Prototype (SLOPE–RBTP).

Component: USCIS.

Date of approval: June 2, 2011.

DHS USCIS Office of Information Technology (IT) developed the SLOPE–RBTP to streamline the adjudication of Form I–90, Application to Replace Permanent Resident Card. SLOPE–RBTP electronically organizes and automates the adjudication of pending Form I–90 applications. USCIS is conducting this PIA because SLOPE–RBTP collects and uses personally identifiable information.

System: DHS/ICE/PIA–028 Automated Threat Prioritization (ATP) Web Service.

Component: Immigration and Customs Enforcement (ICE).

Date of approval: June 6, 2011.

The Office of the Chief Information Officer, in coordination with the Offices of Homeland Security Investigations and Enforcement and Removal Operations within ICE, is developing and implementing the Automated Threat Prioritization (ATP) Web service, which is an IT tool that uses configurable and scalable search and data sharing capabilities to improve and automate existing IT systems. ATP electronically receives processes and transmits criminal history information about individuals who are the subjects of a broad range of enforcement actions or whose criminal history is required to be evaluated by law to determine eligibility for a benefit or credential. For example, this service is intended to enhance and support ICE's investigative and enforcement operations by automating criminal history data processing and aid in its prioritization of enforcement actions. ICE is conducting this PIA because the ATP service will transmit and process PII. This PIA, however, only describes the general functionality of the ATP service and not its implementation.

System: DHS/USCIS/PIA–010(e)—USCIS Person Centric Query Service (PCQS) Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division Update.

Component: USCIS.

Date of approval: June 8, 2011.

This is an update to the existing PIA for the USCIS PCQS. This update describes the privacy impact of expanding the status verifier's person-search capability by adding the American Association of Motor Vehicle Administrators Network Service system to the existing PCQS query inventory.

System: DHS/ALL/PIA–033 Google Analytics.

Component: DHS.

Date of approval: June 9, 2011.

DHS is planning to utilize Google Analytics (*http://www.google.com/analytics*) for viewing and analyzing traffic to DHS's public-facing Web site(s), including components. Google Analytics is a free, external, third-party hosted, Web site analytics solution that generates robust information about the interactions of public-facing Web site visitors with DHS. Google Analytics must collect the full Internet Protocol (IP) address, which Google masks prior to use and storage, and provides DHS with non-identifiable aggregated information in the form of custom reports. DHS implemented the IP address masking feature within Google Analytics to avoid the use and storage of the full IP address. For example, when the last octet is truncated from the IP address, 192.168.0.1 becomes 192.168.0. This masking will affect the geographic location metric within Google Analytics. Google Analytics uses first-party cookies to track visitor interactions. DHS shall not collect, maintain, or retrieve PII including a visitor's IP address during this analytics process operated by Google. Google Analytics shall not provide to DHS, share with Google or any Google product for additional analysis, or use

the full or masked IP address or information to draw any conclusions in the analytics product. DHS has expressly chosen to opt-out of sharing information with Google or any Google product for additional analysis. This PIA is being conducted to identify and mitigate privacy concerns associated with the use of Google Analytics.

System: DHS/USCIS/PIA–038 Freedom of Information Act/Privacy Act (FOIA/PIA) Information Processing System.

Component: USCIS.

Date of approval: June 14, 2011.

USCIS uses the FOIA/PA Information Processing System (FIPS) to process FOIA and PA requests from any person requesting access to USCIS records. FIPS uses document imaging, workflow, and Web-server technologies to enable USCIS to efficiently and effectively manage the FOIA/PA case life cycle. USCIS is conducting this PIA because FIPS uses PII and to address major changes to the application.

System: DHS/FEMA/PIA–017 Federal/Emergency Response Official (F/ERO) Repository.

Component: Federal Emergency Management Agency (FEMA).

Date of approval: June 20, 2011.

FEMA Office of National Capital Region Coordination owns and operates the F/ERO Repository. FEMA uses the F/ERO Repository as the authoritative data source to identify and verify Federal employees/contractors, and participating non-Federal employees/contractors likely to respond during times of response and recovery for natural disasters, terrorism, or other emergencies. The F/ERO Repository allows for immediate electronic verification of an employee/contractor's personal identity and emergency management attribute at a given disaster zone. The purpose of this PIA is to document how FEMA collects, uses, maintains, and disseminates PII.

System: DHS/CISOMB/PIA–001 Virtual Ombudsman System.

Component: Citizenship and Immigration Services Ombudsman (CISOMB).

Date of approval: June 22, 2011.

The Virtual Ombudsman system has undergone a PIA 3-Year Review requiring no changes and continues to accurately relate to its originally stated mission. The Office of the CISOMB or Ombudsman at the DHS, as mandated by the Homeland Security Act of 2002 § 452, is an independent office that reports directly to the Deputy Secretary of Homeland Security. The CISOMB: (1) Assists individuals and employers with resolving problems with USCIS; (2) identifies areas in which individuals and employers have problems in dealing with USCIS; and (3) proposes changes to mitigate those problems. CISOMB has developed the Virtual Ombudsman System to ensure the efficient and secure processing of information to aid the Ombudsman in assisting individuals and employers and making systemic recommendations to USCIS. CISOMB is conducting this PIA because these transactions require collection of PII.

System: DHS/USCIS/PIA–027(a) Refugees, Asylum, and Parole System and the Asylum Pre-Screening System (APSS).

Component: USCIS.

Date of approval: June 30, 2011.

The United States DHS, USCIS is updating the PIA for the Refugees, Asylum, and Parole System (RAPS) and the APSS in order to provide further notice of the expansion of routine sharing of RAPS with the intelligence community in support of the Department's mission to protect the United States from potential terrorist activities.

System: DHS/S&T/PIA–023— Biometrics Access Control System at the Transportation Security Lab.

Component: Science and Technology (S&T).

Date of approval: July 1, 2011.

Biometrics Access Control System is a building facilities access control system used at the DHS S&T Directorate's Transportation Security Lab. The system relies on biometrics (fingerprint and iris recognition) to enhance the physical security of the lab and provides a demonstration of advanced technologies. The S&T TSL is conducting a PIA because PII is collected during the testing and operational use of this system.

System: DHS/USCG/PIA–002(c)— United States Coast Guard (USCG) ''Biometrics at Sea'' (BASS) Update.

Component: USCG.

Date of approval: July 12, 2011.

BASS update allows merchant mariners to determine the status of their credential application using the Homeport Internet Portal. Homeport uses the identification information provided by the mariner to match records from the Merchant Mariner Licensing and Documentation system and provide mariners the current status of their credential application. Information provided by the mariner will be used solely for matching records and will not be retained in Homeport at the completion of the online session.

System: DHS/NPPD/PIA–006(a) Protected Critical Infrastructure Management System (PCIIMS).

Component: National Protection and Programs Directorate (NPPD).

Date of approval: July 13, 2011.

The Protected Critical Infrastructure Information Program, part of the DHS, NPPD, Office of Infrastructure Protection, Infrastructure Information Collection Division, facilitates the sharing of PCII between the government and the private sector. The PCIIM System Final Operating Capability is an IT system and the means by which PCII submissions from the private sector are received and cataloged, and PCII Authorized Users are registered and managed. The PCII Program conducted this PIA to analyze and evaluate the privacy impact resulting from the consolidation of the PCIIMS Initial Operating Capability functionalities into PCIIMS FOC, as well as the collection of limited PII from the submitting individuals and PCII Authorized Users for contact purposes.

System: DHS/ALL/PIA–027(b) Watchlist Service (WLS) Update.

Component: DHS.

Date of approval: July 19, 2011.

DHS currently uses the Terrorist Screening Database (TSDB), a consolidated database maintained by the Department of Justice Federal Bureau of Investigation Terrorist Screening Center (TSC) that contains identifying information about those known or reasonably suspected of being involved in terrorist activity, in order to facilitate DHS mission-related functions, such as counterterrorism, law enforcement, border security, and inspection activities. In July 2010, DHS launched an improved method of transmitting TSDB data from TSC to DHS through a new service called DHS WLS. At that time, DHS published a PIA to describe and analyze privacy risks associated with this new service. The WLS maintains a synchronized copy of the TSDB, which contains PII, and disseminates it to authorized DHS components. DHS is issuing this PIA update to add the U.S. CBP Automated Targeting System as an authorized recipient of TSDB data via the WLS.

System: DHS/CBP/PIA–007(a) Electronic System for Travel Authorization (ESTA) Fee and Information Sharing Update.

Component: Customs and Border Protection (CBP).

Date of approval: July 19, 2011.

U.S. CBP is publishing this update to the PIA for the ESTA Fee and Information Sharing Update dated June 3, 2008. ESTA is a Web-based application and screening system used to determine whether certain aliens are eligible to travel to the U.S. under the Visa Waiver Program. This update will evaluate the privacy impacts of updating the login procedures,

collecting an application fee, and adding the Pay.gov tracking number and country of birth information to the ESTA system of records. Additionally, this update is to provide further notice of the expansion of routine sharing of ESTA with the intelligence community in support of DHS's mission to protect the U.S. from potential terrorist activities.

System: DHS/FEMA/PIA–014(a) National Emergency Family Registry and Locator System (NEFRLS) Update.

Component: FEMA.

Date of approval: July 25, 2011.

DHS FEMA operates the NEFRLS system, a Web-based system that collects information from individuals to assist in reuniting family that have been displaced as a result of a Presidentially-declared disaster or emergency. An initial PIA was completed and approved for the NEFRLS system on August 27, 2009. This PIA update outlines and analyzes substantive enhancements made to the NEFRLS system including new information collected on law enforcement officers for identity verification and authentication purposes. When FEMA is conducting a search on behalf of a displaced individual the collection of cell phone numbers allows the FEMA Disaster Assistance Improvement Program system to use its text messaging functions to notify the individual when an official missing person report has been submitted.

System: DHS/ICE/PIA–029 Alien Medical Records System.

Component: ICE.

Date of approval: July 25, 2011.

U.S. ICE maintains medical records on aliens that ICE detains for violations of U.S. immigration law. Aliens held in ICE custody in a facility staffed by the ICE Health Services Corps, a division of ICE's Office of Enforcement and Removal Operations, receive physical exams and treatment, dental services, and pharmacy services, depending on the alien's medical conditions and length of stay. To properly record the medical assessments and services, ICE operates several IT systems that maintain electronic medical record information: CaseTrakker, MedEZ, Dental X-Ray System, the Criminal Institution Pharmacy System, the Medical Payment Authorization Request System (MedPAR), and the Medical Classification Database. This PIA describes the data maintained in these medical record systems, the purposes for which this information is collected and used, and the safeguards ICE has implemented to mitigate the privacy and security risks to PII stored in these systems.

System: DHS/NPPD/PIA–019 Secure Handling of Ammonium Nitrate Program.

Component: NPPD.

Date of approval: July 25, 2011.

DHS, NPPD, published this PIA to provide a comprehensive analysis of the proposed Ammonium Nitrate Security Program. The proposed Ammonium Nitrate Security Program seeks to prevent the misappropriation or use of ammonium nitrate in an act of terrorism by regulating the sale and transfer of ammonium nitrate by ammonium nitrate facilities. This PIA provides transparency into how the proposed Ammonium Nitrate Security Program will support the homeland security and infrastructure protection missions of DHS/NPPD through the collection of PII, and describes reasonable mitigation solutions proposed to be implemented to address privacy and security risks. This PIA will be updated with any changes to the program concurrently with the rule making process.

System: DHS/USSS/PIA–004 Counter Surveillance Unit Reporting (CSUR) Database.

Component: United States Secret Service.

Date of approval: July 27, 2011.

The United States Secret Service (Secret Service or USSS) has created the CSUR Database. CSUR assists Secret Service employees in managing, analyzing, and distributing intelligence information regarding threats or potential threats to the safety of individuals, events, and facilities protected by the Secret Service. The Secret Service is conducting this PIA because CSUR contains PII regarding subjects of protective interest to the Secret Service.

System: DHS/ICE/PIA–030 Security Management Closed-Circuit Television (SM–CCTV) System.

Component: ICE.

Date of approval: August 4, 2011.

The SM–CCTV System is owned and operated by U.S. ICE, a component agency within the DHS. The SM–CCTV System is a video-only recording system installed to monitor the interior and exterior of ICE facilities. ICE conducted this PIA because the system has the ability to capture images of people, license plates, and any other visual information within range of its cameras.

System: DHS/CBP/PIA–009(a) TECS System: CBP Primary and Secondary Processing (TECS) National Suspicious Activity Report (SAR) Initiative.

Component: CBP.

Date of approval: August 5, 2011.

CBP is publishing this update to the PIA for DHS/CBP/PIA–009 the TECS System: Primary and Secondary Processing (TECS), dated December 22, 2010. TECS (not an acronym) is the updated and modified version of the former Treasury Enforcement Communications System. TECS is owned and managed by the DHS component CBP. TECS is the principal system used by officers at the border to assist with screening and determinations regarding admissibility of arriving persons. This update will evaluate the privacy impacts of identifying certain of the operational records maintained in TECS as SARs for inclusion in the National SAR Initiative, which is led by the Department of Justice on behalf of the entire Federal government.

System: DHS/TSA/PIA–016 Screening of Passengers by Observation Techniques (SPOT) Program.

Component: TSA.

Date of approval: August 5, 2011.

The SPOT program is a behavior observation and analysis program designed to provide Behavior Detection Officers with a means of identifying persons who pose or may pose potential transportation security risks by focusing on behaviors indicative of high levels of stress, fear, or deception. The SPOT program is a derivative of other behavioral analysis programs that have been successfully employed by law enforcement and security personnel both in the U.S. and around the world.

System: DHS/NPPD/PIA–017 National Infrastructure Coordinating Center Suspicious Activity Reporting Initiative Privacy Impact Assessment Update (NICC SARS).

Component: NPPD.

Date of approval: August 12, 2011.

DHS NPPD Office of Infrastructure Protection NICC is publishing this PIA to reflect activities under its SAR Initiative. The NICC SAR Initiative serves as a mechanism by which a report involving suspicious behavior related to an observed encounter or reported activity is received and evaluated to determine its potential nexus to terrorism. NICC is conducting this PIA because SAR occasionally contains PII and NICC will be collecting and contributing SAR data for reporting and evaluation proceedings.

System: DHS/US–VISIT/PIA–005(a) Arrival and Departure Information System (ADIS).

Component: US–VISIT.

Date of approval: August 12, 2011.

ADIS has undergone a PIA 3-Year Review requiring no changes and continues to accurately relate to its stated mission. This PIA for ADIS describes changes to ADIS corresponding to the publication of a new ADIS system of records notice. As

now proposed, ADIS will be a DHS-wide system to serve certain programs, including those of the intelligence community, that require information, in support of the DHS mission, on individuals who seek to enter or who have arrived in or departed from the U.S. US–VISIT has conducted this PIA update based on these proposed changes.

System: DHS/TSA/PIA–0018(b) Secure Flight Program Update.

Component: TSA.

Date of approval: August 15, 2011.

The Secure Flight program will match identifying information of aviation passengers and certain non-travelers against the No Fly and Selectee portions of the consolidated and integrated terrorist watch list and, if warranted by security considerations, other watch lists maintained by the Federal government. The TSA published a Final Rule and PIA in October 2008, outlining TSA's expected implementation of the Secure Flight program. This update reflects changes in the Secure Flight operational environment. Unless otherwise noted, the information provided in previously published PIAs remain in effect. Individuals are encouraged to read all program PIAs to have an understanding of TSA's privacy assessment of the Secure Flight program.

System: DHS/ALL/PIA–040 Electronic Patient Care Reporting System (ePCR).

Component: DHS.

Date of approval: August 25, 2011.

The DHS Office of Health Affairs (OHA) is implementing a Web-based Commercial off the Shelf Internet software service called the ePCR. The ePCR system will establish a standardized approach to document care rendered by DHS Emergency Medical Services (EMS) medical care providers in pre-hospital environments. The system will also enhance OHA's capability to evaluate quality of care delivery, quality assurance, performance improvement, and risk management activities. OHA conducted this PIA because accurate documentation and quality assurance of EMS care provided necessarily includes gathering PII from patient encounters.

System: DHS/USCIS/PIA–0015(a) Computer Linked Application Information Management System (CLAIMS 4) Update.

Component: USCIS.

Date of approval: August 31, 2011.

The USCIS is publishing this update to the PIA for the CLAIMS 4 dated September 5, 2008. CLAIMS 4 is an electronic case management system used to track and process applications for naturalization. The purpose of this update is to: (1) Discuss the disposition of the Change of Address subsystem; (2) discuss the disposition of the Complete File Review subsystem; (3) describe the new privacy impacts associated with the exchange of zip codes between the Site Profile System and CLAIMS 4; (4) describe the new privacy impacts associated with the capturing of certain digitized biometric images through the Benefits Biometric Support System; and (5) provide notice of a pilot program under which DHS is expanding the sharing of CLAIMS 4 data with the National Counterterrorism Center in support of DHS's mission to protect the U.S. from potential terrorist activities.

Dated: September 7, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–24220 Filed 9–21–11; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Council; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet on October 14, 2011, in Washington, DC. NBSAC discusses issues relating to recreational boating safety. This meeting will be open to the public.

DATES: NBSAC will meet Friday, October 14, 2011, from 8 a.m. to 5 p.m. Please note that the meeting may conclude early if NBSAC has completed its business.

All written materials, comments, and requests to make oral presentations at the meeting should reach Mr. Jeff Ludwig, Assistant Designated Federal Officer (ADFO) for NBSAC by October 3, 2011. Any written material submitted by the public will be distributed to the committee and become part of the public record.

ADDRESSES: The meeting will be held in the US Access Board's conference room, 1331 F Street NW., Suite 800, Washington, DC 20004.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below.

Please send written material, comments, and requests to make oral presentations to Mr. Jeff Ludwig, ADFO for NBSAC, by one of the submission methods described below. Written comments must be identified by Docket Number USCG–2010–0164:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: jeffrey.a.ludwig@uscg.mil.* Include the docket number in the subject line of the message.
- *Fax:* (202) 372–1932.
- *Mail:* Mr. Jeff Ludwig, COMDT (CG–54221), 2100 2nd Street, SW., Stop 7581, Washington, DC 20593. We encourage use of electronic submissions because security screening may delay the delivery of mail.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, ADFO for NBSAC, COMDT (CG–54221), 2100 2nd Street, SW., Stop 7581, Washington, DC 20593; (202) 372–1061; *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), (Title 5 United States Code, Appendix). Congress established NBSAC in the Federal Boat Safety Act of 1971 (Pub. L. 92–75). NBSAC currently operates under the authority of 46 U.S.C. 13110, which requires the Secretary of Homeland Security, and the Commandant of the Coast Guard by delegation, to consult with NBSAC in prescribing regulations for recreational vessels and associated equipment, and on other major safety matters. *See* 46 U.S.C. 4302(c) and 13110(c).

Meeting Agenda

The agenda for NBSAC meeting is as follows:

(1) Opening Remarks—Mr. James P. Muldoon, NBSAC Chairman and RADM James Watson, USCG Director of Prevention Policy;

(2) Receipt and discussion of the following reports:

(a) Chief, Office of Auxiliary and Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(b) Assistant Designated Federal Officer's report.

(c) Towing Safety Advisory Committee (TSAC) Liaison's report.

(d) Navigation Safety Advisory Council (NAVSAC) Liaison's report.

(e) National Association of State Boating Law Administrators (NASBLA) report.

(f) Boating Industry Risk Management Council (BIRMC) Liaison's report.

(3) Presentation on Inflatable Life Jackets for 13–15 Year Olds.

(4) Presentation on Progress Made on Recommendation Regarding the Development of New Life Jacket Standards and Approval Processes for Life Jackets.

(5) Strategic Planning, Prevention Through People, and Boats & Associated Equipment Subcommittee reports.

A more detailed agenda can be found at: *http://homeport.uscg.mil/NBSAC,* after September 30, 2011.

Procedural:

This meeting will be open to the public. Please note that the meeting may conclude early if all business is finished. Members of the public may make oral presentations during the meeting concerning the matters being discussed. Public comments will be limited to three minutes per speaker. If you would like to make an oral presentation at the meeting, please notify Mr. Jeff Ludwig as described in the **ADDRESSES** section above by October 3, 2011.

Dated: September 16, 2011.

James A. Watson,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–24334 Filed 9–21–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0023; OMB No. 1660–New]

Agency Information Collection Activities: Submission for OMB review; Comment Request; State Preparedness Report

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is submitting a request for review and approval of a collection of information under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by November 1, 2011. The approval will authorize FEMA to use the collection through May 1, 2012. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

DATES: Comments must be submitted to OMB on or before October 24, 2011. You may submit comments to FEMA on or before November 21, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, (Proposed New Information Collection—State Preparedness Report) and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806. Comments may also be submitted to the following:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0023. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2011–0023 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, Office of the Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or at e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

The Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–205, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, established an annual requirement for a State Preparedness Report (SPR). A State receiving Federal preparedness assistance administered by the Federal Emergency Management Agency (FEMA) must submit a report to the FEMA Administrator on the State's level of preparedness. Each report must include an assessment of current capability levels and a description of target capability levels, and an assessment of resources needed to meet the preparedness priorities established under PKEMRA Section 646(e). The resource assessments must include (i) An estimate of the amount of expenditures required to attain the preparedness priorities; and (ii) the extent to which the use of Federal assistance during the preceding fiscal year achieved the preparedness priorities.

In order to comply with PKEMRA's requirement for annual assessments, the SPR data needs to be collected from States by the end of calendar year 2011.The use of normal clearance procedures will not allow timely collection of this information until 2012. Emergency authorization is thus necessary to comply with the requirements of PKEMRA.

Collection of Information:

Title: State Preparedness Report.

Type of Information Collection: New Collection.

OMB Number: 1660–New.

Abstract: This collection is a Web-based tool that will be used with the National Incident Management System Compliance Assessment Support Tool (NIMSCAST). The information will be used to generate a State Preparedness Report and will be shared throughout FEMA, to inform other programs that rely on preparedness assessments to chart strategic direction. The information will also be used by FEMA to conduct analyses and draft the National Preparedness Report (NPR).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 66 hours.

Estimated Total Annual Burden Hours: 3,696 hours.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Frequency of Response: Annually.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.,* permitting electronic submission of responses. Submit comments to OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide FEMA with a copy of your comments. FEMA will continue to accept comments from interested persons through November 21, 2011. Submit comments to the FEMA address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

Dated: September 15, 2011.

Nicole Bouchet,

Acting, Director, Records Management Division, Office of the Chief Administrative Office. Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–24327 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3323–EM; Docket ID FEMA–2011–0001]

Nebraska; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Nebraska (FEMA–3323–EM), dated June 18, 2011, and related determinations.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 1, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24326 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3327–EM; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3327–EM), dated August 25, 2011, and related determinations.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 1, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24325 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4026–DR; Docket ID FEMA–2011–0001]

New Hampshire; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4026–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 6, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24319 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4028–DR; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Massachusetts (FEMA–4028–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Massachusetts is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

Hampden and Hampshire Counties for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24321 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Herkimer County for Individual Assistance.

Franklin, Hamilton, and Herkimer Counties for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24323 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Schenectady County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24324 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4025–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

Delaware, Luzerne, and Philadelphia Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

Pike and Wayne Counties for Public Assistance, including direct Federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24322 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4026–DR]

[Docket ID FEMA–2011–0001]

New Hampshire; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4026–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Hampshire is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

Strafford and Sullivan Counties for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24320 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2011.

Franklin, Lamoille, and Orleans Counties for Individual Assistance (already designated for Public Assistance, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24318 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Bronx, Kings, Queens, and Richmond, and Washington Counties for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

Otsego and Saratoga Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24315 Filed 9–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–23]

Announcement of Funding Awards for Fiscal Year 2010 Transformation Initiative: Homeless Families Demonstration Small Grant Research Program

AGENCY: Office of the Assistant Secretary for Policy Development, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accord with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards under competition FR–5415–N–23A for the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development (HUD) grants to support small research projects that enhance or complement the contractual study HUD is supporting called *The Impact of Various Housing and Service Interventions on Homeless Families.* The purpose of this document is to announce the names and addresses of the award winners and the amount of awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth Rudd, Program Evaluation Division, U.S. Department of Housing and Urban Development, Room 8120, 451 7th St., SW., Washington, DC 20410, Phone (202) 402–7607. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Relay Service on (800) 877–8339 or (202) 708–1455. (Phone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: HUD's authority for making funding available under this Notice is the Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). The Homeless Families Small Grant Research Program is undertaken by HUD's research authority under the Transformation Initiative Fund. On January 3, 2011, a Notice of Public Interest for this program was posted on *Grants.gov* announcing the availability of $150,000 for the program; a technical correction posted January 31, 2011 increased the total available funds to $275,000. On April 8, 2011 a Notice requesting full proposals from selected applicants only was posted on Grants.gov. Applicants could request up to $75,000 for a three-year (36 months) grant performance period. Awards under this Notice will be made in the form of Cooperative Agreements. This program is administered by HUD's Office of Policy Development and Research, Division of Program Evaluation.

The Catalog of Federal Domestic Assistance number for this program is 14.525.

Dated: September 14, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

List of Awardees for Grant Assistance Under the Fiscal Year 2010 Transformation Initiative: Homeless Families Demonstration Small Grant Research Program

1. EveryoneHome, a project of the Tides Center. PO Box 29907, San Francisco, CA 94129–0907. Alameda County Expansion (ACE) Study: Public Service Involvement of Homeless Families. $75,000.00

2. Metropolitan Housing Coalition, Inc. PO Box 4533, Louisville, KY 40204–4533. The Impact of Various Housing and Service Interventions on Homeless Children's Educational Outcomes. $43,070.00.

3. University of Minnesota, 450 McNamara Alumni Center, 200 Oak Street, SE., Minneapolis, MN 55455. The Effects of Housing and Service Interventions on Academic Achievement and School Factors for Children Experiencing Homelessness. $75,000.00.

4. Cloudburst Consulting Group, Inc., 8100 Corporate Drive, Suite 320, Landover, MD 20785–2231. Homeless Families, Preschool Enrollment, and Housing Stability. $75,000.00.

[FR Doc. 2011–24292 Filed 9–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–27]

Announcement of Funding Awards; Fair Housing Initiatives Program; Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal

Opportunity, the Department of Housing and Urban Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2010. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230,Washington, DC 20410. Telephone number (202) 402–7095 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department published its Fair Housing Initiatives Program (FHIP) NOFA on December 1, 2010 announcing the availability of approximately $40,755,000 out of the Department's FY 2010 appropriation, to be utilized for FHIP projects and activities. Funding availability for discretionary grants included: the Private Enforcement Initiative (PEI) ($26,000,000), the Education and Outreach Initiative (EOI) ($6,755,000), and the Fair Housing Organizations Initiative (FHOI) ($8,000,000).

This Notice announces grant awards of approximately $40,755,000, and funding for Fair Housing Accessibility First (FIRST) training. FIRST is a major training initiative to assist architects, builders, disability advocates and others with understanding how to design and construct multifamily housing that complies with the Act.

For the FY 2010 NOFA, the Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2009 NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: September 13, 2011.

John D. Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Applicant name	Contact	Region	Award amt.
Education and Outreach/General Component			
HAP, Inc.: 322 Main Street, Springfield, MA 01101–2403	Carol Walker, 413–233–1668	1	$121,637.00
Champlain Valley Office of Economic Opportunity: 191 North Street, Burlington, VT 05401–1630.	Kevin Stapleton, 802–864–3334	1	125,000.00
Neighborhood Econ. Development Advocacy Project: 176 Grand Street, Suite 300, New York, NY 10013–3786.	Sarah Ludwig, 212–680–5100	2	22,376.00
Southwestern Pennsylvania Legal Services, Inc.: 10 West Cherry Ave., Washington, PA 15301–6808.	Robert Brenner, 724–225–6170	3	125,000.00
Equal Rights Center: 11 Dupont Circle, NW., Suite 450, Washington, DC 20036–1207.	Leah Maddox, 202–370–3227	3	55,458.00
Housing Opportunities Project for Excellence, Inc.: 18441 NW. 2nd Avenue, Suite 218, Miami Gardens, FL 33169.	Keenya Robertson, 305–651–4673	4	125,000.00
Prairie State Legal Services, Inc.: 303 North Main Street, Rockford, IL 61101–1049.	Jennifer Gelman, 815–762–0858	5	125,000.00
Housing Research & Advocacy Center: 3631 Perkins Ave., Suite 3A–2, Cleveland, OH 44114–4705.	Jeffrey Dillman, 216–361–9240	5	125,000.00
Greater New Orleans Fair Housing Action Center, Inc.: 404 South Jefferson Davis Parkway, New Orleans, LA 70119–7126.	James Perry, 504–596–2100	6	125,000.00
High Plains Community Development Corp., Inc.: 130 East 2nd Street, Chadron, NE 69337–2329.	Marguerite Vey-Miller, 308–432–4346.	7	120,570.00
Missouri Commission on Human Rights: 3315 W. Truman Blvd., Jefferson City, MO 65102–1129.	Alisa Warren, 573–522–1019	7	124,917.00
City of Billings: 510 N. Broadway, Billings, MT 59101–1156	Brenda Beckett, 406–657–8286	8	125,000.00
Mental Health Advocacy Services, Inc.: 3255 Wilshire Blvd., Suite 902, Los Angeles, CA 90010–1413.	James Preis, 213–389–2077	9	115,500.00
Education and Outreach Initiative/Higher Education Component			
John Marshall Law School: 315 S. Plymouth Court, Chicago, IL 60604	Michael Seng, 312–987–2397	5	99,980.00

Applicant name	Contact	Region	Award amt.
Education and Outreach Initiative/Lending Component			
Connecticut Fair Housing Center, Inc.: 221 Main Street, Hartfort, CT 06106.	Erin Kemple, 860–247–4400	1	125,000.00
AAFE Community Development Fund, Inc.: 111 Division Street, New York, NY 10002.	Hally Chu, 212–964–2288	2	100,000.00
Neighborhood Economic Development Advocacy Project: 176 Grand Street, Suite 300, New York, NY 10013.	Sarah Ludwig, 212–680–5100	2	125,000.00
St. Martin Center, Inc.: 1701 Parade Street, Erie, PA 16503	David Pesch, 814–452–6113	3	125,000.00
Housing Counseling Services: 2410 17th Street, NW., Adam's Alley, Washington, DC 20009.	Marian Siegel, 202–667–7006	3	125,000.00
Mobile Fair Housing Center, Inc.: P.O. Box 161202, Mobile, AL 36616	Teresa Bettis, 251–479–1532	4	118,734.00
Legal Aid Society of Palm Beach County, Inc.: 423 Fern Street, Suite 200, West Palm Beach, FL 33401.	Robert Bertisch, 561–655–8944	4	125,000.00
Affordable Housing Centers of America: 1439 W. Flagler Street, Miami, FL 33135.	Bruce Dorpalen, 215–765–0048	4	79,819.00
Charleston Trident Urban League, Inc.: 729 East Bay Street, Charleston, SC 29403.	Otha Meadows, 843–965–4037	4	125,000.00
Mid-Florida Housing Partnership, Inc.: 1834 Mason Ave., Daytona Beach, FL 32117.	Francine Gordon, 386–274–4441	4	125,000.00
Jacksonville Area Legal Aid, Inc.: 126 West Adams Street, Jacksonville, FL 32202.	Michael Figgins, 904–356–8371	4	124,743.00
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Mason Street, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	124,773.00
Fair Housing Opportunities Inc. dba Fair Housing Center: 432 N. Superior, Toledo, OH 43604.	Michael Marsh, 419–243–6163	5	125,000.00
Fair Housing Resource Center, Inc.: 70 West Erie Street, Suite 260, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	125,000.00
Miami Valley Fair Housing Center, Inc.: 21 East Babbitt Street, Dayton, OH 45405.	Jim McCarthy, 937–223–6035	5	125,000.00
Housing Opportunities Made equal of Greater Cincinnati, Inc.: 2400 Reading Road, Suite 118, Cincinnati, OH 45202.	Elizabeth Brown, 513–721–4663	5	124,025.00
Minneapolis Urban League: 2100 Plymouth Avenue North, Minneapolis, MN 55411.	Shawne Monahan, 612–302–3103	5	124,447.00
John Marshall Law School: 315 S. Plymouth Court, Chicago, IL 60604	Michael Seng, 312–987–2397	5	124,994.00
Southwest Fair Housing Council: 2030 E Broadway, Suite 101, Tucson, AZ 85719.	Richard Rhey, 520–798–1568	9	124,786.00
Idaho Legal Aid Services, Inc.: 310 N. 5th Street, Boise, ID 83702	James Cook, 208–336–8980	10	103,699.00
Education and Outreach/National Media Campaign Component			
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Suite 710, Washington, DC 20005.	Catherine Cloud, 202–898–1661	11	999,976.00
San Francisco Consumer Action: 221 Main Street, San Francisco, CA 94105.	Ken McEldowney, 415–777–9648	11	999,990.00
Education and Outreach/National Lending Training Component			
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Washington, DC 20005.	Catherine Cloud, 202–898–1661	11	767,293.00
National Community Reinvestment Coalition: 727 15th Street, NW., Suite 900, Washington, DC 20005.	David Berenbaum, 202–464–2731	11	232,707.00
Fair Housing Organizations Initiative—Continuing Development Component General			
Urban League of Kansas Inc.: 2418 E. 9th Street North, Wichita, KS 67214.	Kevin Andrews, 316–262–2463	7	273,007.00
Inland Mediation Board: The City Center Building, 10681 Foothill Blvd., Rancho Caucamor, CA 91730.	Lynne Anderson, 909–984–2254	9	726,993.00
Fair Housing Organizations Initiative/Establishing New Organizations Component			
West Tennessee Legal Services, Inc.: 210 W. Main Street, Jackson, TN 38301.	Carol Gish, 731–426–1309	4	957,165.54
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Washington, DC 20005.	Catherine Cloud, 202–898–1661	5	994,211.00
Greater Bakersfield Legal Assistance, Inc. (GBLA): 615 California Avenue, Bakersfield, CA 93304.	Estela Casas, 661–334–4660	9	441,743.00
Fair Housing Organizations Initiative/Mortgage Rescue Scam Component			
Queens Legal Services Corporation: 89–00 Sutphin Boulevard, Suite 206, Jamaica, NY 11435.	Jennifer Ching, 347–592–2242	2	498,753.00

Applicant name	Contact	Region	Award amt.
South Brooklyn Legal Services, Inc.: 105 Court Street, Brooklyn, NY 11201.	Meghan Faux, 718–246–3276	2	427,587.00
National Community Reinvestment Coalition: 727 15th Street, NW., Suite 900, Washington, DC 20005.	David Berenbaum, 202–628–8866 ...	3	486,601.00
Lawyers' Committee for Civil Rights Under Law: 1401 New York Avenue, NW., Washington, DC 20005.	Kathleen McEnerny, 202–662–8314	3	499,992.00
Fair Housing Partnership of Greater Pittsburgh: 2840 Liberty Avenue, Suite 205, Pittsburgh, PA 15222.	Peter Harvey, 412–391–2535	3	98,563.00
Advocates for Basic Legal Equality, Inc.: 525 Jefferson Avenue, Suite 300, Toledo, OH 43604.	Cindy Hurst, 419–255–0814	5	499,999.00
Housing and Economic Rights Advocates: 1814 Franklin Street, Suite 1040, Oakland, CA 94612.	Maeve Brown, 510–271–8443	9	145,210.00
Private Enforcement Initiative/General Component			
New Hampshire Legal Assistance: 117 North State Street, Concord, New Hampshire 03301.	Christine Lavallee, 603–206–2221 ...	1	324,972.00
Vermont Legal Aid, Inc.: 264 North Winooski Avenue, Burlington, Vermont 05402.	Rachel Batterson, 802–863–5620	1	325,000.00
Connecticut Fair Housing Center, Inc.: 221 Main Street, Hartford, CT 06106.	Erin Kemple, 860–247–4400	1	325,000.00
Westchester Residential Opportunities, Inc.: 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Geoffrey Anderson, 914–428–4507	2	251,156.00
Fair Housing Justice Center, Inc.: 5 Hanover Square, 17th Floor, New York, NY 10004.	Susan Kurien, 212–400–8232	2	324,991.00
Fair Housing Council of Central New York, Inc.: 327 W. Fayette St., Suite 408, Syracuse, NY 13202.	Merrilee Witherell, 315–471–0420 ...	2	323,870.00
National Community Reinvestment Coalition: 727 15th Street, NW., Suite 900, Washington, DC 20005.	David Berenbaum, 202–628–8866 ...	3	315,256.00
Community Legal Aid Society, Inc.: 100 West 10th Street, Suite 801, Wilmington, DE 19801.	William Dunne, 302–575–0660	3	297,657.00
Southwestern Pennsylvania Legal Services, Inc.: 10 West Cherry Ave., Washington, PA 15301.	Robert Brenner, 724–225–6170	3	325,000.00
Fair Housing Continuum, Inc.: 4760 N. U.S. Hwy. 1, Suite 203, Melbourne, FL 32935.	David Baade, 321–757–3532	4	315,000.00
Bay Area Legal Services, Inc.: 829 W. Dr. MLK, Jr., Blvd., Suite 200, Tampa, FL 33603.	Russell Harrison, 813–232–1222	4	278,914.00
Fair Housing Center of the Greater Palm Beaches, Inc.: 1300 W. Lantana Road, Suite 200, Lantana, FL 33462.	Vince Larkins, 561–533–8717	4	311,694.00
Community Legal Services of Mid-Florida, Inc.: 128 Orange Avenue, Daytona Beach, FL 32114.	Suzanne Edmunds, 386–255–6573	4	325,000.00
Fair Housing Center of the Gulf Coast Region of Mississippi: P.O. Box 1592, Gulfport, MS 39502.	Charmel Gaulden, 228–396–4008 ...	4	325,000.00
Legal Services of Eastern Michigan: 436 S. Saginaw Street, Suite 101, Flint, MI 48502.	Teresa Trantham, 810–234–2621	5	259,384.00
Greater New Orleans Fair Housing Action Center, Inc.: 404 South Jefferson Davis Parkway, New Orleans, LA 70119.	James Perry, 504–596–2100	6	325,000.00
Montana Fair Housing, Inc.: 519 East Front Street, Butte, MT 59701	Pamela Bean, 406–782–2573	8	176,652.00
Arizona Fair Housing Center: 615 N. 5th Avenue, Phoenix, AZ 85003	Edward Valenzuela, 602–548–1599	9	325,000.00
Fair Housing Council of Central California: 333 W. Shaw Avenue, Suite 14, Fresno, CA 93704.	Marilyn Borelli, 559–244–2950	9	293,580.00
Orange County Fair Housing Council, Inc.: 201 S. Broadway, Santa Ana, CA 92701.	David Levy, 714–569–0823	9	304,000.00
Southern California Housing Rights Center: 520 S. Virgil Avenue, Suite 400, Los Angeles, CA 90020.	Chancela Al-Mansour, 213–387–8400.	9	324,938.00
Fair Housing Council of Riverside County, Inc.: 3933 Mission Inn Ave., Riverside, CA 92502.	Rose Mayes, 951–682–6581	9	256,903.00
Intermountain Fair Housing Council, Inc.: 350 N. 9th Street, Suite M 200, Boise, ID 83702.	Richard Mabbutt, 208–383–0695	10	324,839.00
Private Enforcement Initiative/Mortgage Rescue Scam Component			
Fair Housing Center of Greater Boston: 59 Temple Place, Boston, MA 02111.	Tracy Brown, 617–399–0491	1	500,000.00
Legal Services NYC Staten Island: 36 Richmond Terrace Rm 205, Staten Island, NY 10301.	Nancy Goldhill, 718–233–6490	2	471,932.00
National Community Reinvestment Coalition: 727 15th Street, NW., Suite 900, Washington, DC 20005.	David Berenbaum, 202–628–8866 ...	3	500,000.00
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Washington, DC 20005.	Catherine Cloud, 202–898–1661	3	498,640.00
Housing Opportunities Made Equal of Virginia, Inc.: 626 E. Broad Street, Suite 400, Richmond, VA 23219.	Lorae Ponder, 804–237–7541	3	149,404.00
Community Legal Services of Mid-Florida, Inc.: 128 Orange Avenue, Daytona Beach, FL 32114.	Suzanne Edmunds, 386–255–6573	4	300,000.00

Applicant name	Contact	Region	Award amt.
Jacksonville Area Legal Aid, Inc.: 126 W. Adams Street, Jacksonville, FL 32202.	Michael Figgins, 904–224–1546	4	499,970.00
South Suburban Housing Center: 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, 708–957–4674	5	150,000.00
Legal Aid Society of Minneapolis: 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	356,365.00
Miami Valley Fair Housing Center, Inc.: 21 East Babbitt Street, Dayton, OH 45405.	Jim McCarthy, 937–223–6035	5	500,000.00
Southwest Fair Housing Council: 2030 E Broadway Suite 101, Tucson, AZ 85719.	Richard Rhey, 520–798–1568	9	323,689.00
California Rural Legal Assistance, Inc.: 531 Howard Street, Suite 300, San Francisco, CA 94105.	Austa Wakily, 530–742–0694	9	250,000.00
Private Enforcement Initiative/Performance Base Component			
Pine Tree Legal Assistance: 88 Federal Street, Portland, ME 04112	Nan Heald, 207–774–4753	1	325,000.00
Legal Assistance Corporation of Central Massachusetts: 405 Main Street, Worcester, MA 01608.	Jonathan Mannina, 508–752–3718 ..	1	237,933.00
Housing Discrimination Project: 57 Suffolk Street, Holyoke, MA 01040	Meris Bergquist, 413–539–9796	1	325,000.00
Fair Housing Center of Greater Boston: 59 Temple Place, Suite 1105, Boston, MA 02111.	Roxanne Murray, 617–399–0491	1	274,750.00
Fair Housing Council of Northern New Jersey: 131 Main Street, Suite 140, Hackensack, NJ 07601.	Lee Porter, 201–489–3552	2	325,000.00
Legal Assistance of Western NY, Inc.: 1 West Main Street, Rochester, NY 14614.	Louis Prieto, 585–295–5610	2	277,000.00
South Brooklyn Legal Services, Inc.: 105 Court Street, Brooklyn, NY 11201.	Meghan Faux, 718–246–3276	2	325,000.00
Long Island Housing Services: 640 Johnson Avenue, Bohemia, NY 11716	Michelle Santantonio, 631–467–5111.	2	275,000.00
Housing Opportunities Made Equal, Inc.: 700 Main Street, Buffalo, NY 14202.	Scott Ghel, 716–854–1400	2	263,846.33
Equal Rights Center: 11 Dupont Circle, NW., Suite 450, Washington, DC 20036.	Chip Underwood, 202–370–3228	3	325,000.00
Fair Housing Partnership of Greater Pittsburgh: 2840 Liberty Avenue, Ste. 205, Pittsburgh, PA 15222.	Peter Harvey, 412–391–2535	3	275,000.00
Fair Housing Council of Suburban Philadelphia, Inc.: 225 South Chester Road, Ste. 1, Swathmore, PA 19801.	James Berry, 610–604–4411	3	274,817.66
Fair Housing Rights Center of Southeastern Pennsylvania: 105 Glenside Avenue, Glenside, PA 19038.	Angela McIver, 215–576–7711	3	275,000.00
Central Alabama Fair Housing Center: 1817 West Second Street, Montgomery, AL 36106.	Faith Cooper, 334–263–4663	4	274,000.00
Fair Housing Center of Northern Alabama: 1728 3rd Avenue, North, 400 C, Birmingham, AL 35203.	Lila Hackett, 205–324–0111	4	275,000.00
Mobile Fair Housing Center, Inc.: P.O. Box 161202, Mobile, AL 36616	Teresa Bettis, 251–479–1532	4	275,000.00
Metro Fair Housing Services, Inc.: 1514 East Cleveland, East Point, GA 30344.	Foster Corbin, 404–221–0874	4	275,000.00
Tennessee Fair Housing Council, Inc.: 107 Music City Circle, Nashville, TN 37314.	Tracey McCartney, 615–383–6155 ..	4	275,000.00
Lexington Fair Housing Council, Inc.: 207 E. Reynolds Road, Lexington, KY 40517.	Arthur Crosby, 859–971–8067	4	260,476.66
West Tennessee Legal Services, Inc.: 210 W. Main Street, Jackson, TN 38301.	Carol Gish, 731–426–1309	4	275,000.00
Jacksonville Area Legal Aid, Inc.: 126 West Adams Street, Jacksonville, FL 32202.	Michael Figgins, 904–224–1546	4	274,751.66
Housing Opportunities Project for Excellence, Inc.: 18441 NW 2nd Avenue, Suite 218, Miami Gardens, FL 33169.	Keenya Robertson, 305–651–4673 ..	4	325,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc.: 2400 Reading Road, Suite 118, Miami Gardens, FL 45202.	Elizabeth Brown, 513–721–4663	5	324,359.00
Legal Aid Society of Minneapolis: 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Lisa Cohen, 612–746–3770	5	325,000.00
Fair Housing Center of Southwest Michigan: 410 E. Michigan, Kalamazoo, MI 49007.	Robert Ells, 269–276–9100	5	302,766.00
Housing Research & Advocacy Center: 3631 Perkins Ave., Suite 3A–2, Cleveland, OH 44114.	Jeffrey Dillman, 216–361–9240	5	325,000.00
Chicago Lawyers' Committee for Civil Rights Under Law, Inc.: 100 North LaSalle Street, Suite 600, Chicago, IL 60602.	Jay Readey, 312–630–9744	5	325,000.00
Access Living of Metropolitan Chicago: 115 West Chicago Avenue, Chicago, IL 60654.	Jason Gilmore, 312–640–2185	5	325,000.00
Interfaith Housing Center of the Northern Suburbs: 614 Lincoln Avenue, Winnetka, IL 60093.	Gail Schechter, 847–501–5760	5	235,687.00
John Marshall Law School: 315 S. Plymouth, Chicago, IL 60604	Michael Seng, 312–987–2397	5	274,958.33
Fair Housing Opportunities dba Fair Housing Center: 432 North Superior, Toledo, OH 43604.	Michael Marsh, 419–243–6163	5	275,000.00

Applicant name	Contact	Region	Award amt.
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Mason Street, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	274,921.33
South Suburban Housing Center: 18220 Harwood Avenue, Homewood, IL 60430.	John Petruszak, 708–957–4574	5	273,505.00
Housing Advocates, Inc.: 3214 Prospect Avenue, East, Cleveland, OH 44115.	Edward Kramer, 216–431–7400	5	275,000.00
Fair Housing Center of West Michigan: 20 Hall Street, SE., Grand Rapids, MI 49507.	Nancy Haynes, 616–451–2980	5	274,603.66
HOPE Fair Housing Center: 2100 Manchester Road, Wheaton, IL 60187	Bernard Kleina, 630–690–6500	5	274,490.66
Fair Housing Center of Southeastern Michigan: 410 E. Michigan, Ann Arbor, MI 49007.	Robert Ellis, 269–276–9100	5	183,549.00
Fair Housing Resource Center, Inc.: 54 South State Street, Ste. 303, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	275,000.00
Fair Housing Center of Metropolitan Detroit: 1249 Washington Blvd., Ste. 1312, Detroit, MI 48226.	Clifford Schrupp, 313–963–1274	5	180,740.00
Fair Housing Contact Services: 441 Wold Ledge Parkway, Ste. 200, Akron, OH 44311.	Tamala Skipper, 330–376–6191	5	275,000.00
Austin Tenants Council Inc.: 1640–B E. Second St., Suite 150, Austin, TX 78702.	Katherine Stark, 512–474–7007	6	324,723.00
Metropolitan Fair Housing Council of Oklahoma, Inc.: 1500 NE 4th Street, Suite 204, Oklahoma City, OK 73117.	Mary Dulan, 405–232–3247	6	324,808.00
Greater Houston Fair Housing Center, Inc.: P.O. Box 292, Houston, TX 77001.	Daniel Bustamante, 713–641–3247	6	325,000.00
San Antonio Fair Housing Council, Inc.: 4414 Centerview Drive, San Antonio, TX 78228.	Sandra Tamez, 210–773–3247	6	275,000.00
Metropolitan St. Louis Equal Housing Opportunity Council: 1027 S. Vandeventer Ave., 6th Floor, Saint Louis, MO 63110.	Willie Jordan, 314–448–9063	7	272,614.00
Family Housing Advisory Services, Inc.: 2401 Lake Street, Omaha, NE 68111.	Teresa Hunter, 402–934–6657	7	275,000.00
Inland Mediation Board: The City Center Building, 10681 Foothill Blvd., Rancho Cucamor, CA 91730.	Lynne Anderson, 909–984–2254	9	325,000.00
Fair Housing of Marin: 615 B Street, San Rafael, CA 94901	Nancy Kenyon, 415–457–5025	9	324,997.00
Bay Area Legal Aid: 1735 Telegraph Avenue, Oakland, CA 94612	Jaclyn Pinero, 510–663–4755	9	325,000.00
Southwest Fair Housing Council: 2030 E Broadway, Tucson, AZ 85719 ...	Richard Rhey, 520–798–1568	9	274,309.00
California Rural Legal Assistance, Inc.: 531 Howard Street, Suite 300, San Francisco, CA 94105.	Austa Wakily, 530–742–7235	9	275,000.00
Project Sentinel, Inc.: 525 Middlefield, Redwood City, CA 94063	Ann Marquart, 650–321–6291	9	273,787.67
Silver State Fair Housing Council: 855 Fourth Street, Reno, NV 89512	Katherine Copeland, 775–324–0990	9	268,606.00
Legal Aid Society of Hawaii: 924 Bethel Street, Honolulu, HI 96813	Nalani Fujmori, 808–536–4302	9	275,000.00
Northwest Fair Housing Alliance: 35 W. Main, Spokane, WA 99201	Marley Hochendoner, 509–209–2667.	10	325,000.00
Fair Housing Council of Oregon: 506 SW 6th Avenue, Suite 1111, Portland, OR 97204.	Moloy Good, 503–223–8197	10	325,000.00
Fair Housing Center of Washington: 1517 S. Fawcett, Ste. 250, Tacoma, WA 98402.	Lauren Walker, 253–274–9523	10	275,000.00

[FR Doc. 2011–24277 Filed 9–21–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–10]

Announcement of Funding Awards; Fair Housing Initiatives Program Fiscal Year (FY) 2009

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program (FHIP) for FY2009. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5230, Washington, DC 20410. Telephone number (202) 402–7095 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act

and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department published its Fair Housing Initiatives Program (FHIP) NOFA on July 23, 2009 announcing the availability of approximately $26.3 million authorized by out of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) to be utilized for FHIP projects and activities. Funding availability for discretionary grants included: the Private Enforcement Initiative (PEI) ($21.1 million), the Education and Outreach Initiative (EOI) ($3.1 million), and the Fair Housing Organizations Initiative (FHOI) ($2.1 million).

This Notice announces grant awards of approximately $26.3 million, and funding for Fair Housing Accessibility First (FIRST) training. FIRST is a major training initiative to assist architects, builders, disability advocates and others with understanding how to design and construct multifamily housing that complies with the Act.

For the FY 2009 NOFA, the Department reviewed, evaluated and scored the applications received based on the criteria in the FY2009 NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: September 13, 2011

John D. Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

ATTACHMENT A—FY 2009 FAIR HOUSING INITIATIVES PROGRAM AWARDS

Applicant name	Contact	Region	Award amt.
Education and Outreach Initiative/General Component			
Champlain Valley Office of Economic Opportunity: 191 North Street, Burlington, VT 05401	(802) 864–3334	1	$100,000.00
Fair Housing Center of Greater Boston: 59 Temple Place, Ste. 1105 Boston, MA 02111	(617) 399–0491	1	100,000.00
New Jersey Citizen Action: 744 Broad Street, Newark, NJ 07102	(973) 643–8800	2	100,000.00
Neighborhood Economic Development Advocacy Project, Inc.: 73 Spring Street, Suite 506 New York, NY 10012	(212) 680–5100	2	100,000.00
Delaware Community Reinvestment Action Council, Inc.: 601 N. Church Street, Wilmington, DE 19801	(302) 654–5024	3	90,000.00
Equal Rights Center: 11 Dupont Circle, NW., Ste. 450, Washington, DC 20036	(202) 289–5360	3	100,000.00
Southwestern Pennsylvania Legal Services, Inc.: 10 West Cherry Avenue, Washington, PA 15301	(724) 225–6170	3	100,000.00
Northern West Virginia Center for Independent Living: 601–3 East Brockway Avenue, Morgantown, WV 26501	(617) 399–0491	3	95,753.00
Piedmont Housing Alliance: 111 Monticello Avenue, Ste. 104 Charlottesville, VA 22902	(434) 817–2436	3	64,139.00
Legal Aid Society of Palm Beach County, Inc.: 423 Fern Street, Ste. 200, West Palm Beach, FL 33401	(561) 655–8944	4	100,000.00
Corporacion de Desarrollo Economico De Ceiba, CD: 252 Lauro Pittero Street, Ceiba, PR 00735	(787) 885–3020	4	100,000.00
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Mason Street, Milwaukee, WI 53202	(414) 278–1240	5	99,997.00
Prairie State Legal Services, Inc.: 975 N. Main Street, Rockford, IL 61103–7064	(630) 690–2130	5	100,000.00
Miami Valley Fair Housing Center, Inc.: 21 East Babbitt Street, Dayton, OH 45405–4903	(937) 223–6035	5	100,000.00
Desire Community Housing Corporation: 4298 Elysian Field Avenue, Ste. B, New Orleans, LA 70122	(504) 944–2727	6	100,000.00
Iowa Civil Rights Commission, Grimes State Office Building: 400 E. 14th Street, Des Moines, Iowa 50319	(515) 281–9086	7	93,536.00
Missouri Commission on Human Rights: 3315 W. Truman Blvd., Jefferson City MO 65102–1129	(573) 526–5090	7	97,500.00
High Plains Community Development Corporation, Inc.: 139 East 2nd, Chadron, NE 69337	(308) 432–4346	7	59,878.00
Arizona Fair Housing Center: 615 N. 5th Avenue, Phoenix, AZ 85003	(602) 548–1599	9	100,000.00
Fair Housing of Marin: 615 B Street, San Rafael, CA 94901	(415) 457–5025	9	100,000.00
Legal Aid Services of Oregon: 921 SW. Washington Street, Ste. 570, Portland, OR 97205	(503) 224–4094	10	100,000.00
Norwest Fair Housing Alliance: 35 West Main Avenue, Ste. 250, Spokane, WA 92201	(590) 325–2665	10	99,197.00
Education and Outreach Initiative/National Media Campaign Component			
Pacific News Media: 275 Ninth Street, San Francisco, CA 94103	(415) 503–4170	9	500,000.00
National Fair Housing Alliance: 1101 Vermont Avenue, NW, Suite 710, Washington, DC 20005	(202) 898–1661	3	500,000.00
Private Enforcement Initiative/General Component			
Pine Tree Legal Assistance, Inc.: 88 Federal Street, Portland, ME 04112	(207) 774–4753	1	232,395.72
New Hampshire Legal Assistance: 117 North State Street, Concord, NH 03301	(603) 206–2221	1	275,000.00
Vermont Legal Aid, Inc.: 264 North Winooski Avenue, Burlington, VT 05402	(802) 885–5181	1	274,846.58
Connecticut Fair Housing Center, Inc.: 221 Main Street, 4th Floor, Hartford, CT 06106	(860) 247–4400	1	275,000.00
Legal Assistance of Western New York, Inc.: 1 West Main Street, Rochester, NY 14614	(585) 295–5610	2	222,199.00
South Brooklyn Legal Services, Inc.: 105 Court Street, Brooklyn, NY 11201–5645	(718) 237–5500	2	275,000.00
The Fair Housing Justice Center, Inc.: 5 Hanover Square, 17th Floor, New York, NY 10004	(212) 400–8280	2	274,991.00

ATTACHMENT A—FY 2009 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact	Region	Award amt.
Southwestern Pennsylvania Legal Services, Inc.: 10 West Cherry Avenue, Washington, PA 15301	(724) 225–6170	3	275,000.00
Community Legal Aid Society, Inc.: 100 West 10th Street, Ste. 801, Wilmington, DE 19801	(707) 224–9720	3	274,621.00
Baltimore Neighborhoods, Inc.: 2217 St. Paul Street, Baltimore, MD 21218	(410) 243–4468	3	259,124.00
Equal Rights Center: 11 DuPont Circle, NW., Washington, DC 20036	(202) 289–5360	3	275,000.00
Community Legal Services of of Mid-Florida, Inc.: 128–A Orange Avenue, Daytona Beach, FL 32114	(386) 255–6573	4	275,000.00
Fair Housing Continuum, Inc.: 4760 US Hwy 1, Ste. 203, Melbourne, FL 32935	(321) 757–3532	4	275,000.00
Legal Aid Society of Palm Beach County, Inc.: 423 Fern Street, Ste. 200, West Palm Beach, FL 33401	(561) 655–8944	4	230,784.00
Interfaith Housing Center of Northern Surburbs: 614 Lincoln Avenue, Winnetka, IL 60093	(847) 501–5760	5	200,000.00
SER/Jobs for Progress, Inc.: 204 North Genesee Street, Ste. 220, Waukegan, IL 60085	(847)336–3247	5	127,588.00
Fair Housing Center of Southwest Michigan: 410 East Michigan, Kalamazoo, MI 49007	(269) 276–9100	5	330,882.00
Legal Services of Eastern Michigan: 436 S. Saginaw Street, Flint, MI 48502–1812	(810) 234–2621	5	258,577.00
Greater New Orleans Fair Housing Action Center: 228 St. Charles Avenue, New Orleans, LA 70130	(617) 399–0491	6	275,000.00
Metropolitan Fair Housing Council of Oklahoma, Inc.: 1500 NE 4th Street, Suite 204, Oklahoma City, OK 73117	(405) 232–3247	6	274,900.00
Greater Houston Fair Housing Center, Inc.: P. O. Box 292, Houston, TX 77001–0292	(713) 641–3247	6	275,000.00
Arizona Fair Housing Center: 615 N 5th Avenue, Phoenix, AZ 85003	(602) 548–1599	9	275,000.00
Bay Area Legal Aid: 1735 Telegraph Avenue, Oakland, CA 94612	(510) 250–5229	9	275,000.00
Fair Housing Council of Central California: 333 W. Shaw Avenue, Suite 14, Fresno, CA 93704	(559) 244–2950	9	275,000.00
Greater Napa Fair Housing Center: 601 Cabot Way, Napa, CA 94559	(707) 224–9720	9	136,500.00
Orange County Fair Housing Council: 201 S. Broadway, Santa Ana, CA 92701–5633	(714) 569–0823	9	185,200.00
Southern California Housing Rights Center: 520 South Virgil Avenue, Los Angeles, CA 90020	(213) 387–8400	9	275,000.00
Intermountain Fair Housing Council, Inc.: 350 N. 9th Street, Ste. M 200, Boise, ID 83702–5477	(208) 383–0695	10	274,930.00
Fair Housing Council of Oregon: 1020 SW Taylor Street, Ste. 700, Portland, OR 97205	(503) 402–1157	10	275,000.00
Private Enforcement Initiative/Performance-Based Component			
Fair Housing Center of Greater Boston: 59 Temple Place, Ste. 1105, Boston, MA 02111	(617) 399–0491	1	274,750.00
Housing Discrimination Project: 57 Suffolk Street, Holyoke, MA 01040	(413) 539–9796	1	275,000.00
Legal Assistance Corporation of Central Massachusetts: 405 Main Street, Worcester, MA 01608	(508) 752–3718	1	237,933.33
Housing Opportunities Made Equal, Inc.: 700 Main Street, 3rd Floor, Buffalo, NY 14202	(716) 854–1400	2	263,846.33
Long Island Housing Services, Inc.: 640 Johnson Avenue, Bohemia, NY 11716–2624	(613) 467–5111	2	275,000.00
Fair Housing Council of Northern New Jersey: 131 Main Street, Hackensack, NJ 07601	(201) 482–3552	2	275,000.00
Fair Housing Council of Suburban Philadelphia, Inc: 225 South Chester Road, Ste. 1, Swarthmore, PA 19081	(610) 604–4411	3	274,817.66
Fair Housing Partnership of Greater Pittsburgh, Inc.: 2840 Liberty Avenue, Pittsburgh, PA 15222	(412) 391–2535	3	275,000.00
Fair Housing Rights Center in Southeastern Pennsylvania: 105 Glenside Avenue, Glenside, PA 19038	(215) 576–7711	3	275,000.00
Central Alabama Fair Housing Center: 1817 West Second Street, Montgomery, AL 36106	(334) 263–4663	4	274,000.00
Fair Housing Center of Northern Alabama: 1728 3rd Avenue, Ste. 400C, Birmingham, AL 35203–2033	(205) 324–0111	4	275,000.00
Mobile Fair Housing Center, Inc.: P.O. Box 161202, Mobile, AL 36616	(251) 479–1532	4	275,000.00
Lexington Fair Housing Council, Inc.: 207 E Reynolds Road, Ste. 130, Lexington, KY 40517	(859) 971–8067	4	260,476.66
Tennessee Fair Housing Council, Inc.: 107 Music City Circle, Nashville, TN 37214	(615) 874–2344	4	275,000.00
West Tennessee Legal Services, Inc.: 210 West Main Street, Jackson, TN 38301	(731) 426–1311	4	275,000.00
Metro Fair Housing Services, Inc.: 1514 East Cleveland Avenue, Ste. 118, East Point, GA 30344	(404) 765–3965	4	275,000.00
Bay Area Legal Services, Inc.: 829 W MLK Jr. Blvd., Tampa, FL 33603	(813) 232–1343	4	234,973.33
Jacksonville Area Legal Aid, Inc.: 126 West Adams Street, Jacksonville, FL 32202	(904) 356–8371	4	274,751.66
Access Living of Metropolitan Chicago: 115 West Chicago, Chicago, IL 60654	(312) 226–5900	5	275,000.00
HOPE Fair Housing Center: 2100 Manchester Road, Bldg. CC–1620m, Wheaton, IL 60187	(630) 690–6500	5	274,490.66
John Marshall Law School: 315 South Plymouth Court, Chicago, IL 60604	(312) 982–1429	5	274,958.33
South Suburban Housing Center: 18220 Hardwood Avenue, Ste. 1, Homewood, IL 60430	(708) 957–4674	5	273,505.00
Fair Housing Center of Metropolitan Detroit: 124 Washington Blvd., Ste. 1312, Detroit, MI 48226	(313) 963–1274	5	180,740.00
Fair Housing Center of Southeastern Michigan: P.O. Box 7825, Ann Arbor, MI 48107	(734) 994–3426	5	183,549.00
Fair Housing Center of West Michigan: 20 Hall Street, SE, Grand Rapids, MI 49507	(616) 451–2950	5	274,603.66
Legal Aid Society of Minneapolis: 430 First Avenue, Minneapolis, MN 55401	(612) 234–5785	5	275,000.00
Fair Housing Contact Service: 441 Wolf Ledges Parkway, Ste. 200, Akron, OH 44311	(330) 376–6191	5	275,000.00
Fair Housing Resource Center, Inc.: 54 South State Street, Ste. 303, Painesville, OH 44077	(440) 392–0147	5	275,000.00
Fair Housing Opportunities, Inc. dba Fair Housing Center: 432 North Superior, Toledo, OH 43604	(419) 243–6163	5	275,000.00
Housing Advocates, Inc.: 3214 Prospect Avenue East, Cleveland, OH 44115	(216) 431–7400	5	275,000.00
Housing Opportunities Made Equal of Cincinnati, Inc.: 2400 Reading Road, Cincinnati, OH 45202	(513) 721–4663	5	273,815.40

ATTACHMENT A—FY 2009 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact	Region	Award amt.
Housing Research & Advocacy Center: 3631 Perkins Avenue, Cleveland, OH 44114	(216) 426–9240	5	275,000.00
Miami Valley Fair Housing Center, Inc.: 21–23 East Babbitt, Dayton, OH 45405	(937) 223–6035	5	275,000.00
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Main Street, Milwaukee, WI 53202	(414) 278–1240	5	274,921.33
Austin Tenants Council, Inc.: 1640 B East 2nd Street, Austin, TX 78702	(512) 474–7007	6	274,707.00
San Antonio Fair Housing Council, Inc.: 4414 Centerview Drive, Ste. 229, San Antonio, TX 78228	(210) 207–3247	6	275,000.00
Metropolitan Saint Louis Equal Housing Opportunity Council: 1027 S Vandeventer, St. Louis, MO 63110	(314) 534–5800	7	224,379.00
Fair Housing of the Dakotas: 533 Airport Road, Bismark, ND 58504	(701) 221–2530	8	220,540.66
Southwest Fair Housing Council: 2030 Broadway Blvd., Ste. 101, Tucson, AZ 85719	(520) 798–1568	9	274,309.00
California Rural Legal Assistance, Inc.: 631 Howard Street, Ste. 300, San Francisco, CA 94105–3935	(530) 742–7325	9	275,000.00
Fair Housing of Marin: 615 B Street, San Rafael, CA 94901	(415) 457–5025	9	275,000.00
Inland Mediation Board: 60 East 9th Street, Upland, CA 91786	(909) 984–2254	9	275,000.00
Project Sentinel, Inc.: 525 Middlefield Road, Ste. 200, Redwood City, CA 94063–1623	(650) 321–6291	9	273,787.67
Legal Aid Society of Hawaii: 924 Bethel Street, Honolulu, HI 96813	(808) 536–4302	9	275,000.00
Silver State Fair Housing Council: 855 E Fourth Street, Ste. E, Reno, NV 89512	(775) 324–0990	9	268,606.00
Fair Housing Center of Washington: 1517 S. Fawcett Street, Tacoma, WA 98402	(253) 274–9523	10	27 5,000.00
Northwest Fair Housing Alliance: 35 West Main, Ste. 250, Spokane, WA 92201	(590) 325–2665	10	275,000.00
Private Enforcement Initiative/Performance-Mortgage Rescue Scam Component			
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Washington, DC 20005	(202) 898–1661	3	871,961.00
St. Martins Center, Inc.: 1701 Parade Street, Erie, PA 16503	(814) 452–6113	3	128,039.00
Fair Housing Organizations Initiative/Continued Development-Mortgage Rescue Scam Component			
South Brooklyn Legal Services: 105 Court Street, Brooklyn, NY 11201	(718) 237–5500	2	318,408.00
Housing Counseling Services: 2410 17th Street, NW., Washington, DC 20009	(202) 667–7006	3	100,000.00
Lawyers Committee for Civil Rights under Law, Inc.: 1401 New York Avenue, NW., Washington, DC 20005	(202) 662–8314	3	155,079.00
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Mason Street, Milwaukee, WI 53202	(414) 278–1240	5	294,697.00
Housing and Economic Rights Advocates: 1814 Franklin Street, Ste. 1040, Oakland, CA 94612	(510) 271–8443	9	131,916.00
Fair Housing Organizations Initiative/Continued Development Component			
National Fair Housing Alliance: 1101 Vermont Avenue, NW., Washington, DC 20005	(202) 898–1661	3	599,900.00
Reinvestment Fund, Inc.: 718 Arch Street, Philadelphia, PA 19106–1591	(215) 574–5827	3	410,000.00
Miami Valley Fair Housing Center, Inc.: 21 East Babbitt Street, Dayton, OH 45405–4903	(937) 223–6035	5	90,000.00
Fair Housing Organizations Initiative/Establishing New Organizations Component			
National Fair Housing Alliance: 1212 New York Avenue, NW, Suite 525, Washington, DC 20005	(202) 898–1661	3	599,900.00
Secretary-Initiated Projects/Contracts			
Deloitte Consulting, LLP: 1676 International Dr., McLean, VA 22102–4828	(703) 747–4230	3	800,000.00

[FR Doc. 2011–24281 Filed 9–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5200–FA–11]

Announcement of Funding Awards; Fair Housing Initiatives Program Fiscal Year (FY) 2008

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Notice of Funding Availability (NOFA) for the Fair Housing Initiatives Program (FHIP) for FY2008. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Division, Office of Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5230, Washington, DC 20410. Telephone number 202–402–7095 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) provides the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department published its Fair Housing Initiatives Program (FHIP) NOFA on May 12, 2008 (73 FR 27118), announcing the availability of approximately $22.8 million authorized by the Consolidated Appropriations Act 2008 (Pub. L. 110–161, approved December 26, 2007), to be utilized for FHIP projects and activities. Funding availability for discretionary grants included: the Private Enforcement Initiative (PEI) ($19 million), the Education and Outreach Initiative (EOI) ($2.8 million), and the Fair Housing Organizations Initiative (FHOI) ($1 million).

This Notice announces grant awards of approximately $22.8 million, and funding for Fair Housing Accessibility First (FIRST) training. FIRST is a major training initiative to assist architects, builders, disability advocates and others with understanding how to design and construct multifamily housing that complies with the Act. For the FY 2008 NOFA, the Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: September 13, 2011.

John D. Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A—FY2008 FAIR HOUSING INITIATIVES PROGRAM AWARDS

Applicant name	Contact	Region	Award amt.
Education and Outreach Initiative/General Component			
Champlain Valley Office of Economic Opportunity: 191 North Street, Burlington, VT 05402	(802) 864–3334	1	$100,000.00
Buffalo Urban League, Inc.: 15 E. Genesee Street, Buffalo, NY 14203	(716) 854–7625	2	90,000.00
New Jersey Citizen Action: 744 Broad Street, Newark, NJ 07102	(973) 643–8800	2	100,000.00
New York Agency for Community Affairs: 2–4 Nevins Street, 2nd Floor, Brooklyn, NY 11217	(718) 246–7900	2	99,427.00
Neighborhood Economic Development Advocacy Project, Inc.: 73 Spring Street, Suite 506, New York, NY 10012	(212) 680–5100	2	100,000.00
Housing Counseling Services: 2440 17th Street, NW, Washington, DC 20009	(202) 667–7006	3	100,000.00
Equal Rights Center: 11 DuPont Circle, NW, Washington, DC 20036	(202) 289–5360	3	100,000.00
St. Martin Center, Inc.: 1701 Parade Street, Erie, PA 16503	(814) 452–6113	3	100,000.00
Piedmont Housing Alliance: 111 Monticello Avenue, Ste. 104, Charlottesville, VA 22902	(434) 817–2436	3	62,217.00
Mid-Florida Housing Partnership, Inc.: 1834 Mason Avenue, Daytona Beach, FL 32117	(368) 274–4441	4	100,000.00
Legal Services of North Florida: 2119 Delta Boulevard, Tallahassee, FL 32303	(850) 385–9007	4	40,810.00
Prairie State Legal Services, Inc.: 975 N. Main Street, Rockford, IL 61102	(630) 690–2130	5	100,000.00
Garland Fair Housing Office: 210 Carver Drive, Ste. 102 A, Garland, TX 75040	(972) 205–3316	6	100,000.00
Iowa Civil Rights Commission: Grimes State Office Building, Des Moines, Iowa 50319	(515) 281–9086	7	67,126.00
ACORN Associates: 953 E. Sahara Avenue, #D–18, Las Vegas, NV 89104	(702) 699–5530	9	99,974.00
Mental Health Advocacy Services, Inc.: 3255 Wilshire Boulevard, Suite 902, Los Angeles, CA 90010	(213) 389–2077	9	99,800.00
Legal Aid Services of Oregon: 921 SW Washington Street, Ste. 570, Portland, OR 97205	(503) 224–4094	10	100,000.00
Education and Outreach Initiative/Clinical Law Component			
Howard University: 576 W Streets, NW., Washington, DC 20059	(202) 806–5567	3	312,621.00
Education and Outreach Initiative/National Media Campaign Component			
National Fair Housing Alliance: 1212 New York Avenue, NW., Suite 525, Washington, DC 20005	(202) 898–1661	3	999,847.00
Private Enforcement Initiative/General Component			
Pine Tree Legal Assistance, Inc.: 88 Federal Street, Portland, ME 04112	(207) 774–4753	1	275,000.00
New Hampshire Legal Assistance: 117 North State Street, Concord, NH 03301	(603) 206–2221	1	223,556.93
Connecticut Fair Housing Center, Inc.: 221 Main Street, Hartford, CT 06106	(860) 247–4400	1	275,000.00
Vermont Legal Aid, Inc.: 264 North Winooski Avenue, Burlington, VT 05401	(802) 885–5181	1	275,000.00
Legal Assistance Corporation of Central Massachusetts: 405 Main Street, Worchester, MA 01608	(508) 752–3718	1	232,000.00
Legal Assistance of Western New York, Inc.: 1 West Main Street, Rochester, NY 14614	(585) 295–5610	2	197,500.00
Westchester Residential Opportunities, Inc.: 470 Mamarock Avenue, White Plains, NY 10605	(914) 428–4507	2	261,895.00
HELP Social Services Corporation: 5 Hanover Square, New York, NY 10004	(212) 400–8280	2	274,995.00
National Community Reinvestment Coalition: 727 15th Street, NW., Washington, DC 20005 ..	(202) 628–8866	3	230,000.00

APPENDIX A—FY2008 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact	Region	Award amt.
Community Legal Aid Society, Inc.: 100 West 10th Street, Ste. 801, Wilmington, DE 19801 ...	(707) 224–9720	3	274,621.00
Fair Housing Partnership of Greater Pittsburgh, Inc.: 2840 Liberty Avenue, Pittsburgh, PA 15222 ...	(412) 391–2535	3	275,000.00
Fair Housing Continuum, Inc.: 4085 Hwy. US1, Ste.101, Rockledge, FL 32955 ...	(321) 633–4551	4	275,000.00
Metro Fair Housing Services, Inc.: 1514 East Cleveland Avenue, Ste. 118, East Point, GA 30344 ...	(404) 765–3965	4	271,248.00
Mobile Fair Housing Center, Inc.: P.O. Box 161202, Mobile, AL 36616 ...	(251) 479–1532	4	275,000.00
Community Legal Services of Mid-Florida, Inc.: 128 Orange Avenue, Daytona Beach, FL 32114 ...	(386) 255–6573	4	275,000.00
Housing Opportunities Project for Excellence, Inc.: Miami-Gardens, FL 33169 ...	(305) 651–4673	4	275,000.00
Legal Aid Society of Palm Beach County, Inc.: 423 Fern Street, Ste. 200, West Palm Beach, FL 33401 ...	(561) 655–8944	4	120,628.72
Legal Aid and Defender Association, Inc.: 613 Abbott Street, Detroit, MI 48226 ...	(313) 967–5607	5	275,000.00
Interfaith Housing Center of Northern Suburbs: 620 Lincoln Avenue, Winnetka, IL 60093 ...	(847) 501–5760	5	186,403.00
Fair Housing Center of Southwest Michigan: 410 E. Michigan, Kalamazoo, MI 49007 ...	(269) 276–9100	5	162,225.00
Fair Housing Contact Service: 441 Wolf Ledge Parkway, Ste. 200, Akron, OH 44311 ...	(330) 376–6191	5	275,000.00
Legal Services of Eastern Michigan: 436 Saginaw Street, Flint, MI 48502 ...	(810) 234–2621	5	208,561.00
Metropolitan Fair Housing Council: 1500 NE 4th Street, Oklahoma, OK 73117 ...	(405) 232–3247	6	274,900.00
Greater Houston Fair Housing Center, Inc.: P. O. Box 292, Houston, TX 77001 ...	(713) 641–3247	6	275,000.00
Greater New Orleans Fair Housing Action Center: 228 St. Charles Avenue, New Orleans, LA 70130 ...	(617) 399–0491	6	275,000.00
Arizona Fair Housing Center: 615 N 5th Avenue, Phoenix, AZ 85003 ...	(602) 548–1599	9	275,000.00
Southern California Housing Rights Center: 520 South Virgil Avenue, Los Angeles, CA 90020	(213) 387–8400	9	275,000.00
Greater Napa Fair Housing Center: 601 Cabot Way, Napa, CA 94559 ...	(707) 224–9720	9	120,000.00
Orange County Fair Housing Council: 201 S. Broadway, Santa Ana, CA 92701 ...	(714) 569–0823	9	175,000.00
Fair Housing Council of Oregon: 1020 SW., Taylor Street, Ste. 700, Portland, OR 97205 ...	(503) 402–1157	10	275,000.00
Intermountain Fair Housing Council, Inc.: 350 N 9th Street, Ste. M 200, Boise, ID 83702 ...	(208) 383–0695	10	274,796.00
Private Enforcement Initiative/Performance-Based Component			
Fair Housing Center of Greater Boston: 59 Temple Place, Ste. 1105, Boston, MA 02111 ...	(617) 399–0491	1	274,750.00
Housing Discrimination Project: 57 Suffolk Street, Holyoke, MA 01040 ...	(413) 539–9796	1	275,000.00
Housing Opportunities Made Equal, Inc.: 700 Main Street, 3rd Floor, Buffalo, NY 14202 ...	(716) 854–1400	2	263,846.33
Fair Housing Council of Northern New Jersey: 131 Main Street, Hackensack, NJ 07601 ...	(201) 482–3552	2	275,000.00
South Brooklyn Legal Services, Inc.: 105 Court Street, Brooklyn, NY 11201 ...	(718) 237–5667	2	183,333.00
Fair Housing Council of New York, Inc.: 327 W Fayette Street, Ste. 40, Syracuse, NY 13202	(315) 471–0420	2	211,346.00
Long Island Housing Services, Inc.: 3900 Veterans Memorial Hwy. Ste. 251, New York, NY 11761 ...	(613) 467–5111	2	270,417.00
Fair Housing Council of Suburban Philadelphia, Inc.: 225 South Chester Road, Ste. 1, Swarthmore, PA 19081 ...	(610) 604–4411	3	274,817.66
Fair Housing Rights Center in Southeastern Pennsylvania: 105 E. Glenside Avenue, East Glenside, PA 19038 ...	(215) 576–7711	3	275,000.00
Tennessee Fair Housing Council, Inc.: 107 Music City Circle, Nashville, TN 60430 ...	(615) 874–2344	4	275,000.00
West Tennessee Legal Services, Inc.: 210 West Main Street, Jackson, TN 38301 ...	(731) 426–1311	4	275,000.00
Jacksonville Area Legal Aid, Inc.: 126 West Adam Street, Jacksonville, FL 32202 ...	(904) 356–8371	4	274,751.66
Lexington Fair Housing Council, Inc.: 207 E Reynolds Road, Ste. 130, Lexington, KY 40517	(859) 971–8067	4	260,476.66
Bay Area Legal Services, Inc.: 829 W MLK Jr. Blvd., Tampa, FL 33603 ...	(813) 232–1343	4	234,973.33
Central Alabama Fair Housing Center: 1817 West Second Street, Montgomery, AL 36106	(334) 263–4663	4	274,000.00
Fair Housing Center of Northern Alabama: 1728 3rd Avenue, Birmingham, AL 35203 ...	(205) 324–0111	4	275,000.00
South Suburban Housing Center: 18220 Hardwood Avenue, Ste. 1, Homewood, IL 60430 ...	(708) 957–4674	5	273,505.00
Metropolitan Milwaukee Fair Housing Council, Inc.: 600 East Mason Street, Milwaukee, WI 53202 ...	(414) 278–1240	5	274,921.33
Fair Housing Center of Metropolitan Detroit: 124 Washington Blvd., Ste. 1312, Detroit, MI 48226 ...	(313) 963–1274	5	180,740.00
Fair Housing Center of West Michigan: 20 Hall Street SE., Grand Rapids, MI 49507 ...	(616) 451–2950	5	274,603.66
Fair Housing Resource Center, Inc.: 54 South State Street, Ste. 303, Painesville, OH 44077	(440) 392–0147	5	275,000.00
Fair Housing Center of Southeastern Michigan: P.O. Box 7825, Ann Arbor, MI 48107 ...	(734) 994–3426	5	183,549.00
Housing Advocates, Inc.: 3214 Prospect Avenue East, Cleveland, OH 44115 ...	(216) 431–7400	5	275,000.00
HOPE Fair Housing Center: 2100 Manchester Road, Bldg. CC–1620, Wheaton, IL 60187	(630) 690–6500	5	274,490.66
Legal Aid Society of Minneapolis: 430 First Avenue, Minneapolis, MN 55401 ...	(612) 234–5785	5	275,000.00
Housing Opportunities Made Equal of Greater Cincinnati: 2400 Reading Road, Cincinnati, OH 45202 ...	(513) 721–4663	5	273,815.40
Fair Housing Opportunities, Inc. dba Fair Housing Center: 432 North Superior, Toledo, OH 43604 ...	(419) 243–6163	5	275,000.00
Housing Research & Advocacy Center: 3631 Perkins Avenue, Cleveland, OH 44114 ...	(216) 426–9240	5	275,000.00
John Marshall Law School: 316 South Plymouth Court, Chicago, IL 60604 ...	(312) 982–1429	5	274,958.00
Access Living of Metropolitan Chicago: 115 West Chicago, Chicago, IL 60610 ...	(312) 226–5900	5	275,000.00
Miami Valley Fair Housing Center, Inc.: 21–23 East Babbitt, Dayton, OH 45405 ...	(937) 223–6035	5	275,000.00
Chicago Lawyers' Committee for Civil Rights Under Law, Inc.: 100 North LaSalle Street, Ste. 600, Chicago, IL 60602 ...	(312) 630–9744	5	274,994.00
San Antonio Fair Housing Council, Inc.: 4203 Woodcock Drive, Ste. 216, San Antonio, TX 78228 ...	(210) 733–3247	6	275,000.00

APPENDIX A—FY2008 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact	Region	Award amt.
Austin Tenants Council, Inc.: 1640 B East 2nd Street, Austin, TX 78702	(512) 474–7007	6	274,707.00
Family Housing Advisory Services, Inc.: 2401 Lake Street, Omaha, NE 08111	(402) 934–6657	7	275,000.00
Metropolitan Saint Louis Equal Housing Opportunity Council: 1027 S Vandeventer, St. Louis, MO 63110	(314) 534–5800	7	224,379.00
Fair Housing of the Dakotas: 533 Airport Road, Bismark, ND 58504	(701) 221–2530	8	220,545.66
Legal Aid Society of Hawaii: 924 Bethel Street, Honolulu, HI 96813	(808) 536–4302	9	275,000.00
Silver State Fair Housing Council: 855 E. Fourth Street, Ste. E, Reno, NA 89512	(775) 324–0990	9	268,606.00
Fair Housing of Marin: 615 B Street, San Rafael, CA 94901	(415) 457–5025	9	275,000.00
Inland Mediation Board: 60 East 9th Street, Upland, CA 91786	(909) 984–2254	9	275,000.00
Southwest Fair Housing Council: 2030 Broadway Blvd., Ste. 101, Tucson, AZ 85719	(520) 798–1568	9	270,144.00
Project Sentinel, Inc.: 430 Sherman Avenue, Palo Alto, CA 94306	(415) 321–6291	9	270,000.00
California Rural Legal Assistance, Inc.: 531 Howard Street, Ste. 300, San Francisco, CA 94105	(530) 742–7325	9	275,000.00
Bay Area Legal Aid: 405 14th Street, 9th Floor, Oakland, CA 94612	(510) 250–5229	9	275,000.00
Fair Housing Center of Washington: 1517 S. Fawcett Street, Tacoma, WA 98402	(253) 274–9523	10	275,000.00
Norwest Fair Housing Alliance: 36 West Main, Ste. 250, Spokane, WA 92201	(590) 325–2665	10	275,000.00
Secretary-Initiated Projects/Contracts			
Deloitte Consulting, LLP: 1676 International Dr., McClean, VA 22102–4828	(703) 747–4230	3	798,583.00

[FR Doc. 2011–24291 Filed 9–21–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report and Notice of Public Hearings for Klamath Facilities Removal

AGENCY: Office of Environmental Policy and Compliance, Interior.

ACTION: Notice of availability and notice of public hearings.

SUMMARY: The Department of the Interior and the California Department of Fish and Game have prepared a draft environmental impact statement and environmental impact report (EIS/EIR) evaluating the effects of removing four dams on the Klamath River in southern Oregon and northern California. These documents are one part of the total record that will inform the decision of the Secretary of the Interior on whether removing the dams will advance restoration of the fisheries of the Klamath River Basin and will be in the public interest.

DATES: Submit written comments on or before November 21, 2011. We will hold six public hearings to solicit comments on the potential effects of the proposed action. See **SUPPLEMENTARY INFORMATION** section for hearing dates.

ADDRESSES: Please send written comments to Ms. Elizabeth Vasquez, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, or by e-mail to *KlamathSD@usbr.gov*. Written comments also may be submitted during the public meetings. Please see the **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Vasquez, Bureau of Reclamation, 916–978–5040, *evasquez@usbr.gov;* or Mr. Gordon Leppig, California Department of Fish and Game, 707–441–2062, *KSDcomments@dfg.ca.gov,* for technical information. For public involvement information, please contact Mr. Matt Baun, U.S. Fish and Wildlife Service, 530–841–3119, *Matt_Baun@fws.gov.* The Draft EIS/EIR may be viewed at *http://klamathrestoration.gov/.*

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) and the California Department of Fish and Game have prepared an EIS/EIR for Klamath Facilities Removal. The draft EIS/EIR evaluates potential effects of the proposed removal of four PacifiCorp dams on the Klamath River in southern Oregon and northern California (the J.C. Boyle, Copco 1, Copco 2, and Iron Gate Dams). The proposed removal would be in accordance with the Klamath Hydroelectric Settlement Agreement (KHSA).

The KHSA established a process for studies and environmental review leading to a Secretarial decision on whether removal of the dams will:

(1) Advance restoration of salmonid (salmon, steelhead, and trout) fisheries of the Klamath River Basin; and

(2) Be in the public interest, including, but not limited to, consideration of potential impacts on affected local communities and Tribes.

This determination will be made based on in-depth studies and the EIS/EIR. The Klamath Basin Restoration Agreement (KBRA) provides for restoration of native fisheries and sustainable water supplies throughout the Klamath River Basin, and under NEPA is connected to dam removal and the KHSA. Together, these two agreements attempt to resolve long-standing conflicts in the Klamath River Basin.

The EIS/EIR:

- Will inform the Secretary's decision whether to approve removal of the four PacifiCorp dams as well as the connected actions contemplated within the KHSA and KBRA.
- Will include analysis and disclosures of the effects on the human and physical environment that may occur as a result of implementation of the proposed action.
- Will address, among other issues, effects on biological resources, historic and archaeological resources, geomorphology, flood hydrology, water quality, air quality, public safety, hazardous materials and waste, visual resources, socioeconomics, real estate, tribal trust, recreation, and environmental justice.
- Will comply with the California Environmental Quality Act (CEQA).

Background

Conflicts over water and other natural resources in the Klamath Basin between conservationists, Tribes, farmers, fishermen, and State and Federal agencies have existed for decades. In particular, several events affecting the Klamath Basin have occurred in recent years:

- In 2001, water deliveries to irrigation contractors in Reclamation's

Klamath Project were substantially reduced.

• In 2002, returning adult salmon suffered a major die-off.

• In 2006, the commercial salmon fishing season was closed along 700 miles of the West Coast to protect weak Klamath River stocks and other major river salmon stocks.

• In 2010, due to drought conditions, Reclamation's Klamath Project had a reduction in water deliveries resulting in short-term idling of farmland and increased groundwater pumping.

The United States; the States of California and Oregon; the Klamath, Karuk, and Yurok Tribes; Klamath Project Water Users; and other Klamath River Basin stakeholders negotiated the KHSA and the KBRA to resolve long-standing disputes regarding a broad range of natural resource issues. The Agreements are intended to result in effective and durable solutions that:

• Restore and sustain natural fish production and provide for full participation in ocean and river harvest of fish species throughout the Klamath Basin;

• Establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and

• Contribute to the public welfare and the sustainability of all Klamath Basin communities.

Statement of Purpose and Need and Proposed Action

The Purpose and Need statement has changed since publication of the Notice of Intent to prepare an EIS/EIR in the **Federal Register** on June 14, 2010 (75 FR 33634) in order to provide further clarification regarding the need for action. These changes are not substantive and do not warrant consideration of additional alternatives.

The proposed action is to remove the four lower PacifiCorp dams on the Klamath River. The need for the proposed action is to advance restoration of the salmonid fisheries in the Klamath Basin consistent with the KHSA and the connected KBRA. The purpose is to achieve a free-flowing river condition and full volitional fish passage as well as other goals expressed in the KHSA and KBRA. By the terms of the KHSA, the Secretary will determine whether the proposed action is appropriate and should proceed. In making this determination, the Secretary will consider whether removal of the four facilities will advance the restoration of the salmonid fisheries of the Klamath Basin, and is in the public interest, which includes, but is not limited to, consideration of potential impacts on affected local communities and Tribes.

After public scoping and an initial alternative screening, five project alternatives were selected for further analysis in this EIS/EIR:

• Alternative 1: No Action/No Project Alternative;

• Alternative 2: The Proposed Action;

• Alternative 3: Partial Facilities Removal;

• Alternative 4: Fish Passage at Four Dams; and

• Alternative 5: Remove Copco 1 and Iron Gate Dams, Construct Fish Passage at J.C. Boyle and Copco 2 Dams.

Full implementation of the agreements is dependent on an affirmative Secretarial Determination. The KBRA itself is not being approved at this time. But KBRA actions and components that would require discretionary approval by Federal or State agencies may be subject to subsequent National Environmental Policy Act and/or California Environmental Quality Act analysis. Other connected actions analyzed in the EIS/EIR are the transfer of title of Keno Dam from PacifiCorp to the Bureau of Reclamation as well as the re-construction of the City of Yreka water supply pipeline.

Copies of the draft EIS/EIR are available for public inspection at libraries and government offices, including the following locations:

• Main Siskiyou County Library, 719 Fourth Street, Yreka, CA 96097.

• Main Klamath County Library, 126 South Third Street, Klamath Falls, OR 97601.

• Arcata Library, 500 Seventh Street, Arcata, CA 95521.

• Main Humboldt County Library, 1313 Third Street, Eureka, CA 95501.

• Hoopa Library, Loop Rd. & Orchard Street, Hoopa, CA 95546.

• Willow Creek Library Branch, Junction of Highways 299 & 96, Willow Creek, CA 95573.

• Main Del Norte County Library, 190 Price Mall, Crescent City, CA 95531.

• Medford Library Branch, 205 South Central Avenue, Medford, OR 97501.

• Ashland Library Branch, 410 Siskiyou Boulevard, Ashland, OR 97520.

• Chetco Community Public Library, 405 Alder Street, Brookings, OR 97415.

• Bureau of Reclamation, 2800 Cottage Way, MP–152, Sacramento, CA 95825.

• California Department of Fish and Game, 619 Second Street, Eureka, CA 95501.

• Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

For a full list of locations where the Draft EIS/EIR is available for public inspection, or to obtain an electronic copy of the Draft EIS/EIR, please visit *http://klamathrestoration.gov/.*

Public Hearings

The Department and the California Department of Fish and Game will hold six public hearings according to the dates and locations listed below. Oral and written comments will be accepted at the public hearings.

• Tuesday, October 18, 2011, 4:30 p.m. to 8 p.m., County Fair Grounds, 3531 South Sixth Street, Klamath Falls, OR 97603.

• Wednesday, October 19, 2011, 4:30 p.m. to 8 p.m., Chiloquin Community Center, 140 South First Street, Chiloquin, OR 97624.

• Thursday, October 20, 2011, 4:30 p.m. to 8 p.m., Yreka Community Theater, 810 North Oregon Street, Yreka, CA 96097.

• Tuesday, October 25, 2011, 4:30 p.m. to 8 p.m., Karuk Community Room, 39051 Highway 96, Orleans, CA 95556.

• Wednesday, October 26, 2011, 4:30 p.m. to 8 p.m., Arcata Community Center, 321 Community Park Way, Arcata, CA 95521.

• Thursday, October 27, 2011, 4:30 p.m. to 8 p.m., Yurok Tribal Administration Office, 190 Klamath Boulevard, Klamath, CA 95548.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2011–24360 Filed 9–21–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

[Docket ID No. BOEM–2011–0064; OMB Number 1010–0057]

Information Collection Activity: Revision for Subpart C, Pollution Prevention and Control; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart C, Pollution Prevention and Control. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 24, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior (1010–0057). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0064 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- *E-mail: cheryl.blundon@boemre.gov*. Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0057 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions ''for compliance with the National Ambient Air Quality Standards [NAAQS] pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State.'' Section 1843(b) calls for ''regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.''

This collection also incorporates an IC requirement (§ 250.304) pertaining to the Pacific Region's State air quality requirement that was inadvertently submitted to OMB previously under 30 CFR 250, subpart H (section 250.804).

Regulations implementing these responsibilities are under 30 CFR 250, Subpart C. Responses are mandatory. No questions of a sensitive nature are asked. BOEMRE will protect proprietary information according to 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection,'' and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

In general, BOEMRE uses the information collected under subpart C to ensure that:

- There is no threat of serious, irreparable, or immediate damage to the marine environment and to identify potential hazards to commercial fishing caused by OCS oil and gas exploration, development, and production activities;
- The lessee or operator records the location of items lost overboard to aid in recovery during site clearance activities on the lease;
- Operations are conducted according to all applicable regulations, permit conditions and requirements, and in a safe and workmanlike manner;
- OCS oil and gas operations are conducted in a manner that minimizes air pollution of the OCS and adjacent onshore areas and do not exceed required emission levels;
- Discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials (NORM), are properly handled for the protection of OCS workers and the environment; and
- Facilities are inspected daily for the prevention of pollution, and problems observed are corrected.

For the Gulf of Mexico OCS Region (GOMR), this ICR also addresses the following non-routine information collection:

- The Environmental Protection Agency (EPA) promulgated National Ambient Air Quality Standards (NAAQS) for ozone, fine (*i.e.,* < 2.5 micron) particulate matter ($PM_{2.5}$), and regulations for regional haze. Air quality related information will be needed to address any new or outstanding NAAQS and regional haze regulations. In preparation for usage by States and regional planning organizations, affected respondents are required to collect and report air pollutant emissions data for OCS activities in the GOMR. This data will be used in future regional air quality modeling in support of revisions to State Implementation Plans and other air quality regulations.

In the Pacific, lessees are required to file Emergency Action Plans (EAPs) with their local air quality agencies in response to California air quality laws to protect public health during exceptional air pollution episodes.

Frequency: On occasion, daily.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators and states.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 196,547 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Pollution Prevention				
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	Burden covered under 1010–0141 (30 CFR Part 250, Subpart D).		0
300(c)	Mark items that could snag or damage fishing devices.	0.5	130 markings	65
300(d)	Report and record items lost overboard	1 hr ea × 2 = 2	106 reports/records	212
Subtotal			236 responses	277
Inspection of Facilities				
301(a) NTL	Inspect drilling/production facilities for pollution; maintain inspection/repair records 2 years.	15 min per inspection × 365 days = 91.25.	1,022 manned facilities	[1]93,258
		5 mins every 3rd day (365/3 = 122) = 10.14 hrs.	3,000 unmanned facilities.	30,420
Subtotal			4,022 responses	123,678
Facilities described in new or revised EP or DPP				
303(a) thru (d), (i), (j); 304(a), (f).	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR Part 250, Subpart B.	Burden covered under 1010–0151.		0
303(k); 304(a), (g)	Collect and report air quality emissions related data (such as facility, equipment, fuel usage, and other activity information) during the calendar year 2008 for input into State and regional planning organizations modeling.	48 hrs per emission source.	1,500 sources	72,000
303(l); 304(b)(2); 304(h)	Collect and submit meteorological data (not routinely collected—minimal burden); emission data for existing facilities to a State.	1	1 submittal	1
Subtotal			1,501 responses	72,001
Existing Facilities				
304; related NTL	Submit copy of state-required Emergency Action Plan (EAP) containing test abatement plans (Pacific OCS Region).	1	1 copy	1
304(a), (f)	Affected State may submit request to BOEMRE for basic emission data from existing facilities to update State's emission inventory.	4	5 requests	20
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40	10 schedules	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0114.		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	15	10 submissions	150
Subtotal			26 responses	571
General				
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2	10 requests	20
Subtotal			10 responses	20
Total Burden			5,795 responses	196,547

[1] Rounded.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on June 30, 2011, we published a **Federal Register** notice (76 FR 38410) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, section 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to these efforts. The first comment, submitted by a private citizen was not germane to the paperwork burden. The second comment was from the Marine Mammal Commission in support of our submittal to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: September 12, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–24353 Filed 9–21–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent to Accept Proposals, Select Lessee, and Contract for Hydroelectric Power Development at Caballo Dam, Rio Grande Project, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Current Federal policy encourages non-Federal development of environmentally sustainable hydropower potential on Federal water resource projects. The Bureau of Reclamation (Reclamation), in consultation with the Department of Energy, Western Area Power Administration (Western), will consider proposals for non-Federal development of hydroelectric power at Caballo Dam, a feature of the Rio Grande Project. Reclamation is considering such hydroelectric power development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. Western would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. The Rio Grande Project is a Federal Reclamation project. This notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power at Caballo Dam.

DATES: A written proposal and seven copies must be submitted on or before 5 p.m. (MST) on January 20, 2012. A proposal will be considered timely only if it is received in the office of the Area Manager by or before 5 p.m. on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposal and seven copies to Mr. Mike Hamman, Area Manager, Albuquerque Area Office, Bureau of Reclamation, 555 Broadway Avenue, NE., Suite 100, Albuquerque, New Mexico 87102, telephone (505) 462–3540.

A copy of the proposal should also be sent at or about the time it is due at Reclamation to: CRSP Manager, Western Area Power Administration, 150 Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1534. Western is available to meet with Reclamation and interested entities to discuss Western's potential marketing of hydropower.

FOR FURTHER INFORMATION CONTACT: Technical data may be obtained by contacting Ms. Kathleen Dickinson, Albuquerque Area Office, Bureau of Reclamation, 555 Broadway Avenue, NE., Suite 100, Albuquerque, New Mexico 87102, e-mail: *kdickinson@usbr.gov.* Reclamation will be available to meet with interested entities only upon written request to Ms. Kathleen Dickinson at the above cited address. Reclamation will provide an opportunity for a site visit. In addition, Reclamation reserves the right to schedule a single meeting and/or visit to address the questions of all entities that have submitted questions or requested site visits.

Information related to Western's purchasing and/or marketing of the power may be obtained by contacting Ms. LaVerne Kyriss, CRSP Manager, Western Area Power Administration, 150 Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1534, telephone (801) 524–6372.

SUPPLEMENTARY INFORMATION: Construction of the Rio Grande Project was authorized by the Secretary of the Interior (Secretary) on December 2, 1905, under provisions of the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388). The Reclamation Act was extended to the entire state of Texas on June 12, 1906 (34 Stat. 259), following a partial extension for Engle (Elephant Butte) Dam in 1905 (33 Stat. 814). Caballo Dam was included as a flood control unit in the Rio Grande Canalization Project (Act of June 4, 1936, 49 Stat. 1463). Construction of Caballo Dam took place from 1936 to 1938. Flood control operations of the dam are governed by the agreement of October 9, 1935, between the Departments of State and Interior. Caballo Reservoir has a surface area of about 11,500 acres and is located approximately 17 miles south of Truth or Consequences, New Mexico. Caballo

Reservoir also provides replacement for storage lost at Elephant Butte Reservoir due to silt deposition and enables more efficient power generation at Elephant Butte Dam. Additional information about the Rio Grande Project can be found at: *http://www.usbr.gov/projects/Project.jsp?proj_Name=Rio+Grande+Project.* Additional information about Caballo Reservoir operations can be found at: *http://www.usbr.gov/uc/crsp/GetSiteInfo.*

Reclamation, in consultation with Western, is considering hydroelectric power development at Caballo Dam under a lease of power privilege. A lease of power privilege is an alternative to Federal hydroelectric power development. A lease of power privilege is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. Sec. 522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act). Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) and all other relevant Federal environmental compliance laws such as the Endangered Species Act, National Historic Preservation Act, and Clean Water Act for any lease of power privilege considered in response to this notice. Leases of power privilege may be issued only when Reclamation, upon completion of the NEPA process, determines that the proposed hydropower development is environmentally acceptable. Any lease of power privilege at Caballo Dam must accommodate existing contractual and environmental commitments related to operation and maintenance of existing Rio Grande Project facilities, including water delivery contracts, flood control operations, and compliance with the Rio Grande Compact (Act of May 31, 1939, 53 Stat 785) and the convention between the United States and Mexico concluded on May 21, 1906. Caballo Reservoir storage levels must comply with the Court Order CIV–90–95 HB/WWD, dated October 17, 1996. The lessee (*i.e.,* successful proposing entity) would be required to coordinate operation and maintenance of any proposed hydropower development with existing Federal features. The lessee will be required to meet all Bulk Electric System (BES) electrical reliability standards that apply to the proposed hydro-generation facilities.

Western would have the first opportunity to purchase and/or market the power that would be generated under any lease of power privilege. Western would have 60 days from the date of notification of selection of a lessee in which to decide whether to purchase and/or market the power.

All costs incurred by the United States related to development and operation and maintenance under a lease of power privilege, including environmental compliance, engineering reviews, and development of the lease of power privilege, would be at the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a Federal Government facility. Depending on the economic viability of the proposed hydropower development, this amount will be not less than 3 mills per kilowatt-hour of generation. If conditions provide opportunity for substantial benefits to accrue to the lessee, then the United States will benefit proportionally. Also, under the lease of power privilege, provisions will be included for inflation of the annual payment with time. Such annual payments to the United States would be deposited as a credit to the Reclamation Fund.

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the hydropower potential would be developed. Factors which a proposal should consider and address include, but are not limited to, the following:

(a) Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term ''preference entity,'' as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the 1939 Act as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

(b) Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Also describe seasonal or annual generation patterns. Include estimates of the amount of electrical energy that would be produced from the facility for each month of average, dry, and wet water years. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties, and the proposed approach to wheeling and BES electrical reliability compliance if required.

(c) Indicate title arrangements and the ability for acquiring title to or the right to occupy and use lands necessary for the proposed development(s), including such additional lands as may be required during construction.

(d) Identify water rights applicable to the operation of the proposed development(s), the holder of such rights, and how these rights would be used, acquired, or perfected. No new net depletions will be permitted since the Rio Grande is already fully appropriated.

(e) Discuss any studies necessary to adequately define impacts on the Rio Grande Project and the environment of the development. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

(f) Describe anticipated contractual arrangements with Reclamation, which has operation and maintenance responsibility, for any Rio Grande Project feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the multiple purposes of the Rio Grande Project, existing applicable water delivery contracts, flood control operations, compliance with court-

ordered reservoir storage levels, the Rio Grande Compact (Act of May 31, 1939, 53 Stat 785), the convention between the United States and Mexico concluded on May 21, 1906, and the treaty between the United States and Mexico dated February 1, 1933.

(g) Describe plans for continuing downstream flows during construction that are required to meet irrigation demands, flood control operations, and Rio Grande Compact and international treaty requirements.

(h) Describe plans for assuming liability for damage to the operational and structural integrity of the Rio Grande Project caused by construction, operation, and/or maintenance of the hydropower development.

(i) Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

(j) Provide a management plan to accomplish such activities as planning, environmental and electrical reliability compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as is applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

(k) Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, environmental and electrical reliability compliance, design, construction, and financing as well as the amortized annual cost of the investment; also, the annual operation, maintenance, and replacement expense for the hydropower development; annual payments to the United States; expenses that may be associated with the Rio Grande Project; and the anticipated return on investment. If there are additional transmission or wheeling expenses associated with the development of the hydropower development, these should be included. Identify proposed methods of financing the hydropower development. An economic analysis should be presented that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee

Reclamation, in consultation with Western, will evaluate proposals received in response to this published notice. Reclamation may request additional information from individual proposing entities and/or all proposing entities after proposals are submitted, but prior to making a selection of a lessee.

Reclamation will give more favorable consideration to proposals that (1) are well adapted to developing, conserving, improving, and utilizing the water and natural resources in an environmentally and economically sound manner; (2) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term operation and maintenance; and (3) best share the economic benefits of the hydropower development among parties (including the United States) to the lease of power privilege. A proposal will be deemed unacceptable if it is inconsistent with Rio Grande Project purposes, as determined by Reclamation. Reclamation will give preference to those entities that qualify as preference entities, as defined under Proposal Content Guidelines, item (a), provided that their proposal is at least as well adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Through written notice, all preference entities submitting proposals would be allowed 90 days to improve their proposals, if necessary, to be made at least equal to a proposal(s) that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations

Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease of power privilege. Western will consult with Reclamation on such power purchasing and/or marketing considerations.

Western may market the power available from the project as part of, and under the existing marketing plan of, its Salt Lake City Area Integrated Projects. Western may also market the power on a stand-alone basis; first to preference entities qualified under criteria established by Western and second to non-preference entities by developing an individual marketing plan for this power. This marketing plan would be developed through a separate subsequent public process beginning with a notice in the **Federal Register** of Western's intent to market the power. The marketing plan would include all aspects of marketing the power, including assignment of power to qualified preference and/or non-preference entities, pricing, transmission, and delivery of power. Western would recover the costs it would incur in purchasing and/or marketing the power through the rates charged for the power. Firm power rates would be established through a public process, initiated by a notice in the **Federal Register**, separate from the marketing plan.

In the event Western elects to not purchase and/or market the power generated by the hydropower development, or such a decision cannot be made within 60 days of notification of selection of a lessee, the lessee would be responsible for marketing the power generated by the project with priority given to preference entities as heretofore defined in Proposal Content Guidelines, item (a). In addition, if Western elects to not purchase and or market the power generated by the hydropower development, the Lessee will be responsible to coordinate the appropriate transmission service that may be required.

Notice and Time Period To Enter Into Lease of Power Privilege

Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will have two years from the date of such notification to accomplish NEPA compliance and enter into a lease of power privilege for the proposed development of hydropower at Caballo Dam. Any excessive delay resulting from compliance with the provisions of Federal environmental laws or administrative review by a Federal agency, pertaining to the project, may extend the two-year time period for a period equal to that of the delay. In the event of litigation related to the proposed project, the two-year time period will be extended for a period equal to that of the delay, provided such litigation was initiated by parties other than the selected potential lessee or its employees, officers, agents, assigns, shareholders, customers, or persons or groups served by or in privity with the potential lessee. The lessee will then have up to two years from the date of execution of the lease to complete the designs and specifications and an additional year to begin construction.

Dated: August 8, 2011.

Larry Walkoviak,

Regional Director, Upper Colorado Region.

[FR Doc. 2011–24335 Filed 9–21–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act; Refuge Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and subsequent Department of the Interior administrative review process, the Bureau of Reclamation developed and published the Criteria for Developing Refuge Water Management Plans (Refuge Criteria). Several entities have each developed a Refuge Water Management Plan (Refuge Plan), which Reclamation has evaluated and preliminarily determined to meet the requirements of these Refuge Criteria (see list in Supplementary Information below). Willow Creek Mutual Water Company Refuge Plan was developed in accordance with the Refuge Criteria applicable to the conservation easements that have been acquired by the United States Fish and Wildlife Service. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by October 24, 2011.

ADDRESSES: Submit written comments to Ms. Christy Ritenour, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825; or e-mail at *critenour@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Christy Ritenour at *critenour@usbr.gov,* or call (916) 978–5281 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: The following Refuge Water Management Plans are available for review:

- San Luis National Wildlife Refuge
- Kern National Wildlife Refuge
- Merced National Wildlife Refuge
- Pixley National Wildlife Refuge
- Los Banos State Wildlife Area
- Volta State Wildlife Area
- North Grassland State Wildlife Area
- Mendota State Wildlife Area
- Grassland Resource Conservation District (GRCD)
- Delevan National Wildlife Refuge
- Colusa National Wildlife Refuge
- Sacramento National Wildlife Refuge
- Gray Lodge State Wildlife Area
- Willow Creek Mutual Water Company (conservation easement lands)

We are inviting the public to comment on our preliminary (i.e., draft) determination of Refuge Plan adequacy. The Refuge Criteria provides a common methodology, or standard, for efficient use of water by Federal Wildlife Refuges, State wildlife management areas, and resource conservation districts that receive water under provisions of the CVPIA. The Refuge Criteria can be found at the following Web site *http://www.usbr.gov/mp/watershare/documents.html* under the Refuge Criteria topic panel. Reclamation will evaluate Refuge Plans based on these criteria. These Refuge Plans are available at Reclamation's Mid-Pacific Regional Office, 2800 Cottage Way, MP–410, Sacramento, California, 95825. If you wish to receive a copy of these Refuge Plans, please contact Ms. Christy Ritenour. Our practice is to make comments, including names and home addresses of respondents, available for public review.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 16, 2011.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2011–24338 Filed 9–21–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–765]

In the Matter of Certain Display Devices, Including Digital Televisions and Monitors II; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion by Complainant and Respondents To Terminate the Investigation in Its Entirety on the Basis of a Settlement Agreement; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) of the presiding administrative law judge (''ALJ'') granting a joint motion by Complainant and Respondents to terminate the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 11, 2011, based on a complaint filed by Sony Corporation of Tokyo, Japan (''Sony''). 76 FR 13432 (Mar. 11, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain display devices, including digital televisions and monitors by reason of infringement of various claims of United States Patent Nos. 5,731,847; 5,583,577; 6,661,472; and RE40,468. The complaint named LG Electronics, Inc. of Seoul, Korea, and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively, ''LG'') as respondents.

On August 10, 2011, Sony and LG filed a joint motion to terminate the investigation in its entirety based on the execution of a settlement agreement and term sheets. On August 22, 2011, the Commission investigative attorney filed a response in support of the motion to terminate the investigation.

On August 25, 2011, the ALJ issued the subject ID (Order No. 9) terminating the investigation. None of the parties petitioned for review of the ID. The

Commission has determined not to review the ID. Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 19, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24382 Filed 9–21–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–779]

In the Matter of Certain Flip-Top Vials and Products Using the Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (''ID'') (Order No. 9) granting a joint motion to terminate the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 22, 2011, based on a complaint filed by CSP Technologies, Inc. of Auburn, Alabama that named as respondents Süd-Chemie AG of Germany; Süd-Chemie, Inc. of Louisville, Kentucky; and Airsec S.A.S. of France. 76 FR 36576 (June 22, 2011). The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation, sale for importation, and sale within the United States after importation of certain flip-top vials and products using the same by reason of infringement of certain claims of U.S. Patent No. 7,537,137.

On August 16, 2011, the private parties filed a joint motion to terminate the investigation on the basis of withdrawal of the complaint. *See* 19 CFR 210.21(a)(1). The Commission investigative attorney did not oppose the motion, and on August 29, 2011, the ALJ granted the motion as an ID (Order No. 9).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: September 19, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24337 Filed 9–21–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–764]

Certain Digital Televisions and Components Thereof, and Certain Electronic Devices Having a Blu-Ray Disc Player and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 13) granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 9, 2011, based on complaints filed by LG Electronics, Inc. of Seoul, Korea (''LGE''). 76 FR 12994–5 (Mar. 9, 2011). The complaints allege violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,785,906; RE 37,326; 5,533,071; and 5,923,711, and of certain electronic devices having a Blu-Ray disc player and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,701,835; 7,577,080; 7,619,961; and 7,756,398. The complaints further allege the existence of a domestic industry. The Commission's notice of investigation named as respondents Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; Sony Electronics, Inc. of San Diego, California; Sony Computer Entertainment, Inc. of Tokyo, Japan; and Sony Computer Entertainment America LLC of Foster City, California (collectively ''Sony'').

On August 10, 2011, LGE and Sony filed a joint motion to terminate the investigation based on their having entered into a binding memorandum of understanding, which resolves all of LGE's claims against Sony. On August 22, 2011, the Commission investigative

attorney filed a response in support of the joint motion.

On August 23, 2011, the ALJ issued the subject ID, granting the joint motion to terminate the investigation pursuant to Commission rules 210.21(a)(2) and (b)(1) (19 CFR 210.21(a)(2) and (b)(1)). No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 16, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–24336 Filed 9–21–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,857]

The Marlin Firearms Company, Inc., a Subsidiary of Remington Arms Company Including On-Site Leased Workers From Randstat, Reitman, and Hamilton Connections, North Haven, Connecticut; Notice of Revised Determination on Remand

On June 8, 2011, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in *Former Employees of Marlin Firearms Company, Inc., a subsidiary of Remington Arms Company, North Haven, Connecticut* v. *United States,* Case No. 11–00060.

On April 6, 2010, a state workforce official filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of Marlin Firearms Company, Inc. (''Marlin''), a subsidiary of Remington Arms Company, North Haven, Connecticut (hereafter referred to as the subject firm). The subject worker group includes on-site leased workers from Randstat, Reitman, and Hamilton Connections. (AR 394)

The subject worker group was engaged in activities related to the production of lever-action and bolt-action sporting rifles. (AR 376) The Department considered the following articles to be like or directly competitive with lever-action and bolt-action sporting rifles: ''over and under'', ''semi-auto'', ''over and under shotgun/rifle combo'', ''side by side'', ''semi-auto''. (AR 805)

During the initial investigation, it was revealed that a significant number or proportion of workers at the subject firm were totally or partially separated from employment or were threatened to become totally or partially separated during the relevant period. (AR 14–15)

However, during the initial investigation, it was determined that imports of articles like or directly competitive with the articles produced by the subject firm have not increased and that there has not been a shift in production to a foreign country by the workers' firm, of like or directly competitive articles. (AR 10–84, 1322–1348)

During the initial investigation, the Department also conducted a customer survey; however, the survey revealed that during the relevant period, customers did not increase reliance on imports of articles like or directly competitive with those produced by the subject worker group. (AR 270–283, 1322–1348)

The initial investigation also revealed that the subject worker group did not produce component parts or supply a service directly to a firm with a TAA-certified worker group. Further, the initial investigation revealed that the subject firm has not been identified in an affirmative finding of injury by the International Trade Commission. (AR 14–15)

A negative determination regarding the subject worker group's eligibility to apply for TAA was issued on December 17, 2010. The Department's Notice of Determination was published in the **Federal Register** on January 14, 2011 (76 FR 2716). (AR 293–306, 312)

Administrative reconsideration of the Departments' negative determination was not requested.

In the Complaint to the USCIT, dated March 15, 2011, the Plaintiff's Counsel claimed that the Plaintiff's separation occurred because Marlin experienced import competition due to increasing importation of sporting rifles. The Plaintiff's Counsel also claimed that the Department should take into account information related to the application of Marlin for the TAA for Firms program. The Plaintiff's Counsel also claimed that the Department should take into consideration information related to the certification of Marlin's subsidiary, Harrington & Richardson 1871 (TA–W–63,361).

The USCIT'S order granting voluntary remand, dated June 8, 2011, directed the Department to (1) Conduct additional surveys of the subject firm's customers; (2) contact Plaintiff to solicit information relevant to his petition and review any submitted material; (3) request from the subject firm names and contact information for other separated workers and solicit from those workers information relevant to Plaintiff's complaint; (4) request from the subject firm any submissions to the U.S. Department of Commerce in connection with Marlin's certification under the TAA for Firms program and consider the contents of those submissions; (5) request from the U.S. Department of Commerce any documents related to Marlin's certification under the TAA for Firms program and consider the contents of those documents; and (6) consider the facts related to the certification of Harrington & Richardson 1871 (TA–W–63,361).

During the remand investigation, the Department: (1) Conducted an expanded customer survey; (2) contacted the Plaintiff to solicit information relevant to his petition and reviewed the submitted materials; (3) requested and received from the subject firm names and contact information for other separated workers and solicited from those workers information relevant to the Plaintiff's complaint; (4) requested and received from Marlin any submissions to the U.S. Department of Commerce in connection to Marlin's TAA for Firms petition and considered the contents of those documents; (5) requested from the U.S. Department of Commerce any documents related to Marlin's TAA for Firms petition and considered the contents of those documents; and (6) considered the facts related to the certification of TA–W–63,361. The Department also conducted industry analysis related to the articles produced by the subject firm, lever-action and bolt-action sporting rifles. (AR 1322–1348)

The Department fully reviewed all material received during the remand investigation, and considered the contents of each document and statement as they apply to the TAA for workers program in accordance with the statute, regulations, and other authority. (AR 1322–1348)

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), are satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm have decreased absolutely; and

(ii)(I) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm.

In the case at hand, the relevant time periods are April 1, 2009 through April 1, 2010, and the articles at issue are those that are like or directly competitive with the lever-action and bolt-action sporting rifles.

Based on the information collected during the remand investigation, the Department determined that imports of articles like or directly competitive with the lever-action and bolt-action sporting rifles produced by the subject firm increased during the relevant period and contributed importantly to worker separations or threat of separation, and to the decline in production at the subject firm. (AR 14, 15, 389, 531)

Criterion I has been met because a significant number or proportion of workers at the subject firm were totally or partially separated during the relevant period. (AR 14 and 15)

Criterion II has been met because production of lever-action and bolt-action sporting rifles at the subject firm decreased absolutely during the relevant period. (AR 531, 1322–1348)

Criterion III has been met because imports of articles like or directly competitive with the lever-action and bolt-action sporting rifles produced by the subject firm increased during the relevant period and contributed importantly to worker separations, or threat of separations, and to the decline in the production at the subject facility. (AR 14, 15, 389, 531)

Conclusion

After careful review of the complete administrative record, including the additional facts obtained on remand investigation, I determine that workers and former workers of Marlin Firearms Company, Inc., a subsidiary of Remington Arms Company, including on-site leased workers from Randstat, Reitman, and Hamilton Connections, North Haven, Connecticut, who are engaged in employment related to the production of lever-action and bolt-action sporting rifles, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a).

In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Marlin Firearms Company, Inc., a subsidiary of Remington Arms Company, including on-site leased workers from Randstat, Reitman, and Hamilton Connections, North Haven, Connecticut, who became totally or partially separated from employment on or after April 1, 2009, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 7th day of September, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24363 Filed 9–21–11; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–082]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Thursday, October 13, 2011, 8 a.m. to 5 p.m., Local Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, Room 6B42, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by Webex and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Green Aviation Research Portfolio.
- Interagency Relationships for Alternative Fuels Research.
- UAS Subcommittee.
- Aeronautics Committee 2012 Planning.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. U.S. citizens will need to show valid, officially-issued picture identification such as driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center) and must state that they are attending the NASA Advisory Council Aeronautics Committee meeting in conference room 6B42 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), and place and date of entry into the U.S., to Susan Minor, NASA Advisory Council Aeronautics Committee Executive Secretary, fax 202–358–3602, by no less than 8 working days prior to the meeting. Non-U.S. citizens will need to show their Passport or Permanent Resident Alien card to enter the NASA Headquarters building. For questions, please call Susan Minor at (202) 358–0566.

September 16, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–24383 Filed 9–21–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received

to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 2011. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application: 2012–009

1. *Applicant:* Sam Feola, Director, Raytheon Polar Services Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter the Antarctic Specially Protect Areas at Port Foster, Deception Island (ASPA 145), Western Bransfield Straight (ASPA 152), and Eastern Dallmann Bay (ASPA 153) for marine transit of U.S. Antarctic Program (USAP) research vessels, Nathaniel B. Palmer and the Lawrence M. Gould through the ASPA's listed above. Any transits through these areas would only occur when necessary in the best interests of the USAP. The ASPA's will be avoided whenever possible.

Location

ASPA 145-Port Foster, Deception Island, ASPA 152-Western Bransfield Straight, and ASPA 153-Eastern Dallmann Bay.

Dates

October 1, 2011 to September 30, 2014.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2011–24358 Filed 9–21–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2011–0185]

Virginia Electric and Power Company, Surry Power Station, Units 1 and 2; Exemption

1.0 Background

Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Facility Operating License Nos. DPR–32 and DRP–37, which authorize operation of the Surry Power Station, Units 1 and 2 (Surry 1 and 2) respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of two pressurized water reactors located in Surry County, Virginia.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, ''Fitness For Duty Programs,'' Subpart I ''Managing Fatigue,'' requires that individuals described in 10 CFR 26.4(a)(1) through (a)(5) are subject to the work hour controls provided in 10 CFR 26.205. By letter dated February 10, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110450583), and supplemented on March 10, 2011 (ADAMS Accession No. ML110740442), and pursuant to 10 CFR 26.9 VEPCO doing business as Dominion requested an exemption from the requirements of 10 CFR 26.205(c) and (d) during declarations of severe weather conditions such as tropical storm and hurricane force winds at the Surry 1 and 2 site. A subsequent response to requests for additional information (RAI) is dated May 26, 2011 (ADAMS Accession No. ML111470265).

The requested exemption applies to individuals who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5) who are designated to perform work as a member of the Surry 1 and 2 hurricane response organization (HRO). The exemption request states that the station HRO typically consists of enough individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, engineering, emergency planning, radiation protection, chemistry, site services and security to maintain the safe and secure operation of the plant.

Entry conditions for the requested exemption occur when the site activates the station HRO and the Site Vice President (or his designee) determines that travel conditions to the site will potentially become hazardous such that HRO staffing will be required—based on verifiable weather conditions. Verifiable weather conditions are defined in the exemption request as when the National Weather Service issues an Inland High Wind Warning for Hurricane Force Winds for Surry County or when the Dominion Weather Center projects tropical storm or hurricane force winds onsite within 12 hours.

After the high wind conditions pass, wind damage to the plant and surrounding area might preclude sufficient numbers of individuals from immediately returning to the site. Additionally, if mandatory civil evacuations were ordered, this would also delay the return of sufficient relief personnel. The exemption request states that the exemption will terminate when hurricane watches and warnings or inland hurricane watches and warnings have been cancelled; when weather conditions and highway infrastructure support safe travel and; when the Site Vice President or his designee determine that sufficient personnel who perform the duties identified in 10 CFR 26.4(a)(1) through (a)(5) are available to restore normal shift rotation and thereby meet the requirements of 10 CFR 26.205(c) and (d).

3.0 Discussion

Pursuant to 10 CFR 26.09, the Commission may, upon application of an interested person or on its own initiative, grant exemptions from the requirements of 10 CFR part 26 when the exemptions are authorized by law and will not endanger life or property or the common defense and security or are otherwise in the public interest.

Authorized By Law

The exemption being requested for Surry 1 and 2 would allow the licensee site to not meet the work hour control requirements of 10 CFR 26.205(c) and (d), which would allow the sequester of specific individuals on site, prior and subsequent to severe weather conditions such as tropical storms and hurricanes. No law exists which precludes the activities covered by this exemption request. As stated above, 10 CFR 26.09

allows the NRC to grant exemptions from the requirements of 10 CFR part 26. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Endangerment of Life or Property and Otherwise in the Public Interest

This exemption request expands on an exception that is already provided in 10 CFR part 26, during declared emergencies, and allows the licensee to not meet the requirements in 10 CFR 26.205(c) and (d) during time periods just prior and subsequent to the existing exception (10 CFR 26.207(d)). Granting this exemption will allow the licensee to ensure that the control of work hours does not impede the ability to use whatever staff resources may be necessary to respond to a severe weather event to ensure the plant reaches and maintains a safe and secure status. Therefore, this exemption will not endanger life or property or the common defense and security. Thus, this exemption request is in the interest of the public health and safety.

The Fatigue Management provisions found in 10 CFR part 26, Subpart I are designed as an integrated approach to managing both cumulative and acute fatigue through a partnership between licensees and individuals. It is the responsibility of the licensees to provide training to individuals regarding fatigue management. It is also the responsibility of the licensee to provide covered workers with work schedules that are consistent with the objective of preventing impairment from fatigue due to duration, frequency or sequencing of successive shifts. Individuals are required to remain fit-for-duty while at work.

- Section 26.205(c) is the requirement to schedule individuals work hours consistent with the objective of preventing impairment from fatigue due to duration, frequency or sequencing of successive shifts. The requirement to schedule is important as the work hour controls, contained in 10 CFR 26.205 are not necessarily sufficient to ensure that individuals will not be impaired owing to the effects of fatigue.
- Section 26.205(d) provides the actual work hour controls. Work hour controls are limits on the number of hours an individual may work; limits on the minimum break times between work periods; and limits for the minimum number of days off an individual must be given.
- Section 26.205(b) is the requirement to count work hours and days worked. Section 26.205(d)(3) is the requirement to look back into the ''calculation period'' so that all work hours can be included in appropriate work hour calculations, when a covered individual resumes covered work.
- Section 26.207(d) provides an allowance for licensees to not meet the requirements of Section. 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan.

Surry Units 1 and 2 are located in Surry County, Virginia on a point of land that is bordered by the James River on either side. Historical severe weather in the vicinity of the station, over a 100 year period, includes 34 tropical storms and 10 hurricanes that have passed within 100 nautical miles of the site. Consequently, there is a reasonable likelihood of Surry 1 and 2 being affected by severe wind events. The proposed exemption would support effective response to severe weather conditions when travel to and from the Surry 1 and 2 site may not be safe or even possible.

During these times, the Surry 1 and 2 HRO staff typically consists of enough individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, engineering, emergency planning, radiation protection, chemistry, site services and security to maintain the safe and secure operation of the plant. This exemption would be applied to the period established by the entry and exit conditions regardless of whether the Emergency Plan is entered or not. Therefore, Surry 1 and 2's exemption request can be characterized as having three parts: (1) High-wind exemption encompassing the period starting with the initiating conditions to just prior to declaration of an unusual event, (2) a period defined as immediately following a high-wind condition, when an unusual event is not declared, but when a recovery period is still required, and (3) a recovery exemption immediately following an existing 10 CFR 26.207(d) exception as discussed above. Once Surry 1 and 2 has entered into a high-wind exemption or 10 CFR 26.207(d) exception, it would not need to make a declaration that it is invoking the recovery exemption.

As a tropical storm or hurricane approaches landfall, high wind speeds—in excess of wind speeds that create unsafe travel conditions are expected. The National Hurricane Center defines a hurricane warning as an announcement that hurricane conditions (sustained winds of 74 mph or higher) are expected somewhere within the specified coastal area within a 24-hour period. Severe wind preparedness activities become difficult once winds reach tropical storm force, a tropical storm warning is issued 36 hours in advance of the anticipated onset of tropical-storm-force winds (39 to 73 mph). Lessons learned that are included in NUREG–1474, ''Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992,'' include the acknowledgement that detailed, methodical preparations should be made prior to the onset of hurricane force winds. The NRC staff finds the Surry 1 and 2 proceduralized actions are consistent with those lessons learned.

The entry conditions for the requested exemption could have been exceeded, yet wind speeds necessary for the declaration of an unusual event may not have been reached. This circumstance may still require a recovery period. Also, high winds that make travel unsafe but that fall below the threshold of an emergency, could be present for several days. After the high wind condition has passed, sufficient numbers of personnel may not be able to access the site to relieve the sequestered individuals. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d) exemption.

Following a declared emergency, under 10 CFR 26.207(d), due to high wind conditions, the site may not be accessible by sufficient numbers of personnel to allow relief of the sequestered individuals. Once the high wind conditions have passed and the unusual event exited, a recovery period might be necessary. An exemption during these circumstances is consistent with the intent of 10 CFR 26.207(d).

The RAI response letter states that the HRO shift start times will be pre-planned and consistent and that the hurricane response plan is being revised to emphasize the need for pre-planned and consistent work shift start times to better facilitate fatigue management. The RAI response also states that the hurricane response plan will be updated to include that the HRO staff will be provided with an opportunity for restorative rest of at least 10 hours when off and that these individuals will not be assigned any duties when off shift.

The exemption request specifies that the exemption is not for discretionary maintenance activities. The exemption request states that the exemption would provide for use of whatever plant staff and resources may be necessary to respond to a plant emergency and ensure that the units achieve and

maintain a safe and secure status and can be safely restarted. The exemption request also states that maintenance activities for structures, systems and components that are significant to public health and safety will be performed, if required. The NRC staff finds the exclusion of discretionary maintenance from the exemption request to be consistent with the intent of the exemption.

In its exemption request the licensee committed to maintain the following guidance in a Surry 1 and 2 site procedure:

- The conditions necessary to sequester site personnel that are consistent with the conditions specified in the Surry 1 and 2 exemption request.
- The provisions for ensuring that personnel who are not performing duties are provided an opportunity as well as accommodations for restorative rest.
- The condition for departure from this exemption, consistent with the Site Vice President's (or his designee's) determination that adequate staffing is available to meet the requirements of Part 26.205(c) and (d).

In its RAI response letter the licensee committed to maintain the following guidance in its hurricane response procedure:

- Guidance that emphasizes the need for pre-planned and consistent work-shift start times to better facilitate fatigue management.
- Guidance that states that the Station Hurricane Response Organization staff will be provided an opportunity for at least 10 hours of restorative rest when off-shift and should not be assigned any duties when off-shift.

When the exemption period(s) ends, the licensee is immediately subject to the scheduling requirements of 10 CFR 26.205(c) and the work hour/rest break/days off requirements of 10 CFR 26.205(d), and must ensure that any individual performing covered work complies with these requirements. Section 26.205(d)(3) requires the licensee to ''look back'' over the calculation period and count the hours the individual has worked and the rest breaks and days off he/she has had, including those that occurred during the licensee-declared emergency. Hours worked must be below the maximum limits and rest breaks must be above the minimum requirements in order for the licensee to allow the individual to perform covered work. Days off and hours and shifts worked during the licensee-declared emergency and the exempted period before and after the declared emergency, would be counted as usual in the establishment of the applicable shift schedule and compliance with the minimum-days-off requirements.

Granting these exemptions is consistent with 10 CFR 26.207(d) Plant Emergencies which allows the licensee to not meet the requirements of 10 CFR 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The Part 26 Statement of Considerations, page 17148 states that ''Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of 10 CFR 26.205(c) and (d).'' The objective of the exemption is to ensure that the control of work hours does not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status. The actions described in the exemption request and submitted procedures are consistent with the recommendations in NUREG–1474, ''Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992.'' Also consistent with NUREG–1474, the NRC staff expects the licensee would have completed a reasonable amount of hurricane preparation prior to the need to sequester personnel, in order to minimize personnel exposure to high winds.

The NRC staff has reviewed the exemption request from certain work hour controls during conditions of high winds and recovery from high wind conditions. Based on the considerations discussed above, the NRC staff has concluded that (1) There is reasonable assurance that the health and safety of the public will not be endangered by the proposed exemption, (2) such activities will be consistent with the Commission's regulations and guidance, and (3) the issuance of the exemption will not be contrary to the common defense and security or to the health and safety of the public.

Consistent With Common Defense and Security

This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.09, granting an exemption to the licensee from the requirements in 10 CFR 26.205(c) and (d) during severe wind events such as tropical storms and hurricanes and bounded by the entry and exit conditions of the exemption request, by allowing Surry 1 and 2 to sequester individuals to ensure the plant reaches and maintains a safe and secure status, is authorized by law and will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants Virginia Electric Power Company an exemption from the requirement of 10 CFR 26.205(c) and (d) during periods of severe winds.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment published in the **Federal Register** on August 31, 2011 (76 FR 54259).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of September 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–24359 Filed 9–21–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0494]

Final Interim Staff Guidance: Review of Evaluation To Address Gas Accumulation Issues in Safety Related Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111110572). The purpose of this ISG is to clarify the NRC staff guidance to address issues of gas accumulation in safety related systems. This ISG revises and updates the guidance provided to the staff in Standard Review Plan (SRP) Section 5.4.7, ''Residual Heat Removal System,'' Section 6.3, ''Emergency Core Cooling System,'' and Section 6.5.2, ''Containment Spray System'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' March 2007. The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff

guidance and to facilitate activities associated with review of applications for design certifications and combined licenses by the Office of New Reactors. The NRC staff intends to incorporate the final approved DC/COL–ISG–019 into the next revision of the SRP and related guidance documents.

Disposition: On November 12, 2009 (74 FR 58323), the NRC staff issued proposed DC/COL–ISG–019 on ''Review of Evaluation to Address Gas Accumulation Issues in Safety Related Systems,'' ADAMS Accession No. ML092360375. The staff received comments (ADAMS Accession No. ML093500086) on the proposed guidance on December 14, 2009. These comments were further discussed in a public meeting held at the NRC on January 20, 2010, and in a conference call on July 9, 2010. This final issuance incorporates changes from the majority of the comments. A document comparing the version of the ISG that went out for public comment and the final version of the ISG can be found under ADAMS Accession No. ML111170302.

ADDRESSES: Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Donoghue, Chief, Reactor Systems, Nuclear Performance and Code Review Branch, Division of Safety Systems & Risk Assessment, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–1193 or e-mail at *joseph.donoghue@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 9th day of September, 2011.

For the Nuclear Regulatory Commission,

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–24344 Filed 9–21–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–73; Order No. 858]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Langston, Alabama post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): September 29, 2011; *deadline for notices to intervene:* October 11, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 14, 2011, the Commission received a petition for review of the Postal Service's determination to close the Langston post office in Langston, Alabama. The petition was filed by Donald J. Hahn (Petitioner) and is postmarked September 1, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–73 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 19, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) failure to observe procedures required by law (*see* 39 U.S.C. 404(d)(5)(B)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 29, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 29, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before

October 11, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 29, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 29, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 14, 2011	Filing of Appeal.
September 29, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 29, 2011	Deadline for the Postal Service to file any responsive pleading.
October 11, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 19, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 8, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
November 23, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
November 30, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
December 30, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–24301 Filed 9–21–11; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Pension Plan Reports; OMB 3220–0089. Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment, including a distribution from a 401(k) savings plan, from a private pension from a railroad employer, to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.40–216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump-sum in lieu of month pension payments from such a plan, or received a lump-sum distribution from a 401(k) savings plan; (c) the date monthly pension payments began or a lump-sum payment was received; and (d) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Forms G–88p, *Employer's Supplemental Pension Report,* G–88r, *Request for Information About New or Revised Employer Pension Plan,* and G–88r.1, *Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

The RRB proposes the following changes to the information collection. Forms G–88p and G–88r will be revised to include information related to the reporting of 401(k) savings plans and to remove items that are no longer relevant. Form G–88r.1 will no longer be utilized.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
G–88p	750	8	100
G–88r	10	8	1
Total	760		101

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–24293 Filed 9–21–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29789; File No. 812–13892]

Legg Mason Partners Equity Trust, *et al.;* Notice of Application

September 15, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Legg Mason Partners Equity Trust (''LMP Equity Trust''), Legg Mason Partners Variable Equity Trust (''LMP Variable Equity Trust'' and together with LMP Equity Trust, the ''Trusts''), Legg Mason Partners Fund Advisor, LLC (''LMPFA''), and Legg Mason Investor Services, LLC (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on April 12, 2011, and amended on August 24, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: the Trusts, 55 Water Street, New York, NY 10041; LMPFA, 620 Eighth Avenue, New York, NY 10018; the Distributor, 100 International Drive, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trusts are organized as Maryland statutory trusts and are registered under the Act as open-end management investment companies. LMPFA, a wholly-owned subsidiary of Legg Mason, Inc. (''Legg Mason''), is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and currently serves as investment adviser to each Trust. The Distributor, a Delaware limited liability company and wholly-owned subsidiary of Legg Mason, is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and is the distributor for each registered open-end investment company for which LMPFA presently acts as investment adviser.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof that (i) Is advised by LMPFA or an entity controlling, controlled by or under common control with LMPFA (any such adviser or LMPFA, an ''Adviser''); [1] (ii) is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act and that invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), also to invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2]

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the

[1] All Advisers to any Fund will be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24330 Filed 9–21–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29790; File No. 812–13890]

Highland Capital Management, L.P., et al.; Notice of Application

September 15, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Highland Capital Management, L.P. (''HCM''), Highland Funds Asset Management, L.P. (''HFAM''), Highland Funds I (''HFI'') and Highland Funds II (''HFII'').

Filing Dates: The application was filed on April 8, 2011, and amended on August 15, 2011, and September 15, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: NexBank Tower, 13455 Noel Road, Suite 800, Dallas, TX 75240.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. HFI is organized as a Delaware statutory trust and HFII as a Massachusetts unincorporated business trust (HFI and HFII, collectively the ''Trusts''). Each is registered under the Act as an open-end management investment company. HCM is organized as a Delaware limited partnership and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). HCM currently serves as investment adviser to a number of registered investment companies, including HFI. HFAM is organized as a Delaware limited partnership and is registered as an investment adviser under the

Advisers Act. HFAM currently serves as investment adviser to HFII.

2. Applicants request the exemption to the extent necessary to permit any series of the Trusts and any other existing or future registered open-end management investment company or series thereof that (i) is advised by HCM, HFAM or any person controlling, controlled by, or under common control with HCM or HFAM (any such adviser or HCM or HFAM, an ''Adviser''); [1] (ii) is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act as the Trusts; (iii) invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iv) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity, including any entity controlled or under common control with an Adviser, that now or in the future acts as principal underwriter, or broker or dealer (if registered under the Securities Exchange Act of 1934, as amended (''Exchange Act'')), with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act, as amended, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with Rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24331 Filed 9–21–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Any other Adviser also will be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the requested order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, September 26, 2011 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Monday, September 26, 2011 will be:

Institution and settlement of an administrative proceeding.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24434 Filed 9–20–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65346; File No. SR–MSRB–2011–16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule Change To Extend the Effective Date of the Amendment to the Continuing Disclosure Service of EMMA To Provide for the Posting of Credit Rating and Related Information on the EMMA Public Web Site

September 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2011, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii),[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change to extend the effective date of the amendment (the ''Amendment'') to the continuing disclosure service of the MSRB's Electronic Municipal Market Access system (''EMMA'') to provide for the posting of credit rating and related information on the EMMA public Web site (the ''original proposal''), which was approved by the Commission on October 13, 2010.[5] The Approval Order provided that the original proposal would be effective no later than one year after the date of the approval order (*i.e.,* by October 13, 2011). The proposed rule change would change the effective date of the original proposal to ''no later than December 31, 2011.''

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will provide the MSRB with sufficient time to complete its existing development project related to the continuing disclosure service of EMMA that would allow for the posting of credit rating information and related information provided by Nationally Recognized Statistical Rating Organizations (''NRSROs'') that agree to participate in the project (the ''credit ratings project''), as described in the original proposal. The credit ratings project was designed to provide additional material information to retail investors and other market participants regarding municipal securities. The MSRB had previously received the commitment of one NRSRO to participate in the credit ratings project and is in on-going discussions with a second NRSRO, which requires additional time to finalize an agreement with the second NRSRO. The extension of the effective date as proposed in this proposed rule change would permit the credit ratings project to be launched with the participation of both NRSROs. Any additional NRSROs that hereafter agree to participate in the credit ratings project under the terms of the original proposal would be incorporated into the credit ratings project in a subsequent phase of development.

[5] *See* SEC Release No. 34–63086, File No. SR–MSRB–2010–03 (October 13, 2010) (''Approval Order'').

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The extension of the effective date of the original proposal will allow the MSRB sufficient time to complete development of the credit ratings project as described above, which will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and for municipal financial products, assist in preventing fraudulent and manipulative acts and practices, and in general promote investor protection and the public interest by ensuring equal access for all market participants to critical information needed by investors in the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Credit ratings and related information provided on the EMMA public Web site would be available to all persons

simultaneously. Any credit rating and related information of an NRSRO would be displayed on the EMMA public Web site only with the agreement of such NRSRO to such use of its information. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of credit rating and related information provided by NRSROs, including in particular retail investors in municipal securities, who do not normally have access to information services customarily used by professional market participants, would justify any potentially negative impact on such existing information services from the display of credit rating and related information on the EMMA public Web site.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act[6] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after filing or such shorter time as the Commission may designate consistent with the protection of investors and the public interest. The MSRB provided the required written notice of its intention to file the proposed rule change to the Commission on August 31, 2011,[7] and the proposed rule change will become operative on October 12, 2011, which is more than 30 days after the filing of the proposed rule change, or on such earlier date as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[8] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2011–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–16 and should be submitted on or before October 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–24329 Filed 9–21–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The MSRB has complied with the requirement.

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7608]

In the Matter of the Designation of Muhammad Hisham Muhammad Isma'il Abu Ghazala, Also Known as Muhammad Hisham Isma'il Abu-Ghazalah, Also Known as Muhammad Hisham Muhammad Abu-Ghazalah, Also Known as Abu Ghazala, Also Known as Abu Ghazaleh, Also Known as Mansur Abu Layth, Also Known as Abu Layth al-Filistini, Also Known as 'Ali 'Abd Al-Rahman Isma'il, Also Known as 'Ali 'Abd Al-Rahman Abu Suwaywin, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Muhammad Hisham Muhammad Isma'il Abu Ghazala, also known as Muhammad Hisham Isma'il Abu-Ghazalah, also known as Muhammad Hisham Muhammad Abu-Ghazalah, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render

ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 16, 2011.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2011–24512 Filed 9–21–11; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2011 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: In 2010 the Office of the United States Trade Representative (USTR) began publishing the notorious market list as an ''Out of Cycle Review'' separately from the annual Special 301 report. This review of Notorious Markets (''Notorious Markets List'') results in the publication of examples of Internet and physical markets that have been the subject of enforcement action or that may merit further investigation for possible intellectual property infringements. The Notorious Markets List does not represent a finding of violation of law, but rather is a summary of information that serves to highlight the problem of marketplaces that deal in infringing goods and which help sustain global piracy and counterfeiting. USTR is hereby requesting written submissions from the public identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2011 Notorious Markets List.

DATES: The deadline for interested parties to submit written comments is October 26, 2011.

ADDRESSES: All written comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2011–0012. Submissions should contain the term ''2011 Out-of-Cycle Review of Notorious Markets'' in the ''Type comment'' field on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paula Karol Pinha, Director for Intellectual Property Enforcement, Office of the United States Trade Representative, at (202) 395– 5419. Further information about Special 301 can be found at *http://www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Pursuant to the 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR began publishing the Notorious Markets List separately from the annual Special 301 report in which it had previously been included. After a dedicated request for comments and separate review which took place in the fall and winter of 2010, USTR published the first Out-of-Cycle Review of Notorious Markets (''Notorious Markets List'') in February 2011.

The 2010 Notorious Markets List identified 34 markets, including both physical and virtual markets, as examples of marketplaces that have been the subject of enforcement action or that may merit further investigation for possible intellectual property rights infringements, or both. The 2010 Notorious Markets List did not reflect findings of violation of law, nor did it reflect the United States' analysis of the general climate of protection and enforcement of intellectual property rights in the countries where the markets were located. Rather, the list identified certain prominent examples of markets in which pirated or counterfeit goods were reportedly available. Through the Notorious Markets List, the United States encourages the responsible authorities to step up efforts to combat piracy and counterfeiting in these and similar markets.

2. Public Comments

A. Written Comments

The Special 301 Subcommittee invites written submissions from the public concerning potential examples of Internet and physical ''notorious markets.'' Notorious markets are those where counterfeit or pirated products are prevalent to such a degree that the market exemplifies the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.

B. Requirements for Comments

Interested parties must submit written comments by October 26, 2011. Written comments should be as detailed as possible and should clearly identify the reason or reasons why the nature or scope of activity associated with the identified market or markets exemplify the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting. Information that would be particularly helpful would include: location; principal owners/operators (if known); types of products sold, distributed, or otherwise made available; information on the volume of Internet traffic associated with the Web site, such as the Alexa ranking; any known civil or criminal enforcement activity against the market; any other efforts to remove/limit infringing materials, including the Web site's responsiveness to notices of infringement and requests to remove or disable access to allegedly infringing material; and any other relevant information, including with respect to any other positive progress made by the operators of the market in addressing infringing activity. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English.

All comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2011–0012. To submit comments to *http://www.regulations.gov,* find the docket by entering the number USTR–2011–0012 in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search results page, and click on the link entitled ''Submit a comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.) The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type comment'' field, or by attaching a document. It is USTR's preference that comments be provided in an attached document. If a document is attached, please type ''2011 Out-of-Cycle Review of Notorious Markets'' in the ''Type comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type comment'' field.

3. Inspection of Comments

USTR will maintain a docket on the 2011 Out-of-Cycle Review of Notorious Markets accessible to the public. The public file will include all comments received which will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by

entering docket number USTR–2011–0012 in the search field on the home page.

Stanford K. McCoy,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. 2011–24523 Filed 9–21–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (the AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for calendar year 2012 for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor in the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under the AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA and those that were ineligible for such benefits in 2011.

DATES: To ensure consideration, public comments must be submitted to the Office of the U.S. Trade Representative (USTR) by October 11, 2011.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov,* docket number USTR-. See ''Requirements for Submission,'' below. If you are unable to make a submission at *www.regulations.gov*, please contact Laura Newport, Trade Policy Staff Committee, at (202) 395–3475 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Laura Newport, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA (19 U.S.C. 3703); and (2) section 502 of the 1974 Act (19 U.S.C. 2462).

Section 104 of the AGOA includes requirements that the country has established or is making substantial progress toward establishing: a market-based economy; the rule of law, political pluralism, and the right to due process; the elimination of barriers to U.S. trade and investment; economic policies to reduce poverty; a system to combat corruption and bribery; and protection of internationally recognized worker rights. In addition, the country may not engage in activities that undermine U.S. national security or foreign policy interests or engage in gross violations of internationally recognized human rights. Please see section 104 of the AGOA and section 502 of the 1974 Act for a complete list of the AGOA eligibility criteria.

For 2011, 37 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the countries currently ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor and review annually the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act. The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2011:

Angola, Republic of Benin, Republic of Botswana, Burkina Faso, Burundi, Republic of Cape Verde, Republic of Cameroon, Republic of Chad, Federal Islamic Republic of Comoros, Republic of Congo, Republic of Djibouti, Ethiopia, Gabonese Republic, The Gambia, Republic of Ghana, Republic of Guinea-Bissau, Republic of Kenya, Kingdom of Lesotho, Republic of Liberia, Republic of Malawi, Republic of Mali, Islamic Republic of Mauritania, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Federal Republic of Nigeria, Republic of Rwanda, Sao Tome & Principe, Republic of Senegal, Republic of Seychelles, Republic of Sierra Leone, Republic of South Africa, Kingdom of Swaziland, United Republic of Tanzania, Republic of Togo, Republic of Uganda, Republic of Zambia.

Three countries that were not designated as AGOA beneficiary countries for 2011 are the subject of a separate out-of-cycle review that is ongoing, so they are not part of this annual review. These countries are Cote d'Ivoire, Guinea, and Niger. Written public comments regarding AGOA eligibility for these three countries were separately solicited through a notice in the **Federal Register** (76 FR 50284, August 12, 2011).

The following sub-Saharan African countries that were not designated as beneficiary sub-Saharan African countries in 2011 that are up for review are:

Central African Republic, Democratic Republic of Congo, Republic of Equatorial Guinea, State of Eritrea,

Republic of Madagascar, Somalia, Republic of Sudan, Republic of Zimbabwe.

Requirements for Submissions: Comments must be submitted in English. To ensure the most timely and expeditious receipt and consideration of petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit petitions via this site, enter docket number USTR–2011–0010 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''Document Type'' on search-results page and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''Type Comment'' field, or by attaching a document. USTR prefers comments to be submitted as attachments. When doing this, it is sufficient to type ''See attached'' in the ''Type Comment'' field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (pdf) are preferred.

Persons wishing to file comments containing business confidential information must submit both a business confidential version and a public version. Persons submitting business confidential information should write ''See attached BC comments'' in the ''Type Comment'' field. Any page containing business confidential information must be clearly marked ''Business Confidential'' on the top of that page. Persons submitting a business confidential comment must also submit a separate public version of that comment with the business confidential information deleted. Persons should write ''See attached public version'' in the ''Type Comment'' field of the public submission. Submissions should not attach separate cover letters; rather, information that might appear in the cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

Public versions of all documents relating to this review will be available for review no later than two weeks after the due date at *http://www.regulations.gov,* docket number USTR–2011–0010.

Donald W. Eiss,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2011–24312 Filed 9–21–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services of Armenia

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Regarding Waiver of Discriminatory Purchasing Requirements under the Trade Agreements Act of 1979.

DATES: *Effective Date:* September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

SUPPLEMENTARY INFORMATION: On December 7, 2010, the WTO Committee on Government Procurement approved the accession of Armenia to the World Trade Organization (''WTO'') Agreement on Government Procurement (''GPA''). Armenia submitted its instrument of accession to the Secretary-General of the WTO on August 16, 2011. The GPA will enter into force for Armenia on September 15, 2011. The United States, which is also a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of Armenia beginning on September 15, 2011.

Section 1–201 of Executive Order 12260 of December 31, 1980 delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Determination: In conformity with sections 301 and 302 of the Trade Agreements Act, and in order to carry out U.S. obligations under the GPA, I hereby determine that:

1. Armenia has become a party to the GPA and will provide appropriate reciprocal competitive government procurement opportunities to United States products and services and suppliers of such products and services. In accordance with section 301(b)(1) of the Trade Agreements Act, Armenia is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. Accordingly, beginning on September 15, 2011, with respect to eligible products (namely, those goods and services covered under the GPA for procurement by the United States) of Armenia and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products, or

(B) To eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products,

shall be waived. This waiver shall be applied by all entities listed in United States Annexes 1 and 3 of GPA Appendix 1.

3. The Trade Representative may modify or withdraw the designation in paragraph 1 and the waiver in paragraph 2.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2011–24313 Filed 9–21–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Jet-A, LLC for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2011–9–8). Docket DOT–OST–2010–0120.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should issue an order finding Jet-A, LLC fit, willing, and able to operate interstate charter air transportation of persons, property and mail, using one large aircraft.

DATES: Persons wishing to file objections should do so no later than September 28, 2011.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0120 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine J. O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S.

Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: September 14, 2011.

Robert Letteney,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–24191 Filed 9–21–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2011–0178]

Privacy Act of 1974: System of Records

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice to establish a system of records and request for comments.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation proposes to establish a new Department of Transportation system of records titled, ''Department of Transportation/ALL–23 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records.'' This system of records will allow DOT to compile suspicious activity report data that meet the Information Sharing Environment Suspicious Activity Reporting Functional Standard and share these Suspicious Activity Reporting data with authorized participants in the Nationwide Suspicious Activity Reporting Initiative, including other DOT operating administrations, Federal departments and agencies, State, local and Tribal law enforcement agencies, and the private sector. Additionally, the Department of Transportation issued a Notice of Proposed Rulemaking to exempt this system from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in the Department of Transportation's inventory of record systems.

DATES: Submit comments on or before October 24, 2011. This new system will be effective October 24, 2011.

ADDRESSES: You may submit comments, identified by docket number Docket No. DOT–OST–2011–0178, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Lawrence V. Hopkins, (202–366–6285), Associate Director for Intelligence, Department of Transportation, Washington, DC 20590. For privacy issues, please contact: Claire W. Barrett (202–366–8135), Departmental Chief Privacy Officer, Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT) proposes to establish a new DOT system of records titled, ''DOT/ALL–23 Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records.''

This system of records will allow DOT operating administrations that produce, receive, and store suspicious activity reports (SARs) pursuant to their existing authorities, responsibilities, platforms, and programs to compile and share report data that also meet the ISE–SAR Functional Standard with authorized participants in the Nationwide SAR Initiative (NSI), including Federal departments and agencies, State, local and Tribal law enforcement agencies, and the private sector. The NSI is one of a number of government-wide efforts designed to implement guidelines first issued by the President on December 16, 2005, for establishing the ISE pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. The NSI establishes a nationwide capability to gather, document, process, analyze and share information about suspicious activity, incidents, or behavior reasonably indicative of terrorist activities (hereafter collectively referred to as suspicious activity or activities) to enable rapid identification and mitigation of potential terrorist threats.

There is a long history of documenting of suspicious activity, particularly in the law enforcement community. These reports are sometimes referred to as suspicious activity reports, tips and leads, or other similar terms. Federal, State, local and Tribal agencies and the private sector currently collect and document suspicious activities in support of their responsibilities to investigate and prevent potential crimes, protect citizens, and apprehend and prosecute criminals. Since some of these documented activities may bear a nexus to terrorism, the Program Manager for the Information Sharing Environment (PM–ISE) developed a standardized process for identifying, documenting, and sharing terrorism-related SAR data (hereinafter referred to as an ''ISE–SAR''), which meet the definition and criteria set forth in the ISE Functional Standard Suspicious Activity Reporting (Version 1.5, May 2009) to the maximum extent possible consistent with the protection of individual privacy, civil rights, and civil liberties. The Functional Standard defines an ISE–SAR as official documentation of observed behavior determined to have a potential nexus to terrorism (*i.e.,* to be reasonably indicative of criminal activity associated with terrorism).

Several operating administrations within DOT regularly observe or otherwise encounter suspicious activities while executing their authorized missions and performing operational duties. Operating administrations document those observations or encounters in SARs. Across the Department, the operational setting or context for activities reported in SARs are as varied as the Department's regulatory responsibilities. Engagement with the NSI will alter neither those underlying mission functions nor upset the current methodologies employed by DOT operating administrations collecting information on suspicious activities and issuing SARs. Rather, the NSI will facilitate the more effective sharing and discovery—both internally and between DOT and external NSI participants—by incorporating a standardized technological and functional approach for recording and storing ISE–SARs throughout DOT. Once trained in the NSI program and the application of these technical and functional standards, DOT personnel will review operating administration SARs and submit the data only from those that meet the ISE–SAR Functional Standard into the NSI Shared Space.

In keeping with NSI standards, whenever suspicious activity is determined to have a potential nexus to terrorism, DOT personnel will extract data from the operating administration level SARs and input that data in a standardized format to the NSI Shared Space. All ISE–SAR data introduced

into the NSI Shared Space are stored locally, but made available to other authorized users when a user's search criteria are met. For example, DOT ISE–SAR data remains under the control of the Department until an authorized user queries the NSI Shared Space with terms that match the data in the DOT ISE–SAR server. The results of each user's search or query cannot be downloaded or edited.

Additionally, DOT issued a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act in the **Federal Register**, 76 FR 55334 (Sept. 7, 2011). This newly established system will be included in the Department of Transportation's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DOT extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOT by complying with DOT Privacy Act regulations, 49 CFR part 10. As published at 76 FR 55334 (Sept. 7, 2011), the Secretary of Transportation exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DOT will consider individual requests to determine whether or not information may be released.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DOT/ALL–23 system of records.

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DOT/ALL–23

SYSTEM NAME:

Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, and law enforcement sensitive.

SYSTEM LOCATION:

Records are maintained at the Department of Transportation (DOT) Headquarters on the DOT Nationwide Suspicious Activity Report Initiative (NSI) Shared Space Server in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

- DOT employees and contractors who have submitted ISE–SAR data to the NSI Shared Space.
- DOT employees and contractors who use the NSI Shared Space for conducting research and analysis with a potential terrorism nexus.
- Federal, State, local, Tribal, territorial and private sector officials whose agency or organization is part of the NSI and have submitted a ISE–SAR that meets the ISE–SAR Functional Standard and whose information DOT personnel have a need to know for the performance of their official duties.
- Federal, State, local, Tribal, territorial, and private sector officials whose agency or organization is an NSI participant and who use the NSI Shared Space for conducting research and analysis with a potential terrorism nexus.
- Individuals whose behavior is reasonably indicative of pre-operational planning related to terrorism or other criminal activity associated with terrorism.
- Witnesses who have observed individuals whose behavior reasonably is indicative of pre-operational planning related to terrorism or other criminal activity associated with terrorism.
- Individuals who have a material relationship to the activity or behavior reported in an ISE–SAR (*e.g.,* the owner of a particular vehicle that was observed in a SAR, where it is unclear whether the person was actually driving the vehicle).

CATEGORIES OF RECORDS IN THE SYSTEM:

As described in the ISE–SAR Functional Standard Version 1.5 published in May 2009, the information listed below may be maintained in this system. The ISE–SAR Functional Standard identifies privacy fields, which are also noted below.

- Aircraft descriptions, including:
  - Aircraft engine quality.
  - Aircraft fuselage color.
  - Aircraft wing color.
  - Aircraft ID (privacy field).
  - Aircraft make code.
  - Aircraft model code.
  - Aircraft style code.
  - Aircraft tail number.
- Attachment:
  - Attachment type text.
  - Binary image.
  - Capture date.
  - Description text.
  - Format type text.
  - Attachment URI.
  - Attachment privacy field indicator.
- Contact information for the submitter of the ISE–SAR:
  - Person first name.
  - Person last name.
  - Person middle initial/name.
  - E-mail address.
  - Organization/Affiliation.
  - Full telephone number.
- Driver License:
  - Expiration date (privacy field).
  - Expiration year.
  - Issuing authority text.
  - Driver license number (privacy field).
  - Driver license endorsements, such as Hazardous Materials, Commercial Driver's License, Motorcycle.
- Follow-up Action:
  - Activity date.
  - Activity time.
  - Assigned by text.
  - Assigned to text.
  - Disposition text.
  - Status text.
- Location:
  - Location description (privacy field).
- Location Address:
  - Building description.
  - County name.
  - Country name.
  - Cross street description.
  - Floor identifier.
  - International Civil Aviation Organization (ICAO) airfield code for departure.
  - ICAO airfield code for planned destination.

- ICAO for actual destination.
- ICAO airfield for alternate.
- Mile marker text.
- Municipality name.
- Postal code.
- State name.
- Street name.
- Street number (privacy field).
- Street post directional.
- Street pre directional.
- Street type.
- Unit ID (privacy field).

• Location Coordinates:
- Altitude.
- Coordinate datum.
- Latitude degree.
- Latitude minute.
- Latitude second.
- Longitude degree.
- Longitude minute.
- Longitude second.
- Conveyance track/intent.

• Observer:
- Observer type text.
- Person employer ID (privacy field).

• Owning organization:
- Organization item.
- Organization description.
- Organization ID (privacy field).
- Organization Local ID.

• Other Identifier:
- Person identification number (PID) (privacy field).
- PID effective date (privacy field).
- PID effective year.
- PID expiration date (privacy field).
- PID expiration year.
- PID issuing authority text.
- PID type code.

• Passport:
- Passport ID (privacy field).
- Expiration date (privacy field).
- Expiration year.
- Issuing country code.

• Person:
- AFIS FBI number (privacy field).
- Age.
- Age unit code.
- Date of birth (privacy field).
- Year of birth.
- Ethnicity code.
- Maximum age.
- Minimum age.
- State identifier (privacy field).
- Tax identification number (privacy field).

• Person Name:
- First name (privacy field).
- Last name (privacy field).
- Middle name (privacy field).
- Full name (privacy field).
- Moniker (privacy field).
- Name suffix.
- Name type.

• Physical descriptors:
- Build description.
- Eye color code.
- Eye color text.
- Hair color code.
- Hair color text.
- Person eyewear text.
- Person facial hair text.
- Person height.
- Person height unit code.
- Person maximum height.
- Person minimum height.
- Person maximum weight.
- Person minimum weight.
- Person sex code.
- Person weight.
- Person weight unit code.
- Race code.
- Skin tone code.
- Clothing description text.

• Physical feature:
- Feature description.
- Feature type code.
- Location description.

• Registration:
- Registration authority code.
- Registration number (privacy field).
- Registration type.
- Registration year.

• ISE–SAR Submission:
- Additional details indicator.
- Data entry date.
- Dissemination code.
- Fusion center contact first name.
- Fusion center contact last name.
- Fusion center contact e-mail address.
- Fusion center contact telephone number.
- Message type indicator.
- Privacy purge data.
- Privacy purge review date.
- Submitting ISE–SAR Record ID.
- ISE–SAR submission date.
- ISE–SAR title.
- ISE–SAR version.
- Source agency case ID.
- Source agency record reference name.
- Source agency record status code.
- Privacy information exists indicator.

• Sensitive Information Details:
- Classification label.
- Classification reason text.
- Sensitivity level.
- Tearlined indicator (information that indicates the report does not contain classified information).

• Source Organization:
- Organization name.
- Organization ORI.
- System ID.
- Fusion center submission date.
- Source agency contact first name.
- Source agency contact last name.
- Source agency contact e-mail address.
- Source agency contact phone number.

• Suspicious Activity Report:
- Community description.
- Community URI.
- LEXS version.
- Message date/time.
- Sequence number.
- Source reliability code.
- Content validity code.
- Nature of source-code.
- Nature of source-text.

• Submitting organization:
- Organization name.
- Organization ID.
- Organization ORI.
- System ID.

• Suspicious Activity:
- Activity end date.
- Activity end time.
- Activity start date.
- Activity start time.
- Observation description text.
- Observation end date.
- Observation end time.
- Observation start date.
- Observation start time.
- Threat type code.
- Threat type detail text.
- Suspicious activity code.
- Weather condition details.

• Target:
- Critical infrastructure indicator.
- Infrastructure sector code.
- Infrastructure tier text.
- Structure type code.
- Target type text.
- Structure type text.
- Target description text.

• Vehicle:
- Color code.
- Description.
- Make name.
- Model name.
- Style code.
- Vehicle year.
- Vehicle identification number (privacy field).
- US DOT number (privacy field).
- Vehicle description.

• Related ISE–SAR:
- Fusion center ID.
- Fusion center ISE–SAR Record ID.
- Relations description text.

• Vessel:
- Vessel official Coast Guard number identification (privacy field).
- Vessel ID (privacy field).
- Vessel ID issuing authority.
- Vessel IMO number identification (privacy field).
- Vessel MMSI identification.
- Vessel make.
- Vessel model.
- Vessel model year.
- Vessel name.
- Vessel hailing port.
- Vessel national flag.
- Vessel overall length.
- Vessel overall length measure.

○ Vessel serial number (privacy field).
○ Vessel type code.
○ Vessel propulsion text.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, as amended; and the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; Executive Order 13388.

PURPOSE(S):

The ISE–SAR Functional Standard is designed to support the sharing, specifically through the NSI, of information about suspicious activities that have a potential terrorism nexus throughout the ISE. The NSI participants include DOT; the Department of Justice; other Federal agencies carrying out counterterrorism mission function; State, local, and Tribal entities, including law enforcement agencies, represented at State, regional, major urban area fusion centers; and the private sector to the extent authorized by applicable law. In addition to providing specific indicators of possible terrorism-related crimes, ISE–SARs can be used to look for patterns and trends by analyzing information at a broader level than would typically be recognized within a single jurisdiction, State, or territory. Standardized and consistent sharing of suspicious activity information regarding potential terrorist threats and possible criminal activity associated with terrorism among State and major urban area fusion centers and Federal agencies is vital to assessing, deterring, preventing, or prosecuting those involved in criminal activities associated with terrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DOT or any operating administration thereof;

2. Any employee of DOT in his/her official capacity;

3. Any employee of DOT in his/her individual capacity where DOJ or DOT has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DOT determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DOT collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) or harm to the individuals that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DOT officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate public or private sector organization who is a participant in the Nationwide SAR Initiative and authorized access through the NSI Shared Space for the purpose of supporting an authorized law enforcement, counterterrorism, national security, or homeland security function.

H. To Federal government counterterrorism agencies where DOT becomes aware of an indication of a threat or potential threat to national or international security, and where such use is to assist in anti-terrorism efforts.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property or other vital interests of a data subject and disclosure is proper and consistent with the official duties of the person making the disclosure.

J. See DOT Prefatory Statement of General Routine Uses published in the **Federal Register** on December 29, 2010 (75 FR 82132).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, personal information may be captured. Personal data may be retrieved by name, Social Security number, any privacy fields noted under Categories of Records, and other identifiers listed under the Categories of Records section.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know

the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

DOT is in the process of developing a retention schedule for DOT ISE–SAR data. This retention schedule will be based upon the underlying retention schedules of the information identified in existing operating administrations' retention schedules. DOT operating administrations maintain the authority to withdraw and/or edit any and all ISE–SAR data that they have entered into the NSI Shared Space in accordance with their respective policies. The NSI Shared Space does not have any internal retention mandates independent of the retention policies of the DOT operating administrations that enter their information into the NSI Shared Space.

SYSTEM MANAGER AND ADDRESS:

Lawrence V. Hopkins, (202) 366–6285), Associate Director for Intelligence, Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

The Secretary of Transportation has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DOT will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the appropriate FOIA Requester Service Center, for which contact information can be found at *http://www.dot.gov/foia* under ''Contact Us.''

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must verify your identity by providing either a notarized statement or a statement signed under penalty of perjury stating that you are the person that you say you are. You may fulfill this requirement by: (1) Having your signature on your request letter witnessed by a notary; or (2) including the following statement immediately above the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].'' If you request information about yourself and do not follow one of these procedures, your request cannot be processed.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from ISE–SARs submitted by Federal, State, local, Tribal, and territorial agencies and private sector organizations who are NSI participants. The respective mission sets of DOT operating administrations are varied and entail coverage across multiple modes. DOT operating administrations use a standardized technical approach across the Department to incorporate SAR data into the NSI Shared Space. DOT personnel, trained in the ISE–SAR program, will review operating administration SARs and submit only those SAR data that meet the ISE–SAR Functional Standard to the NSI Shared Space.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Transportation has exempted this system from the following subsections of the Privacy Act, 5 U.S.C. 552, to the extent that this system contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2): a(c)(3) (Accounting of Certain Disclosures); (d) (Access to Records); (e)(4)(G), (H), and (I) (Agency Requirements); and (f) (Agency Requirements).

Dated: September 16, 2011.

Claire W. Barrett,

Departmental Chief Privacy Officer, Department of Transportation.

[FR Doc. 2011–24279 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No FAA–2012–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria and application procedures for designation or redesignation, in the Military Airport Program (MAP), for the fiscal year 2012.

SUMMARY: In anticipation of Congress enacting a reauthorization of the Airport Improvement Program (AIP) the FAA is publishing this annual notice. This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. While FAA currently has continuing authority to designate or redesignate airports, FAA does not have authority to issue grants for fiscal year 2012 MAP, and will not have authority until Congress enacts legislation enabling FAA to issue grants for fiscal year 2012.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP).

The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) the airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before November 21, 2011.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424,* ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports/resources/forms/media/aip_sf424_2010.pdf* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2012 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.*

faa.gov/airports_airtraffic/airports/regional_guidance/ or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 8 slots available for designation or redesignation in FY 2012. There is no general aviation slot available in fiscal year 2012.

Term of Designation

The maximum term is five fiscal years following designation. The FAA can designate airports for a period of less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airports may apply for redesignation of an additional term not to exceed five years. Those airports must meet current eligibility requirements in 49 U.S.C. 47118(a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA's goal is to graduate MAP airports to regular AIP participation by successfully converting these airports to civilian airport operations.

Eligible Projects

In addition to eligible AIP projects, MAP can fund fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet. A designated or redesignated military airport can receive not more than $7,000,000 each fiscal year to construct, improve, and repair terminal building facilities. In addition a designated or redesignated military airports can receive not more than $7,000,000 each fiscal year for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(1) The airport is a former military installation closed or realigned under:

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations; and

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. (See 49 U.S.C. 47105(b)(2)). One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 49 U.S.C. 47102(1), (20)) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (See 49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant will:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects will contribute to reducing delays and/or how the airport will enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five-year Capital Improvement Plan (CIP). These projects need to be related to development of that airport and/or the air traffic control system capacity.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports will relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use a congested airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, *i.e.,* scheduled or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the congested airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the extent to which development needs funded through MAP will make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424,

Application for Federal Assistance, and provide supporting documentation to the appropriate FAA Airports regional or district office serving that airport.

Standard Form 424:

Sponsors may obtain this fillable form at *http://www.faa.gov/airports/resources/forms/media/aip_sf424_2010.pdf.*

Applicants should fill this form out completely, including the following:

• Mark Item 1, Type of Submission as a ''pre-application'' and indicate it is for ''construction''.

• Mark item 8, Type of Application as ''new'', and in ''other'', fill in ''Military Airport Program''.

• Fill in Item 11, Descriptive Title of Applicants Project. ''Designation (or redesignation) to the Military Airport Program''.

• In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint-use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. Sec. 47102(20).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. For all first time applicants a copy of the existing joint-use agreement must be submitted with the application. This is necessary so the FAA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2012.

(5) Documentation that the airport is classified as a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(22).

(6) Documentation that the airport owner is an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(24).

(7) Documentation that the airport has an FAA approved airport layout plan (ALP) and a five-year capital improvement plan (CIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation:

(1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the congested airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year CIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The CIP must specifically identify the safety, capacity, and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (*e.g.,* safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

• Modification of airport or military airfield for safety purposes, including airport pavement modifications, marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFR part 77 or standards set forth in FAA Advisory Circular 150/5300–13.

• Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.

• Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.

• Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.

• Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.

• Acquisition of additional land for runway protection zones, other approach protection, or airport development.

• Cargo facility requirements.

• Modifications, which will permit the airfield to accommodate general aviation users.

Landside

• Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.

• Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.

• Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for Up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for redesignation to the MAP. In addition to the information required for new candidates, airports requesting redesignation must also explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not, to exceed five years;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

In addition to the information requested above, airports applying for redesignation must provide a reanalysis of their original business/marketing plans (for example, a plan previously funded by the Office of Economic Adjustment or the original Master Plan for the airport) and prepare a report. If there is no existing business/marketing plan a business/marketing plan or strategy must be developed. The report must contain:

(1) Whether the original business/marketing plan is still appropriate;

(2) Is the airport continuing to work towards the goals established in the business/marketing plan;

(3) Discuss how the MAP projects contained in the application contribute to the goals of the sponsor and their plans; and

(4) If the business/marketing plan no longer applies to the current goals of the airport, how has the airport altered the business/marketing plan to establish a new direction for the facility and how do the projects contained in the MAP application aid in the completion of the new direction and goals and by what date does the sponsor anticipate graduating from the MAP.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on September 16, 2011.

Benito DeLeon,

Director, Office of Airport Planning and Programming.

[FR Doc. 2011–24350 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0138]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Emergency **Federal Register** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) requesting emergency processing for review and comment. The ICR describes the nature of the information collection and its expected burden. OMB approval has been requested by October 31, 2011.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Kil-Jae Hong, NHTSA, 1200 New Jersey Avenue SE., W52–232, NPO–520, Washington, DC 20590. Ms. Hong's telephone number is (202) 493–0524 and e-mail address is *kil-jae.hong@dot.gov.*

Docket: For access to the docket to read background documents, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

SUPPLEMENTARY INFORMATION:

In compliance with the Paperwork Reduction Act of 1995, NHTSA conducted Phase 1 of the Consumer Research, which included Focus Groups and Tire Retailer Interviews. Based upon the Phase 1 research results, NHTSA developed the materials for Phase 2 of the Consumer Research plan. This notice announces that the ICR for Phase 2 consumer research, abstracted below, has been forwarded to OMB requesting emergency processing for review and comment. The ICR describes the nature of the information collection and its expected burden. This is a request for new collection.

Title: 49 CFR 575.106—Consumer Information Regulations—Tire Fuel Efficiency Quantitative Research—Online Survey.

OMB Control Number: Not Assigned.

Form Number: None.

Type of Request: New collection.

Affected Public: Passenger vehicle tire consumers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: The Energy Independence and Security Act of 2007 (EISA), enacted in December 2007, included a requirement that NHTSA develop a national tire fuel efficiency program to educate consumers about the effect of tires on automobile fuel efficiency, safety and durability. A critical step in developing the consumer information program is to conduct proper market research to understand consumers' knowledge of tire maintenance and performance, understand the tire purchase process from both the consumer and retailer's perspectives, evaluate comprehension of ratings, explore the clarity, meaningfulness and the likely resulting behaviors, and evaluate the informational and educational materials and the channels for communication. NHTSA proposed a dual-phased research project to gather the data and apply analyses and results from the project to develop the consumer information program. Phase 1 has been completed and the final reports from this phase have been posted to this docket. The Phase 2 research plan, resulting from Phase 1 data and analyses, is posted to this docket.

Estimated Annual Burden: 1,300 hours.

Number of Respondents: 5,200.

NHTSA completed qualitative research that included two phases—focus groups and retailer interviews. The reports from each of those phases informed the questions that are included in this quantitative research phase. NHTSA will conduct this research via an online survey that will be administered once. The online survey will take approximately 15 minutes for respondents to complete and will require 4,000 general population participants and up to an additional 1,200 respondents for the tire purchaser oversample. The total burden hours for this survey is 1,300 hours (5,200 participants × 15 min).

The estimated annual burden hour for the online survey is 1,300 hours. Based on the Bureau of Labor and Statistics' median hourly wage (all occupations) in the May 2010 National Occupational Employment and Wage Estimates, NHTSA estimates that it would cost an average of $16.27 per hour if all respondents were interviewed on the job. Therefore, the agency estimates that the cost associated with the burden hours is $21,151 ($16.27 per hour × 1,300 interviewing hours).

Issued on: September 16, 2011.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2011–24310 Filed 9–21–11; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 184 September 22, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Species; Determination of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100104003–1068–02]

RIN 0648–AY49

Endangered and Threatened Species; Determination of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened

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

ACTION: Final rule.

SUMMARY: We (NMFS and USFWS; also collectively referred to as the Services) have determined that the loggerhead sea turtle (*Caretta caretta*) is composed of nine distinct population segments (DPSs) that constitute ''species'' that may be listed as threatened or endangered under the Endangered Species Act (ESA). In this final rule, we are listing four DPSs as threatened and five as endangered under the ESA. We will propose to designate critical habitat for the two loggerhead sea turtle DPSs occurring within the United States in a future rulemaking. We encourage interested parties to provide any information related to the identification of critical habitat and essential physical or biological features for this species, as well as economic or other relevant impacts of designation of critical habitat, to assist us with this effort.

DATES: This rule is effective on October 24, 2011.

ADDRESSES: This final rule and comments and materials received, as well as supporting documentation used in the preparation of this rule, are available on the Internet at *http://www.regulations.gov* and will be available for public inspection, by appointment, during normal business hours at: National Marine Fisheries Service, Office of Protected Resources, 1315 East West Highway, Room 13657, Silver Spring, MD 20910. You may submit information related to the identification of critical habitat for the loggerhead sea turtle by either of the following methods:

• Mail: NMFS National Sea Turtle Coordinator, Attn: Loggerhead Critical Habitat Information, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13657, Silver Spring, MD 20910 or USFWS National Sea Turtle Coordinator, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

• Fax: To the attention of NMFS National Sea Turtle Coordinator at 301–427–2522 or USFWS National Sea Turtle Coordinator at 904–731–3045.

Instructions: All information received will be a part of the public record. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the public may be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, NMFS, at 301–427–8402; Sandy MacPherson, USFWS, at 904–731–3336; Marta Nammack, NMFS, at 301–427–8403 or Lorna Patrick, USFWS, at 850–769–0552 ext. 229. Persons who use a Telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We issued a final rule listing the loggerhead sea turtle as threatened throughout its worldwide range on July 28, 1978 (43 FR 32800). On July 12, 2007, we received a petition to list the ''North Pacific populations of loggerhead sea turtle'' as an endangered species under the ESA. NMFS published a notice in the **Federal Register** on November 16, 2007 (72 FR 64585), concluding that the petitioners (Center for Biological Diversity and Turtle Island Restoration Network) presented substantial scientific information indicating that the petitioned action may be warranted. Also, on November 15, 2007, we received a petition to list the ''Western North Atlantic populations of loggerhead sea turtle'' as an endangered species under the ESA. NMFS published a notice in the **Federal Register** on March 5, 2008 (73 FR 11849), concluding that the petitioners (Center for Biological Diversity and Oceana) presented substantial scientific information indicating that the petitioned action may be warranted.

In early 2008, NMFS assembled a Loggerhead Biological Review Team (BRT) to complete a status review of the loggerhead sea turtle. The BRT was composed of biologists from NMFS, USFWS, the Florida Fish and Wildlife Conservation Commission, and the North Carolina Wildlife Resources Commission. The BRT was charged with reviewing and evaluating all relevant scientific information relating to loggerhead population structure globally to determine if any population met the criteria to qualify as a DPS and, if so, to assess the extinction risk of each DPS. The findings of the BRT, which are detailed in the ''Loggerhead Sea Turtle (*Caretta caretta*) 2009 Status Review under the U.S. Endangered Species Act'' (Conant *et al.,* 2009; hereinafter referred to as the Status Review), addressed DPS delineations, extinction risks to the species, and threats to the species. The Status Review underwent independent peer review by nine scientists with expertise in loggerhead sea turtle biology, genetics, and modeling. The Status Review is available electronically at *http://www.nmfs.noaa.gov/pr/species/statusreviews.htm.*

On March 12, 2009, the petitioners (Center for Biological Diversity, Turtle Island Restoration Network, and Oceana) sent a 60-day notice of intent to sue to the Services for failure to make 12-month findings on the petitions by the statutory deadlines (July 16, 2008, for the North Pacific petition and November 16, 2008, for the Northwest Atlantic petition). On May 28, 2009, the petitioners filed a Complaint for Declaratory and Injunctive Relief to compel the Services to complete the 12-month findings. On October 8, 2009, the petitioners and the Services reached a settlement in which the Services agreed to submit to the **Federal Register** a 12-month finding on the two petitions on or before February 19, 2010. On February 16, 2010, the United States District Court for the Northern District of California modified the February 19, 2010, deadline to March 8, 2010.

On March 16, 2010 (75 FR 12598), the Services published in the **Federal Register** combined 12-month findings on the petitions to list the North Pacific populations and the Northwest Atlantic populations of the loggerhead sea turtle as DPSs with endangered status, along with a proposed rule to designate nine loggerhead sea turtle DPSs worldwide and to list two of the DPSs as threatened and seven as endangered. The **Federal Register** notice also announced the opening of a 90-day public comment period on the proposed listing determination.

The Services subsequently received a request from the Maryland Department of Natural Resources for a public hearing to be held in Maryland. On June 2, 2010 (75 FR 30769), the Services published a notice in the **Federal Register** announcing our plans to hold

a public hearing on the proposed actions on June 16, 2010. The **Federal Register** notice also announced a re-opening of the public comment period for an additional 90 days. The June 16, 2010, public hearing was held at the Ocean Pines Public Library in Berlin, Maryland.

On March 22, 2011 (76 FR 15932), the Services published in the **Federal Register** a notice announcing a 6-month extension of the deadline for a final listing decision to address substantial disagreement on the interpretation of data related to the status and trends for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and its relevance to the assessment of risk of extinction. At this time, we solicited new information or analyses from the public that would help clarify this issue. The public comment period was open for 20 days, and closed on April 11, 2011.

Policies for Delineating Species Under the ESA

Section 3 of the ESA defines ''species'' as including ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' is not recognized in the scientific literature, nor clarified in the ESA or its implementing regulations. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. Congress has instructed the Secretary of the Interior or of Commerce to exercise this authority with regard to DPSs ''* * * sparingly and only when the biological evidence indicates such action is warranted.'' The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (an organism or group of organisms) as a consequence of physical, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (i.e., inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other population segments of the species in its genetic characteristics.

Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A–E)). We are to make this determination based solely on the best available scientific and commercial data after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species.

Biology and Life History of Loggerhead Sea Turtles

A thorough account of loggerhead sea turtle biology and life history may be found in the Status Review, which is incorporated here by reference. The following is a summary of that information.

The loggerhead occurs throughout the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans (Dodd, 1988). However, the majority of loggerhead nesting is at the western rims of the Atlantic and Indian Oceans. The most recent reviews show that only two loggerhead nesting aggregations have greater than 10,000 females nesting per year: Peninsular Florida, United States, and Masirah Island, Oman (Baldwin *et al.,* 2003; Ehrhart *et al.,* 2003; Kamezaki *et al.,* 2003; Limpus and Limpus, 2003a; Margaritoulis *et al.,* 2003). Nesting aggregations with 1,000 to 9,999 females nesting annually are Georgia through North Carolina (United States), Quintana Roo and Yucatan (Mexico), Brazil, Cape Verde Islands (Cape Verde), Western Australia (Australia), and Japan. Smaller nesting aggregations with 100 to 999 nesting females annually occur in the Northern Gulf of Mexico (United States), Dry Tortugas (United States), Cay Sal Bank (The Bahamas), Tongaland (South Africa), Mozambique, Arabian Sea Coast (Oman), Halaniyat Islands (Oman), Cyprus, Peloponnesus (Greece), Zakynthos (Greece), Crete (Greece), Turkey, and Queensland (Australia). In contrast to determining population size on nesting beaches, determining population size in the marine environment has been very localized. A summary of information on distribution and habitat by ocean basin follows.

Pacific Ocean

Loggerheads can be found throughout tropical to temperate waters in the Pacific; however, their breeding grounds include a restricted number of sites in the North Pacific and South Pacific. Within the North Pacific, loggerhead nesting has been documented only in Japan (Kamezaki *et al.,* 2003), although low level nesting may occur outside of Japan in areas surrounding the South China Sea (Chan *et al.,* 2007). In the South Pacific, nesting beaches are restricted to eastern Australia and New Caledonia and, to a much lesser extent, Vanuatu and Tokelau (Limpus and Limpus, 2003a).

Based on tag-recapture studies from Japan, the East China Sea has been identified as the major habitat for post-nesting adult females (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997; Balazs, 2006), while satellite tracking indicates the Kuroshio Extension Bifurcation Region to be an important pelagic foraging area for juvenile loggerheads (Polovina *et al.,* 2006). Other important juvenile turtle foraging areas have been identified off the coast of Baja California Sur, Mexico (Pitman, 1990; Peckham and Nichols, 2006; Peckham *et al.,* 2007).

Nesting females tagged on the coast of eastern Australia have been recorded

foraging in New Caledonia; Queensland, northern New South Wales, and Northern Territory, Australia; Solomon Islands; Papua New Guinea; and Indonesia (Limpus and Limpus, 2003a; Limpus, 2009). Foraging Pacific loggerheads originating from nesting beaches in Australia are known to migrate to Chile and Peru (Alfaro-Shigueto *et al.,* 2004, 2008a; Donoso and Dutton, 2006; Boyle *et al.,* 2009).

Indian Ocean

In the North Indian Ocean, Oman hosts the vast majority of loggerhead nesting. The majority of the nesting in Oman occurs on Masirah Island, on the Al Halaniyat Islands, and on mainland beaches south of Masirah Island all the way to the Oman-Yemen border (IUCN—The World Conservation Union, 1989a, 1989b; Salm, 1991; Salm and Salm, 1991). In addition, nesting probably occurs on the mainland of Yemen on the Arabian Sea coast, and nesting has been confirmed on Socotra, an island off the coast of Yemen (Pilcher and Saad, 2000). Limited information exists on the foraging habitats of North Indian Ocean loggerheads; however, foraging individuals have been reported off the southern coastline of Oman (Salm *et al.,* 1993). Satellite telemetry studies of post-nesting migrations of loggerheads nesting on Masirah Island, Oman, have revealed extensive use of the waters off the Arabian Peninsula, with the majority of telemetered turtles traveling southwest, following the shoreline of southern Oman and Yemen, and circling well offshore in nearby oceanic waters (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). A minority traveled north as far as the western Persian Gulf or followed the shoreline of southern Oman and Yemen as far west as the Gulf of Aden and the Bab-el-Mandab.

The only verified nesting beaches for loggerheads on the Indian subcontinent are found in Sri Lanka. A small number of nesting females use the beaches of Sri Lanka every year (Deraniyagala, 1939; Kar and Bhaskar, 1982; Dodd, 1988); however, there are no records indicating that Sri Lanka has ever been a major nesting area for loggerheads (Kapurusinghe, 2006). No confirmed nesting occurs on the mainland of India (Tripathy, 2005; Kapurusinghe, 2006). The Gulf of Mannar provides foraging habitat for juvenile and post-nesting adult turtles (Tripathy, 2005; Kapurusinghe, 2006).

In the East Indian Ocean, Western Australia hosts all known loggerhead nesting (Dodd, 1988). Nesting distributions in Western Australia span from the Shark Bay World Heritage Area, including Dirk Hartog Island, and northward through the Ningaloo Marine Park coast to the North West Cape, including the Muiron Islands (Baldwin *et al.,* 2003). Nesting individuals from Dirk Hartog Island have been recorded foraging within Shark Bay and Exmouth Gulf (Baldwin *et al.,* 2003), and satellite tracking of individuals from Ningaloo has demonstrated that female turtles can disperse as far east as Torres Strait in Queensland.

In the Southwest Indian Ocean, loggerhead nesting occurs on the southeastern coast of Africa, from the Paradise Islands in Mozambique southward to St. Lucia in South Africa, and on the south and southwestern coasts of Madagascar (Baldwin *et al.,* 2003). Foraging habitats are only known for post-nesting females from Tongaland, South Africa; tagging data show these loggerheads migrating eastward to Madagascar, northward to Mozambique, Tanzania, and Kenya, and southward to Cape Agulhas at the southernmost point of Africa (Baldwin *et al.,* 2003; Luschi *et al.,* 2006).

Atlantic Ocean

In the Northwest Atlantic, the majority of loggerhead nesting is concentrated along the coasts of the United States from southern Virginia through Alabama. Additional nesting beaches are found along the northern and western Gulf of Mexico, eastern Yucatan Peninsula, at Cay Sal Bank in the eastern Bahamas (Addison and Morford, 1996; Addison, 1997), on the southwestern coast of Cuba (F. Moncada-Gavilan, personal communication, cited in Ehrhart *et al.,* 2003), and along the coasts of Central America, Colombia, Venezuela, and the eastern Caribbean Islands. In the Southwest Atlantic, loggerheads nest in significant numbers only in Brazil. In the eastern Atlantic, the largest nesting population of loggerheads is in the Cape Verde Islands (L.F. López-Jurado, personal communication, cited in Ehrhart *et al.,* 2003), and some nesting occurs along the West African coast (Fretey, 2001).

As post-hatchlings, Northwest Atlantic loggerheads use the North Atlantic Gyre and enter Northeast Atlantic waters (Carr, 1987). They are also found in the Mediterranean Sea (Carreras *et al.,* 2006; Eckert *et al.,* 2008). In these areas, they overlap with animals originating from the Northeast Atlantic and the Mediterranean Sea (Laurent *et al.,* 1993, 1998; Bolten *et al.,* 1998; LaCasella *et al.,* 2005; Carreras *et al.,* 2006; Monzón-Argüello *et al.,* 2006, 2010; Revelles *et al.,* 2007; Eckert *et al.,* 2008). The oceanic juvenile stage in the North Atlantic has been primarily studied in the waters around the Azores and Madeira (Bolten, 2003). In Azorean waters, satellite telemetry data and flipper tag returns suggest a long period of residency (Bolten, 2003), whereas turtles appear to be moving through Madeiran waters (Dellinger and Freitas, 2000). Preliminary genetic analyses indicate that juvenile loggerheads found in Moroccan waters are of western Atlantic origin (M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data). Other concentrations of oceanic juvenile turtles exist in the Atlantic (*e.g.,* in the region of the Grand Banks off Newfoundland; Witzell, 2002). Genetic information indicates the Grand Banks are foraging grounds for a mixture of loggerheads from all the North Atlantic rookeries (Bowen *et al.,* 2005; LaCasella *et al.,* 2005), and a large size range is represented (Watson *et al.,* 2004, 2005).

After departing the oceanic zone, neritic juvenile loggerheads in the Northwest Atlantic inhabit continental shelf waters from Cape Cod Bay, Massachusetts, south through Florida, The Bahamas, Cuba, and the Gulf of Mexico (Musick and Limpus, 1997; Spotila *et al.,* 1997; Hopkins-Murphy *et al.,* 2003) (neritic refers to the inshore marine environment from the surface to the sea floor where water depths do not exceed 200 meters).

Habitat preferences of Northwest Atlantic non-nesting adult loggerheads in the neritic zone differ from the juvenile stage in that relatively enclosed, shallow water estuarine habitats with limited ocean access are less frequently used. Areas such as Pamlico Sound, North Carolina, and the Indian River Lagoon, Florida, in the United States, regularly used by juvenile loggerheads, are only rarely frequented by adults (Ehrhart and Redfoot, 1995; Epperly *et al.,* 2007). In comparison, estuarine areas with more open ocean access, such as the Chesapeake Bay in the U.S. mid-Atlantic, are also regularly used by juvenile loggerheads, as well as by adults primarily during warmer seasons (J. Musick, The Virginia Institute of Marine Science, personal communication, 2008). Shallow water habitats with large expanses of open ocean access, such as Florida Bay, provide year-round resident foraging areas for significant numbers of male and female adult loggerheads (Schroeder *et al.,* 1998; Witherington *et al.,* 2006a). Offshore, adults inhabit continental shelf waters, from New York south through Florida, The Bahamas, Cuba, and the Gulf of Mexico (Schroeder *et al.,* 2003; Hawkes *et al.,*

2007; Foley *et al.,* 2008). The southern edge of the Grand Bahama Bank is important habitat for loggerheads nesting on the Cay Sal Bank in The Bahamas, but nesting females are also resident in the bights of Eleuthera, Long Island, and Ragged Islands as well as Florida Bay in the United States, and the north coast of Cuba (A. Bolten and K. Bjorndal, University of Florida, unpublished data). Moncada *et al.* (2010) reported the recapture in Cuban waters of five adult female loggerheads originally flipper tagged in Quintana Roo, Mexico, indicating that Cuban shelf waters likely also provide foraging habitat for adult females that nest in Mexico.

In the Northeast Atlantic, satellite telemetry studies of post-nesting females from Cape Verde identified two distinct dispersal patterns; larger individuals migrated to benthic foraging areas off the northwest Africa coast and smaller individuals foraged primarily oceanically off the northwest Africa coast (Hawkes *et al.,* 2006). Monzón-Argüello *et al.* (2009) conducted a mixed stock analysis of juvenile loggerheads sampled from foraging areas in the Canary Islands, Madeira, Azores, and Andalusia and concluded that while juvenile loggerheads from the Cape Verde population were distributed among these four sites, a large proportion of Cape Verde juvenile turtles appear to inhabit as yet unidentified foraging areas.

In the South Atlantic, recaptures of tagged juvenile turtles and nesting females have shown movement of animals up and down the coast of South America (Almeida *et al.,* 2000, 2007; Marcovaldi *et al.,* 2000; Laporta and Lopez, 2003). Juvenile loggerheads, presumably of Brazilian origin, have also been captured on the high seas of the South Atlantic (Kotas *et al.,* 2004; Pinedo and Polacheck, 2004) and off the coast of Atlantic Africa (Petersen, 2005; Bal *et al.,* 2007; Petersen *et al.,* 2007) suggesting that loggerheads of the South Atlantic may undertake transoceanic developmental migrations (Bolten *et al.,* 1998; Peckham *et al.,* 2007). Marcovaldi *et al.* (2010) identified the northeastern coast of Brazil as important foraging habitat for post-nesting females from Bahia, Brazil.

Mediterranean Sea

Loggerhead sea turtles are widely distributed in the Mediterranean Sea. However, nesting is almost entirely confined to the eastern Mediterranean basin, with the main nesting concentrations in Cyprus, Greece, and Turkey (Margaritoulis *et al.,* 2003; Casale and Margaritoulis, 2010). Preliminary surveys in Libya suggested nesting activity comparable to Greece and Turkey, although a better quantification is needed (Laurent *et al.,* 1999). Minimal to moderate nesting also occurs in other countries throughout the Mediterranean including Egypt, Israel, Italy (southern coasts and islands), Lebanon, Syria, and Tunisia (Margaritoulis *et al.,* 2003). Recently, isolated nesting events have been recorded in the western Mediterranean basin, namely in Spain, Corsica (France), and in the Tyrrhenian Sea (Italy) (Tomás *et al.,* 2002; Delaugerre and Cesarini, 2004; Bentivegna *et al.,* 2005).

Important neritic habitats have been suggested for the large continental shelves of: (1) Tunisia-Libya, (2) northern Adriatic Sea, (3) Egypt, and (4) Spain (Margaritoulis, 1988; Argano *et al.,* 1992; Laurent and Lescure, 1994; Lazar *et al.,* 2000; Gomez de Segura *et al.,* 2006; Broderick *et al.,* 2007; Casale *et al.,* 2007a; Nada and Casale, 2008). At least the first three constitute shallow benthic habitats for adults (including post-nesting females). Some other neritic foraging areas include Amvrakikos Bay in western Greece, Lakonikos Bay in southern Greece, and southern Turkey. Oceanic foraging areas for small juvenile loggerheads have been identified in the south Adriatic Sea (Casale *et al.,* 2005a), Ionian Sea (Deflorio *et al.,* 2005), Sicily Strait (Casale *et al.,* 2007a), and western Mediterranean (Spain) (*e.g.,* Camiñas *et al.,* 2006). In addition, tagged juvenile loggerheads have been recorded crossing the Mediterranean from the eastern to the western basin and vice versa, as well as in the Eastern Atlantic (Argano *et al.,* 1992; Casale *et al.,* 2007a).

Reproductive migrations have been confirmed by flipper tagging and satellite telemetry. Female loggerheads, after nesting in Greece, migrate primarily to the Gulf of Gabès and the northern Adriatic (Margaritoulis, 1988; Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004; Zbinden *et al.,* 2008). Loggerheads nesting in Cyprus migrate to Egypt and Libya, exhibiting fidelity in following the same migration route during subsequent nesting seasons (Broderick *et al.,* 2007). In addition, directed movements of juvenile loggerheads have been confirmed through flipper tagging (Argano *et al.,* 1992; Casale *et al.,* 2007a) and satellite tracking (Rees and Margaritoulis, 2009).

Overview of Information Used To Identify DPSs

In the Status Review, the BRT considered a vast array of information to assess whether there were any loggerhead population segments that satisfy the DPS criteria of both discreteness and significance. First, the BRT examined whether there were any loggerhead population segments that were discrete. Data relevant to the discreteness question included physical, ecological, behavioral, and genetic data. Given the physical separation of ocean basins by continents, the BRT evaluated these data by ocean basin (Pacific Ocean, Indian Ocean, and Atlantic Ocean). This was not to preclude any larger or smaller DPS delineation, but to aid in data organization and assessment. The BRT then evaluated genetic information by ocean basin. The genetic data consisted of results from studies using maternally inherited mitochondrial DNA (mtDNA) and biparentally inherited nuclear DNA microsatellite markers. Next, tagging data (both flipper and Passive Integrated Transponder (PIT) tags) and telemetry data were reviewed. Additional information, such as potential differences in morphology, was also evaluated. Finally, the BRT considered whether the available information on loggerhead population segments was bounded by any oceanographic features (*e.g.,* current systems) or geographic features (*e.g.,* land masses).

In accordance with the DPS policy, the BRT also reviewed whether the population segments identified in the discreteness analysis were significant. If a population segment is considered discrete, its biological and ecological significance relative to the species or subspecies must then be considered. NMFS and USFWS must consider available scientific evidence of the discrete segment's importance to the taxon to which it belongs. Data relevant to the significance question include morphological, ecological, behavioral, and genetic data, as described above. The BRT considered the following factors, listed in the DPS policy, in determining whether the discrete population segments were significant: (a) Persistence of the discrete segment in an ecological setting unusual or unique for the taxon; (b) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (c) evidence that the discrete segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (d) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics. A discrete population segment needs to satisfy only one of

these criteria to be considered significant. As described below, the BRT evaluated the available information and considered items (a), (b), and (d), as noted above, to be most applicable to loggerheads.

Discreteness Determination

As described in the Status Review, the loggerhead sea turtle is present in all tropical and temperate ocean basins, and has a life history that involves nesting on coastal beaches and foraging in neritic and oceanic habitats, as well as long-distance migrations between and within these areas. As with other globally distributed marine species, today's global loggerhead distribution has been shaped by a sequence of isolation events created by tectonic and oceanographic shifts over geologic time scales, the result of which is population substructuring in many areas (Bowen *et al.,* 1994; Bowen, 2003). Globally, loggerhead sea turtles comprise a mosaic of populations, each with unique nesting sites and in many cases possessing disparate demographic features (*e.g.,* mean body size, age at first reproduction) (Dodd, 1988). However, despite these differences, loggerheads from different nesting populations often mix in common foraging areas during certain life stages (Bolten and Witherington, 2003; Bowen and Karl, 2007), thus creating unique challenges when attempting to delineate distinct population segments for management or listing purposes.

Bowen *et al.* (1994) examined the mtDNA sequence diversity of loggerheads across their global distribution and found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. The divergence between these two primary lineages corresponds to approximately three million years (2 percent divergence per million years; Dutton *et al.,* 1996; Encalada *et al.,* 1996). Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003). Recent warm temperatures during interglacial periods allowed bi-directional invasion by the temperate-adapted loggerheads into the respective basins (Bowen *et al.,* 1994; J.S. Reece, Washington University, personal communication, 2008). Today, it appears that loggerheads within a basin are effectively isolated from populations in the other basin, but some dispersal from the Tongaland rookery in the Indian Ocean into feeding and developmental habitat in the South Atlantic is possible via the Agulhas Current (G.R. Hughes, unpublished data, cited in Bowen *et al.,* 1994). In the Pacific, extensive mtDNA studies show that the northern loggerhead populations are isolated from the southern Pacific populations, and that juvenile loggerheads from these distinct genetic populations do not disperse across the equator (Bowen *et al.,* 1994, 1995; Hatase *et al.,* 2002a; Dutton, 2007, unpublished data; Boyle *et al.,* 2009).

Mitochondrial DNA data indicate that regional turtle rookeries within an ocean basin have been strongly isolated from one another over ecological timescales (Bowen *et al.,* 1994; Bowen and Karl, 2007). These same data indicate strong female natal homing and suggest that each regional nesting population is an independent demographic unit (Bowen *et al.,* 2004, 2005; Bowen and Karl, 2007). It is difficult to determine the precise boundaries of these demographically independent populations in regions, such as the eastern U.S. coast, where rookeries are close to each other and range along large areas of a continental coastline. There appear to be varying levels of connectivity between proximate rookeries facilitated by imprecise natal homing and male mediated gene flow (Pearce, 2001; Bowen, 2003; Bowen *et al.,* 2005). Regional genetic populations often are characterized by allelic frequency differences rather than fixed genetic differences (Bowen and Karl, 2007).

Through the evaluation of genetic data, tagging data, telemetry, and demography, the BRT determined that there are at least nine discrete population segments of loggerhead sea turtles globally. These discrete population segments are markedly separated from each other as a consequence of physical, ecological, behavioral, and oceanographic factors and, given the genetic evidence, the BRT concluded that each regional population identified is discrete from other populations of loggerheads. Information considered by the BRT in its delineation of discrete population segments is presented below by ocean basin.

Pacific Ocean

In the North Pacific Ocean, the primary loggerhead nesting areas are found along the southern Japanese coastline and Ryukyu Archipelago (Kamezaki *et al.,* 2003), although low level nesting may occur outside Japan in areas surrounding the South China Sea (Chan *et al.,* 2007). Loggerhead sea turtles hatching on Japanese beaches undertake extensive developmental migrations using the Kuroshio and North Pacific Currents (Balazs, 2006; Kobayashi *et al.,* 2008), and some turtles reach the vicinity of Baja California in the eastern Pacific (Uchida and Teruya, 1988; Bowen *et al.,* 1995; Peckham *et al.,* 2007). After spending years foraging in the central and eastern Pacific, loggerheads return to their natal beaches for reproduction (Resendiz *et al.,* 1998; Nichols *et al.,* 2000) and remain in the western Pacific for the remainder of their life cycle (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997; Sakamoto *et al.,* 1997; Hatase *et al.,* 2002c).

Despite these long-distance developmental movements of juvenile loggerheads in the North Pacific, current scientific evidence, based on genetic analysis, flipper tag recoveries, and satellite telemetry, indicates that individuals originating from Japan remain in the North Pacific for their entire life cycle, never crossing the equator or mixing with individuals from the South Pacific (Bowen *et al.,* 1995; Hatase *et al.,* 2002a; LeRoux and Dutton, 2006; Dutton, 2007, unpublished data; Boyle *et al.,* 2009). This apparent, almost complete separation of two adjacent populations most likely results from: (1) The presence of two distinct Northern and Southern Gyre (current flow) systems in the Pacific (Briggs, 1974), (2) near-passive movements of post-hatchlings in these gyres that initially move them farther away from areas of potential mixing among the two populations along the equator, and (3) the nest-site fidelity of adult turtles that prevents turtles from returning to non-natal nesting areas.

Pacific loggerheads are further partitioned evolutionarily from other loggerheads throughout the world based on additional analyses of mtDNA. The haplotypes (a haplotype refers to the genetic signature, coded in mtDNA, of an individual) from both North and South Pacific loggerheads are distinguished by a minimum genetic distance (d) equal to 0.017 from other conspecifics, which indicates isolation of approximately one million years (Bowen, 2003).

Within the Pacific, Bowen *et al.* (1995) used mtDNA to identify two genetically distinct nesting populations in the Pacific—a northern hemisphere population nesting in Japan and a southern hemisphere population nesting primarily in Australia. This study also suggested that some loggerheads sampled as bycatch in the North Pacific

might be from the Australian nesting population (Bowen *et al.,* 1995). However, more extensive mtDNA data from rookeries in Japan (Hatase *et al.,* 2002a) taken together with preliminary results from microsatellite (nuclear) analysis confirms that loggerheads inhabiting the North Pacific actually originate from nesting beaches in Japan (Watanabe *et al.,* 2011; P. Dutton, NMFS, unpublished data).

Although these studies indicate genetic distinctness between loggerheads nesting in Japan versus those nesting in Australia, Bowen *et al.* (1995) did identify individuals with the common Australian haplotype at foraging areas in the North Pacific, based on a few individuals sampled as bycatch in the North Pacific. Bowen *et al.* (1995) indicated that this finding could be an artifact of sampling variance or that the Australian haplotype exists at low frequency in Japanese nesting aggregates but escaped detection in their study. More recently, Hatase *et al.* (2002a) and Watanabe *et al.* (2011) detected this common Australian haplotype at very low frequency at Japanese nesting beaches. However, the presence of the common Australian haplotype does not preclude the genetic distinctiveness of Japanese and Australian nesting populations, and is likely the result of rare gene flow events occurring over geologic time scales. Watanabe *et al.* (2011) found sub-structuring among the Japanese nesting sites based on mtDNA results, but homogeneity of nuclear DNA variation among the same Japanese nesting sites, indicating connectivity through male-mediated gene flow. These results taken together are consistent with the previous evidence supporting the genetic distinctiveness of the northern (Japanese) stocks from the southern Pacific nesting stocks.

The discrete status of loggerheads in the North Pacific is further supported by results from flipper tagging in the North Pacific. Flipper tagging of loggerheads has been widespread throughout this region, occurring on adults nesting in Japan and bycaught in the coastal pound net fishery (Y. Matsuzawa, Sea Turtle Association of Japan, personal communication, 2006), juvenile turtles reared and released in Japan (Uchida and Teruya, 1988; Hatase *et al.,* 2002a), juvenile turtles foraging near Baja California, Mexico (Nichols, 2003; Seminoff *et al.,* 2004), and juvenile and adult loggerheads captured in and tagged from commercial fisheries platforms in the North Pacific high seas (NMFS, unpublished data). To date, there have been at least three trans-Pacific tag recoveries showing east-west and west-east movements (Uchida and Teruya, 1988; Resendiz *et al.,* 1998; W.J. Nichols, California Academy of Sciences, and H. Peckham, Pro Peninsula, unpublished data) and several recoveries of adults in the western Pacific (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997). Tag returns show post-nesting females migrating into the East China Sea off South Korea, China, and the Philippines, and the nearby coastal waters of Japan (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997, 2003). However, despite the more than 30,000 marked individuals, not a single tag recovery has been reported outside the North Pacific.

A lack of movements by loggerheads south across the equator has also been supported by extensive satellite telemetry. As with flipper tagging, satellite telemetry has been conducted widely in the North Pacific, with satellite transmitters being placed on adult turtles departing nesting beaches (Sakamoto *et al.,* 1997; Japan Fisheries Resource Conservation Association, 1999; Hatase *et al.,* 2002b, 2002c), on adult and juvenile turtles bycaught in pound nets off the coast of Japan (Sea Turtle Association of Japan, unpublished data), on captive-reared juvenile turtles released in Japan (Balazs, 2006), on juvenile and adult turtles bycaught in the eastern and central North Pacific (*e.g.,* Kobayashi *et al.,* 2008; Peckham, 2008), and on juvenile turtles foraging in the eastern Pacific (Nichols *et al.,* 2000; Nichols, 2003; Peckham *et al.,* 2007; Peckham, 2008; J. Seminoff, NMFS, unpublished data). Aerial surveys and satellite telemetry studies, which have documented juvenile foraging areas in the eastern Pacific, near Baja California, Mexico (Nichols, 2003; Seminoff *et al.,* 2006; Peckham *et al.,* 2007; H. Peckham, Pro Peninsula, unpublished data) and Peru (Mangel *et al.,* in press), similarly showed a complete lack of long distance north or south movements. Of the nearly 200 loggerheads tracked using satellite telemetry in the North Pacific, none have moved south of the equator.

Studies have demonstrated the strong association loggerheads show with oceanographic mesoscale features such as the Kuroshio Current Bifurcation Region and the Transition Zone Chlorophyll Front (Polovina *et al.,* 2000, 2001, 2004, 2006; Etnoyer *et al.,* 2006; Kobayashi *et al.,* 2008). The Kuroshio Extension Current, lying west of the international date line, serves as the dominant physical and biological habitat in the North Pacific and is highly productive, likely due to unique features such as eddies and meanders that concentrate prey and support food webs. Juvenile loggerheads originating from nesting beaches in Japan exhibit high site fidelity to this area referred to as the Kuroshio Extension Bifurcation Region (Polovina *et al.,* 2006). Juvenile turtles also were found to correlate strongly with the Transition Zone Chlorophyll Front, an area of surface chlorophyll a levels that also concentrates surface prey for loggerheads (Polovina *et al.,* 2001; Parker *et al.,* 2005; Kobayashi *et al.,* 2008). Kobayashi *et al.* (2008) demonstrated that loggerheads strongly track these zones even as they shift in location, suggesting that strong habitat specificity during the oceanic stage also contributes to the lack of mixing. In summary, loggerheads inhabiting the North Pacific Ocean are derived primarily, if not entirely, from Japanese beaches, with the possible exception of rare waifs over evolutionary time scales. Further, nesting colonies of Japanese loggerheads are found to be genetically distinct based on mtDNA analyses, and when compared to much larger and more genetically diverse loggerhead populations in the Atlantic and Mediterranean, Pacific loggerheads have likely experienced critical bottlenecks (in Hatase *et al.,* 2002a). This is the only known population of loggerheads to be found north of the equator in the Pacific Ocean, foraging in the eastern Pacific as far south as Baja California Sur, Mexico (Seminoff *et al.,* 2004; Peckham *et al.,* 2007) and in the western Pacific as far south as the Philippines (Limpus, 2009) and the mouth of Mekong River, Vietnam (Sadoyama *et al.,* 1996; Hamann *et al.,* 2006).

In the South Pacific Ocean, loggerhead sea turtles nest primarily in Queensland, Australia, and, to a lesser extent, New Caledonia and Vanuatu (Limpus and Limpus, 2003a; Limpus *et al.,* 2006; Limpus, 2009). Loggerheads from these rookeries undertake an oceanic developmental migration, traveling to habitats in the central and southeastern Pacific Ocean where they may reside for several years prior to returning to the western Pacific for reproduction. Loggerheads in this early life history stage differ markedly from those originating from Western Australia beaches in that they undertake long west-to-east migrations, likely using specific areas of the pelagic environment of the South Pacific Ocean. An unknown portion of these loggerheads forage off Chile and Peru, and genetic information from foraging areas in the southeastern Pacific confirms that the haplotype frequencies among juvenile turtles in these areas closely match those found at nesting

beaches in eastern Australia (Alfaro-Shigueto *et al.,* 2004; Donoso and Dutton, 2006, 2007; Boyle *et al.,* 2009). Large juvenile and adult loggerheads generally remain in the western South Pacific, inhabiting neritic and oceanic foraging sites during non-nesting periods (Limpus *et al.,* 1994; Limpus, 2009).

Loggerheads from Australia and New Caledonia apparently do not travel north of the equator. Flipper tag recoveries from nesting females have been found throughout the western Pacific, including the southern Great Barrier Reef and Moreton Bay off the coast of Queensland, Australia, Indonesia (Irian Jaya), Papua New Guinea, Solomon Islands, the Torres Strait, and the Gulf of Carpentaria (Limpus, 2009). Of approximately 1,000 (adult and juvenile; male and female) loggerheads that have been tagged in eastern Australian feeding areas over approximately 25 years, only two have been recorded nesting outside of Australia; both traveled to New Caledonia (Limpus and Limpus, 2003b; Limpus, 2009). Flipper tagging programs in Peru and Chile tagged approximately 500 loggerheads from 1999 to 2006, none of which have been reported from outside of the southeastern Pacific (Alfaro-Shigueto *et al.,* 2008a; S. Kelez, Duke University Marine Laboratory, unpublished data; M. Donoso, ONG Pacifico Laud—Chile, unpublished data). Limited satellite telemetry data from 12 turtles in the southeastern Pacific area show a similar trend (Mangel *et al.,* in press).

The spatial separation between the North Pacific and South Pacific loggerhead populations has contributed to substantial differences in the genetic profiles of the nesting populations in these two regions. Whereas the dominant mtDNA haplotypes among loggerheads nesting in Japan are CCP2 and CCP3 (equivalent to B and C respectively in Bowen *et al.,* 1995 and Hatase *et al.,* 2002a; LeRoux *et al.,* 2008; P. Dutton, NMFS, unpublished data), loggerheads nesting in eastern Australia have a third haplotype (CCP1, previously A) which is dominant (98 percent of nesting females) (Bowen *et al.,* 1994; FitzSimmons *et al.,* 1996; Boyle *et al.,* 2009). Further, preliminary genetic analysis using microsatellite markers (nuclear DNA) indicates genetic distinctiveness between nesting populations in the North versus South Pacific (P. Dutton, NMFS, personal communication, 2008).

The separateness between nesting populations in eastern Australia (in the South Pacific Ocean) and western Australia (in the East Indian Ocean) is less clear, although these too are considered to be genetically distinct from one another (Limpus, 2009). For example, mtDNA haplotype CCP1, which is the overwhelmingly dominant haplotype among eastern Australia nesting females (98 percent), is also found in western Australia, although at much lower frequency (33 percent) (FitzSimmons *et al.,* 1996, 2003). The remaining haplotype for both regions was the CCP5 haplotype. Further, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci from females nesting in these two regions. Estimates of gene flow between eastern and western Australian populations were an order of magnitude less than gene flow within regions. These preliminary results based on nuclear DNA indicate that male-mediated gene flow between eastern and western Australia may be insignificant, which, when considered in light of the substantial disparity in mtDNA haplotype frequencies between these two regions, provides further evidence of population separation. It is also important to note that there is no nesting by loggerheads recorded by either scientists or indigenous peoples for the thousands of kilometers of sandy beaches between the rookeries of Queensland and Western Australia (Chatto and Baker, 2008).

At present, there is no indication from genetic studies that the loggerhead sea turtles nesting in eastern Australia are distinct from those nesting in New Caledonia. Of 27 turtles sequenced from New Caledonia, 93 percent carried the CCP1 haplotype and the remaining had the CCP5 haplotype; similar to eastern Australia (Boyle *et al.,* 2009).

The South Pacific population of loggerheads occupies an ecological setting distinct from other loggerheads, including the North Pacific population; however, less is known about the ecosystem on which South Pacific oceanic juvenile and adult loggerheads depend. Sea surface temperature and chlorophyll frontal zones in the South Pacific have been shown to dramatically affect the movements of green turtles, *Chelonia mydas* (Seminoff *et al.,* 2008) and leatherback turtles, *Dermochelys coriacea* (Shillinger *et al.,* 2008), and it is likely that loggerhead distributions are also affected by these mesoscale oceanographic features. However, unlike the North Pacific, there are no records of oceanic aggregations of loggerhead sea turtles.

Loggerheads in the South Pacific are substantially impacted by periodic environmental perturbations such as the El Niño Southern Oscillation (ENSO). This 3- to 6-year cycle within the coupled ocean-atmosphere system of the tropical Pacific brings increased surface water temperatures and lower primary productivity, both of which have profound biological consequences (Chavez *et al.,* 1999; Saba *et al.,* 2008). Loggerheads are presumably adversely impacted by the reduced food availability that often results from ENSO events, although data on this subject are lacking. Although ENSO may last for only short periods and thus not have a long-term effect on loggerheads in the region, recent studies by Chaloupka *et al.* (2008) suggested that long-term increases in sea surface temperature within the South Pacific may influence the ability of the Australian nesting population to recover from historical population declines.

Loggerheads originating from nesting beaches in the western South Pacific are the only population of loggerheads to be found south of the equator in the Pacific Ocean. As post-hatchlings, they are generally swept south by the East Australian Current (Limpus *et al.,* 1994), spend a large portion of time foraging in the oceanic South Pacific Ocean, and some migrate to the southeastern Pacific Ocean off the coasts of Peru and Chile as juvenile turtles (Donoso *et al.,* 2000; Alfaro-Shigueto *et al.,* 2004, 2008a; Boyle *et al.,* 2009). As large juveniles and adults, the foraging range of these loggerheads encompasses the eastern Arafura Sea, Gulf of Carpentaria, Torres Strait, Gulf of Papua, Coral Sea, and throughout the eastern coastline of Australia from north Queensland south to southern New South Wales, including the Great Barrier Reef, Hervey Bay, and Moreton Bay. The outer extent of this range includes the coastal waters off eastern Indonesia, northeastern Papua New Guinea, northeastern Solomon Islands, and New Caledonia (Limpus, 2009).

In summary, all loggerheads inhabiting the South Pacific Ocean are derived from beaches in eastern Australia and a lesser known number of beaches in southern New Caledonia, Vanuatu, and Tokelau (Limpus and Limpus, 2003a; Limpus, 2009). Furthermore, nesting colonies of the South Pacific population of loggerheads are found to be genetically distinct from loggerheads in the North Pacific and Indian Ocean.

Given the information presented above, the BRT concluded, and we concur, that two discrete population segments exist in the Pacific Ocean: (1) North Pacific Ocean and (2) South Pacific Ocean. These two population segments are markedly separated from each other and from population

segments within the Indian Ocean and Atlantic Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry, which indicate that individuals originating from Japan remain in the North Pacific for their entire life cycle, likely never crossing the equator or mixing with individuals from the South Pacific (Bowen *et al.,* 1995; Hatase *et al.,* 2002a; LeRoux and Dutton, 2006; Dutton, 2007, unpublished data; Boyle *et al.,* 2009). This apparent, almost complete separation most likely results from: (1) The presence of two distinct Northern and Southern Gyre (current flow) systems in the Pacific (Briggs, 1974), (2) near-passive movements of post-hatchlings in these gyres that initially move them farther away from areas of potential mixing along the equator, and (3) the nest-site fidelity of adult turtles that prevents turtles from returning to non-natal nesting areas. The separation of the Pacific Ocean population segments from population segments within the Indian Ocean and Atlantic Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003).

Indian Ocean

Similar to loggerheads in the Pacific and Atlantic, loggerheads in the Indian Ocean nest on coastal beaches, forage in neritic and oceanic habitats, and undertake long-distance migrations between and within these areas. The distribution of loggerheads in the Indian Ocean is limited by the Asian landmass to the north (approximately 30° N. lat.); distributions east and west are not restricted by landmasses south of approximately 38° S. latitude.

In the North Indian Ocean, Oman hosts the vast majority of loggerhead nesting. The largest nesting assemblage is at Masirah Island, Oman, in the northern tropics at 21° N. lat. (Baldwin *et al.,* 2003). Other key nesting assemblages occur on the Al Halaniyat Islands, Oman (17° S. lat.) and on Oman's Persian Gulf mainland beaches south of Masirah Island to the Oman-Yemen border (17–20° S. lat.) (IUCN—The World Conservation Union, 1989a, 1989b; Salm, 1991; Salm and Salm, 1991; Baldwin *et al.,* 2003). In addition, nesting probably occurs on the mainland of Yemen on the Arabian Sea coast, and nesting has been confirmed on Socotra, an island off the coast of Yemen (Pilcher and Saad, 2000).

Outside of Oman, loggerhead nesting is rare in the North Indian Ocean. The only verified nesting beaches for loggerheads on the Indian subcontinent are found in Sri Lanka (Deraniyagala, 1939; Kar and Bhaskar, 1982; Dodd, 1988; Kapurusinghe, 2006). Reports of regular loggerhead nesting on the Indian mainland are likely misidentifications of olive ridleys (*Lepidochelys olivacea*) (Tripathy, 2005; Kapurusinghe, 2006). Although loggerheads have been reported nesting in low numbers in Myanmar, these data may not be reliable because of misidentification of species (Thorbjarnarson *et al.,* 2000).

Limited information exists on foraging locations of North Indian Ocean loggerheads. Foraging individuals have been reported off the southern coastline of Oman (Salm *et al.,* 1993) and in the Gulf of Mannar, between Sri Lanka and India (Tripathy, 2005; Kapurusinghe, 2006). Satellite telemetry studies of post-nesting migrations of loggerheads nesting on Masirah Island, Oman, have revealed extensive use of the waters off the Arabian Peninsula, with the majority of telemetered turtles (15 of 20) traveling southwest, following the shoreline of southern Oman and Yemen, and circling well offshore in nearby oceanic waters (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). A minority traveled north as far as the western Persian Gulf (3 of 20) or followed the shoreline of southern Oman and Yemen as far west as the Gulf of Aden and the Bab-el-Mandab (2 of 20). These preliminary data from Oman suggest that post-nesting migrations and adult female foraging areas are restricted to the Northwest Indian Ocean (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). No tag returns or satellite tracks indicated that loggerheads nesting in Oman traveled south of the equator.

In the East Indian Ocean, Western Australia hosts all known loggerhead nesting (Dodd, 1988). Nesting distributions in Western Australia span from the Shark Bay World Heritage Area northward through the Ningaloo Marine Park coast to the North West Cape and to the nearby Muiron Islands (Baldwin *et al.,* 2003). Nesting individuals from Dirk Hartog Island have been recorded foraging within Shark Bay and Exmouth Gulf, while other adults range into the Gulf of Carpentaria (Baldwin *et al.,* 2003) as far east as Torres Strait. At the eastern extent of this apparent range, there is likely overlap with loggerheads that nest on Australia's Pacific coast (Limpus, 2009). However, despite extensive tagging and beach monitoring at principal nesting beaches on Australia's Indian Ocean and Pacific coasts, no exchange of females between nesting beaches has been observed (Limpus, 2009).

Loggerhead nesting in the Southwest Indian Ocean includes the southeastern coast of Africa from the Paradise Islands in Mozambique southward to St. Lucia in South Africa, and on the south and southwestern coasts of Madagascar (Baldwin *et al.,* 2003). Foraging habitats are only known for the Tongaland, South Africa, adult female loggerheads. Returns of flipper tags describe a range that extends eastward to Madagascar, northward to Mozambique, Tanzania, and Kenya, and southward to Cape Agulhas at the southernmost point of Africa (Baldwin *et al.,* 2003). Four post-nesting loggerheads satellite tracked by Luschi *et al.* (2006) migrated northward, hugging the Mozambique coast and remained in shallow shelf waters off Mozambique for more than 2 months. Only one post-nesting female from the Southwest Indian Ocean population (South Africa) has been documented migrating north of the equator (to southern Somalia) (Hughes and Bartholomew, 1996).

The available genetic information relates to connectivity and broad evolutionary relationships between ocean basins. There is a lack of genetic information on population structure among rookeries within the Indian Ocean. Bowen *et al.* (1994) described mtDNA sequence diversity among eight loggerhead nesting assemblages and found one of two principal branches in the Indo-Pacific basins. Using additional published and unpublished data, Bowen (2003) estimated divergence between these two lineages to be approximately three million years. Bowen pointed out evidence for more recent colonizations (12,000–250,000 years ago) between the Indian Ocean and the Atlantic-Mediterranean. For example, the sole mtDNA haplotype (among eight samples) identified by Bowen *et al.* (1994) at Masirah Island, Oman, is known from the Atlantic and suggests some exchange between oceans some 250,000 years ago. The other principal Indian Ocean haplotype reported by

Bowen *et al.* (1994) was seen in all loggerheads sampled (n = 15) from Natal, South Africa. Encalada *et al.* (1998) reported that this haplotype was common throughout the North Atlantic and Mediterranean, thus suggesting a similar exchange between the Atlantic and Indian Oceans as recently as 12,000 years ago (Bowen *et al.,* 1994). Bowen (2003) speculated that Indian-Atlantic Ocean exchanges took place via the temperate waters south of South Africa and became rare as the ocean shifted to cold temperate conditions in this region.

To estimate loggerhead gene flow in and out of the Indian Ocean, J.S. Reece (Washington University, personal communication, 2008) examined 100 samples from Masirah Island, 249 from Atlantic rookeries (from Encalada *et al.,* 1998), and 311 from Pacific rookeries (from Bowen *et al.,* 1995 and Hatase *et al.,* 2002a). Reece estimated that gene flow, expressed as number of effective migrants, or exchanges of breeding females between Indian Ocean rookeries and those from the Atlantic or Pacific occurred at the rate of less than 0.1 migrant per generation. Reece estimated gene flow based on coalescence of combined mtDNA and nuclear DNA data to be approximately 0.5 migrants per generation. These unpublished results, while somewhat theoretical, may indicate that there is restricted gene flow into and out of the Indian Ocean. The low level of gene flow most likely reflects the historical connectivity over geological timescales rather than any contemporary migration, and is consistent with Bowen *et al.'*s (1994) hypothesis that exchange occurred most recently over 12,000–3,000,000 years ago during the Pleistocene, and has been restricted over recent ecological timescales.

The discrete status of three loggerhead populations in the Indian Ocean is primarily supported by observations of tag returns and satellite telemetry. The genetic information currently available based on mtDNA sequences does not allow for a comprehensive analysis of genetic population structure analysis for Indian Ocean rookeries, although Bowen *et al.* (1994) indicated the Oman and South African rookeries are genetically distinct, and, based on preliminary results, once sequencing studies are completed for these rookeries, it is likely that they will also be genetically distinct from the rookeries in Western Australia (P. Dutton, NMFS, unpublished data; N. FitzSimmons, University of Canberra, unpublished data; J. Reece, University of California at Santa Cruz, unpublished data). Based on multiple lines of evidence, discrete status is supported for the North Indian Ocean, Southeast Indo-Pacific Ocean, and Southwest Indian Ocean loggerhead populations. Although there is not a sufficiently clear picture of gene flow between these regions, significant vicariant barriers likely exist between these three Indian Ocean populations that would prevent migration of individuals on a time scale relative to management and conservation efforts. These biogeographical barriers are the oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat.

Given the information presented above, the BRT concluded, and we concur, that three discrete population segments exist in the Indian Ocean: (1) North Indian Ocean, (2) Southeast Indo-Pacific Ocean, and (3) Southwest Indian Ocean. These three population segments are markedly separated from each other and from population segments within the Pacific Ocean and Atlantic Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion is primarily based on observations of tag returns and satellite telemetry. The genetic information currently available based on mtDNA sequences does not allow for a comprehensive analysis of genetic population structure for Indian Ocean rookeries; however, the Oman and South African rookeries are genetically distinct (Bowen *et al.,* 1994), and, based on preliminary results, once sequencing studies are completed for these rookeries, it is likely that they will also be determined genetically distinct from the rookeries in Western Australia (P. Dutton, NMFS, unpublished data; N. FitzSimmons, University of Canberra, unpublished data; J. Reece, University of California at Santa Cruz, unpublished data). Furthermore, significant biogeographical barriers (i.e., oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between these three Indian Ocean populations that would prevent migration of individuals on a time scale relative to management and conservation efforts. The separation of the Indian Ocean population segments from population segments within the Pacific Ocean and Atlantic Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003). In the East Indian Ocean, although there is possible overlap with loggerheads that nest on Australia's Indian Ocean and Pacific Ocean coasts, extensive tagging at the principal nesting beaches on both coasts has revealed no exchange of females between these nesting beaches (Limpus, 2009).

Atlantic Ocean and Mediterranean Sea

Within the Atlantic Ocean, loss and re-colonization of nesting beaches over evolutionary time scales has been influenced by climate, natal homing, and rare dispersal events (Encalada *et al.,* 1998; Bowen and Karl, 2007). At times, temperate beaches were too cool to incubate eggs and embryonic development could have succeeded only on tropical beaches. Thus, the contemporary distribution of nesting is the product of colonization events from the tropical refugia during the last 12,000 years. Apparently, turtles from the Northwest Atlantic colonized the Mediterranean and at least two matrilines were involved (Schroth *et al.,* 1996); however, Mediterranean rookeries became isolated from the Atlantic populations in the last 10,000 years following the end of the Wisconsin glacial period (Encalada *et al.,* 1998). A similar colonization event appears to have populated the Northeast Atlantic (Monzón-Argüello *et al.,* 2010).

Nesting in the western South Atlantic occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro, with peak concentrations in northern Bahia, Espírito Santo, and northern Rio de Janeiro (Marcovaldi and Chaloupka, 2007). In the eastern South Atlantic, diffuse nesting may occur along the mainland coast of Africa (Fretey, 2001), with more than 200 loggerhead nests reported for Rio Longa beach in central Angola in 2005 (Brian, 2007). However, other researchers have been unable to confirm nesting by loggerheads in the last decade anywhere along the south Atlantic coast of Africa, including Angola (Fretey, 2001; Weir *et al.,* 2007). There is the possibility that reports of nesting loggerheads from Angola and Namibia (Márquez M., 1990;

Brian, 2007) may have arisen from misidentified olive ridley turtles (Brongersma, 1982; Fretey, 2001). At the current time, it is not possible to confirm that regular, if any, nesting of loggerheads occurs along the Atlantic coast of Africa, south of the equator.

Genetic surveys of loggerheads have revealed that the Brazilian rookeries have a unique mtDNA haplotype (Encalada *et al.,* 1998; Pearce, 2001). The Brazilian mtDNA haplotype, relative to North Atlantic haplotypes, indicates isolation of South Atlantic loggerheads from North Atlantic loggerheads on a scale of 250,000–500,000 years ago, and microsatellite DNA results show divergence on the same time scale (Bowen, 2003). Brazil's unique haplotype has been found only in low numbers in foraging populations of juvenile loggerheads of the North Atlantic (Bass *et al.,* 2004). Other lines of evidence support a deep division between loggerheads from the South Atlantic and from the North Atlantic, including: (1) A nesting season in Brazil that peaks in the austral summer around December–January (Marcovaldi and Laurent, 1996), as opposed to the April–September nesting season in the southeastern United States in the northern hemisphere (Witherington *et al.,* 2009); and (2) no observations of tagged loggerheads moving across the equator in the Atlantic, except a single case of a captive-reared animal that was released as a juvenile from Espírito Santo and was recaptured 3 years later in the Azores (Bolten *et al.,* 1990). Post-nesting females from Espírito Santo, Brazil, moved either north or south along the coast, but remained between 10° S. lat. and 30° S. lat. (Marcovaldi *et al.,* 2000; Lemke *et al.,* 2006), while post-nesting females from Bahia, Brazil, all moved north (Marcovaldi *et al.,* 2010).

Recaptures of tagged juvenile turtles and nesting females have shown movement of animals up and down the coast of South America (Almeida *et al.,* 2000, 2007; Marcovaldi *et al.,* 2000; Laporta and Lopez, 2003). Juvenile loggerheads, presumably of Brazilian origin, have also been captured on the high seas of the South Atlantic (Kotas *et al.,* 2004; Pinedo and Polacheck, 2004) and off the coast of Atlantic Africa (Petersen, 2005; Petersen *et al.,* 2007; Weir *et al.,* 2007) suggesting that, like their North Pacific, South Pacific, and Northwest Atlantic counterparts, loggerheads of the South Atlantic may undertake transoceanic developmental migrations (Bowen *et al.,* 1995; Bolten *et al.,* 1998; Peckham *et al.,* 2007; Boyle *et al.,* 2009). Marcovaldi *et al.* (2010) equipped 10 loggerheads nesting in Brazil with satellite transmitters to study their internesting and postnesting movements. At the conclusion of their nesting season, all 10 turtles migrated to the northern coast of Brazil to individual foraging areas on the continental shelf. Females were also tracked during a second postnesting migration back to their foraging areas, showing a strong fidelity to foraging grounds.

Within the Northwest Atlantic, the majority of nesting activity occurs from April through September, with a peak in June and July (Williams-Walls *et al.,* 1983; Dodd, 1988; Weishampel *et al.,* 2006). Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, and The Bahamas, but is concentrated in the southeastern United States and on the Yucatan Peninsula in Mexico (Sternberg, 1981; Ehrhart, 1989; Ehrhart *et al.,* 2003; NMFS and USFWS, 2008). Five recovery units (management subunits of a listed species that are geographically or otherwise identifiable and essential to the recovery of the species) have been identified based on genetic differences and a combination of geographic distribution of nesting densities and geographic separation (NMFS and USFWS, 2008). These recovery units are: Northern Recovery Unit (Florida/Georgia border through southern Virginia), Peninsular Florida Recovery Unit (Florida/Georgia border through Pinellas County, Florida), Dry Tortugas Recovery Unit (islands located west of Key West, Florida), Northern Gulf of Mexico Recovery Unit (Franklin County, Florida, through Texas), and Greater Caribbean Recovery Unit (Mexico through French Guiana, The Bahamas, Lesser Antilles, and Greater Antilles) (NMFS and USFWS, 2008).

Loggerheads in the Northwest Atlantic have a complex population genetic structure. Based on mtDNA evidence, oceanic juveniles show no structure, neritic juveniles show moderate structure, and nesting colonies show strong structure (Bowen *et al.,* 2005). In contrast, a study using microsatellite (nuclear DNA) markers showed no significant population structure among nesting populations (Bowen *et al.,* 2005), indicating that while females exhibit strong philopatry, males may provide an avenue of gene flow between nesting colonies in this region. Nevertheless, Bowen *et al.* (2005) argued that male-mediated gene flow within the Northwest Atlantic does not detract from the classification of breeding areas as independent populations (*e.g.,* management/recovery units) because the production of progeny depends on female nesting success. All Northwest Atlantic recovery units are reproductively isolated from populations within the Northeast Atlantic, South Atlantic, and Mediterranean Sea.

As oceanic juveniles, loggerheads from the Northwest Atlantic use the North Atlantic Gyre and often are associated with *Sargassum* communities (Carr, 1987). They also are found in the Mediterranean Sea. In these areas, they overlap with animals originating from the Northeast Atlantic and the Mediterranean Sea (Laurent *et al.,* 1993, 1998; Bolten *et al.,* 1998; Bowen *et al.,* 2005; LaCasella *et al.,* 2005; Carreras *et al.,* 2006; Monzón-Argüello *et al.,* 2006; Revelles *et al.,* 2007). In the western Mediterranean, they tend to be associated with the waters off the northern African coast and the northeastern Balearic Archipelago, areas generally not inhabited by turtles of Mediterranean origin (Carreras *et al.,* 2006; Revelles *et al.,* 2007; Eckert *et al.,* 2008). As larger neritic juveniles, they show more structure and tend to inhabit areas closer to their natal origins (Bowen *et al.,* 2004), but some do move to and from oceanic foraging grounds throughout this life stage (McClellan and Read, 2007; Mansfield *et al.,* 2009; McClellan *et al.,* 2010), and some continue to use the Mediterranean Sea (Casale *et al.,* 2008a; Eckert *et al.,* 2008).

Adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean. Carapace epibionts suggest the adult females of different subpopulations use different foraging habitats (Caine, 1986). In the Northwest Atlantic, based on satellite telemetry studies and flipper tag returns, non-nesting adult females from the Northern Recovery Unit reside primarily off the east coast of the United States; movement into the Bahamas or the Gulf of Mexico is rare (Bell and Richardson, 1978; Williams and Frick, 2001; Mansfield, 2006; Turtle Expert Working Group (TEWG), 2009). Adult females of the Peninsular Florida Recovery Unit are distributed throughout eastern Florida, The Bahamas, Greater Antilles, the Yucatan Peninsula of Mexico, and the Gulf of Mexico, as well as along the Atlantic seaboard of the United States (Meylan, 1982; Meylan *et al.,* 1983; Foley *et al.,* 2008; TEWG, 2009). Adult females from the Northern Gulf of Mexico Recovery Unit remained in the Gulf of Mexico, including off the Yucatan Peninsula of Mexico, based on satellite telemetry and flipper tag returns (Foley *et al.,* 2008; TEWG, 2009;

M. Lamont, Florida Cooperative Fish and Wildlife Research Unit, personal communication, 2009; M. Nicholas, National Park Service, personal communication, 2009).

Nesting in the Northeast Atlantic is concentrated in the Cape Verde Archipelago, with some nesting occurring on most of the islands, and the highest concentration on the beaches of Boa Vista Island (López-Jurado *et al.,* 2000; Varo Cruz *et al.,* 2007; Loureiro, 2008; Monzón-Argüello *et al.,* 2010). On mainland Africa, there is minor nesting on the coasts of Mauritania to Senegal (Brongersma, 1982; Arvy *et al.,* 2000; Fretey, 2001). Earlier reports of loggerhead nesting in Morocco (Pasteur and Bons, 1960) have not been confirmed in recent years (Tiwari *et al.,* 2001). Nesting has not been reported from Macaronesia (Azores, Madeira Archipelago, The Selvagens Islands, and the Canary Islands), other than in the Cape Verde Archipelago (Brongersma, 1982). In Cape Verde, nesting begins in mid-June and extends into October (Cejudo *et al.,* 2000), which is somewhat later than when nesting occurs in the Northwest Atlantic.

Based on an analysis of mtDNA of nesting females from Boa Vista Island, the Cape Verde nesting assemblage is genetically distinct from other studied rookeries (Monzón-Argüello *et al.,* 2009, 2010). The results also indicate that despite the close proximity of the Mediterranean, the Boa Vista rookery is most closely related to the rookeries of the Northwest Atlantic.

The distribution of juvenile loggerheads from the Northeast Atlantic is largely unknown but they have been found on the oceanic foraging grounds of the North Atlantic (A. Bolten, University of Florida, personal communication, 2008, based on Bolten *et al.,* 1998 and LaCasella *et al.,* 2005; Monzón-Argüello *et al.,* 2009; M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data) and in the western and central Mediterranean (A. Bolten, University of Florida, personal communication, 2008, based on Carreras *et al.,* 2006), along with small juvenile loggerheads from the Northwest Atlantic. The size of nesting females in the Northeast Atlantic is comparable to those in the Mediterranean (average 72–80 cm straight carapace length (SCL); Margaritoulis *et al.,* 2003) and smaller than those in the Northwest Atlantic or the South Atlantic; 91 percent of the nesting turtles are less than 86.5 cm curved carapace length (CCL) (Hawkes *et al.,* 2006) and nesting females average 77.1 cm SCL (Cejudo *et al.,* 2000). Satellite-tagged, post-nesting females from Cape Verde foraged in coastal waters along northwest Africa or foraged oceanically, mostly between Cape Verde and the African shelf from Mauritania to Guinea Bissau (Hawkes *et al.,* 2006).

In the Mediterranean, nesting occurs throughout the central and eastern basins on the shores of Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, the Sinai, Egypt, Libya, and Tunisia (Sternberg, 1981; Margaritoulis *et al.,* 2003; SWOT, 2007; Casale and Margaritoulis, 2010). Sporadic nesting also has been reported in the western Mediterranean on Corsica (Delaugerre and Cesarini, 2004), southwestern Italy (Bentivegna *et al.,* 2005), and on the Spanish Mediterranean coast (Tomás *et al.,* 2003, 2008). Nesting in the Mediterranean is concentrated between June and early August (Margaritoulis *et al.,* 2003; Casale and Margaritoulis, 2010).

Within the Mediterranean, a recent study of mtDNA and nuclear DNA in nesting assemblages from Greece to Israel indicated genetic structuring, philopatry by both females and males, and limited gene flow between assemblages (Carreras *et al.,* 2007). Genetic differentiation based on mtDNA indicated that there are at least four independent nesting assemblages within the Mediterranean and usually they are characterized by a single haplotype: (1) Mainland Greece and the adjoining Ionian Islands, (2) eastern Turkey, (3) Israel, and (4) Cyprus. There is no evidence of adult female exchange among these four assemblages (Carreras *et al.,* 2006). In studies of the foraging grounds in the western and central Mediterranean, seven of the 17 distinct haplotypes detected had not yet been described, indicating that nesting beach data to describe the natal origins of juveniles exploiting the western Mediterranean Sea are incomplete (Carreras *et al.,* 2006; Casale *et al.,* 2008a). Gene flow among the Mediterranean rookeries estimated from nuclear DNA was significantly higher than that calculated from mtDNA, consistent with the scenario of female philopatry maintaining isolation between rookeries, offset by male-mediated gene flow. Nevertheless, the nuclear data show there was a higher degree of substructuring among Mediterranean rookeries compared to those in the Northwest Atlantic (Bowen *et al.,* 2005; Carreras *et al.,* 2007).

Small oceanic juveniles from the Mediterranean Sea use the eastern basin (defined as inclusive of the central Mediterranean, Ionian, Adriatic, and Aegean Seas) and the western basin (defined as inclusive of the Tyrrhenian Sea) along the European coast (Laurent *et al.,* 1998; Margaritoulis *et al.,* 2003; Carreras *et al.,* 2006; Revelles *et al.,* 2007). Carreras *et al.* (2006) believe this genetic structuring is explained by the pattern of sea surface currents and water masses, with a limited exchange of juvenile loggerheads between water masses. Larger juveniles also use the eastern Atlantic and the eastern Mediterranean, especially the Tunisia-Libya shelf and the Adriatic Sea (Laurent *et al.,* 1993; Margaritoulis *et al.,* 2003; Monzón-Argüello *et al.,* 2006; Revelles *et al.,* 2007; Eckert *et al.,* 2008). Adults appear to forage closer to the nesting beaches in the eastern basin; most tag recoveries from females nesting in Greece have occurred in the Adriatic Sea and off Tunisia (Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004).

Loggerheads nesting in the Mediterranean were significantly smaller than loggerheads nesting in the Northwest Atlantic and the South Atlantic. Within the Mediterranean, carapace lengths ranged from 58 to 95 cm SCL (Margaritoulis *et al.,* 2003). Greece's loggerheads averaged 77–80 cm SCL (Tiwari and Bjorndal, 2000; Margaritoulis *et al.,* 2003), whereas Turkey's loggerheads averaged 72–73 cm SCL (Margaritoulis *et al.,* 2003). The Greece turtles also produced larger clutches (relative to body size) than those produced by Florida or Brazil nesters (Tiwari and Bjorndal, 2000).

Given the information presented above, the BRT concluded, and we concur, that four discrete population segments exist in the Atlantic Ocean/Mediterranean: (1) Northwest Atlantic Ocean, (2) Northeast Atlantic Ocean, (3) South Atlantic Ocean, and (4) Mediterranean Sea. These four population segments are markedly separated from each other and from population segments within the Pacific Ocean and Indian Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads in these four population segments (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; Monzón-Argüello *et al.,* 2009, 2010). Although loggerheads from the Northwest Atlantic, Northeast Atlantic, and Mediterranean Sea population segments may comingle on oceanic foraging grounds as juveniles, adults are apparently isolated from each other; they also differ demographically. Data from satellite telemetry studies and

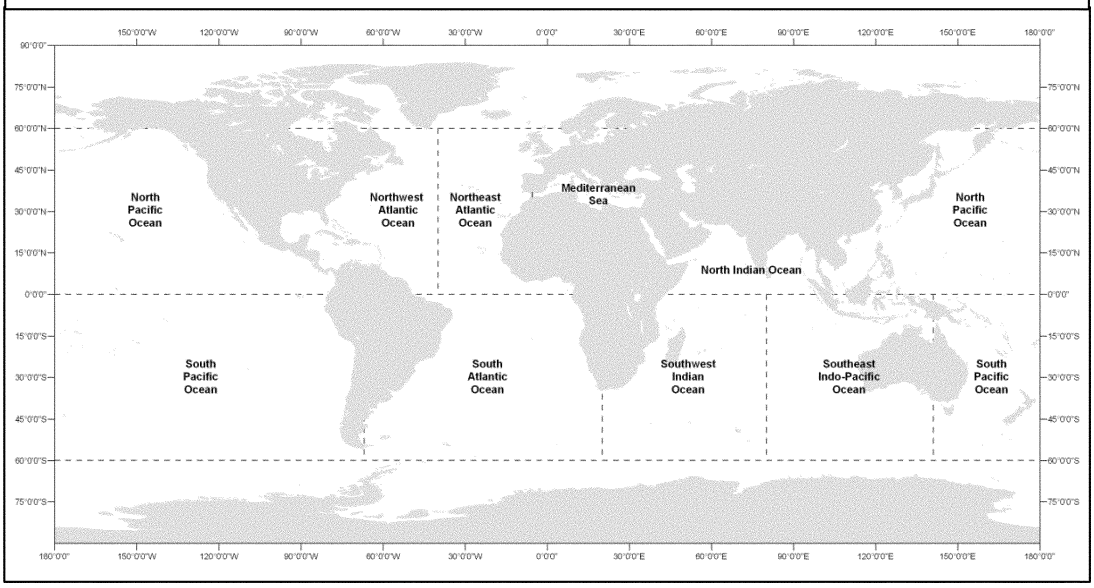
flipper tag returns have shown that nesting females from the Northwest Atlantic return to the same nesting areas; they reveal no evidence of movement of adults south of the equator or east of 40° W. longitude. Similarly, there is no evidence of movement of Northeast Atlantic adults south of the equator, west of 40° W. long., or east of the Strait of Gibraltar, a narrow strait that connects the Atlantic Ocean to the Mediterranean Sea. Also, there is no evidence of movement of adult Mediterranean Sea loggerheads west of the Strait of Gibraltar. With regard to South Atlantic loggerheads, there have been no observations of tagged loggerheads moving across the equator in the Atlantic, except a single case of a captive-reared animal that was released as a juvenile from Espírito Santo and was recaptured 3 years later in the Azores (Bolten *et al.,* 1990). The separation of the Atlantic Ocean/Mediterranean Sea population segments from population segments within the Indian Ocean and Pacific Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003).

Significance Determination

As stated in the preceding section, the BRT identified nine discrete population segments. As described below by ocean basin, the BRT found that each of the nine discrete population segments is biologically and ecologically significant. They each represent a large portion of the species' range, sometimes encompassing an entire hemispheric ocean basin. The range of each discrete population segment occurs within a unique ecosystem that has significantly influenced each population in physiology, morphology, and genetics. The loss of any individual discrete population segment would result in a significant gap in the loggerhead's range. Each discrete population segment is genetically distinct, often identified by unique mtDNA haplotypes, and the BRT suggested that this geographic partitioning of genetic variation could also indicate adaptive differences; the loss of any one discrete population segment would represent a significant loss of genetic diversity. Therefore, the BRT concluded, and we concur, that these nine population segments are both discrete from other conspecific population segments and significant to the species to which they belong, *Caretta caretta.*

The geographic delineations given below for each discrete population segment were determined primarily based on nesting beach locations, genetic evidence, oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution and migrations from satellite telemetry and flipper tagging studies (see Map of Loggerhead Sea Turtle DPS Boundaries). With rare exception, adults from discrete population segments remain within the delineated boundaries. In some cases, juvenile turtles from two or more discrete population segments may mix on foraging areas and, therefore, their distribution and migrations may extend beyond the geographic boundaries delineated below for each discrete population segment (*e.g.,* juvenile turtles from the Northwest Atlantic Ocean, Northeast Atlantic Ocean, and Mediterranean Sea discrete population segments share foraging habitat in the western Mediterranean Sea).

Map of Loggerhead Sea Turtle DPS Boundaries



Pacific Ocean

The BRT considered 60° N. lat. and the equator as the north and south boundaries, respectively, of the North Pacific Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the North Pacific Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs

markedly from other population segments of the species in its genetic characteristics. The North Pacific Ocean population segment encompasses an entire hemispheric ocean basin and its loss would result in a significant gap in the range of the taxon. There is no evidence or reason to believe that female loggerheads from South Pacific nesting beaches would repopulate the North Pacific nesting beaches should those nesting assemblages be lost (Bowen *et al.,* 1994; Bowen, 2003). Tagging studies show that the vast majority of nesting females return to the same nesting area. As summarized by Hatase *et al.* (2002a), of 2,219 tagged nesting females from Japan, only five females were subsequently documented nesting away (between 74 and 630 km) from where they were originally encountered. In addition, flipper tag and satellite telemetry research, as described in detail in the Discreteness Determination section above, has shown no evidence of north-south movement of loggerheads across the equator. This discrete population segment is genetically unique (see Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the North Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S. lat. as the north and south boundaries, respectively, and 67° W. long. and 141° E. long. as the east and west boundaries, respectively, of the South Pacific Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the South Pacific Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The South Pacific Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. The South Pacific Ocean population is the only population of loggerheads found south of the equator in the Pacific Ocean and there is no evidence or reason to believe that female loggerheads from North Pacific nesting beaches would repopulate the South Pacific nesting beaches should those nesting assemblages be lost (Bowen *et al.,* 1994; Bowen, 2003). In addition, flipper tag and satellite telemetry research, as described in detail in the Discreteness Determination section above, has shown no evidence of north-south movement of loggerheads across the equator. The BRT also stated that it does not expect that recolonization from Indian Ocean loggerheads would occur in eastern Australia within ecological time frames. Despite evidence of foraging in the Gulf of Carpentaria by adult loggerheads from the nesting populations in eastern Australia (South Pacific Ocean population segment) and western Australia (Southeast Indo-Pacific Ocean population segment), the nesting females from these two regions are considered to be genetically distinct from one another (Limpus, 2009). In addition to a substantial disparity in mtDNA haplotype frequencies between these two populations, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci between females nesting in these two regions, indicating separation between the South Pacific Ocean and the Southeast Indo-Pacific Ocean population segments. Long-term studies show a high degree of site fidelity by adult females in the South Pacific, with most females returning to the same beach within a nesting season and in successive nesting seasons (Limpus, 1985, 2009; Limpus *et al.,* 1994). This has been documented as characteristic of loggerheads from various rookeries throughout the world (Schroeder *et al.,* 2003). This discrete population segment is genetically unique and the BRT indicated that these unique haplotypes could represent adaptive differences. Thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the South Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

Indian Ocean

The BRT considered 30° N. lat. and the equator as the north and south boundaries, respectively, of the North Indian Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the North Indian Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The North Indian Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct (Bowen *et al.,* 1994), and, based on preliminary results, once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the Western Australia rookeries in the Southeast Indo-Pacific Ocean (P. Dutton, NMFS, unpublished data; N. FitzSimmons, University of Canberra, unpublished data; J. Reece, University of California at Santa Cruz, unpublished data). In addition, oceanographic phenomena associated with Indian Ocean equatorial waters exist between the North Indian Ocean population segment and the two population segments in the South Indian Ocean, which likely prevent migration of individuals across the equator on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the Southwest Indian Ocean or Southeast Indo-Pacific Ocean would repopulate the North Indian Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). Based on this information, the BRT concluded, and we concur, that the North Indian Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S. lat. as the north and south boundaries, respectively, and 20° E. long. at Cape Agulhas on the southern tip of Africa and 80° E. long. as the east and west boundaries, respectively, of the Southwest Indian Ocean population segment based on oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite

telemetry and flipper tagging studies. The BRT determined that the Southwest Indian Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Southwest Indian Ocean population segment encompasses half of a hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct (Bowen *et al.,* 1994), and, based on preliminary results, once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the Western Australia rookeries in the Southeast Indo-Pacific Ocean (P. Dutton, NMFS, unpublished data; N. FitzSimmons, University of Canberra, unpublished data; J. Reece, University of California at Santa Cruz, unpublished data). In addition, biogeographical barriers (*i.e.,* oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between the three Indian Ocean populations that would prevent migration of individuals between populations on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the North Indian Ocean or Southeast Indo-Pacific Ocean would repopulate the Southwest Indian Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence of movement of adult Southwest Indian Ocean loggerheads west of 20° E. long. at Cape Agulhas, the southernmost point on the African continent, or east of 80° E. long. within the Indian Ocean. Based on this information, the BRT concluded, and we concur, that the Southwest Indian Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S. lat. as the north and south boundaries, respectively, and 141° E. long. and 80° E. long. as the east and west boundaries, respectively, of the Southeast Indo-Pacific Ocean population segment based on oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Southeast Indo-Pacific Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Southeast Indo-Pacific Ocean population segment encompasses half of a hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct (Bowen *et al.,* 1994), and, based on preliminary results, once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the Western Australia rookeries in the Southeast Indo-Pacific Ocean (P. Dutton, NMFS, unpublished data; N. FitzSimmons, University of Canberra, unpublished data; J. Reece, University of California at Santa Cruz, unpublished data). In addition, biogeographical barriers (*i.e.,* oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between the three Indian Ocean populations that would likely prevent migration of individuals between populations on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the North Indian Ocean or Southwest Indian Ocean would repopulate the Southeast Indo-Pacific Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence of movement of adult Southeast Indo-Pacific Ocean loggerheads west of 80° E. long. within the Indian Ocean. Despite evidence of foraging in the Gulf of Carpentaria by adult loggerheads from the nesting populations in eastern Australia (South Pacific Ocean population segment) and western Australia (Southeast Indo-Pacific Ocean population segment), the nesting females from these two regions are considered to be genetically distinct from one another (Limpus, 2009). In addition to a substantial disparity in mtDNA haplotype frequencies between these two regions, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci from females nesting in these two regions, indicating separation between the South Pacific Ocean population segment and the Southeast Indo-Pacific Ocean population segment. Based on this information, the BRT concluded, and we concur, that the Southeast Indo-Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, it satisfies the significance element of the DPS policy.

Atlantic Ocean and Mediterranean Sea

The BRT considered 60° N. lat. and the equator as the north and south boundaries, respectively, and 40° W. long. as the eastern boundary of the Northwest Atlantic Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Northwest Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Northwest Atlantic Ocean population segment encompasses half of a hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; Monzón-Argüello *et al.,* 2009, 2010). There is no evidence or reason to believe that female loggerheads from the Northeast Atlantic, Mediterranean Sea, or South Atlantic nesting beaches would repopulate the Northwest Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). Data from satellite telemetry studies and flipper tag returns, as described in detail in the Discreteness Determination section above, have shown that the vast majority of nesting females from the Northwest Atlantic return to the same

nesting area; they reveal no evidence of movement of adults south of the equator or east of 40° W. longitude. This discrete population segment is genetically distinct (see Discreteness Determination section above) possibly indicating adaptive differences as suggested by the BRT; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Northwest Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered 60° N. lat. and the equator as the north and south boundaries, respectively, and 40° W. long. as the west boundary of the Northeast Atlantic Ocean population segment. The BRT considered the boundary between the Northeast Atlantic Ocean and Mediterranean Sea population segments as 5° 36′ W. long. (Strait of Gibraltar). These boundaries are based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Northeast Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Northeast Atlantic Ocean population segment encompasses half of a hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; Monzón-Argüello *et al.,* 2009, 2010). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Mediterranean Sea, or South Atlantic nesting beaches would repopulate the Northeast Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence of movement of Northeast Atlantic adults west of 40° W. long. or, in the vicinity of the Strait of Gibraltar (the boundary between the Northeast Atlantic Ocean and Mediterranean Sea population segments), no evidence of movement east of 5° 36′ W. longitude. This discrete population segment is genetically unique (see Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Northeast Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the Mediterranean Sea west to 5°36′ W. long. (Strait of Gibraltar) as the boundary of the Mediterranean Sea population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Mediterranean Sea discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Mediterranean Sea population segment encompasses the entire Mediterranean Sea basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; Monzón-Argüello *et al.,* 2009, 2010). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Northeast Atlantic, or South Atlantic nesting beaches would repopulate the Mediterranean Sea nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). As previously described, adults from the Mediterranean Sea population segment appear to forage closer to the nesting beaches in the eastern basin, and most flipper tag recoveries from females nesting in Greece have occurred in the Adriatic Sea and off Tunisia (Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004). There is no evidence of movement of adult Mediterranean Sea loggerheads west of the Strait of Gibraltar (5°36′ W. long.). This discrete population segment is genetically unique (see Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Mediterranean Sea population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S. lat. as the north and south boundaries, respectively, and 20° E. long. at Cape Agulhas on the southern tip of Africa and 67° W. long. as the east and west boundaries, respectively, of the South Atlantic Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the South Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The South Atlantic Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; Monzón-Argüello *et al.,* 2009, 2010). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Northeast Atlantic, or Mediterranean Sea nesting beaches would repopulate the South Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). This discrete population segment is genetically unique (see Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the

South Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

In summary, based on the information provided in the Discreteness Determination and Significance Determination sections above, the BRT identified nine loggerhead DPSs distributed globally: (1) North Pacific Ocean DPS, (2) South Pacific Ocean DPS, (3) North Indian Ocean DPS, (4) Southeast Indo-Pacific Ocean DPS, (5) Southwest Indian Ocean DPS, (6) Northwest Atlantic Ocean DPS, (7) Northeast Atlantic Ocean DPS, (8) Mediterranean Sea DPS, and (9) South Atlantic Ocean DPS. We concur with the findings and application of the DPS policy described by the BRT and herein delineate the nine DPSs identified by the BRT as DPSs (*i.e.,* they are discrete and significant).

Significant Portion of the Range

We have determined that the range of each DPS contributes meaningfully to the conservation of the DPS and that populations that may contribute more or less to the conservation of each DPS throughout a portion of its range cannot be identified due to the highly migratory nature of the listed entity.

The loggerhead sea turtle is highly migratory and crosses multiple domestic and international geopolitical boundaries. Depending on the life stage, they may occur in oceanic waters or along the continental shelf of landmasses, or transit back and forth between oceanic and neritic habitats. Protection and management of both the terrestrial and marine environments is essential to recovering the listed entity. Management measures implemented by any State, foreign nation, or political subdivision likely would only affect individual sea turtles during certain stages and seasons of the life cycle. Management measures implemented by any State, foreign nation, or political subdivision may also affect individuals from multiple DPSs because juvenile turtles from disparate DPSs can overlap on foraging grounds or migratory corridors (*e.g.,* Northwest Atlantic, Northeast Atlantic, and Mediterranean Sea DPSs). The term ''significant portion of its range'' is not defined by the statute. For the purposes of this rule, a portion of the species' (species or distinct population segment) range is ''significant'' if its contribution to the viability of the species is so important that without that portion the species would be in danger of extinction. The BRT was unable to identify any particular portion of the range of any of the DPSs that was more significant to the DPS than another portion of the same range because of the species' migratory nature, the varying threats that affect different life stages, and the varying benefits accruing from conservation efforts throughout the geographic range of each DPS. The next section describes our evaluation of the status of each DPS throughout its range.

Status and Trends of the Nine Loggerhead DPSs

Complete population abundance estimates do not exist for the nine DPSs. Within the global range of the species, and within each DPS, the primary data available are collected on nesting beaches, either as counts of nests or counts of nesting females, or a combination of both (either direct or extrapolated). Information on abundance and trends away from the nesting beaches is limited or non-existent, primarily because these data are, relative to nesting beach studies, logistically difficult and expensive to obtain. Therefore, the primary information source for directly evaluating status and trends of the nine DPSs is nesting beach data.

North Pacific Ocean DPS

In the North Pacific, loggerhead nesting is essentially restricted to Japan where monitoring of loggerhead nesting began in the 1950s on some beaches, and expanded to include most known nesting beaches since approximately 1990. Kamezaki *et al.* (2003) reviewed census data collected from most of the Japanese nesting beaches. Although most surveys were initiated in the 1980s and 1990s, some data collection efforts were initiated in the 1950s. Along the Japanese coast, nine major nesting beaches (greater than 100 nests per season) and six ''submajor'' beaches (10–100 nests per season) were identified. Census data from 12 of these 15 beaches provide composite information on longer-term trends in the Japanese nesting assemblage. Using information collected on these beaches, Kamezaki *et al.* (2003) concluded a substantial decline (50–90 percent) in the size of the annual loggerhead nesting population in Japan since the 1950s. Snover (2008) combined nesting data from the Sea Turtle Association of Japan and data from Kamezaki *et al.* (2002) to analyze an 18-year time series of nesting data from 1990–2007. Nesting declined from an initial peak of approximately 6,638 nests in 1990–1991, followed by a steep decline to a low of 2,064 nests in 1997. During the past decade, nesting increased gradually to 5,167 nests in 2005, declined and then rose again to a high of just under 11,000 nests in 2008. Estimated nest numbers for 2009 were on the order of 7,000–8,000 nests. While nesting numbers have gradually increased in recent years and the number for 2009 was similar to the start of the time series in 1990, historical evidence from Kamouda Beach (census data dates back to the 1950s) indicates that there has been a substantial decline over the last half of the 20th century (Kamezaki *et al.,* 2003) and that current nesting represents a fraction of historical nesting levels.

South Pacific Ocean DPS

In the South Pacific, loggerhead nesting is almost entirely restricted to eastern Australia (primarily Queensland) and New Caledonia, and the population has been well studied. The size of the annual breeding population (females only) has been monitored at numerous rookeries in Australia since 1968 (Limpus and Limpus, 2003a), and these data constitute the primary measure of the current status of the DPS. The total nesting population for Queensland was approximately 3,500 females in the 1976–1977 nesting season (Limpus, 1985; Limpus and Reimer, 1994). Little more than two decades later, Limpus and Limpus (2003a) estimated this nesting population at less than 500 females in the 1999–2000 nesting season. There has been a marked decline in the number of females breeding annually since the mid-1970s, with an estimated 50 to 80 percent decline in the number of breeding females at various Australian rookeries up to 1990 (Limpus and Reimer, 1994) and a decline of approximately 86 percent from 1976–1999 (Limpus and Limpus, 2003a). However, since 2000, this long-term decline in the number of nesting females has reversed with increasing numbers of nesting females observed from 2000–2009 (Limpus, in press). More recent data for Mon Repos have shown increased nesting; 2009 nesting numbers were similar to nesting numbers recorded in the 1990s (M. Hamann, James Cook University, personal communication, 2010). However, comparable nesting surveys have not been conducted in New Caledonia. Information from a pilot study conducted in 2005 combined with oral history information collected suggest that there has been a decline in loggerhead nesting over recent decades (Limpus *et al.,* 2006). Based on data from the pilot study, only 60 to 70 loggerheads nested on the four surveyed New Caledonia beaches during the

2004–2005 nesting season (Limpus *et al.,* 2006).

Studies of eastern Australia loggerheads at their foraging areas provide some information on the status of non-breeding loggerheads of the South Pacific Ocean DPS. Chaloupka and Limpus (2001) determined that the resident loggerhead population on coral reefs of the southern Great Barrier Reef declined at 3 percent per year from 1985 to the late 1990s. The observed decline occurred in spite of constant high annual survivorship measured at this foraging habitat and was hypothesized to result from recruitment failure from fox predation of eggs at mainland rookeries during the 1960s and pelagic juvenile mortality from incidental capture in longline fisheries since the 1970s (Chaloupka and Limpus, 2001). Concurrently, a decline in new recruits was measured in these foraging areas (Limpus and Limpus, 2003a).

North Indian Ocean DPS

The North Indian Ocean hosts the largest nesting assemblage of loggerheads in the eastern hemisphere; the vast majority of these loggerheads nest in Oman (Baldwin *et al.,* 2003). Nesting occurs in greatest density on Masirah Island; the number of emergences ranges from 27–102 per km nightly (Ross, 1998). Nesting densities have complicated the implementation of standardized nesting beach surveys, and more precise nesting data have only been collected since 2008. Extrapolations resulting from partial surveys and tagging in 1977–1978 provided broad estimates of 19,000 to 60,000 females nesting annually at Masirah Island in 1977 and 28,000 to 35,000 in 1978. A more recent partial survey in 1991 provided an estimate of 23,000 nesting females at Masirah Island (Ross, 1979, 1998; Ross and Barwani, 1982; Baldwin, 1992). A reinterpretation of the 1977–1978 estimates, assuming 50 percent nesting success (as compared to 100 percent in the original estimates), resulted in an estimate of 20,000 to 40,000 females nesting annually (Baldwin *et al.,* 2003). Reliable trends in nesting cannot be determined due to the lack of standardized surveys at Masirah Island prior to 2008. From 2008 through 2010, approximately 50,000, 67,600, and 62,400 nests, respectively, were estimated annually based on standardized daily surveys of the highest density nesting beaches and weekly surveys on all remaining island nesting beaches. Using an estimated clutch frequency of five nests per nesting female this would convert to 10,000, 13,520, and 12,480 nesting females annually (Conant *et al.,* 2009). Even using the low end of the 1977–1978 estimates of 20,000 nesting females at Masirah, this suggests a significant decline in the size of the nesting population and is consistent with observations by long-term resident rangers that the population has declined substantially in the last three decades (E. Possardt, USFWS, personal communication, 2008).

In addition to the nesting beaches on Masirah Island, over 3,000 nests per year have been recorded in Oman on the Al-Halaniyat Islands and, along the Oman mainland of the Arabian Sea, approximately 2,000 nests are deposited annually (Salm, 1991; Salm *et al.,* 1993). In Yemen, on Socotra Island, 50–100 loggerheads were estimated to have nested in 1999 (Pilcher and Saad, 2000). A time series of nesting data based on standardized surveys is not available to determine trends for these nesting sites.

Loggerhead nesting is rare elsewhere in the northern Indian Ocean and in some cases is complicated by inaccurate species identification (Shanker, 2004; Tripathy, 2005). A small number of nesting females use the beaches of Sri Lanka every year; however, there are no records to suggest that Sri Lanka has ever been a major nesting area for loggerheads (Kapurusinghe, 2006). Loggerheads have been reported nesting in low numbers in Myanmar; however, these data may not be reliable because of misidentification of species (Thorbjarnarson *et al.,* 2000).

Southeast Indo-Pacific Ocean DPS

In the eastern Indian Ocean, loggerhead nesting is restricted to Western Australia (Dodd, 1988), and this nesting population is the largest in Australia (Wirsing *et al.,* unpublished data, cited in Natural Heritage Trust, 2005; Limpus, 2009).

Dirk Hartog Island hosts about 70–75 percent of nesting individuals in the eastern Indian Ocean (Baldwin *et al.,* 2003). Surveys were conducted on the island for the duration of six nesting seasons between 1993/1994 and 1999/2000 (Baldwin *et al.,* 2003) and continued until 2009 during which time 800–1,500 loggerheads were estimated to nest annually on Dirk Hartog Island beaches (Baldwin *et al.,* 2003).

Fewer loggerheads (approximately 150–350 per season) are reported nesting on the Muiron Islands; however, more nesting loggerheads are reported here than on North West Cape (approximately 50–150 per season) (Baldwin *et al.,* 2003). Although data are insufficient to determine trends, historical information suggests the nesting population in the Muiron Islands and North West Cape region was likely reduced from historical numbers, before recent beach monitoring programs began, as a result of bycatch in commercial fisheries (Nishemura and Nakahigashi, 1990; Poiner *et al.,* 1990; Poiner and Harris, 1996).

Southwest Indian Ocean DPS

In the Southwest Indian Ocean, the highest concentration of nesting occurs on the coast of Tongaland, South Africa, where surveys and management practices were instituted in 1963 (Baldwin *et al.,* 2003). A trend analysis of index nesting beach data from this region from 1965 to 2008 indicates an increasing nesting population between the first decade of surveys, which documented 500–800 nests annually, and the last 8 years, which documented 1,100–1,500 nests annually (Nel, 2008). These data represent approximately 50 percent of all nesting within South Africa and are believed to be representative of trends in the region. Loggerhead nesting occurs elsewhere in South Africa, but sampling is not consistent and no trend data are available. The total number of females nesting annually in South Africa is estimated between 500–2,000 turtles (Baldwin *et al.,* 2003). In Mozambique, surveys have been instituted much more recently; likely less than 200 females nest annually and no trend data are available (Baldwin *et al.,* 2003; Louro *et al.,* 2006; Videira *et al.,* 2008, 2010; Pereira *et al.,* 2009). Similarly, in Madagascar, loggerheads have been documented nesting in low numbers, but no trend data are available (Rakotonirina, 2001).

Northwest Atlantic Ocean DPS

Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, and The Bahamas, but is concentrated in the southeastern U.S. and on the Yucatan Peninsula in Mexico (Sternberg, 1981; Ehrhart, 1989; Ehrhart *et al.,* 2003; NMFS and USFWS, 2008). Collectively, the Northwest Atlantic Ocean hosts the most significant nesting assemblage of loggerheads in the western hemisphere and is one of the two largest loggerhead nesting assemblages in the world. NMFS and USFWS (2008), Witherington *et al.* (2009), and TEWG (2009) provide comprehensive analyses of the status of the nesting assemblages within the Northwest Atlantic Ocean DPS using standardized data collected over survey periods ranging from 10 to 23 years. The results of these analyses, using different analytical approaches, were consistent in their findings—there had been a significant, overall nesting decline

within this DPS. However, with the addition of nesting data from 2008 through 2010, which was not available at the time those analyses were conducted, the final result for the trend line changes. Nesting in 2008 showed a substantial increase compared to the low of 2007, and nesting in 2010 reached the highest level seen since 2000 (Florida Fish and Wildlife Conservation Commission Core Index Nesting Beach Database). The most current nesting trend for the Northwest Atlantic Ocean DPS, from 1989–2010, is very slightly negative, but the rate of decline is not statistically different from zero. Additionally, the range from the statistical analysis of the nesting trend includes both negative and positive growth (NMFS, unpublished data).

NMFS and USFWS (2008) identified five recovery units (nesting subpopulations) in the Northwest Atlantic Ocean: The Northern (Florida/Georgia border to southern Virginia); Peninsular Florida (Florida/Georgia border south through Pinellas County, excluding the islands west of Key West, Florida); Dry Tortugas (islands west of Key West, Florida); Northern Gulf of Mexico (Franklin County, Florida, west through Texas); and Greater Caribbean (Mexico through French Guiana, The Bahamas, Lesser and Greater Antilles). At that time, declining trends in the annual number of nests were documented for all recovery units for which there were an adequate time series of nesting data.

The Peninsular Florida Recovery Unit represents approximately 87 percent of all nesting effort in the Northwest Atlantic Ocean DPS (Ehrhart *et al.,* 2003). A significant declining trend had been documented for the Peninsular Florida Recovery Unit, where nesting declined 26 percent over the 20-year period from 1989–2008, and declined 41 percent over the period 1998–2008 (NMFS and USFWS, 2008; Witherington *et al.,* 2009). As explained previously, with the addition of nesting data through 2010, the nesting trend for the Peninsular Florida Recovery Unit, and the Northwest Atlantic Ocean DPS, does not show a nesting decline statistically different from zero. The Northern Recovery Unit is the second largest recovery unit within the DPS and was declining significantly at 1.3 percent annually from 1983 to 2007 (NMFS and USFWS, 2008). Currently, nesting for that recovery unit is showing possible signs of stabilizing. In 2008, nesting in Georgia reached what was a new record at that time (1,646 nests), with a downturn in 2009, followed by yet another record in 2010 (1,760 nests). South Carolina had the two highest years of nesting in the 2000s in 2009 (2,183 nests) and 2010 (3,141 nests). The previous high for that 11-year span was 1,433 nests in 2003. North Carolina had 847 nests in 2010, which is above the average of 715. The Georgia, South Carolina, and North Carolina nesting data come from the *seaturtle.org* Sea Turtle Nest Monitoring System which is populated with data input by the State agencies. The Greater Caribbean Recovery Unit is the third largest recovery unit within the Northwest Atlantic Ocean DPS, with the majority of nesting at Quintana Roo, Mexico. TEWG (2009) reported a greater than 5 percent annual decline in loggerhead nesting from 1995–2006 at Quintana Roo. When nest counts up through 2010 are analyzed, however, the nesting trends from 1989 through 2010 are not significantly different from zero for all of the recovery units within the Northwest Atlantic Ocean DPS for which there are enough data to analyze (NMFS, unpublished data).

In an effort to evaluate loggerhead population status and trends beyond the nesting beach, NMFS and USFWS (2008) and TEWG (2009) reviewed data from in-water studies within the range of the Northwest Atlantic Ocean DPS. NMFS and USFWS (2008), in the Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle, summarized population trend data reported from nine in-water study sites where loggerheads were regularly captured and where efforts were made to provide local indices of abundance. These sites were located from Long Island Sound, New York, to Florida Bay, Florida. The study periods for these nine sites varied. The earliest began in 1987, and the most recent were initiated in 2000. Results reported from four of the studies indicated no discernible trend, two studies reported declining trends, and two studies reported increasing trends. Trends at one study site, Mosquito Lagoon, Florida, indicated either a declining trend (all data, 1977–2005) or no trend (more recent data, 1995–2005), depending on whether all sample years were used or only the more recent, and likely more comparable sample years, were used. TEWG (2009) used raw data from six of the aforementioned nine in-water study sites to conduct trend analyses. Results from three of the four sites located in the southeastern United States showed an increasing trend in the abundance of loggerheads, one showed no discernible trend, and the two sites located in the northeastern United States showed a decreasing trend in abundance of loggerheads.

Crouse *et al.* (1987) and Crowder *et al.* (1994) presented models, using data available from what is now the Northwest Atlantic Ocean DPS, suggesting that adults (males and females) are approximately 0.3 percent of the total population. These models assume that the population is density independent and growing exponentially; however, in the case of sea turtles, it is unlikely that either of these assumptions is met. The most recent point estimate of the number of adult females in the Northwest Atlantic Ocean DPS is 30,000 (Southeast Fisheries Science Center, 2009); assuming a 1:1 adult sex ratio results in 60,000 adults. If those individuals represent 0.3 percent of the total population size, then the total population size would be on the order of 20 million individuals. The vast majority of these individuals would be in the youngest life stages, where natural mortality is very high. This is the life history strategy of sea turtles; many individuals must be produced to contribute to the breeding population and to keep the population from declining. The most important point to understand regarding these models and subsequent calculations is that their main assumptions—the population has a stable age distribution, anthropogenic mortality is constant, sex ratios are equal, and the environment is constant—are likely not met.

A recent aerial survey from Cape Canaveral, Florida, to the mouth of the Gulf of St. Lawrence provided insight into loggerhead abundance in continental shelf waters of the U.S. Atlantic coast. In a preliminary report (Northeast Fisheries Science Center, 2011), the most conservative estimate, in which only sightings that were positively identified as loggerhead sea turtles were used, was that about 588,000 juvenile and adult loggerheads were present in the survey area (approximate inter-quartile range of 382,000–817,000 individuals). When a portion of the unidentified turtles were assigned as loggerheads, the estimate increased to 801,000 individuals (inter-quartile range of 521,000–1,111,000). The survey effort did not encompass waters south of Cape Canaveral on the Atlantic Coast or in the Gulf of Mexico (Northeast Fisheries Science Center, 2011).

Northeast Atlantic Ocean DPS

In the northeastern Atlantic, the Cape Verde Islands support the only large nesting population of loggerheads in the region (Fretey, 2001). Nesting occurs at some level on most of the islands in the archipelago with the largest nesting

numbers reported from the island of Boa Vista where studies have been ongoing since 1998 (Lazar and Holcer, 1998; López-Jurado *et al.,* 2000; Fretey, 2001; Varo Cruz *et al.,* 2007; Loureiro, 2008; M. Tiwari, NMFS, personal communication, 2008). On Boa Vista Island, 833 and 1,917 nests were reported in 2001 and 2002 respectively from 3.1 km of beach (Varo Cruz *et al.,* 2007) and between 1998 and 2002 the local project had tagged 2,856 females (Varo Cruz *et al.,* 2007). In 2005, 5,396 nests and 3,121 females were reported from 9 km of beach on Boa Vista Island (López-Jurado *et al.,* 2007). More recently, 12,028 nests in 2008, 20,102 nests in 2009, and 9,174 nests in 2010 were reported from approximately 68 km of beach on Boa Vista Island (Cabo Verde Natura 2000, 2010). On Sal Island, 344 nests were reported in 2008, 1,037 nests in 2009, and 566 nests in 2010 (SOS Tartarugas, 2009; J. Cozens, SOS Tartarugas, personal communication, 2011). From Santiago Island, 66 nests were reported from four beaches in 2007 and 53 nests from five beaches in 2008 (*http://tartarugascaboverde.wordpress.com/santiago*). Due to limited data available, a population trend cannot currently be determined for the Cape Verde population; however, available information on the directed killing of nesting females suggests that this nesting population is under severe pressure and likely significantly reduced from historical levels (Marco *et al.,* 2010). Loureiro (2008) reported a reduction in nesting from historical levels at Santiago Island, based on interviews with elders. Elsewhere in the northeastern Atlantic, loggerhead nesting is non-existent or occurs at very low levels. In Morocco, anecdotal reports indicated high numbers of nesting turtles in southern Morocco (Pasteur and Bons, 1960), but a few recent surveys of the Atlantic coastline have suggested a dramatic decline (Tiwari *et al.,* 2001, 2006). A few nests have been reported from Mauritania (Arvy *et al.,* 2000) and Sierra Leone (E. Aruna, Conservation Society of Sierra Leone, personal communication, 2008). Some loggerhead nesting in Senegal and elsewhere along the coast of West Africa has been reported; however, a more recent and reliable confirmation is needed (Fretey, 2001).

Mediterranean Sea DPS

Nesting occurs throughout the central and eastern Mediterranean in Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, Egypt, Libya, and Tunisia (Sternberg, 1981; Margaritoulis *et al.,* 2003; SWOT, 2007; Casale and Margaritoulis, 2010). In addition, sporadic nesting has been reported from the western Mediterranean (Spain and France), but the vast majority of nesting occurs in Greece and Turkey (Margaritoulis *et al.,* 2003). The documented annual nesting of loggerheads in the Mediterranean averages over 7,200 nests (Casale and Margaritoulis, 2010). There has been no discernible trend in nesting reported for the two longest monitoring projects in Greece, Laganas Bay (Margaritoulis, 2005) and southern Kyparissia Bay (Margaritoulis and Rees, 2001). However, the nesting trend at Rethymno Beach, which hosts approximately 7 percent of all documented loggerhead nesting in the Mediterranean, showed a highly significant declining trend from 1990 through 2004 (Margaritoulis *et al.,* 2009). In Turkey, intermittent nesting surveys have been conducted since the 1970s with more consistent surveys conducted on some beaches only since the 1990s, making it difficult to assess trends in nesting. Ilgaz *et al.* (2007) reported a declining trend at Fethiye Beach from 1993–2004, this beach represents approximately 10 percent of loggerhead nesting in Turkey (Margaritoulis *et al.,* 2003).

South Atlantic Ocean DPS

In the South Atlantic, nesting occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro, with peak concentrations in northern Bahia, Espírito Santo, and northern Rio de Janeiro with peak nesting along the coast of Bahia (Marcovaldi and Chaloupka, 2007). Prior to 1980, loggerhead nesting populations in Brazil were considered severely depleted. Recently, Marcovaldi and Chaloupka (2007) reported a long-term, sustained increasing trend in nesting abundance over a 16-year period from 1988 through 2003 on 22 surveyed beaches containing more than 75 percent of all loggerhead nesting in Brazil. A total of 4,837 nests were reported from these survey beaches for the 2003–2004 nesting season (Marcovaldi and Chaloupka, 2007). Loggerhead nesting has continued to increase with approximately 6,800 nests recorded during the 2008–2009 nesting season (dos Santos *et al.,* 2011).

Summary of Comments

With the publication of the proposed listing determination for the nine loggerhead sea turtle DPSs on March 16, 2010 (75 FR 12598), we announced a 90-day comment period extending through June 14, 2010. On June 2, 2010 (75 FR 30769), we extended the public comment period for an additional 90 days through September 13, 2010, and announced our intention to hold a public hearing to provide an additional opportunity and format to receive public input. The public hearing was held in Berlin, Maryland, on June 16, 2010. On March 22, 2011 (76 FR 15932), we published in the **Federal Register** a notice announcing a 6-month extension of the deadline for a final listing decision to address substantial disagreement that existed on the interpretation of data related to the status and trends for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and its relevance to the assessment of risk of extinction. At this time, we announced an additional 20-day comment period for new information or analyses from the public that would help clarify this issue.

A joint NMFS/USFWS policy requires us to solicit independent expert review from at least three qualified specialists, concurrent with the public comment period (59 FR 34270; July 1, 1994). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities, and applies to information disseminated on or after June 16, 2005. We solicited technical review of the proposed listing determination from six independent experts, and received reviews from all six of these experts. The independent expert review under the joint NMFS/USFWS peer review policy collectively satisfies the requirements of the OMB Peer Review Bulletin and the joint NMFS/USFWS peer review policy. The peer reviewers provided additional information, clarifications, suggestions, and editorial comments to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into this final rule as appropriate.

The Services received over 109,000 public comments on the proposed rule, of which over 104,000 were form letters sent as part of comment campaigns from environmental organizations. Approximately 5,000 unique individual comments received were generally supportive of the proposed rule. Comments were received from interested individuals, State and Federal agencies, fishing groups, environmental

organizations, industry groups, and peer reviewers with scientific expertise.

The Services received many comments outside the scope of this rulemaking. These included comments on agency guidance on listing species, prohibitions on take, exceptions to the ESA prohibition on take (*e.g.,* incidental take permits under section 10, incidental take statements under section 7), the difference between ''take'' as defined by the ESA and mortality, actions that may be taken as a result of changes to the ESA listing for loggerheads, management measures implemented via subsequent rulemakings, the findings of a National Research Council report on the assessment of sea turtle status and trends, and implementation of recovery plans. We do not respond to these comments in this final rule.

The summary of comments and our responses below are organized into six general categories: (1) Peer review comments; (2) comments on the identification of DPSs; (3) comments on the identification and consideration of specific threats; (4) comments on the status and trends and extinction risk assessments of the DPSs; (5) comments on the status determinations for the DPSs; and (6) other comments.

Peer Review Comments

Comment 1: Two of the six peer reviewers requested clearer definitions for Endangered Species Act terminology used in the proposed rule. For instance, the proposed rule stated ''The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range * * *'' These two reviewers asked about the time frame for ''in danger of extinction'' and whether the term extinction is referring to quasi-extinction or absolute extinction. One of these reviewers also asked what is meant by a ''significant portion of its range'' and ''foreseeable future.''

Response: The ESA defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The legislative history of the ESA indicates Congress did not provide any quantitative measures for the Services to apply when determining whether a species is ''in danger of extinction.'' Rather, it left to the discretion of the Services the task of giving meaning to the terms through the process of case-specific analyses that necessarily depend on the Services' expertise to make the highly fact-specific decisions to list species as endangered or threatened. Although Congress did not seek to make any single factor controlling when drawing the distinction, Congress acknowledged that ''there is a temporal element to the distinction between the categories.'' *In Re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation,* Slip Opinion at 40 n. 24, 51, 51 n. 27. (D.D.C. June 30, 2011). Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently at risk of extinction. A ''threatened species,'' on the other hand, is not currently at risk of extinction, but is likely to become so. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened).

The term ''significant portion of its range'' is not defined by the statute. For the purposes of this rule, a portion of the species' (species, subspecies, or distinct population segment) range is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction. The definition of a ''threatened species'' is a species that is ''likely to become an endangered species within the foreseeable future.'' USFWS uses the term foreseeable future as interpreted by the U.S. Department of the Interior Office of the Solicitor (Bernhardt, 2009): ''In summary, the foreseeable future describes the extent to which the Secretary (of Interior) can, in making determinations about the future conservation status of the species, reasonably rely on predictions about the future. Those predictions can be in the form of extrapolation of population or threat trends, analysis of how threats will affect the status of the species, or events that will have a significant new impact on the species. The Secretary's ability to rely on predictions may significantly vary with the amount and substance of available data.''

Comment 2: Three of the six peer reviewers agreed with the designation of the nine proposed DPSs. Two reviewers agreed with eight of the proposed DPSs, but disagreed with the proposed North Indian Ocean DPS and questioned the rationale for not breaking out this DPS into East and West components. One reviewer felt that the separation of the Indian Ocean into three DPSs was not sufficiently explained. Another reviewer found the evidence compelling to conclude that the North Pacific Ocean, South Pacific Ocean, and South Atlantic Ocean DPSs were discrete. However, he had questions about the discreteness of the Indian Ocean DPSs, and the northern Atlantic Ocean and Mediterranean Sea DPSs. While he did not question the discreteness findings of these DPSs, the full argument was not clear to him.

Response: Insufficient information was available to further separate the North Indian Ocean DPS into east and west segments. As for the comments indicating that sufficient information was not provided to justify the separation of some of the DPSs, the Services believe the information provided in the Discreteness Determination section of this final rule and the Discreteness Determination section of the Status Review (Conant *et al.,* 2009), which is incorporated into this final rule by reference, meets agency policy for identifying DPSs.

Comment 3: In most cases, the peer reviewers either agreed with or did not oppose the proposed listing status for the nine DPSs. However, one reviewer stated that while he does not oppose the proposed status for any of the DPSs, he does not believe the proposed status for each DPS was adequately explained or justified. Another reviewer expressed similar concerns for the North Pacific Ocean DPS, South Pacific Ocean DPS, North Indian Ocean DPS, Southeast Indo-Pacific Ocean DPS, and the Northwest Atlantic Ocean DPS and stated that the status determinations needed to be more explicitly justified. One reviewer expressed concern about the restricted use of nesting data for the South Pacific Ocean DPS up until 1999 only and indicated that more recent data should be used. This reviewer indicated that the more recent data for Mon Repos, for example, have shown increased nesting with 2009 nesting levels back up to similar numbers as seen in the 1990s. Two reviewers did not believe sufficient data were presented to justify listing of the North Indian Ocean DPS as endangered, particularly in light of the large size of the nesting population, although one of them indicated he did not feel strongly about this. These same two reviewers also questioned the proposed endangered status for the Southeast Indo-Pacific Ocean DPS because the nesting population is protected, trends have been stable, and there do not appear to be major sources of mortality; however, one of the two reviewers indicated he did not feel strongly about this.

Response: With regard to the North Indian Ocean DPS, threats are substantial as identified in the five-factor review, and conservation efforts are embryonic relative to the known and suspected threats impacting the population. Given the information suggesting declines in the nesting population, the emergence of gillnet fisheries in close proximity to the nesting beaches, and the embryonic stage of conservation efforts in the region, the Services believe an endangered status is justified. In the case of the Southeast Indo-Pacific Ocean DPS, the nesting survey effort and methods have varied over the last 2 decades and currently there are no nesting population estimates available to suggest any positive trend in nesting populations. However, some of the fisheries bycatch impacts have been resolved through requirement of turtle excluder devices (TEDs) in shrimp trawlers, and longline fishery effort has declined due to fish stock decreases and economic reasons. Although a new fisheries effort has emerged for portunid crabs and is posing new threats to loggerheads, and longline fishing effort for tuna and billfish is also subject to increase if and when economics and fish populations improve, we are unable to quantify these threats. As a result, based primarily on peer reviewer comments regarding current threats and conservation efforts, the Services now believe a threatened status for the Southeast Indo-Pacific Ocean DPS is appropriate. With regard to the comment that the status determinations for several of the DPSs lacked sufficient justification, we have clarified the rationale for the status determinations in the Finding section in this final rule.

Comment 4: One peer reviewer commented that the information presented in the proposed rule appeared thorough, up-to-date, and convincing for the conclusions made, both with respect to DPS designation and listing status. However, he noted the Services could have readily arrived at these conclusions without the use of either the susceptibility to quasi-extinction (SQE) or the threat matrix analysis. He also noted that the relative novelty and thin track records of both methods may draw criticism that distracts from the real substance of the analysis of the available data. Another reviewer noted weaknesses with the extinction risk assessments, but was pleased to see these quantitative risk assessments included in the proposed rule and appreciated that they were considered hand-in-hand with the threats analysis. Specifically, he stated that the SQE approach looked at the risk of declining to 30 percent of the current population size, but it was not clear over what time frame this decline was examined or what risk of decline warranted listing. He also noted that the SQE method was largely retrospective, as it used past empirical trends to forecast future trends. He thought the matrix method was better at exploring the potential risk posed by future trends, so it was more forward-looking than the SQE method, but it only looked at deterministic risk, not stochastic risk. A third reviewer agreed with the threat based assessments, but he thought details were lacking in the SQE analysis. Specifically, he thought there should be more emphasis on the relationship between reduced population sizes and decreased resilience to cope with current and future impacts and felt this to be particularly relevant given the large time frames for maturity and the large spatial scales involved.

Response: The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were based on an assessment of population sizes and trends, current and anticipated threats (*i.e.,* five-factor analysis), and conservation efforts for each DPS.

Comment 5: One peer reviewer stated that the threats assessments were not as future-focused as he would have liked. He thought they tended to rely on current or past status and trends, but he believes the ESA is forward-looking and is concerned about the future status of the species. He recognized that some evidence was presented about future trends, such as development pressures on beaches in various areas of the world, progress toward enforcing existing legislation, reduction of bycatch, and potential climate change impacts, but he still thought the final assessments could be more future-focused.

Response: Section 4 of the ESA and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. The Services are required to use the best scientific and commercial information available at the time we are making our listing assessments. Thus, predicting potential future threats to a species is dependent on available data and the life history and ecology of the species, the nature of the threats, and the species' response to those threats. While the SQE analysis relied on nesting beach surveys and is retrospective, the threat matrix analyses look at the potential future directions given the known threats and loggerhead sea turtle biology. Although the SQE and threat matrix analyses provided some additional insights into the status of the nine DPSs, ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

Comment 6: One peer reviewer said that for some populations (*e.g.,* Northwest Atlantic Ocean DPS) there has been a great deal of study over the past few decades and there is a lot of information about many aspects of the life history of the population and its anthropogenic threats. For other populations, there are little data. As a result he was unclear how the quality of the empirical evidence affected the risk assessment and the status classification under the ESA. He questioned whether a more precautionary interpretation of the risk was taken when there was greater uncertainty or whether the greater amount of evidence in some places actually made it easier.

Response: We are to make status determinations based solely on the best available scientific and commercial data after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species. In assessing the status of each identified DPS, we considered available information on status and trends, the five-factor analysis (see Summary of Factors Affecting the Nine Loggerhead DPSs section), and conservation efforts that have been implemented (see Conservation Efforts section). We considered this information in light of the ESA definitions of endangered and threatened (see Listing Determinations Under the ESA section).

Comment 7: One peer reviewer commented that the boundary of 139° E. long. in the Gulf of Carpentaria separating the South Pacific Ocean DPS and the Southeast Indo-Pacific Ocean DPS was too far west. He stated that satellite tracking showed a female from Western Australia moving into 141° E. long. and indicated there are reasonable numbers of loggerheads foraging in the Torres Strait for which genetic analyses have not yet been conducted.

Response: Based on the information provided by this peer reviewer, the

Services have revised the boundary separating the South Pacific Ocean DPS and the Southeast Indo-Pacific Ocean DPS from 139° E. long. to 141° E. longitude.

Comments on the Identification of DPSs

Comment 8: Two commenters questioned the Services' application of the DPS policy. They noted that DPS designations should be used sparingly and only when biological evidence indicates that such action is warranted to meet Congressional intent. They stated that the separation must be marked, and DPS designations are only appropriate where scientific evidence is conclusive to justify such listing.

Response: The Services acknowledge in the Policies for Delineating Species Under the ESA section of this final rule that Congress has instructed the Secretaries of the Interior and Commerce to exercise the authority to designate DPSs ''* * * sparingly and only when the biological evidence indicates such action is warranted.'' As a result, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. This policy, described in the Policies for Delineating Species Under the ESA section, has been closely followed in determining loggerhead DPSs, and the Services believe it meets the Congressional intent.

Comment 9: One commenter did not believe additional benefits to the populations would occur if DPSs were designated (*e.g.,* threatened turtles are already treated the same as endangered turtles under a 4(d) rule, critical habitat can be designated, and section 7 of the ESA applies). Another commenter believes the United States will diminish its role in international sea turtle conservation by only having an interest in the two DPSs (Northwest Atlantic Ocean and North Pacific Ocean) that occur in the United States.

Response: The Services were petitioned to list the Northwest Atlantic and North Pacific loggerhead sea turtle populations as DPSs and to change the listing status of turtles in those populations from threatened to endangered. The Services do not believe that identifying DPSs for the loggerhead will diminish the United States' role in international sea turtle conservation. Both Services have strong international programs for sea turtles, including implementation of the U.S. Marine Turtle Conservation Act of 2004, which was created to assist in the conservation of sea turtles and their nesting habitats in foreign countries.

Comment 10: The State of Florida supports the identification of nine DPSs. The States of Georgia and South Carolina support the designation of the Northwest Atlantic DPS. The State of Connecticut believes the listing of nine loggerhead DPSs is reasonable and will result in better targeted conservation for this species. The State of Maryland believes it is premature to consider listing DPSs without full disclosure of loggerhead population status. Numerous conservation organizations and individuals, including all the individuals that sent form letters, support designation of the nine proposed DPSs. Three fishing groups do not support the identification of loggerhead DPSs.

Response: The Services have considered the best available information on loggerhead population status and have summarized this information in the Status and Trends of the Nine Loggerhead DPSs section of this final rule.

Comment 11: The State of Alaska provided information that only two loggerheads have been observed in Alaska in the past 50 years and requested that Alaska waters be excluded from the North Pacific Ocean DPS.

Response: While the ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS of a vertebrate species, it does not authorize the exclusion of a subset or portion of a listed species, subspecies, or DPS from a listing decision. Although only two observations of loggerheads in Alaska waters have been reported, this indicates the species does at least occasionally occur there.

Comment 12: One commenter contended that the Services failed to conduct analyses (*e.g.,* statistical analysis, gene flow, extent of DNA allele and haplotype differences, degree of DNA sequence divergence for mtDNA or nuclear DNA) necessary to determine if the data support a conclusion of marked separation with respect to genetics. The commenter noted that the proposed rule stated that it relied on genetic differences characterized by allele frequency differences rather than fixed genetic differences.

Response: The Services conducted a thorough review of the best available science and presented and discussed the body of published genetic studies in the scientific literature, including statistical analysis, gene flow, extent of DNA allele and haplotype differences, and degree of DNA sequence divergence for mtDNA and nuclear DNA. All of these studies consistently show evidence of deep evolutionary divergence between the proposed DPSs. Several of the DPSs are characterized by fixed genetic differences or endemic mtDNA haplotypes; however, fixation is not a requirement for marked genetic separation.

Comment 13: One commenter disagreed with the Services' determination that physical factors separate DPSs in different ocean basins, and further disagreed that water temperatures are a sufficient barrier to prevent turtles from moving between ocean basins. The commenter noted that dispersal from the Indian Ocean to the South Atlantic is possible via the Agulhas current and cited Bowen and Karl (2007), which documented at least two such transfers. The commenter disagreed with the rationale for dividing the Atlantic basin into North and South because a DNA haplotype unique to the Brazilian nesting assemblage has been found in foraging juveniles in the North Atlantic, therefore contradicting that loggerheads in the North and South Atlantic are isolated from each other. The commenter also believes that loggerheads from the North Pacific and South Pacific mix during their trans-Pacific migrations, which results in gene flow across the equator. The commenter cited information presented in Hatase *et al.* (2002a) that the Australian haplotype (South Pacific Ocean DPS) was present in loggerheads nesting in Japan (North Pacific Ocean DPS) and in Bowen and Karl (2007) that turtles caught off Baja California have 5 percent of the Australian haplotype.

Response: There is substantial genetic evidence that is consistent with satellite telemetry and other lines of evidence to support the division between Ocean basins and between the North and South Atlantic and Pacific Oceans. The Services present a review of the available science and discuss the rationale in detail for each DPS, which are based on distribution of breeding populations (rookeries). The Services note that the distribution of and migration of juveniles may extend beyond the geographic boundaries of each DPS and that juveniles from different DPSs may share oceanic foraging habitat. The dispersal (in terms of expansion/exchange and establishment of breeding populations) between the Atlantic and Indian Oceans referred to by the commenter occurred on geological timescales, most recently during the Pleistocene 12,000–250,000 years ago. The separation between the North and South Atlantic is believed to be even deeper according to the published scientific literature detailed by the Services. The earlier speculation by Bowen *et al.* (2005) of an Australian haplotype present in the North Pacific (including Baja California foraging

grounds) has been shown by more recent studies to be a sampling artifact (Bowen *et al.,* 1994, 1995; Hatase *et al.,* 2002a; Dutton, 2007, unpublished data; Boyle *et al.,* 2009; Watanabe *et al.,* 2011).

Comment 14: One commenter referred to the Status Review statement that unique DNA haplotypes could represent adaptive differences. The commenter contended that this is speculation with no supporting evidence and, therefore, that adaptation and selection should not be considered in the discreteness finding.

Response: Adaptation and selection were not explicitly used as criteria to evaluate discreteness, but are processes that are implicitly involved in the evolution of populations (*e.g.,* the accumulation of geographically divergent genetic variation). The text has been revised to clarify this point.

Comment 15: One commenter believes the Services cannot limit genetic analysis to a subset of the DPS (adult females) because doing so would be listing below the DPS level and contrary to court findings and legislative history. The commenter cited various court cases including *Modesto Irrigation District* v. *Gutierrez, Alsea Valley Alliance* v. *Evans,* and *Rock Creek Alliance* v. *United States Fish and Wildlife Service.* The commenter believes that limiting genetic analyses to only mtDNA can yield misleading results because it only reflects female gene flow. Alternately, nuclear DNA reflects total gene flow.

Response: The Services followed the DPS Policy to determine the applicability of the policy for the loggerhead sea turtle. The DPS policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs. The loggerhead sea turtle's global distribution and natal site fidelity and migratory nature are integral to this determination. While the Services relied on the genetic analysis results of mitochondrial DNA (matriarchal), nuclear DNA analysis results, where available, were used to determine discreteness and significance of the DPSs. The Services presented a detailed rationale for identifying breeding populations as the population units given the complex life history of sea turtles. The geographic structure of maternal lineages is an appropriate measure that has been used extensively to delineate populations of sea turtles whose life history is characterized by natal homing (both of adult males and females).

Comment 16: One commenter disagreed that genetic separation exists for loggerheads in the Atlantic. The commenter believes that the data suggest the proposed DPSs in the Atlantic (Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean) are not genetically distinct because they share mtDNA haplotypes and microsatellite DNA alleles. The commenter provided their own analysis of the Northwest Atlantic and South Atlantic that showed at least four migrants per generation between the Northwest Atlantic and South Atlantic; the commenter contended that migration of 1 to 10 animals between population groups per generation is sufficient to prevent genetic differentiation. Another commenter noted scientific agreement that male mediated gene flow is common among loggerheads, which leads the commenter to conclude that loggerheads are not ''reproductively-isolated'' on a global scale. This commenter believes that exchanges between ocean basins have occurred, are occurring now, and will likely occur in the future, while even subpopulations have been shown as genetically distinct within regions. One commenter questioned the Services' finding that the Northwest Atlantic Ocean DPS is reproductively isolated and therefore markedly separated based on male-mediated gene flow as well as nest site fidelity. The commenter cited studies that have documented individual adult females returning to nest at sites that were equal to or greater than distances between nesting colonies. This commenter further believes that by declaring female loggerheads are reproductively isolated because of ''unique'' nesting areas is to classify an entire species based on the characteristics of part of the proposed DPS (nesting adult females), which violates the ESA.

Response: Male mediated gene flow is one hypothesis explaining lack of differentiation with nuclear markers that have been found between proximate rookeries that have otherwise shown structure based on mtDNA. Follow up studies are necessary to further test the alternative hypothesis that the lack of differentiation was due to the lack of statistical power of the microsatellite markers used in early studies to resolve fine scale structure. These studies are ongoing and there is a suite of new microsatellite markers that has been developed to further this research. Published studies consistently indicate that gene flow between the DPSs identified by the Services occur over geological time scales and shared haplotypes are the result of shared common ancestry 12,000–3 million years ago and not ongoing radiation and colonization between DPSs.

Comment 17: One commenter questioned and disagreed with the Services' finding that the Northwest Atlantic Ocean DPS is genetically separated from other DPSs, particularly the Northeast Atlantic Ocean and South Atlantic Ocean DPSs. As evidence of substantial mixing in the oceanic zone, the commenter cited data from bycaught loggerheads in the pelagic longline fishery operating off Atlantic Canada as well as fisheries off the Azores and Madeira. Relative to foraging grounds, another commenter believes that the documented mixing of males and females facilitates male mediated gene flow between different nesting assemblages and different ocean basins and results in mixing by male mediated gene flow. This commenter also believes that Northwest Atlantic loggerheads are not a legitimate DPS because they do not have private microsatellite alleles, share microsatellite alleles with other loggerheads, and do not have monophyletic DNA haplotypes within regions.

Response: There is no evidence that mating occurs on the distant foraging grounds. Indeed the body of genetic, behavioral, and telemetry research over the last 25 years is consistent with a paradigm of migration by adults, both male and female, to coastal areas near natal beaches where mating takes place at the beginning of the nesting season. There is no evidence that mixing of immature turtles at high seas foraging areas where pelagic fisheries also interact facilitates male mediated gene flow. Bowen *et al.* (2005) also showed tendency toward natal homing by immature loggerheads in the Northwest Atlantic as they move into the nearshore neritic habitat.

Comment 18: One commenter provided an analysis comparing mtDNA haplotypes directly (*i.e.,* not transforming them to Fst) for the proposed DPSs in the Northwest Atlantic and Mediterranean. The commenter concluded that actual genetic data show that the Northwest Atlantic, Northeast Atlantic, and Mediterranean populations are genetically similar, with shared mtDNA haplotypes with similar frequencies in some nesting populations. The commenter believes these observations of genetic patterns within and between regions indicate the proposed DPSs

(Northwest Atlantic, Northeast Atlantic, and Mediterranean) are not genetically distinct or markedly separated. The commenter noted that after the Services concluded genetic separation between the proposed Northwest and Northeast Atlantic Ocean DPSs, the Services admitted that nesting females of the Boa Vista rookery in the Northeast Atlantic, despite their proximity to other Northeast Atlantic rookeries and to the Mediterranean, are ''most closely related to the rookeries of the Northwest Atlantic.'' Thus, the commenter believes the Services' admit no marked genetic separation between these two proposed DPSs. The commenter further recalled that the proposed rule admitted loggerheads from the Northwest Atlantic colonized the Northeast Atlantic and Mediterranean. Additionally, the commenter believes this same rationale applies to other DPSs. An Australian haplotype (South Pacific Ocean) is found in Japanese nesting populations (North Pacific Ocean) indicating comingling of these groups. Similarly, the proposed South Pacific Ocean DPS (eastern Australia) does not appear to be markedly different from nesting assemblages in Western Australia in the proposed Southeast Indo-Pacific Ocean DPS because the two groups share two mtDNA haplotypes. Turtles caught off Baja California included 95 percent of the haplotypes that are common to Japanese nesting areas and 5 percent of Australian haplotypes; the Status Review admitted gene flow between these populations. As noted by Bowen and Karl (2007) ''there appears to be sufficient leakage [of genes] between ocean basins to prevent long-term isolation and allopatric specification.''

Response: Standard population genetic analysis published in the peer-reviewed scientific literature indicates significant population structure. Recent studies (Monzón-Argüello *et al.,* 2010) reinforce this and identify haplotypes that are common in the Northeast Atlantic but absent in the Northwest Atlantic rookeries. Furthermore, Monzón-Argüello *et al.* (2010) show that haplotypes that were the same based on relatively short (~380bp) sequences were actually different when longer sequence fragments (~760bp) were analyzed. They identified four new variants of the base haplotype and showed fixed differences between a Northwest Atlantic rookery and Northeast Atlantic rookery, suggesting that previous studies have underestimated the level of differentiation between these DPSs. Research is currently underway using longer sequence data to comprehensively reanalyze Atlantic and Mediterranean rookery structure that is expected to provide greater power to detect differentiation. Also, see the response to Comment 17.

Comment 19: One commenter believes there is an error in the proposed rule, which notes that loggerheads at Brazilian rookeries have a ''unique mtDNA haplotype * * *.'' but then notes the haplotype is not ''unique'' because it has been found ''in foraging populations of juvenile loggerheads of the North Atlantic * * *.'' The commenter believes that if the haplotype is found throughout the Atlantic it is not ''unique'' and instead indicates common recent ancestry and male mediated gene flow throughout the Atlantic basin. Additionally, the commenter believes that mtDNA obtained from 11 animals from one site in Brazil is too small a sample and limited geographically to properly assess the presence of haplotypes in North and South Atlantic populations.

Response: The commenter has confused the presence of haplotype in juvenile foraging populations with absence of this haplotype in North Atlantic rookeries. Furthermore the commenter overstates the frequency of occurrence of the Brazilian haplotype in the North Atlantic juvenile foraging aggregations, and since mtDNA is maternally inherited, the claim that this is evidence of male mediated gene flow is erroneous.

Comment 20: One commenter disagreed that there are ecological differences for adult females in the Atlantic basin because multiple populations mix on foraging grounds. The commenter also feels that ecological differences cannot be used as justification for delineating a Northwest Atlantic Ocean DPS because foraging behavior of adult males and other life stages are not included. Therefore, DPS designation is based only on a subset of the population and not the entire DPS. To further illustrate this point, the commenter cited a 2001 Atlantic Highly Migratory Species Fishery Management Plan that noted adult females comprise only 1 percent of the total turtle population and a National Research Council report that concluded adults comprise less than 5 percent of the non-hatchling population.

Response: See response to comment 15. Also, in general, adult females occupy neritic foraging habitat, and mixing of adults from different DPSs on foraging grounds is unlikely.

Comment 21: One commenter disagreed that behavioral differences (i.e., nesting season) justify discreteness. The commenter noted that nesting occurs in the summer months in both the South Atlantic and the Northwest Atlantic; the months that nesting occurs are not the same because of the earth's rotation and have nothing to do with turtle behavior. The commenter contended that the behavior patterns of turtles are the same in both regions, thus if nesting season is used as the justification, it argues against separating the Northwest Atlantic from the Northeast Atlantic and the Mediterranean.

Response: Marked differences in nesting season between northern and southern hemispheres is one of several characteristics that help support distinction. The Services do not use nesting season per se as a diagnostic criterion to justify DPS designation, but rather consider it as one of several supporting factors.

Comment 22: One commenter believes the Services reached conclusions on the discreteness factors without analysis or explanation.

Response: The Services disagree. The Discreteness Determination section of the proposed rule clearly presented the information we considered in determining the discreteness of populations.

Comment 23: One commenter noted that the proposed rule addressed size issues only in the Atlantic and neglected the other ocean basins. Also with respect to size, the commenter did not agree that mean size of reproductive female loggerheads should be used to support splitting the Northwest Atlantic Ocean and South Atlantic Ocean DPSs because the proposed rule noted that SCL in Brazil is comparable to that in the Northwest Atlantic. Further, the commenter does not believe that size differences are justification for separate DPSs as these differences could be attributed to various ages, sexes, nutrition, and water temperature, which would greatly affect growth rates and corresponding size.

Response: The Services did not use nesting female size per se as a diagnostic criterion to justify DPS designation, but rather considered it as one of several supporting factors.

Comment 24: One commenter does not believe the ''significance'' standard is met in the proposed rule. The commenter believes that being located in different geographic areas does not make each area unique for loggerheads such that each area is significant.

Response: The Services disagree with the comment. Each of the nine populations represents a large portion of the species' range and each represents a unique ecosystem that is significant to the taxon as a whole, influenced by

local ecological and physical factors. The loss of any individual population would result in a significant gap in the loggerhead's range. Each population segment is genetically unique, often identified by unique mtDNA haplotypes, and the loss of any one population segment would represent a significant loss of genetic diversity.

Comments on the Identification and Consideration of Specific Threats

Comment 25: Three commenters believe climate change should be determined as a significant threat to the persistence of all of the DPSs. The commenters provided detailed information on sea level rise impacts on nesting beaches and nesting success, increasing sand temperatures resulting in skewed sex ratios and higher egg mortality, impacts of storm activity on nesting beaches and nesting success, warmer ocean temperatures and changes in circulation effects on all age classes, and ocean acidification impacts on nesting beaches and food resources. Another commenter believes that global climate change should not be considered in the listing decision for the North Pacific Ocean DPS because its effects on loggerheads and the ecosystem are too complex and speculative, and they could adapt to changing conditions.

Response: The Services have identified climate change impacts as potentially having profound long-term impacts on nesting populations, but also continue to believe it is not possible to quantify the potential impacts at this time. Impacts from climate change, especially due to global warming, are likely to become more apparent in future years (Intergovernmental Panel on Climate Change, 2007). The global mean temperature has risen 0.76 degrees Celsius over the last 150 years, and the linear trend over the last 50 years is nearly twice that for the last 100 years (Intergovernmental Panel on Climate Change, 2007). One of the most certain consequences of climate change is sea level rise (Titus and Narayanan, 1995), which will result in increased erosion rates along nesting beaches. On undeveloped and unarmored beaches with no landward infrastructure, shoreline migration may have limited effects on the suitability of nesting habitat. Bruun (1962) hypothesized that during sea level rise a typical beach profile will maintain its configuration but will be translated landward and upward. However, along developed coastlines, and especially in areas where erosion control structures have been constructed to limit shoreline movement, rising sea levels are likely to cause severe effects on nesting females and their eggs (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009).

Comment 26: One commenter believes that terrestrial threats documented in the proposed rule should be irrelevant because the North Pacific Ocean DPS nesting beach counts have increased despite these threats during the same time period. While these threats may have some as yet unquantified impact on the population, they are most certainly not driving the population to extinction.

Response: The Services believe that increased impacts in the terrestrial zone, such as beach armoring and human traffic, serve to decrease nesting success, hatching success, and hatchling survivorship. Thus, although terrestrial threats may not impact loggerheads through direct mortality, the indirect effects hamper the reproductive output of the population, on which the effects will be manifested for decades to come.

Comment 27: One commenter believes the listing factor analysis for the North Pacific Ocean DPS does not appropriately weigh the adequacy of existing regulatory mechanisms (*e.g.,* regulatory measures that address egg harvest and drift netting).

Response: The Services believe that the illegal, unidentified, and unregulated industrial longline and driftnet fleets operating in the North Pacific have a major adverse effect on loggerhead sea turtles. Thus, the existing regulatory mechanisms are currently insufficient to address these fishing impacts. It is likely that the existing regulatory mechanisms mandating fishing strategies in U.S.-based fleets are approaching adequate, yet loggerheads remain vulnerable to impacts from foreign fleets.

Comment 28: One commenter believes the impacts of U.S. commercial fisheries on North Pacific loggerheads are extremely small and not currently (or foreseeably) a significant source of injury or mortality. The commenter noted that peer-reviewed scientific literature demonstrated that severe restrictions placed on the shallow-set fishery ostensibly to protect turtles, actually resulted in substantially more takes on the high seas by foreign fleets filling market demand not being met by Hawaii-based longline fisheries. While foreign high seas fisheries interact with North Pacific loggerheads, the commenter noted the impact of this take is uncertain and unquantified. The commenter believes that known data demonstrate that the North Pacific population has increased and remained stable since the 1990s, which suggests that high seas bycatch is not driving the population to extinction; this is contrary to the language in the proposed rule on foreign high seas fisheries' effects on the population.

Response: The Services agree that efforts by Hawaii-based longline fisheries to minimize loggerhead takes have been substantial and effective. However, to focus on loggerhead population trends since 1990 only tells part of the story. Empirical data clearly show that by 1990 the annual nesting population was substantially reduced relative to historical levels. Thus, loggerheads in the North Pacific remain a depleted population that continues to be vulnerable to fisheries bycatch.

Comment 29: One commenter did not agree that bycatch in Japanese coastal pound net and other fisheries is causing population declines of the North Pacific Ocean DPS and requested detailed bycatch data/information that supports the Services' conclusion.

Response: The loggerhead Status Review concludes that impacts from fisheries bycatch represent a substantial threat to loggerhead sea turtles. Coastal pound-net fisheries in Japan have been shown to present a problem to loggerhead sea turtles in Japan and, when taken in context of all the other fisheries impacts ongoing at present, it is clear that no single fishery (coastal pound nets included) constitutes the only threat to loggerheads.

Comment 30: One commenter noted that for listing Factor A (The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range), the Status Review listed threats as low and very low for Northwest Atlantic loggerheads. The commenter believes that low or very low threats do not provide a legally sound basis to designate the Northwest Atlantic Ocean DPS as endangered. The commenter believes the proposed rule is inadequate in its assessment of listing Factor A and does not believe this factor justifies an endangered finding. The commenter listed several threats for which effects were not quantified (*e.g.,* number of individuals or amount of habitat affected) or evaluated for impacts to Northwest Atlantic loggerheads: Nesting beach erosion, erosion control devices (beach armoring), beach washout, jetty construction, light pollution, vehicular traffic, fishing effects on loggerhead diet, sediment dredging for port navigation, and climate change effects on trophic changes. Further, the commenter noted that the proposed rule does not explain how impacts from armoring or dredging are offset by beach nourishment programs that increase loggerhead nesting. Another commenter also provided comments for listing

Factor A and believes the discussion of trends in addressing these threats is missing in the proposed rule (*e.g.,* artificial lighting in Florida, beach driving in North Carolina, Magnuson-Stevens Fishery Conservation and Management Act and Atlantic States Marine Fisheries Commission management measures, *etc.*).

Response: For a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened. While a listing could proceed based on one of the five factors, determinations of any listing decision are generally based on an examination of all five factors and how they impact the entity in total and not by examining or relying on only one factor in isolation. Habitat modification or destruction impacts are considered to the extent they are known based on the best available information. Quantification of such impacts is typically very difficult as a result of lack of available information. Regarding armoring or dredging impacts being offset by beach nourishment programs, we cannot quantify what the trade-off in effects would be. However, while nourishment can provide nesting habitat where either it had been destroyed previously or to augment impacts from other coastal measures, it at best helps reduce the impacts, but does not provide new benefits to the turtles. The Services agree that many efforts have been made to reduce threats on the nesting beaches. However, in many cases past policies have resulted in permanent detrimental impacts to nesting beaches. As coastal development increases, additional pressure on beach systems will occur, and are occurring now. In many areas breakwaters, jetties, seawalls, and other erosion control structures designed to protect public and private property continue to be permitted and built. Additional residential and commercial properties near beaches also continue to be permitted and built. While measures (*e.g.,* lighting ordinances, construction setbacks) to mitigate these pressures to some degree provide important protections, threats remain a serious concern.

Comment 31: One commenter noted that for listing Factor B (Overutilization for Commercial, Recreational, Scientific, or Educational Purposes), the Status Review lists threats as low or very low for Northwest Atlantic loggerheads. The commenter believes that low or very low threats do not provide a legally sound basis to designate the Northwest Atlantic Ocean DPS as endangered. The commenter also questioned how a harvest of close to zero threatens loggerheads with extinction in the Northwest Atlantic, citing the TEWG assessment of harvest in the Caribbean and the proposed rule.

Response: For a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened. While a listing could proceed based on one of the five factors, determinations of any listing decision are generally based on an examination of all five factors and how they impact the listed entity in total and not by examining or relying on only one factor in isolation.

Comment 32: One commenter noted that for listing Factor C (Disease or Predation), the Status Review lists threats as low or very low for Northwest Atlantic loggerheads. The commenter believes that low or very low threats do not provide a legally sound basis to designate the Northwest Atlantic Ocean DPS as endangered. The commenter also asserted the proposed rule does not claim that threat from disease and predation actually exists, only that it may be an issue for Northwest Atlantic loggerheads. Further, the commenter believes the Services failed to indicate the nature or extent of the threat or how many loggerheads may be affected.

Response: For a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened. While a listing could proceed based on one of the five factors, determinations of any listing decision are generally based on an examination of all five factors and how they impact the entity in total and not by examining or relying on only one factor in isolation. There are little data to assess the extent of disease and predation threats, thus a more qualitative discussion on the factor is presented. That some degree of disease and predation occurs is known, though it is not expected to be significant by itself. That is the reason it was considered to be a low to very low threat.

Comment 33: One commenter presented an argument that the declines in Northwest Atlantic loggerhead nesting can best be explained by an epizootic event that specifically impacted loggerheads, and not fishery interactions. The commenter also claimed that the epizootic ended some years ago and populations are in recovery.

Response: The Services do not find there is enough evidence to support the epizootic hypothesis at this time. While epizootic events may play a factor in the population trajectory, a much stronger case would need to be made. Witherington *et al.* (2009) published a very compelling analysis of loggerhead nesting trends and demonstrated that fisheries impacts appear to account for a significant proportion of the trend.

Comment 34: One commenter believes listing Factor D (Inadequacy of Existing Regulatory Mechanisms) is not at issue and cannot be used to justify an endangered designation for the Northwest Atlantic Ocean DPS because the Status Review noted that it is ''not considered to be reducing survival rates directly.'' Additionally, the commenter believes the Services never discussed what mechanisms are believed to be inadequate nor identified any indirect impacts.

Response: For a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened. While a listing could proceed based on one of the five factors, determinations of any listing decision are generally based on an examination of all five factors and how they impact the entity in total and not by examining or relying on only one factor in isolation. Our review of regulatory mechanisms for this DPS described below in the Summary of Factors Affecting the Nine Loggerhead DPSs demonstrates that regulatory mechanisms are in place that should address direct and incidental take for this DPS. While the regulatory mechanisms contained within international instruments are inconsistent and likely insufficient, the mechanisms of existing national legislation and protection enacted under existing regulatory mechanisms, primarily the ESA, Magnuson-Stevens Fishery Conservation and Management Act, and State regulations, are much more adequate. However, it remains to be determined if national measures are being implemented effectively to fully address the needs of loggerheads as many of the most significant measures have come within the last generation of loggerheads, and thus the benefits may not yet be seen in the nesting trends. In addition, even with the existing regulatory mechanisms there is still a potential threat from both national and international fishery bycatch and coastal development, beachfront lighting, and coastal armoring and other erosion control structures on nesting beaches in the United States. More work needs to be done under the existing national regulatory mechanisms, as well as continuing to advance the development and effectiveness of international instruments, to ensure the persistence of this DPS. Therefore, we have determined that the threat from the inadequacy of existing regulatory

mechanisms is significant relative to the persistence of this DPS.

Comment 35: One commenter agrees with the Services that although regulatory mechanisms are in place that should address direct and incidental take in Northwest Atlantic loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads.

Response: More work needs to be done under the existing national regulatory mechanisms, as well as continuing to advance the development and effectiveness of international instruments, to ensure the persistence of this DPS. See the response to Comment 34 for additional information.

Comment 36: One commenter believes that the Services' assessment of existing regulatory measures for loggerheads in the Northwest Atlantic Ocean DPS was confounded by the Services' failure to implement existing mechanisms. The commenter believes it is difficult to argue that the existing regulatory mechanisms are inadequate for the Northwest Atlantic Ocean DPS. The commenter noted that many conservation measures have been enacted, but given the species' prolonged age to maturity, coupled with transitory dynamics, it is likely too early to begin measuring effects of past actions on nesting activity; this is further complicated by multiple measures, implemented at different times, affecting different life stages.

Response: The Services agree that nationally, significant measures have been enacted under existing regulatory mechanisms and that is not yet possible to determine whether the measures are sufficiently effective as many of the most significant measures have come within the last generation of loggerheads, and thus the benefits may not yet be seen in the nesting trends. However, we have determined that additional work needs to be done under the existing national regulatory mechanisms, as well as continuing to advance the development and effectiveness of international instruments, to ensure the persistence of this DPS.

Comment 37: One commenter is concerned about apparent low survival rates of adult females from the Peninsular Florida Recovery Unit within the Northwest Atlantic Ocean DPS, but suggested this is better addressed through more effective implementation of existing regulatory measures.

Response: The apparent low survival rate of adult females from the Peninsular Florida Recovery Unit has also been a concern for the Services. There is a need to continue researching the issue to better understand what the actual survival rates are for adult females and all age classes. The Services agree that continued, and more effective, implementation of measures under the existing regulatory mechanisms is needed.

Comment 38: One commenter disagreed that existing regulatory mechanisms have failed to adequately address threats to Northwest Atlantic loggerheads from incidental take and that no mechanism has effectively eliminated or sufficiently reduced mortality from fishing. Similarly, another commenter stated that the claims that NMFS faces ''limitations on implementing demonstrated effective conservation measures'' and that domestic ''regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads'' of the Northwest Atlantic is contrary to the commenters' beliefs. This commenter noted that while no regulatory measure is perfect, the mechanisms in the United States (and increasingly internationally) are strong and subject to constant improvement and enforcement. The law virtually assures that identified gaps in protection are filled. Further, this commenter states that the current system for enforcing sea turtle protective measures is comprehensive and effective and took issue with the Services' characterization of ''limitations on enforcement capacity.'' However, several commenters disagreed that NMFS has an adequate number of officers to enforce existing regulations.

Response: The Services agree that substantial measures have been taken to reduce sea turtle mortality from fishery bycatch, and NMFS is committed to reducing bycatch and bycatch mortality further. However, in many fisheries high interaction levels and mortalities still occur, both nationally and internationally. While the Federal law does require that gaps in protection under U.S. jurisdiction are addressed, many gaps remain, and many of the measures enacted provide benefits to the species, but impacts still remain significant. NMFS disagrees with the assertion that there are not substantial limitations on enforcement capacity, as the geographic scope and variety of fisheries, inshore, coastal, and on the high seas that are known to, or potentially, impact sea turtles make effective enforcement difficult with limited resources at both the State and Federal levels.

Comment 39: One commenter questioned what the Services meant by ''lack of availability of comprehensive bycatch reduction technologies'' under Factor D (Inadequacy of Existing Regulatory Mechanisms) for the Northwest Atlantic Ocean DPS.

Response: While TEDs stand as the model for sea turtle bycatch reduction technology, many gear types do not lend themselves to technological fixes that can reach a similarly high level of effectiveness when properly used. Even for some trawl fisheries, further development is needed to devise TED designs that effectively exclude sea turtles while maintaining sufficient target catch. Longline measures such as circle hooks and release gear requirements are valuable, but partial, solutions. Take levels in longline fisheries, both pelagic and bottom, can still result in significant impacts. For many other gear types, effective technological solutions are not so readily available, and much work remains to determine what gear changes, if any, will result in significant reductions in interactions and mortalities.

Comment 40: One commenter believes that ''limitations on implementing demonstrated conservation measures'' is a fallacious rationale to justify a change in status. The commenters again cited longline and shrimp trawl as well as scallop dredge gear modifications as leading to increasing protection for sea turtles at all life stages.

Response: While important measures have been enacted to address sea turtle interactions in some fisheries, there are still substantial levels of interactions in those and other fisheries. Limitations in applicability, resources, and industry acceptance and compliance in many cases present very real limitations on implementing demonstrated conservation measures in an effective manner.

Comment 41: One commenter noted that Federal negligence to design and execute appropriate loggerhead recovery efforts is a routinely overlooked threat to loggerhead survival. However, the commenter believes these failures can simply be corrected by harmonizing the conservation recommendations of ESA mandates with permitted incidental take. The commenter suggested better integration of three integral agency actions—mandatory species recovery plans, ESA section 7 Biological Consultations, and incidental take (both Incidental Take Permits for State and private actions and Incidental Take Statements for Federal agency actions)—to facilitate the recovery of the loggerhead sea turtle. Specifically, the commenter stated the belief that crucial

recommendations in recovery plans are routinely ignored during section 7 consultations and incidental take authorizations and urged NMFS to reassess its internal recovery management strategy (*e.g.,* reinitiating section 7 consultation when necessary not just when authorized take limits are exceeded) to meet the recovery needs of loggerheads.

Response: Although the commenter is referring to actions taken subsequent to the listing, the Services point out that the ''three integral agency actions'' cited by the commenter are and will continue to be integrated. The ''ESA section 7 biological consultations'' and incidental take are both part of the same action for a Federal agency action. Incidental take is authorized by section 7 Biological Opinions, which are formal ESA consultations that occur when take is anticipated from a Federal action. Section 10(a)(1)(B) provides a mechanism when an action is being undertaken by a non-Federal entity that results in incidental take of a species; section 10(a)(1)(A) provides a mechanism for exempting directed take for scientific purposes. Recovery plans are important tools in the species conservation and recovery and provide recommendations at a broader scale and are used as guidelines but are not regulatory. Reasonable and Prudent Measures and Terms and Conditions, in Biological Opinions are project specific and are intended to minimize the effects of the incidental take on a species. Reinitiation of section 7 consultations takes place when: The amount or extent of take specified in the incidental take statement is exceeded; new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; and a new species is listed or critical habitat designated that may be affected by the identified action.

Comment 42: One commenter believes that permitting incidental take in the face of uncertainties in baseline loggerhead life history parameters and population estimates suggests existing regulatory mechanisms are inadequate. Specifically, the commenter stated the belief that data for both sexes of loggerheads at all life stages (growth rate, size, dispersal, etc.) are either nonexistent or inadequate, significantly curtailing their value for modeling.

Response: The Services agree that there remain substantial gaps in knowledge regarding loggerhead life history parameters; however, the ESA requires us to use the best scientific data available when making a listing determination. Although significant measures have been enacted nationally under existing regulatory mechanisms, it is not yet possible to determine whether the measures are sufficiently effective as many of the most significant measures have come within the last generation of loggerheads, and thus the benefits may not yet be seen in the nesting trends. We have determined that additional work needs to be done under the existing national regulatory mechanisms, as well as continuing to advance the development and effectiveness of international instruments, to ensure the persistence of this DPS.

Comment 43: One commenter questioned the analysis of loggerhead survival rates in the Status Review. The commenter noted that the natural survival rate for neritic adults (*i.e.,* large prebreeding and breeding males and females) is stated to be 95 percent in all DPSs. The Status Review also stated that anthropogenic mortalities for neritic juveniles and adults in the proposed Northwest Atlantic Ocean DPS are between 13 percent and 50 percent of the 95 percent of loggerheads left after natural mortality is subtracted. In other words, using the high end of the anthropogenic mortality estimate in the Status Review, approximately 52.5 percent of the proposed Northwest Atlantic Ocean DPS neritic juvenile and adult population dies annually. The TEWG estimated the neritic juvenile and adult population of the proposed Northwest Atlantic Ocean DPS to be 230,000. Given that, the Status Review asserted that 120,750 neritic juveniles and adults from this population die annually, almost entirely because of anthropogenic mortality. Yet the Status Review admitted that the largest source of mortality in the proposed Northwest Atlantic Ocean DPS, fishery bycatch, totals only 3,743 turtles annually.

Response: The Status Review document prepared by the BRT was only one of many sources of information considered by the Services to make the listing status determination. The mortality estimate used for that particular threat analysis was based upon a majority opinion of experts comprising the BRT, but it was not a consensus opinion. Another study estimated that total annual mortality (natural and anthropogenic) for the neritic juveniles was 17 percent, with a range of 11–26 percent (Braun-McNeill *et al.,* 2007). However, another preliminary study determined that adult female survivorship from the Northwest Atlantic Ocean DPS may be a significant concern. That study estimated annual survivorship of adult females to be as low as 0.41 (0.20–0.65, 95 percent confidence intervals), and at best 0.60 (0.40–0.78, 95 percent confidence intervals) (NMFS, unpublished data). Additional research to better understand survival rates for the various life stages is a high priority for the Services.

Comment 44: One commenter believes the justification for listing the Northwest Atlantic Ocean DPS as endangered by evaluating other natural or manmade factors is missing. The commenter noted several threats for which effects were not quantified adequately or inappropriately assessed, such as vessel strikes, changing weather (*e.g.,* hurricanes and cold stun events), habitat change, saltwater cooling, and bycatch. Specific to bycatch in the shrimp fishery, the commenter provided a population calculation for Northwest Atlantic loggerheads based on annual bycatch in all fisheries and questioned how take of 0.17 percent of the population is likely to result in an endangered listing.

Response: The Services disagree that an evaluation of other natural or manmade factors was missing. In many cases, there are substantial data limitations that prevent in-depth, quantitative analysis of threats, including those listed by the commenter. The five-factor analysis for listing determinations is based on consideration of all of the factors, using the best data available.

Comment 45: The State of Florida referenced the Witherington *et al.* (2009) analysis of the Index Nesting Beach Survey data set that concluded the causal factor that best fit the nesting decline was fisheries bycatch. The State judged the magnitude, timing, and ongoing nature of fisheries threats to be consistent with the steep decline in nesting following 1998. The State believes the full scope of threats and impacts remain poorly understood as evidenced by the recent discovery of unexpectedly high mortality rates of sea turtles in the Gulf of Mexico reef fish bottom longline fishery. The State does not believe the threat posed by fisheries bycatch is likely to abate significantly in the foreseeable future.

Response: Inclusion of nesting data up through 2010 results in the nesting trend line being slightly negative, but not significantly different from zero. The Services agree that fisheries bycatch is one factor that best fits the nesting decline seen in the past. However, various fishery bycatch reduction measures have occurred within the last generation time for loggerhead sea

turtles, and the benefits of those actions may only now be starting to become evident on the nesting beaches. The agencies are committed to reducing fisheries bycatch further.

Comment 46: The North Carolina Division of Marine Fisheries and the State of South Carolina suggested that instead of reclassifying Northwest Atlantic loggerheads as endangered, existing measures (*e.g.,* TEDs, circle hooks, time/area closures) should be broadened or modified to apply to problem gears or areas. Additionally, the North Carolina Division of Marine Fisheries believes that annual catch limits and accountability measures under the Magnuson-Stevens Fishery Conservation and Management Act will result in lower harvest levels, reduced fishing effort, closed areas, and shorter seasons, all of which will decrease potential for sea turtle bycatch.

Response: A variety of conservation measures for fisheries and non-fishery activities have been enacted in many areas, including in the Northwest Atlantic, and many within the past generation of loggerhead sea turtles. Additionally, many fisheries, especially the shrimp trawl fisheries in the Northwest Atlantic Ocean and Gulf of Mexico, have experienced substantial declines, thus potentially reducing impacts to sea turtles. The benefits of those fishery reductions, if permanent, combined with conservation actions, if sufficiently effective, may only now, or may soon, begin to become evident on the nesting beaches. The agencies are committed to reducing fisheries bycatch further regardless of the listing status.

Comment 47: Two commenters noted that loggerheads are at risk from fisheries using longlines, trawls, gillnets, hooks and lines, dredges, and assorted other types of gear, citing mortality estimates in the 2008 Recovery Plan for Northwest Atlantic loggerheads. Additionally, the commenters noted that an unknown number of animals also sustain serious and moderate injuries in other fisheries. The commenters referenced Wallace *et al.* (2008), which concluded that turtles killed in U.S. waters are larger and more valuable to the population; therefore, the failure of NMFS to reduce fishery interactions is significantly undermining the survival of Northwest Atlantic loggerheads. Further, the commenters noted the 2008 Biological Opinion on the Gulf of Mexico reef fish fishery, which states that the population ''is likely to continue to decline until large mortality reductions in all fisheries and other sources of mortality (including impacts outside U.S. jurisdiction) are achieved.''

Response: The Services agree that fishery bycatch is a significant threat to sea turtles, including Northwest Atlantic loggerheads, and that substantial gaps remain in our understanding of take and mortality levels for many fisheries. Various fishery bycatch reduction measures have occurred within the most recent generation of loggerhead sea turtles, including technological measures, time/area closures, and effort reductions. Additionally, some U.S. fisheries that incidentally capture loggerhead turtles have experienced effort declines within that time. The benefits of those actions may only now be starting to become evident on the nesting beaches. NMFS is committed to reducing fisheries bycatch further to conserve loggerhead sea turtles, regardless of the listing status of the Northwest Atlantic Ocean DPS.

Comment 48: Three commenters referenced recent data showing 1,451 loggerhead mortalities in the Southeast U.S. and Gulf of Mexico shrimp trawl fleets, indicating this fishery is the leading cause of mortality for Northwest Atlantic loggerheads.

Response: The Services agree that taking measures to limit sea turtle interactions with fisheries, including the U.S. shrimp trawl fishery, is a top priority for sea turtle conservation. NMFS is currently working on a new consultation for the shrimp trawl fishery, a rule to require TEDs in certain mid-Atlantic trawl fisheries, and a rule to require TEDs in skimmer trawl fisheries. NMFS continues to work with the coastal States to improve TED enforcement.

Comment 49: Two commenters highlighted the bycatch of hundreds of loggerheads in the Gulf of Mexico reef fish bottom longline fishery, citing NMFS 2005 and 2009 biological opinions. The commenters noted the particularly lethal nature of takes in this fishery because turtles become hooked while too deep and cannot reach the surface to breathe. Additionally, the commenters stated that gillnet interactions represent the greatest unknown for turtles because there is no estimate of the total numbers of interactions occurring or the mortality sustained by loggerheads in gillnets as observer coverage in many fisheries is so low and State fisheries are often not observed or regulated. The commenters further noted that as observer coverage increases, actual take levels and authorizations are regularly revised upward. However, another commenter disagreed with the Services' statement that ''gillnets, longlines, and trawl gear collectively result in tens of thousands of Northwest Atlantic loggerhead deaths annually throughout their range'' especially with regard to the pelagic longline fleet. Additionally, yet another commenter stated that measures, particularly shrimp TEDs, modifications to longline gear and practices, and gillnet reductions, have progressively reduced the threat facing juvenile and adult loggerheads by orders of magnitudes and weigh strongly against a change in listing status.

Response: NMFS has enacted various efforts over the years to reduce bycatch and mortality rates in domestic fisheries, and has engaged other nations bilaterally and through larger international organizations in efforts to reduce sea turtle bycatch overseas. Such efforts continue to be a top priority for the agency. This includes reductions in take, and mortality rates, for the Gulf of Mexico reef fish bottom longline fishery enacted in 2009. However, the effect of those measures are yet to be determined as many of the most significant measures have come within the last generation of loggerheads, and thus the benefits may not yet be seen in the nesting trends. The Services are committed to enacting additional measures to reduce anthropogenic impacts. NMFS also continues to undertake efforts to increase the understanding of interaction levels and impacts of the many Federal and State fisheries through means such as the 2007 ESA Sea Turtle Observer Rule (72 FR 43176; August 3, 2007).

The level of take authorized under the ESA is based upon an analysis of the anticipated take from the proposed action. Upward revisions of take occur when new data indicate that take levels are higher than previously anticipated. That new expected take level is then analyzed to determine if it would jeopardize the continued existence of the species, and often additional terms and conditions are required as part of the new biological opinion that could result in additional or different limitations or gear restrictions for the fishing industry.

Comment 50: The State of Maryland provided information on loggerhead strandings documented from May to November from 1991–2009 along the Chesapeake Bay and Atlantic Coast. Of the 378 dead loggerhead strandings, less than 3 percent of strandings with evidence of human interaction exhibited signs of fishery interaction. The Maryland Department of Natural Resources conducts fishery-dependent and independent surveys each year and rarely finds turtles associated with either of these surveys.

Response: The Services are aware that there is variability, both geographically and temporally, in the instances of fishery interactions with loggerheads in coastal waters. Evidence of human interaction in stranded turtles is difficult to ascertain, especially if the examination is limited to externally observable anomalies. Bycatch mortality due to drowning is not apparent through external examination, and turtles captured in gear, such as trawls or gillnets, are most often removed from the gear and, as such, do not strand with gear attached. This makes it difficult to use the referenced stranding data to ascertain rates of fisheries interactions. The Services believe that fisheries bycatch is the leading source of anthropogenic mortality in U.S. waters.

Comment 51: Five commenters cited information on the threat of direct and indirect effects of oil, as well as the actions to contain, remove, and disperse oil, on sea turtles. Two of these commenters noted that while the preamble of the proposed rule discusses the threat posed by oil spills, it was published prior to the Deepwater Horizon oil spill in the Gulf of Mexico. Additionally, three of the commenters noted that the total number of loggerhead sea turtles harmed by the spill is likely higher than observed numbers. Another commenter provided information on the impacts of the 2010 Deepwater Horizon oil spills on loggerheads.

Response: The full scope and effects of the 2010 Deepwater Horizon (Mississippi Canyon 252) oil well blowout and uncontrolled oil release on sea turtles in the Gulf of Mexico, including Northwest Atlantic Ocean DPS loggerheads, is not yet determined.

Comment 52: Three commenters believe that plastic ingestion poses immediate threats and risks to Northwest Atlantic loggerheads. The commenters provided detailed information to support this.

Response: The Services agree that plastic ingestion is a threat to Northwest Atlantic Ocean DPS loggerheads as well as other DPSs and species. Discussion of this threat was added to the ''Other Manmade and Natural Impacts'' section under the analysis for Factor E (Other Natural or Manmade Factors Affecting its Continued Existence) in the five-factor analysis.

Comment 53: One commenter questioned why ''geopolitical complexities'' contribute to a listing determination given that all populations are within the U.S. and subject to the Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES), the International Commission for the Conservation of Atlantic Tunas (ICCAT), etc.

Response: Although the majority of Northwest Atlantic Ocean DPS nesting is within the United States, and a significant portion of adult and sub-adult stages are spent in U.S. waters, the wide-ranging habits of the species still results in significant exposure to pressures outside of U.S. jurisdiction. The existence of various international conventions (*e.g.,* CITES) and organizations (*e.g.,* ICCAT) are valuable tools, as pointed out by the commenter. However, advances made in reducing bycatch in foreign nations via these instruments are still limited, in need of strengthening and expansion, and in many cases tenuous as a result of political uncertainties.

Comments on the Status and Trends and Extinction Risk Assessments of the DPSs

Comment 54: One commenter believes that neither of the methodologies used in the 2009 Status Review provided the necessary ''convincing evidence'' of near-term extinction of loggerheads, either globally or in the Northwest Atlantic Ocean DPS. The commenter believes that neither of the two models employed were geared toward the legally relevant factors, and thus do nothing to further the inquiry as to the imminence of loggerhead extinction. The commenter believes that the models used do not meet the ESA standard that the Services use the best available scientific and commercial data. Thus, as a legal matter, the commenter believes that a change in listing status is not warranted by the best scientific and commercial data available. Another commenter believes that models are an inappropriate tool to measure fluctuating population trends and predict extinction.

Response: The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS. However, for a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened.

Comment 55: Given the species' life history, one commenter expressed concern that any positive trends in the adult segment of the Northwest Atlantic population as a result of conservation efforts over the last 15 years would not be apparent until 2020 and beyond. The North Carolina Division of Marine Fisheries also stated that conservation measures (*e.g.,* TEDs) from the 1980s should have positive effects on the segment of the population that is just now becoming sexually mature; therefore, it would be prudent to allow enough time to evaluate whether those conservation measures have worked before taking further action. Similarly, a third commenter stated that the most recent and effective management measures have and will continue to have beneficial impacts that will not be seen on beaches for decades.

Response: The Services agree that the effects of most conservation measures will not be apparent for many years given the loggerhead's prolonged age to maturity. Although individual conservation measures should have a positive effect on a population, in many cases it would be difficult to clearly determine the effect of any individual conservation activity due to the many different conservation efforts being undertaken simultaneously. Collectively, however, conservation efforts should result in a positive effect on a population as long as the key threats have been sufficiently targeted. For a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened. However, the Services do not believe it would be prudent to wait to see the results of conservation efforts that have been implemented before taking any additional actions to protect the species given the species life history. Further, under the ESA, the Services are required to make determinations based on the best available scientific and commercial data, and not wait to determine whether measures already implemented are effective at ameliorating threats.

Comment 56: The Services received several comments relative to in-water abundance and population size. One commenter questioned why the Status Review did not consider existing in-water survey data, which show an increase in loggerhead populations, as reported in the 2009 TEWG Report. Another commenter noted that both Epperly *et al.* (2007) and the SEAMAP survey show an increase in juvenile loggerheads. Both of these commenters stated that the Services should not proceed until a major survey of in-water abundance is undertaken, and that the Services should wait to make a final decision until additional data were available.

Response: It would not be appropriate for the Services to wait for additional in-water data to become available before proceeding with this final rule. Under the ESA, the Services must base each listing determination solely on the best available scientific and commercial data after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species. The Services were petitioned to list the North Pacific and Northwest Atlantic populations as DPSs under the ESA. The Services must respond to petitions within statutory deadlines. We do not have the latitude to defer listing decisions until additional information becomes available.

Although the Services did consider available data from in-water studies within the range of the Northwest Atlantic Ocean DPS in its assessment of population status, extrapolation of these localized in-water trends to the broader population, and relating localized trends at neritic sites to population trends at nesting beaches, is a problem of scale and requires the integration of many representative foraging grounds throughout the population range (Bjorndal *et al.,* 2005). NMFS and USFWS (2008) summarized trend data available from nine in-water sampling programs along the U.S. Atlantic coast. Four studies indicated no discernible trend, two studies reported declining trends, and two studies reported increasing trends. Trends at one study site indicated either a declining trend or no trend depending on whether all sample years were used or only the more recent, and likely more comparable, sample years were used. TEWG (2009) used raw data from six of the aforementioned nine in-water study sites to conduct trend analyses and found three with positive trends, two with a negative trend, and one with no trend. The TEWG did not provide a shared agreement about the weighting of these data, nor did they establish how representative these programs were of the larger population. As a result, caution must be exercised in evaluating results from all of the above referenced studies, given the relative short-term duration of most of the studies, noted difficulties in comparisons of trend data across disparate sampling periods, changes in sampling methodologies and equipment, small study areas, and uncontrolled variables such as weather, sea-state, migration patterns, and possible shifts in loggerhead distributions.

Comment 57: One commenter referenced Northeast Fisheries Science Center (2011) (Preliminary Summer 2010 Regional Abundance Estimate of Loggerhead Turtles (*Caretta caretta*) in Northwestern Atlantic Ocean Continental Shelf Waters) and suggested that the Services incorporate this new information into the final rule.

Response: The Services agree and have incorporated this information into the Status and Trends of the Nine Loggerhead DPSs section of this final rule.

Comment 58: One commenter stated that the Status Review never assessed the status of the proposed Northwest Atlantic Ocean DPS as a whole; rather the analysis focused solely on specific indices. Thus, the commenter stated the opinion that no finding was ever made as to whether the proposed DPS is in danger of extinction. The commenter also stated there was no analysis of the timeframe in which extinction is likely to occur, which is the primary factor distinguishing a threatened from an endangered species under the ESA. Therefore, the commenter recommends that the appropriate response would be to find that there is not sufficient evidence to justify reclassifying Northwest Atlantic loggerheads as endangered.

Response: Both modeling approaches assessed the Northwest Atlantic Ocean DPS as a whole; the indices used were based on the population. The commenter is correct in saying that the models did not find that the proposed DPS was in danger of extinction. The models also did not find that the DPS was increasing. The Status Review simply stated that the model outputs indicated that the DPS may be declining without us detecting the decline. However, for a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened.

Comment 59: One commenter stated that she does not believe that a proportional decline in the population is the appropriate definition of extinction when other information exists. Specifically, the commenter did not agree that listing decisions should depend solely on whether the population will decline to 50 percent, 30 percent, or 10 percent of its current or historical population size, but should instead be based on more quantitative listing criteria whenever possible. The commenter further noted that stochastic population models have indicated that population size and trend are the best focus in determining listing status and provided several references.

Response: Stochastic population models are useful when we have information on the magnitude of stochasticity. We incorporated the uncertainty in the threat matrix analyses. Because of the late maturity of the species, only small additional mortality can be tolerated for a population of loggerhead sea turtles. Because of the large uncertainties in additional mortalities from a wide variety of threats, a population of loggerheads can be increasing or decreasing rapidly. The observed trend at nesting beaches may not reflect what happens at sea.

Comment 60: One commenter questioned whether a decline to 30 percent by itself warrants listing any species under the ESA regardless of the population size when at 30 percent. In the case of the Northwest Atlantic Ocean DPS, in 2007 (the lowest nesting activity in the series) the adult population size of all recovery units combined was approximately 30,000 adult females (TEWG, 2009). Thus, a quasi-extinction threshold (QET) of 0.3 of that number translates to a decline to, or below, 10,000 nesting females (or 20,000 adult females and males combined) within 100 years, if the model was initialized with the 2007 numbers, not the 1998 numbers, which were greater. The commenter asked whether a population of 10,000 adult females 100 years later warrants endangered or threatened status.

Response: The Services believe that population size is just one piece of information to be taken into consideration when considering the status of a species. Although the SQE and threat matrix analyses provided some additional insights into the status of the nine DPSs, ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

Comment 61: One commenter believes the SQE analysis used outdated, qualitative estimates of risk factors that fail to incorporate significant changes in fishing effort and management measures that have drastically reduced take and mortality.

Response: The SQE analysis did not use risk factors. Fishing effort or management measures were not relevant to the SQE analysis.

Comment 62: One commenter believes that because the SQE analysis relies exclusively on nesting beach surveys, it is retrospective and considers only mature females thereby failing to capture important indicators of current abundance.

Response: The Services agree that because the SQE analysis relied on nesting beach surveys, it is retrospective and considers only mature females. That

is why the BRT also conducted the threat matrix analyses to provide insight into the future outlook for each DPS, given the known threats and loggerhead sea turtle biology.

Comment 63: One commenter recommended that the Services update the model to include nesting data through 2008 for the Northwest Atlantic Ocean DPS, Peninsula Florida Recovery Unit, and the North Pacific Ocean DPS and through 2008–2009 for the Indian Ocean DPS as data were provided by an independent reviewer of the Status Review. The commenter stated the belief that including these data will change the model's results. Another commenter also requested that the Services update the model to include 2008 nesting data. A third commenter noted that nesting beach abundance data for the North Pacific Ocean DPS exhibit a long-term increasing trend. Additionally, this commenter noted that in the Snover model, the North Pacific population ranked 0.3 on the SQE index, thus indicating that it is at risk (*i.e.,* ''threatened''). The model used a single composite time series of nesting counts for 1990–2007, which likely underestimates a strong recovery trend because it does not include 2008 and 2009 nesting data. A fourth commenter also noted that most major nesting beaches for which pre-1990 nest count data are available show a consistent lower trend in the latter half of the 1980s compared to the early 1990s, raising the question of whether 1990 may have been an anomalous year with high nesting activity.

Response: The Services have included the most recent nesting data available for each DPS in the Status and Trends of the Nine Loggerhead DPSs section. For the Northwest Atlantic Ocean DPS, the nesting data for 2008–2010 were incorporated into the nesting trend analyses, and the result indicated that the nesting trend for this DPS from 1989–2010 is slightly negative but not statistically different from zero. Available data for the North Pacific Ocean DPS suggest this DPS has declined up to 90 percent from its recorded historical population size of about 50 years ago. The 2010 estimate of the number of nests suggests the abundance of nesting females has returned to earlier levels (ca. 1990); however, this level is still low relative to the historical population.

Comment 64: One commenter noted that the Status Review model used a constant parameter for the number of nests laid per female per season for the next 100 years. The commenter stated that this was inappropriate because older females produce more nests per season than new nesters. Therefore, the commenter stated the belief that the model fails to account for the large number of females that are about to be added to the breeding population and the possibility of a naturally fluctuating decrease that may follow.

Response: Because the models were not age-specific, the BRT did not incorporate age-specific demographic parameters. Such an exercise is important for demographic studies but not for determining effects of possible threats to a population, as those uncertainties would be overwhelmed with much greater uncertainty in threat measures. The parameters of the base model in the threat matrix analyses were derived from the basic biology of loggerhead sea turtles, rather than what may happen in the future.

Comment 65: One commenter stated that the application of the diffusion approximation model was so flawed as to make the results unusable and provided a detailed analysis of these flaws. The commenter questioned why the Services did not specify a population threshold or range that below which the population could not survive. The commenter also contended that the Services did not provide direct probability estimates of extinction; instead the Services provided susceptibility to quasi-extinction.

Response: The Services agree that the diffusion approximation approach has limitations as do any other approaches used to estimate possible extinctions of a population. That is why we also conducted the threat matrix analyses to provide insight into the future outlook for each DPS, given the known threats and loggerhead sea turtle biology. The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were based on an assessment of population sizes and trends, current and anticipated threats (*i.e.,* five-factor analysis), and conservation efforts for each DPS.

Comment 66: One commenter stated that neither the Status Review nor the Services dealt with the actual abundance of loggerhead sea turtles or bothered to develop a numeric value to define ''quasi-extinction'' based on known biological characteristics of loggerheads. Rather, the Status Review included relative estimates of potential decline in its SQE analysis. Further, the analysis relied solely on nesting data as the only empirical input. Because sea turtles are both long-lived and late maturing, this analysis completely ignored the myriad efforts implemented over the past 20 to 30 years to reduce anthropogenic mortality and increase survival, of which the benefits to conservation of juvenile loggerheads have yet to influence adult numbers. This math-rich, but data-poor approach does not address relevant legal criteria.

Response: The BRT included all available information in the threat matrix analysis approach and used mathematics as a tool to explain how these data are related to the results provided in the Status Review rather than treating them as separate entities. The BRT also considered the time-lag effects of the long-lived and late maturing nature of the species through the matrix modeling approach.

Comment 67: One commenter disagreed with using 100 years in the diffusion approximation model given that scientists who support this concept recommend limiting the number of years to 2.5 times the number of years for which nesting survey data are available (i.e., 50 years based on the 20 years or less of nesting data in the Status Review). The commenter stated that, using the current model, the population size of the Peninsula Florida Recovery Unit within the Northwest Atlantic Ocean DPS in 100 years would still approach 1 million loggerheads, which does not suggest an immediate risk of extinction.

Response: Because loggerhead sea turtles are likely to mature at greater than 30 years of age, the BRT used the time period of 100 years to compute QETs, which is consistent with the IUCN Red List Criteria for estimating extinction risk (3 generations or 100 years, whichever is shorter). To incorporate the uncertainty of parameter estimates in determining SQE, the BRT used 95 percent confidence limits of the arithmetic mean of the log population growth rate and the variance of the log population growth rate, which accounts for sources of variability, including environmental and demographic stochasticity, and observation error.

Comment 68: One commenter stated that the diffusion approximation model produced results outside appropriate and acceptable boundaries and contended that the Services did not evaluate the model assumptions to determine whether the results were within appropriate boundaries.

Response: The Services believe the assumptions made for the diffusion approximation model were appropriate for the modeling exercise conducted by the BRT. For further information on the assumptions for the diffusion approximation model, see Conant *et al.*

2009, section 4. The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

Comment 69: One commenter noted that there is no universal definition or numerical value of the QET, but it is generally defined as a small population that is doomed to eventual extinction. The commenter provided specific information from Morris and Doak (2002) on the range of QET values, starting at 1 (extremely low), including 20 and 50, and continuing to a much larger value of 100 breeders and noted that typically QET values are less than 500 individuals, breeders, or females. The commenter suggested that the Services make informed decisions about the QET for sea turtles and use population size. The commenter provided an example of susceptibility of quasi-extinction for Kemp's ridley sea turtles to support this point. The commenter recommended using a QET of 1,000 (or lesser value) adult female loggerhead population size. The commenter provided a new analysis of various SQE values using QET levels ranging from 10,000 to 50 adult females. The Peninsular Florida Recovery Unit is the largest in the Northwest Atlantic Ocean DPS (80 percent of nesting occurs in this recovery unit) and it drives the dynamics of the DPS. Based on the revised SQE analysis, the commenter expressed the opinion that there is little risk (SQE<0.3) that the Peninsular Florida Recovery Unit, and therefore the Northwest Atlantic Ocean DPS, will fall to or below the threshold of 1,000 adult females in 100 years. Similarly, the commenter stated the South Atlantic Ocean DPS is not at risk of dropping below 1,000 adult females, whereas the North Pacific Ocean DPS and the South Pacific Ocean DPS are at risk. The commenter stated that the conclusions are the same when QET is set at 500 and 250 adult females, but begin to differ when QET is 100 or less (fewer DPSs are at risk).

Response: The SQE analyses only provided information on what has happened and what may happen if the same trend continues in the future. Consequently, the Services do not rely solely on the SQE analysis in the decision-making process. The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

Comment 70: One commenter noted that when the impact of the scallop fishery on loggerhead sea turtles was last assessed, NMFS undertook an analysis that looked at the probability of extinction in terms of the time to quasi-extinction. This report was conducted in the context of an ESA section 7 consultation to determine whether the fishery could lead to ''jeopardy.'' The basic findings, utilizing the same nesting trends and similar modeling techniques as relied upon by the 2009 Status Review and very conservative (i.e., precautionary high) estimates of takes by the scallop fishery, were that the likelihood of quasi-extinction over a 75-year period was zero, and the likelihood at 100 years was only 0.01. The commenter noted that neither the BRT nor the Services made a comparable quantitative finding of the likelihood of near-term extinction with respect to loggerheads as a global species or as a species within any of the newly proposed DPSs.

Response: The Services believe the analyses conducted were appropriate and tailored to the best available information (see section 4 of the 2009 Status Review (Conant *et al.* 2009)). The Services have clarified the text in the Extinction Risk Assessments section to more clearly state that the SQE and threat matrix analyses were only used to provide some additional insights into the status of the nine DPSs, but that ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

Comment 71: Comments were provided with respect to survey methods and how the resulting data are used in the listing process for the North Pacific Ocean DPS. One commenter stated that the proposed rule is internally inconsistent and unjustifiably relies on questionable long-term data. For example, the Kamouda Beach 1955–1992 data only covers 500 m of beach, is unreliable, and does not outweigh standardized data collection from 1990 to present. Another commenter stated that individual beach level data should be used to ameliorate the distorting effects of inconsistent survey methods, which likely skew results when combining Japanese nesting beach data into a single time series. This commenter suggested the Services revise the Status Review and extinction analysis using individual nesting beach data for longer time periods, which would likely produce different, more positive results. The proposed rule recognizes the positive nesting trend, but states ''nesting beach count data for the North Pacific Ocean DPS indicated a decline of loggerhead nesting in the last 20 years.''

Response: The Services used the best available information in assessing population trends for the North Pacific Ocean DPS. Population size trends for this DPS rely on nesting beach counts at a number of nesting beaches in Japan. Overall counts in the early 1990s approached 7,000 nests, declined to a low point in the mid-1990s (just over 2,000 nests), and between 2008 and 2010 have ranged from approximately 7,000 to 11,000 nests. A long-term dataset available from a single beach (Kamouda, Japan) documents turtle emergences from 1954 to at least 2004. While these emergence counts include both nesting emergences and non-nesting emergences (false crawls), they have a relationship to the number of nests, and thereby to nesting females. As such, it is the longest continual index of adult females in the North Pacific population, and these data suggest a decline of approximately 90 percent in turtle emergences at the site over the 50-year period. Given historical records overall, during the last half of the 20th century, over fewer than three generations, the size of the nesting population in Japan has declined between 50–90 percent.

Comment 72: Four commenters stated that they did not agree with the expert opinions used in the Status Review threat matrix model. One of the commenters questioned the validity of this approach and cited one of the Status Review peer reviewer's comments to support their opinion as well as a National Research Council report noting that models are a ''heuristic exercise with little or no real power for prediction.'' Further, this commenter contended that the experts arbitrarily assigned threat rankings that were inconsistent with actual data. Another of these commenters noted that despite disagreeing on values for anthropogenic mortality in the Northwest Atlantic Ocean DPS, the analysis on extinction risk using population growth rate showed that this DPS cannot withstand much anthropogenic mortality. Yet another of these commenters also stated that the

model skewed estimates of anthropogenic mortalities high (*e.g.,* for the scallop fishery, trawl fisheries), leading to a false sense of urgency, primarily because it over-relied on the subjective opinions of experts. In addition, one of the four commenters asserted that threat rankings were arbitrarily assigned mortality values that do not correlate with actual data. Three different commenters indicated that a paper by Dulvy *et al.* (2004) noted that the available approaches have been subject to considerable debate, but this suggests that deference to the scientific expertise of those knowledgeable about loggerhead sea turtles, such as the BRT, is required. These three commenters noted that general criticisms, such as the fact that loggerhead sea turtles may be numerous, are not sufficient to undermine the BRT's report and are not based on the best available science. For example, Dulvy *et al.* (2004) stated that the decline of an abundant species may represent a massive biomass loss that may be of greater concern than the loss of a small number of individuals of a rare species because it may compromise the ecosystem's functionality, stability, or resilience. These three commenters stressed that scientists with intimate knowledge both of loggerhead sea turtles and their ecosystem must be able to use their scientific opinions to analyze the status of the species.

Response: As stated in the Status Review, known anthropogenic threats to each life stage of a DPS, measured as additional annual mortality, were quantified using both available data and experts' opinions, where the stage-specific additional annual mortality was summarized in a matrix format (threat matrix). The BRT loggerhead sea turtle experts estimated threat levels based on the best information available. Justifications and references for each threat were provided in the Status Review and in the online threat matrix spreadsheets [*http://www.nmfs.noaa.gov/pr/species/statusreviews.htm*].

The threat matrix analysis was not used to predict the population trends. The National Research Council (2010) review is correct in that the threats matrix analysis was used as a heuristic exercise to show that the current knowledge about loggerhead sea turtle biology and anthropogenic mortalities is not sufficient to make precise conclusions about the future. In the Status Review, the BRT stated ''* * * these indices were used to measure the negative effects of known anthropogenic mortalities on the overall health of each DPS and not to estimate the actual population growth rates of these DPSs.''

Comment 73: One commenter stated the belief that the BRT incorporated the most pessimistic and conservative assumptions in its analyses. For example, with respect to the assumptions made in the threat matrix analysis, the BRT stated that ''we used the precautionary principle for characterizing the threat level.'' For the SQE analysis, the commenter stated that the BRT ignored the model developers' use of 0.4 as the critical value, which was found to balance the risk of making both Type I and Type II errors, opting to reduce that value to 0.3. This had the effect of increasing the chances of finding risk where none exists. The commenter stated that all assumptions incorporated in the models were skewed toward findings of endangerment. The commenter noted this approach could be suitable, and perhaps even required, in the context of a section 7 consultation, where the question is whether a Federal action is or is not likely to result in jeopardy to a listed species. However, the commenter argued that it is legally inappropriate in the context of a listing decision. The commenter noted that the Services are required to use the best scientific and commercial data available, not data skewed toward a particular result. In the present case, the commenter stated that the BRT failed to utilize both basic biological and population dynamics expertise. Further, the commenter noted that contrary information, such as the TEWG's findings with respect to the increase in juvenile abundance and the newer nest numbers, was ignored.

Response: The BRT clearly explained its rationale for using the SQE value of 0.3 as follows: ''Using simulations, Snover and Heppell (2009) demonstrated that SQE values greater than 0.4 indicated a population has > 0.9 probability of quasi-extinction. At this critical value (SQE = 0.40), Type I and Type II errors are minimized simultaneously at approximately 10%. Reducing the critical value to 0.3 lessens the 'Type I' error rate but increases the 'Type II' error rate (Snover and Heppell, 2009). The choice of 0.9 as the cut-off probability was arbitrary, and values other than 0.9 could be used. However, new critical values other than 0.4 needed to be established for different values of the cut-off probability. Qualitatively, the results would not differ if a value other than 0.9 was used (Snover and Heppell, 2009). In this assessment, we used the cut-off probability of 0.9 as in Snover and Heppell (2009) and a critical value for the SQE of 0.30, which reduced the 'Type I' error (a DPS is considered to be not at risk when in fact it is). SQE values greater than 0.30, therefore, indicate the DPS is at risk.'' The Services agree with this approach taken by the BRT.

Comments on the Status Determinations for the DPSs

Comment 74: All individuals that sent form letters, as well as 18 organizations or individuals that sent non-form letters, supported the proposed endangered listing status for seven of the DPSs.

Response: While general support or non-support of a listing is not, in itself, a substantive comment that we take into consideration as part of our five-factor analysis, we appreciate the support of these commenters. Support is important to the conservation of species.

Comment 75: Several commenters noted that in the NMFS and USFWS 5-year review for the loggerhead sea turtle (NMFS and USFWS, 2007), the agencies concluded that they do not believe the loggerhead sea turtle should be reclassified; therefore, the 2009 Status Review presents no new information to justify a new ''endangered'' finding.

Response: In the 5-year review for the loggerhead sea turtle, NMFS and USFWS concluded that, based on the best available information, we did not believe the entire species, as listed worldwide, should be delisted or reclassified. However, we stated that we had information indicating that an analysis and review of the species should be conducted to determine the application of the DPS policy to the loggerhead sea turtle. Subsequently, the BRT reviewed and evaluated all relevant scientific information relating to loggerhead population structure globally to determine whether DPSs exist and, if so, to assess the status of each DPS. The findings of the BRT informed this rulemaking.

Comment 76: One commenter provided an analysis of the distinction between ''threatened'' and ''endangered'' under the ESA, referencing a memorandum written by Dan Ashe, USFWS (Ashe Memo). The commenter stated that the key difference is the timing for when the species is in danger of extinction—threatened means may be in danger of extinction in the foreseeable future and endangered means in danger now and on the brink of extinction. The commenter referenced four basic categories included in the Ashe Memo and provided information relative to loggerhead sea turtles as follows: ''(1) Species facing a catastrophic threat from which the risk of extinction is imminent and certain. Unlike snail darters, loggerhead sea turtles are found throughout the world making it neither

uniquely dependent on a single, vulnerable area nor subject to any impending, catastrophic threat. (2) Narrowly restricted endemics that, as a result of their limited range or population size, are vulnerable to extinction from elevated threats. Conservation efforts for loggerheads in the U.S. and internationally have greatly minimized anthropogenic threats and these threats have been significantly reduced over recent decades. (3) Species formerly more widespread that have been reduced to such critically low numbers or restricted ranges that they are at a high risk of extinction due to threats that would not otherwise imperil the species. Loggerheads do not meet these particular criteria, for many of the same reasons already discussed. Additionally, in the Northwest Atlantic alone, this species numbers in the millions at all life stages. Furthermore, such as in the Tongaland example, local loggerhead subpopulations have shown the ability to recover from levels of only a couple hundred mature females. (4) Species with still relatively widespread distribution that have nevertheless suffered ongoing major reductions in its numbers, range, or both, as a result of factors that have not abated.'' The commenter noted that protective measures in the form of ever improving TEDs, protective longline gear and practices, time/area closures, and nesting beach improvements and ordinances have gone a long way toward abating threats to loggerhead sea turtles and that the current trend in loggerhead abundance in the Northwest Atlantic is increasing.

The commenter further referenced the Ashe Memo, which says ''threatened species typically have some of the characteristics of the fourth category above, in that they too have generally suffered some recent declines in numbers, range or both, but to a less severe extent than endangered species.'' The Ashe Memo goes on to distinguish between a species that is endangered and one that is threatened and ''depends on the life history and ecology of the species, the nature of the threats, and population numbers and trends.'' The trends for loggerheads, both in terms of increased nesting and reduced threats, not to mention the geographic diversity of nesting habitat, the species' extensive distribution, and the sheer numbers of individuals in the population, all point toward, at most, a ''threatened'' status.

Response: The Services agree that numerous protective measures have been implemented to protect loggerhead sea turtles in the Northwest Atlantic Ocean. However, compliance levels with TEDs, high interaction levels and mortalities in many domestic and international fisheries, continued loss of nesting beach habitat, and inadequate development and enforcement of lighting ordinances, to name a few, suggest that many threats are still impacting Northwest Atlantic loggerhead sea turtles and need to be further addressed. With regard to the commenter's assertion that the current trend in loggerhead abundance in the Northwest Atlantic is increasing, inclusion of nesting data up through 2010 results in the nesting trend line being slightly negative, but not significantly different from zero. Regardless, for a number of reasons, discussed in the Finding section, the Services are listing the Northwest Atlantic Ocean DPS as threatened.

Comment 77: Three commenters noted that best available science suggests that focusing solely on biological extinction, or imminent extinction, is not useful from an ecological, management, or ecosystem perspective because even after population declines of more than 95 percent, many marine fishes would still number in the hundreds of thousands or millions of individuals and, therefore, not be considered to be at an increased risk of extinction. The commenters argued that scientists do not understand ''how the multitude of factors that influence the extinction probability for a given population or species interact with one another under specific physical and biological environments.'' They contended that the ESA, by requiring NMFS and USFWS to consider five statutory listing criteria, anticipates the interactions of many factors and provides inherent flexibility in determining whether a species warrants protection as endangered. The commenters stated that requiring that the species face imminent extinction or that the species be on the brink of extinction is neither legally justifiable nor scientifically possible given the current published literature on extinction risk in marine species. The commenters urged the Services to be open to scientists' assessments of extinction risk because these are important to convey that a species' extinction probability has increased and that its probability of recovery is low.

Response: The Services agree that even species that have suffered fairly substantial declines in numbers or range are sometimes listed as threatened rather than endangered, based on the species' resilience and resistance to threats making the species currently less vulnerable to threats. Whether a species is ultimately protected as an endangered species or a threatened species depends on the specific life history and ecology of the species, the nature of the threats, the species' response to those threats, and population numbers and trends.

Comment 78: Two commenters stated that they did not support the proposed endangered listing for North Pacific loggerheads. One of these commenters stated the proposed endangered listing is contrary to established listing practices for other species in similar situations with North Pacific loggerheads (*e.g.,* crested caracara, ribbon seal, northern spotted owl, slickspot peppergrass, chirichua leopard frog, delta green ground beetle, California red-legged frog, southeastern beach mouse, Anastasia Island beach mouse, and Waccamaw silverside minnow). This commenter argued that even though a species may be at risk from significant past and projected habitat destruction, population declines, or elimination from a portion of its range, the Services regularly list a species as threatened when the population declines are not steep and when the threat to the species' ongoing survival is not imminent.

Response: An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus, a species may be listed as threatened if it is likely to become in danger of extinction within the foreseeable future. Threatened species typically have some of the same characteristics as endangered species with relatively widespread distribution that have suffered ongoing major reductions in numbers, range, or both, as a result of factors that have not been abated, in that they too have generally suffered some recent decline in numbers, range, or both, but to a less severe extent than endangered species. Whether a species is ultimately protected as an endangered species or a threatened species depends on the specific life history and ecology of the species, the nature of the threats, the species' response to those threats, and population numbers and trends.

Comment 79: One commenter stated that there is a lack of evidence to support the endangered designation for the North Pacific Ocean DPS. The commenter stated that recent nesting increases are clear evidence that the North Pacific Ocean DPS is increasing, which is inconsistent with the proposed endangered status.

Response: The Services agree there has been an encouraging trend in the annual nesting abundance of

loggerheads in Japan. However, relative to historical levels, the annual nesting abundance is very low. The agencies believe the substantial depletion of this population, despite the aforementioned increases, coupled with ongoing threats to loggerheads in the North Pacific, warrants endangered status for the North Pacific Ocean DPS.

Comment 80: Two commenters stated that they do not support listing the Southwest Indian Ocean DPS as threatened and suggested it should be listed as endangered. The commenters noted that although this population is increasing, it remains small and vulnerable. The commenters noted that while the majority of nesting habitat is protected in South Africa and Mozambique, loggerheads are at risk from direct exploitation, especially in Madagascar, and incidental capture has not yet been quantified. Additionally, dramatic increases in regional longline fishing for tuna are expected to increase loggerhead bycatch.

Response: A trend analysis of index nesting beach data from this region from 1965 to 2008 indicates an increasing nesting population. Although the Services agree that fisheries bycatch is a concern, the extent of this threat is not well understood. In light of the protected status of the majority of nesting beaches and the increasing nesting trend, the Services believe a threatened status is appropriate for the Southwest Indian Ocean DPS.

Comment 81: Thousands of commenters stated that they strongly supported listing the Northwest Atlantic Ocean DPS as endangered, particularly noting that Northwest Atlantic loggerheads are more in need of endangered status to ensure their survival after the recent oil spill in the Gulf of Mexico. Many commenters noted that the majority of Northwest Atlantic loggerheads nest in the United States and represent the second largest nesting assemblage in the world, which makes their survival critical to the future of the species. The States of Florida, Georgia, and Virginia support an endangered status for the Northwest Atlantic Ocean DPS. The North Carolina Department of Marine Fisheries stated that it opposes an endangered listing because appropriate information is lacking. Specifically, the agency stated that it opposes the listing because counts of nests or females are not an assessment of the population. Three other commenters also stated that they oppose listing the Northwest Atlantic Ocean DPS as endangered, arguing that the case for a change in listing status has not been established and the proposed rule should be rejected, particularly for the Northwest Atlantic Ocean DPS.

Response: The Services agree on the importance of the Northwest Atlantic Ocean DPS. The predominance of nesting in the United States and the extensive use of U.S. coastal and Exclusive Economic Zone (EEZ) waters by adults and large neritic juveniles from this DPS provides us the ability to better control anthropogenic threats to individuals of those highly valuable life stages compared to other DPSs which originate in, and inhabit waters of, other nations over which we have no control. Based on additional review and discussions within the Services on status and trends, threats, and conservation efforts, we do not believe the Northwest Atlantic Ocean DPS is currently ''in danger of extinction throughout all or a portion of its range,'' and determined that a ''threatened'' listing under the ESA is more appropriate.

Comment 82: The North Carolina Division of Marine Fisheries stated that there is no accurate way to determine the status of the Northwest Atlantic Ocean DPS because there is no benchmark assessment of the DPS and periodic updates. It suggested conducting an assessment similar to the 2009 bottlenose dolphin stock assessment.

Response: The Services agree that gaps remain in what is known about the population dynamics of the Northwest Atlantic Ocean DPS. The Services continue to evaluate ways to improve population assessments for sea turtles. The Services used the best available data and the most appropriate analyses in assessing the status of the Northwest Atlantic Ocean DPS and making our final determination.

Comment 83: Three commenters stated the belief that the Northwest Atlantic Ocean DPS is ''in danger of extinction throughout all or a portion of its range'' and therefore must be listed as endangered. The commenters noted that the definition of an endangered species is necessarily forward-looking, as a species ''in danger'' of extinction is not currently extinct. Rather it is a species facing a risk of extinction in the future. The Northwest Atlantic Ocean DPS, facing a high probability of quasi-extinction, cannot be merely threatened, because the threatened category is only for species that are not currently in danger of extinction but instead likely to become so in the future.

Response: Based on additional review and discussions within the Services on status and trends, threats, and conservation efforts, we do not believe the Northwest Atlantic Ocean DPS is currently ''in danger of extinction throughout all or a portion of its range,'' and determined that a ''threatened'' listing under the ESA is more appropriate. Quasi-extinction analyses support the fact that the Northwest Atlantic Ocean DPS is not currently in danger of extinction throughout all or a portion of its range. In one such analysis, a Dennis-Holmes demographic population viability analysis (PVA) was conducted using nesting data through 2009. Quasi-extinction was defined as 1,000 remaining adults (which is higher than is typically used in most PVAs) within 100 years. For a population of 35,000 turtles (approximately the current estimated number of adult females), the risk of reaching that QET was 0.0017, less than two-tenths of a percent (NMFS, unpublished data). A revision of the SQE analysis done in the Status Report written by the BRT had similar results. Including nesting data through 2009 instead of just 2007, and redoing the analysis to use a range of adult female abundance estimates as QETs, it was determined that there was little risk (SQE < 0.3) of the Peninsular Florida Recovery Unit (comprising approximately 80 percent of the Northwest Atlantic Ocean DPS) reaching 1,000 or fewer females in 100 years.

Comment 84: Three commenters referenced *Center for Biological Diversity* v. *Lohn,* where the court found that uncertainty regarding data used in an ESA section 4 listing determination did not justify failing to list the species, citing *Conner* v. *Burford.* The commenters noted that, while data gaps exist for loggerhead sea turtles, this is true for many if not all marine species and cannot excuse the lack of agency action under the ESA to protect loggerhead sea turtles. The commenters noted that with a threatened listing for over 30 years, Northwest Atlantic loggerheads continue to decline; therefore, the Services must grant additional protections to recover the species.

Response: The Services agree and understand that data gaps do not justify failing to list a species under the ESA. Despite the gaps in knowledge, loggerhead sea turtles in the Northwest Atlantic have been, and will continue to be, listed as a threatened species under the ESA. We disagree that there has been a ''lack of agency action under the ESA to protect loggerhead sea turtles.'' Numerous protective regulations and measures have been adopted since the original listing of the loggerhead sea turtle, both on the nesting beaches and in the marine environment. The effectiveness of many of those measures

may not yet be observed on the nesting beaches because of the recent enactment relative to the life history and age to maturity of loggerhead sea turtles. However, additional measures continue to be undertaken to reduce anthropogenic impacts, as required by the ESA. Analysis of nesting trends from 1989–2010 results in a trend line that is slightly negative, but not significantly different from zero.

Comment 85: Three commenters reiterated that the Services' determinations concerning listing species or DPSs and changing the status of a listed species or DPS must be made ''solely on the basis of the best scientific and commercial data available.'' The commenters noted that the Services may not cater to political influences in conducting a purely scientific evaluation. The commenters noted that their petitions, prior comments, the 2009 Status Review, and the best available science support the Services' proposed DPS designations and changing the status of the Northwest Atlantic Ocean DPS from threatened to endangered. The commenters argued that the Services' alleged substantial disagreement on the interpretation of the existing data, which prompted a 6-month extension on the final determination, suggests political and not scientific differences of opinion.

Response: The Services agree that such determinations must be made solely on the basis of the best scientific and commercial data available. The final determination was based upon all available information, as well as information and comments provided in response to the proposed rule, including information provided during the public comment extension periods. The Services then determined that the Northwest Atlantic Ocean DPS should be listed as threatened. A discussion of that information and basis for the listing status is contained in the final determination for the DPS, below.

Comment 86: One commenter questioned why the Services reasoned that current circumstances warrant an endangered listing for the Northwest Atlantic Ocean DPS instead of a threatened listing. The commenter noted that at the time of the original listing in 1978, adult loggerhead population sizes were not well known. For example, the Final EIS associated with the original listing of the species in 1978 identified the Florida population with a total of 41,524 adults of both sexes and Georgia with 551 females nesting annually. Assuming a 3-year remigration interval and a 1:1 sex ratio, the Georgia estimate equates to approximately 3,306 adults, and combined with the Florida estimate, yields an adult population size of 44,830 turtles for the region. The regional population was thought to be declining. The most recent adult population point estimate for the Northwest Atlantic Ocean DPS is 30,050 adult females or approximately 60,100 adult males and females, and that number is believed to be declining. Thus, while the number of nests in the DPS [at the largest rookery] in the Northwest Atlantic increased for 2 decades after being listed, it since has declined, and now the population size of adults (extrapolated from the number of nests) is comparable to or slightly greater than the number that existed when the species was listed as threatened. Another commenter also questioned the size of the loggerhead population against which impacts are measured and provided an estimate of between 1,230,000 and at least 3,300,000 animals in the Northwest Atlantic Ocean DPS.

Response: Based on additional review and discussions within the Services on status and trends, threats, and conservation efforts, we do not believe the Northwest Atlantic Ocean DPS is currently ''in danger of extinction throughout all or a portion of its range,'' and have determined that a ''threatened'' listing under the ESA is more appropriate.

Comment 87: One commenter questioned whether nesting declines are truly valid evidence that the Northwest Atlantic Ocean DPS is headed for extinction. The commenter expressed the belief that the Services should have delved more rigorously into all existing abundance data to determine whether trends in nesting actually reflect trends in the population. The commenter cited the following text from the TEWG (2000) report: ''nesting trends alone may give an incomplete picture of population status.''

Response: The Services agree with the TEWG (2000) report's statement that nesting trends alone may give an incomplete picture of population status. However, at this time it is the strongest indicator, and most thorough and consistent data set available for such determinations. The limited in-water data are also given consideration when making determinations of population status. Note that subsequent to the publication of the proposed rule, nesting data for 2008–2010 was incorporated into the nesting trend analyses, and the result indicated that the nesting trend for the Northwest Atlantic Ocean DPS from 1989–2010 is slightly negative but not statistically different from zero.

Comment 88: The State of Florida provided data on loggerhead nesting activity on Florida beaches collected by the Florida Fish and Wildlife Conservation Commission through June 2010. The analysis of these data shows a marked decline in nest counts since 1989 when extensive index beach monitoring began. The recent analysis reveals that the decline in nest counts from 1989 to 2009 was 23.9 percent and from 1998 to 2009 was 38.4 percent, which corresponds to a decline of 1.42 percent and 4.84 percent per year, respectively. The State of Florida noted that nesting declines correspond with declines of adult female loggerheads. The State acknowledged that nest counts vary with reproductive output as well as adult female abundance and that this source of variation could contribute to either an under- or over-estimate of females from nests in a given year. As such, declines in adult females may be lower or greater than nest counts indicate, but the declining trend is not in dispute. The State of Florida recognized data from other data sets representing younger life stages within the Northwest Atlantic Ocean DPS that come from in-water captures where capture effort was recorded. The trends in catch per unit effort vary by location with some showing a statistically significant increasing trend in immature loggerheads. The State of Florida explained that there are important differences between nest count data and catch per unit effort data that apply to how accurately each data set represents actual population changes. Florida nest count data have a time series of 21 years collected via a standardized protocol, are spatially detailed, and are collected over the majority of the principal nesting range of the Northwest Atlantic Ocean DPS. In contrast, catch per unit effort data, even when a composite data set, do not come close to the spatial detail and population range as the nest count data. The State of Florida acknowledged the importance of catch per unit effort trends assessment, but cautioned that the inherent sampling bias of catch per unit effort techniques introduces uncertainty into any conclusions drawn from those data.

Response: The Services acknowledge the nesting decline reported by the State of Florida for the period 1989–2009; however, analysis of the data through 2010 (2010 data were not available at the time of the proposed rule) results in a trend line that is slightly negative, but not statistically different from zero. Nesting in 2009 on the Core Index Nesting Beaches was relatively low at 32,717. However, in 2008, nesting

numbers exceeded 38,000, the second highest total since 2002. In 2010, the nest count was 47,880, the highest since 2000, and the ninth highest in the 22 years in the data set. The Services agree that available in-water abundance information must be used with caution due to inherent sampling biases; however, we believe these data are an important piece of information that can be used to help assess the status of this DPS.

Comment 89: Five commenters referenced Witherington *et al.* (2009) and the decline of nesting in Florida. The commenters noted that if the trend continues the nesting population will decline by 80 percent by 2017 (using 1989–2007 data); such a drastic decline over just 19 years, less than half a loggerhead's generation time, would warrant IUCN Critically Endangered status. Witherington *et al.* 2009 noted that fisheries bycatch is the factor that best fits the nesting decline.

Response: Inclusion of nesting data up through 2010 results in the nesting trend line being slightly negative, but not significantly different from zero. The Services agree that fisheries bycatch is one factor that best fits the nesting decline seen in the past. However, various fishery bycatch reduction measures have occurred within the last generation time for loggerhead sea turtles, and the benefits of those actions may only now be starting to become evident on the nesting beaches. The agencies are committed to reducing fisheries bycatch further.

Comment 90: The State of Georgia provided data on loggerhead nesting in Georgia. The State noted that loggerhead nest counts in Georgia show a stable nesting population for the corresponding time period used in Witherington *et al.* (2009). However, the State acknowledged that nesting in Georgia represents a small fraction (less than 2 percent) of the nesting by loggerheads in the Northwest Atlantic Ocean DPS and, therefore, has little effect on the overall nesting trend for the Northwest Atlantic Ocean DPS.

Response: The Services agree that Georgia loggerhead nesting indicates a stable nesting population. Additionally, nesting in South Carolina and North Carolina has also been relatively stable over the past decade, with record or near record nesting since 2008 in some cases. Nesting in these three States constitute most of the Northern Recovery Unit of the Northwest Atlantic Ocean DPS. While small in comparison to the Peninsular Florida Recovery Unit, it is the second largest recovery unit in the DPS and an important source of gene flow within the Northwest Atlantic Ocean DPS.

Comment 91: One commenter provided a critique of the methods used in the loggerhead Status Review written by the BRT. In more than one instance, the commenter made reference to the Status Review making an ''endangered'' determination or recommendation.

Response: The Services would like to clarify that the role of the BRT and the Status Review was not to make a determination or recommendation of listing status under the ESA. The BRT was to provide an analysis of loggerhead status, which was then used in conjunction with numerous other sources of information by the Services to make a final listing determination. Confusion occurred for many readers of the Status Review because of the convergence of language used in the BRT report and the legal language used in the ESA. The BRT did not make conclusions as to ESA listing status.

Comment 92: Two commenters stated that they did not support listing the South Atlantic Ocean DPS as threatened and suggested it should be listed as endangered. The commenters noted that although this population is increasing, it remains small and vulnerable. The commenters further noted that the South Atlantic Ocean DPS in Brazil is subject to various threats on both important nesting beaches and in-water habitat, particularly climate change and ocean acidification.

Response: The Services determined that a threatened status is appropriate for the South Atlantic Ocean DPS. A long-term, sustained increasing trend in nesting abundance was observed from 1988 through 2003, and loggerhead nesting has continued to increase through the 2008–2009 nesting season. Conservation efforts on nesting beaches have been largely successful although coastal development in the main nesting areas continues to be a concern. The Services agree that fisheries bycatch remains a concern; however, there are efforts underway within Brazilian waters and elsewhere in their range to address these threats.

Other Comments

Comment 93: The North Carolina Division of Marine Fisheries and one other commenter noted that the proposed rule contained limited discussion of mitigating non-fisheries threats (*e.g.,* oil spills, vessel strikes, entanglement in marine debris, and indirect anthropogenic factors that affect reproductive success such as alteration/loss of nesting habitat, light pollution, *etc.*) for the Northwest Atlantic Ocean DPS.

Response: The Services appreciate the significance and importance of non-fisheries threats on sea turtle populations, including the Northwest Atlantic Ocean DPS. Discussion of these threats does occur within the preamble language of the listing rule. However, as a result of the greater specific information available for known fishery impacts and the general understanding that fishery impacts constitute what is likely the largest category of impact on sea turtle populations, a greater volume of text is dedicated to that discussion.

Comment 94: Three commenters argued the 6-month extension was unjustified and unlawful and requested the Services withdraw the extension and complete the final rule immediately.

Response: The Services disagree that the 6-month extension was unjustified and unlawful. Section 4(b)(6) of the ESA allows for 6-month extensions of final determinations when ''there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination * * * for purposes of soliciting additional data.'' The Services proposed to list the Northwest Atlantic Ocean DPS of the loggerhead sea turtle as endangered. However, in preparing the final rule, there was substantial disagreement regarding the interpretation of the existing data on status and trends and its relevance to the assessment of extinction risk to the Northwest Atlantic Ocean DPS. There was also considerable disagreement regarding the magnitude and immediacy of the fisheries bycatch threat and measures to reduce this threat to the Northwest Atlantic Ocean DPS. As part of the 6-month extension notice, the Services solicited new information or analyses to help clarify these issues and used this time to fully evaluate and assess the best scientific and commercial data available and ensure consistent interpretation of data and application of statutory standards for all of the nine proposed DPSs.

Comment 95: Several individuals provided comments on critical habitat designations for the Northwest Atlantic Ocean and North Pacific Ocean DPSs.

Response: The Services have not designated critical habitat for the loggerhead sea turtle. Critical habitat is not determinable at this time, but will be proposed in a separate rulemaking.

Summary of Factors Affecting the Nine Loggerhead DPSs

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Species.

Under section 4(a) of the ESA, we must determine if a species is threatened or endangered because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have described the effects of various factors leading to the decline of the loggerhead sea turtle in the original listing determination (43 FR 32800; July 28, 1978) and other documents (NMFS and USFWS, 1998, 2007, 2008). In making this finding, information regarding the status of each of the nine loggerhead DPSs is considered in relation to the five factors provided in section 4(a)(1) of the ESA. The reader is directed to section 5 of the Status Review for a more detailed discussion of the factors affecting the nine identified loggerhead DPSs. In section 5.1, a general description of the threats that occur for all DPSs is presented under the relevant section 4(a)(1) factor. In section 5.2, threats that are specific to a particular DPS are presented by DPS under each section 4(a)(1) factor. That information is incorporated here by reference; the following is a summary of that information by DPS.

North Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the North Pacific result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, planting of non-native vegetation (NMFS and USFWS, 1998), and climate change. Beaches in Japan where loggerheads nest are extensively eroded due to dredging and dams constructed upstream, and are obstructed by seawalls as well. Unfortunately, no quantitative studies have been conducted to determine the impact to the loggerhead nesting populations (Kamezaki *et al.,* 2003). However, it is clear that loggerhead nesting habitat has been impacted by erosion and extensive beach use by tourists, both of which have contributed to unusually high mortality of eggs and pre-emergent hatchlings at many Japanese rookeries (Matsuzawa, 2006). While the Services cannot predict the exact impacts of climate change, sea level rise may present a more immediate challenge for this DPS because of the proportion of beaches with shoreline armoring that prevents or interferes with the ability of nesting females to access to suitable nesting habitat.

Maehama Beach and Inakahama Beach on Yakushima in Kagoshima Prefecture account for approximately 30 percent of loggerhead nesting in Japan (Kamezaki *et al.,* 2003), making Yakushima an important area for nesting beach protection. However, the beaches suffer from beach erosion and light pollution, especially from passing cars, as well as from tourists encroaching on the nesting beaches (Matsuzawa, 2006). Burgeoning numbers of visitors to beaches may cause sand compaction and nest trampling. Egg and pre-emergent hatchling mortality in Yakushima has been shown to be higher in areas where public access is not restricted and is mostly attributed to human foot traffic on nests (Kudo *et al.,* 2003). Fences have been constructed around areas where the highest densities of nests are laid; however, there are still lower survival rates of eggs and pre-emergent hatchlings due to excessive foot traffic (Ohmuta, 2006).

Loggerhead nesting habitat also has been lost at important rookeries in Miyazaki due in part to port construction that involved development of a groin of 1 kilometer from the coast into the sea, a yacht harbor with breakwaters and artificial beach, and an airport, causing erosion of beaches on both sides of the construction zone. This once excellent nesting habitat for loggerheads is now seriously threatened by erosion (Takeshita, 2006).

Minabe-Senri beach, Wakayama Prefecture is a ''submajor'' nesting beach (in Kamezaki *et al.,* 2003), but is one of the most important rookeries on the main island of Japan (Honshu). Based on unpublished data, Matsuzawa (2006) reported hatching success of unwashed-out clutches at Minabe-Senri beach to be 24 percent in 1996, 50 percent in 1997, 53 percent in 1998, 48 percent in 1999, 62 percent in 2000, 41 percent in 2001, and 34 percent in 2002.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the North Pacific Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases loggerhead foraging areas coincide with fishing zones. For example, using aerial surveys and satellite telemetry, juvenile foraging hotspots have recently been identified off the coast of Baja California, Mexico; these hotspots overlap with intensive small-scale fisheries (Peckham and Nichols, 2006; Peckham *et al.,* 2007, 2008). Comprehensive data currently are unavailable to fully understand how intense harvesting of fish resources changes neritic and oceanic ecosystems. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the North Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development and coastal armoring on nesting beaches in Japan are significant threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In Japan, the use of loggerhead meat for food was historically popular in local communities such as Kochi and Wakayama prefectures. In addition, egg collection was common in the coastal areas during times of hunger and later by those who valued loggerhead eggs as revitalizers or aphrodisiacs and acquired them on the black market (in Kamezaki *et al.,* 2003; Takeshita, 2006). Currently, due in large part to research and conservation efforts throughout the country, egg harvesting no longer represents a problem in Japan (Kamezaki *et al.,* 2003; Ohmuta, 2006; Takeshita, 2006). Laws were enacted in 1973 to prohibit egg collection on Yakushima, and in 1988, the laws were extended to the entire Kagoshima Prefecture, where two of the most important loggerhead nesting beaches are protected (Matsuzawa, 2006).

Despite national laws, in many other countries where loggerheads are found migrating through or foraging, the hunting of adult and juvenile turtles is still a problem, as seen in Baja California Sur, Mexico (Koch *et al.,* 2006; Mancini and Koch, 2009). Sea turtles have been protected in Mexico since 1990, when a Federal law decreed the prohibition of the ''extraction, capture and pursuit of all species of sea turtle in federal waters or from beaches within national territory * * * [and a

requirement that] * * * any species of sea turtle incidentally captured during the operations of any commercial fishery shall be returned to the sea, independently of its physical state, dead or alive'' (in Garcia-Martinez and Nichols, 2000). Despite the ban, studies have shown that sea turtles continue to be caught, both indirectly in fisheries and by a directed harvest of juvenile turtles. Turtles are principally hunted using nets, longlines, and harpoons. While some are killed immediately, others are kept alive in pens and transported to market. The market for sea turtles consists of two types: the local market (consumed locally) and the export market (sold to restaurants in Mexico cities such as Tijuana, Ensenada, and Mexicali, and U.S. cities such as San Diego and Tucson). Consumption is highest during holidays such as Easter and Christmas (Wildcoast/Grupo Tortuguero de las Californias, 2003).

Based on a combination of analyses of stranding data, beach and sea surveys, tag-recapture studies, and extensive interviews, all carried out between June 1994 and January 1999, Nichols (2003) conservatively estimated the annual take of sea turtles by various fisheries and through direct harvest in the Baja California, Mexico, region. Sea turtle mortality data collected between 1994 and 1999 indicated that over 90 percent of sea turtles recorded dead were either green turtles (30 percent of total) or loggerheads (61 percent of total), and signs of human consumption were evident in over half of the specimens. These studies resulted in an estimated 1,950 loggerheads killed annually, affecting primarily juvenile size classes. The primary causes for mortality were the incidental take in a variety of fishing gears and direct harvest for consumption and [illegal] trade (Gardner and Nichols, 2001; Nichols, 2003).

From April 2000 to July 2003 throughout the Bahia Magdalena region (including local beaches and towns), researchers found 1,945 sea turtle carcasses, 44.1 percent of which were loggerheads. Of the sea turtle carcasses found, slaughter for human consumption was the primary cause of death for all species (63 percent for loggerheads). Over 90 percent of all turtles found were juvenile turtles (Koch *et al.,* 2006). As the population of green turtles has declined in Baja California Sur waters, poachers have switched to loggerheads (H. Peckham, Pro Peninsula, personal communication, 2006).

In summary, overutilization for commercial purposes in both Japan and Mexico likely was a factor that contributed to the historical declines of this DPS. Current illegal harvest of loggerheads in Baja, California for human consumption continues as a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the North Pacific Ocean. As in other nesting locations, egg predation also exists in Japan, particularly by raccoon dogs (*Nyctereutes procyonoides*) and weasels (*Mustela itatsi*); however, quantitative data do not exist to evaluate the impact on loggerhead populations (Kamezaki *et al.,* 2003). Loggerheads in the North Pacific Ocean also may be impacted by harmful algal blooms.

In summary, although nest predation in Japan is known to occur, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the North Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.1.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the North Pacific Ocean is substantial (see Factor E). Although national and international governmental and non-governmental entities on both sides of the North Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In addition to fishery bycatch, coastal development and coastal armoring on nesting beaches in Japan continues as a substantial threat (see Factor A). Coastal armoring, if left unaddressed, will become an even more substantial threat as sea level rises. Recently, the Japan Ministry of Environment has supported the local non-governmental organization conducting turtle surveys and conservation on Yakushima in establishing guidelines for surveys and minimizing impacts by humans encroaching on the nesting beaches. As of the 2009 nesting season, humans accessing Inakahama, Maehama, and Yotsuse beaches at night must comply with the established rules (Y. Matsuzawa, Sea Turtle Association of Japan, personal communication, 2009).

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of North Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threats from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and coastal development and coastal armoring (Factor A) are significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of loggerheads in the North Pacific. (Artisanal fisheries are typically small scale-commercial or subsistence fisheries.) Sea turtles may be caught in pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, fishing dredges, pound nets and weirs, haul and purse seines, pots and traps, and hook and line gear.

Based on turtle sightings and capture rates reported in an April 1988 through

March 1989 survey of fisheries research and training vessels and extrapolated to total longline fleet effort by the Japanese fleet in 1978, Nishemura and Nakahigashi (1990) estimated that 21,200 turtles, including greens, leatherbacks, loggerheads, olive ridleys, and hawksbills, were captured annually by Japanese tuna longliners in the western Pacific and South China Sea, with a reported mortality of approximately 12,300 turtles per year. Using commercial tuna longline logbooks, research vessel data, and questionnaires, Nishemura and Nakahigashi (1990) estimated that for every 10,000 hooks in the western Pacific and South China Sea, one turtle is captured, with a mortality rate of 42 percent. Although species-specific information on the bycatch is not available, vessels reported that 36 percent of the sightings of turtles in locations that overlap with these commercial fishing grounds were loggerheads.

Caution should be used in interpreting the results of Nishemura and Nakahigashi (1990), including estimates of sea turtle take rate (per number of hooks) and resultant mortality rate, and estimates of annual take by the fishery, for the following reasons: (1) The data collected were based on observations by training and research vessels, logbooks, and a questionnaire (*i.e.,* hypothetical), and do not represent actual, substantiated logged or observed catch of sea turtles by the fishery; (2) the authors assumed that turtles were distributed homogeneously; and (3) the authors used only one year (1978) to estimate total effort and distribution of the Japanese tuna longline fleet. Although the data and analyses provided by Nishemura and Nakahigashi (1990) are conjectural, longliners fishing in the Pacific have significantly impacted and, with the current level of effort, probably will continue to have significant impacts on sea turtle populations.

Foreign high-seas driftnet fishing in the North Pacific Ocean for squid, tuna, and billfish ended with a United Nations moratorium in December 1992. Except for observer data collected in 1990–1991, there is virtually no information on the incidental take of sea turtle species by the driftnet fisheries prior to the moratorium. The high-seas squid driftnet fishery in the North Pacific was observed in Japan, Korea, and Taiwan, while the large-mesh fisheries targeting tuna and billfish were observed in the Japanese fleet (1990–1991) and the Taiwanese fleet (1990). A combination of observer data and fleet effort statistics indicate that 2,986 loggerhead sea turtles were entangled by the combined fleets of Japan, Korea, and Taiwan from June 1990 through May 1991, when all fleets were monitored. Of these incidental entanglements, an estimated 805 loggerheads were killed (27 percent mortality rate) (Wetherall, 1997). Data on size composition of the turtles caught in the high-seas driftnet fisheries also were collected by observers. The majority of loggerheads measured by observers were juvenile (Wetherall, 1997). The cessation of high-seas driftnet fishing in 1992 should have reduced the incidental take of marine turtles. However, nations involved in driftnet fishing may have shifted to other gear types (*e.g.,* pelagic or demersal longlines, coastal gillnets); this shift in gear types could have resulted in either similar or increased turtle bycatch and associated mortality.

These rough mortality estimates for a single fishing season provide only a narrow glimpse of the impacts of the driftnet fishery on sea turtles, and a full assessment of impacts would consider the turtle mortality generated by the driftnet fleets over their entire range. Unfortunately, comprehensive data are lacking, but the observer data do indicate the possible magnitude of turtle mortality given the best information available. Wetherall *et al.* (1993) speculate that the actual mortality of sea turtles may have been between 2,500 and 9,000 per year, with most of the mortalities being loggerheads taken in the Japanese and Taiwanese large-mesh fisheries.

While a comprehensive, quantitative assessment of the impacts of the North Pacific driftnet fishery on turtles is impossible without a better understanding of turtle population abundance, genetic identities, exploitation history, and population dynamics, it is likely that the mortality inflicted by the driftnet fisheries in 1990 and in prior years was significant (Wetherall *et al.,* 1993), and the effects may still be evident in sea turtle populations today. The high mortality of juvenile turtles and reproductive adults in the high-seas driftnet fishery has probably altered the current age structure (especially if certain age groups were more vulnerable to driftnet fisheries) and therefore diminished or limited the future reproductive potential of affected sea turtle populations.

Extensive ongoing studies regarding loggerhead mortality and bycatch have been administered off the coast of Baja California Sur, Mexico. The location and timing of loggerhead strandings documented in 2003–2005 along a 43-kilometer beach (Playa San Lazaro) indicated bycatch in local small-scale fisheries. In order to corroborate this, in 2005, researchers observed two small-scale fleets operating closest to an area identified as a high-use area for loggerheads. One fleet, based out of Puerto López-Mateos, fished primarily for halibut using bottom set gillnets, soaking from 20 to 48 hours. This fleet consisted of up to 75 boats in 2005, and, on a given day, 9 to 40 vessels fished the deep area (32–45 meter depths). During a 2-month period, 11 loggerheads were observed taken in 73 gillnet day-trips, with eight of those loggerheads landed dead (observed mortality rate of 73 percent). The other fleet, based in Santa Rosa, fished primarily for demersal sharks using bottom-set longlines baited with tuna or mackerel and left to soak for 20 to 48 hours. In 2005, the fleet numbered only five to six vessels. During the seven day-long bottom-set longline trips observed, 26 loggerheads were caught; 24 of them were dead when the longlines were retrieved (observed mortality rate of 92 percent). Based on these observations, researchers estimated that in 2005 at least 299 loggerheads died in the bottom-set gillnet fishery and at least 680 loggerheads died in the bottom-set longline fishery. This annual bycatch estimate of approximately 1,000 loggerheads is considered a minimum and is also supported by shoreline mortality surveys and informal interviews (Peckham *et al.,* 2007). These results suggest that incidental capture at Baja California Sur is one of the most significant sources of mortality identified for the North Pacific loggerhead population and underscores the importance of reducing bycatch in small-scale fisheries.

Peckham *et al.* (2008) assessed anthropogenic mortality of loggerhead sea turtles in the coastal waters of Baja California Sur through the synthesis of three sources: (1) Intensive surveys of an index shoreline from 2003–2007, (2) bimonthly surveys of additional shorelines and towns for stranded and consumed carcasses from 2006–2007, and (3) bycatch observations of two small-scale fishing fleets. They estimated that 1,500–2,950 loggerhead sea turtles died per year from 2005–2006 due to bycatch in the two observed fleets. Actual mortality may have been considerably higher due to bycatch in other fisheries, directed hunting for black market trade, and natural factors including predation and disease. From 2003–2007, 2,719 loggerhead carcasses were encountered on shorelines and in and around towns of Baja California Sur. Along the 43-km Playa San Lázaro, thousands of loggerheads stranded

during the summer fishing months over 5 years, which is among the highest reported stranding rates worldwide. This stranding rate corroborates similarly high observed bycatch rates for local small-scale longline (29 loggerheads per 1,000 hooks) and gillnet (1.0 loggerhead per km of net) fisheries. A significant increase in mean length of 2,636 carcasses measured at Baja California Sur occurred from 1995–2007. Due to the decades-long maturation time of loggerheads, this increasing trend in turtle size may reflect both long term declines in nesting described from Japan (Kamezaki *et al.,* 2003) and also historically high bycatch of juvenile loggerheads in both high seas driftnet (Wetherall *et al.,* 1993) and longline fisheries (Lewison *et al.,* 2004). The decreasing proportion of smaller juveniles at Baja California Sur especially from 2000–2007 could be related to sharp declines in nesting observed across all Japanese rookeries in the 1990s (Peckham *et al.,* 2008).

In the U.S. Pacific, longline fisheries targeting swordfish and tuna and drift gillnet fisheries targeting swordfish have been identified as the primary fisheries of concern for loggerheads. Bycatch of loggerhead sea turtles in these fisheries has been significantly reduced as a result of time-area closures, required gear modifications, and hard caps imposed on turtle bycatch, with 100 percent observer coverage in certain areas.

The California/Oregon (CA/OR) drift gillnet fishery targets swordfish and thresher shark off the west coast of the United States. The fishery has been observed by NMFS since July 1990 and currently averages 20 percent observer coverage. From July 1990 to January 2000, the CA/OR drift gillnet fishery was observed to incidentally capture 17 loggerheads (12 released alive, 1 injured, and 4 killed). Based on a worst-case scenario, NMFS estimated that a maximum of 33 loggerheads in a given year could be incidentally taken by the CA/OR drift gillnet fleet. Sea turtle mortality rates for hard-shelled species were estimated to be 32 percent (NMFS, 2000). In 2000, analyses conducted under the mandates of the ESA showed that the CA/OR drift gillnet fishery was taking excessive numbers of sea turtles, such that the fishery ''jeopardized the continued existence of'' loggerheads and leatherbacks. In this case, the consulting agency (NMFS) was required to provide a reasonable and prudent alternative to the action (i.e., the fishery). In order to reduce the likelihood of interactions with loggerhead sea turtles, NMFS has regulations in place to close areas to drift gillnet fishing off southern California during forecasted or occurring El Niño events from June 1 through August 31, when loggerheads are likely to move into the area from the Pacific coast of Baja California following a preferred prey species, pelagic red crabs.

Prior to 2000, the Hawaii-based longline fishery targeted highly migratory species north of Hawaii using gear largely used by fleets around the world. From 1994–1999, the fishery was estimated to take between 369 and 501 loggerheads per year, with between 64 and 88 mortalities per year (NMFS, 2000). Currently, the Hawaii-based shallow longline fishery targeting swordfish is strictly regulated such that an annual take of 17 loggerheads is authorized for the fishery, beginning in 2004, when the fishery was re-opened after being closed for several years. In 2004 and 2005, the fishing year was completed without reaching the turtle take levels (1 and 10 loggerheads were captured, respectively, with fleets operating with 100 percent observer coverage). However, in 2006, 17 loggerheads were taken, resulting in early closure of the fishery. From 2007 through 2010, 15, 0, 3, and 5 loggerheads were taken, respectively, by the fishery. Most loggerheads were released alive (NMFS—Pacific Islands Regional Office, Observer Database Public Web site, 2011, *http://www.fpir.noaa.gov/OBS/obs_qrtrly_annual_rprts.html*).

Recent investigations off the coast of Japan, particularly focused off the main islands of Honshu, Shikoku, and Kyushu, have revealed a major threat to the more mature stage classes of loggerheads (approximately 70–80 cm SCL) due to pound net fisheries set offshore of the nesting beaches and in the coastal foraging areas (T. Ishihara, Sea Turtle Association of Japan, personal communication, 2007). While pound nets constitute the third largest fishery in terms of metric tons of fish caught in Japan, they account for the majority of loggerhead bycatch by Japanese fisheries (Ishihara, 2007, 2009). Open-type pound nets studied in an area off Shikoku were shown to take loggerheads as the most prevalent sea turtle species caught but had lower mortality rates (less than 15 percent), primarily because turtles could reach the surface to breathe. Middle layer and bottom-type pound nets in particular have high rates of mortality (nearly 100 percent), because the nets are submerged and sea turtles are unable to reach the surface. Estimates of loggerhead mortality in one area studied between April 2006 and September 2007 were on the order of 100 individuals. While the fishing industry has an interest in changing its gear to open-type, it is very expensive, and the support from the Japanese government is limited (T. Ishihara, Sea Turtle Association of Japan, personal communication, 2007). Nonetheless, the BRT recognized that coastal pound net fisheries off Japan may pose a significant threat to the North Pacific population of loggerheads.

Quantifying the magnitude of the threat of fisheries in the North Pacific Ocean on loggerhead sea turtles is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effect of pelagic longline fishing on loggerheads, and annual estimates of bycatch were on the order of over 10,000 sea turtles, with as many as 2,600 individual loggerheads killed annually through immediate or delayed mortality as a result of interacting with the gear (Lewison *et al.,* 2004).

Other Manmade and Natural Impacts

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the North Pacific Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Because the majority of Japanese beaches are armored, loggerheads nesting on Japan beaches are likely to be left with increasingly limited nesting habitat when they undergo the vertical and poleward shifts in nesting habitat selection necessitated by sea level rise (S.H. Peckham, Grupo Tortuguero de las Californias, personal communication, 2010). Matsuzawa *et al.* (2002) found heat-related mortality of pre-emergent hatchlings in Minabe Senri Beach and concluded that this population is vulnerable to even small temperature increases resulting from global warming because sand temperatures already exceed the optimal thermal range for incubation. Recently, Chaloupka *et al.* (2008) used generalized additive regression modeling and autoregressive-prewhitened cross-correlation analysis to consider whether changes in regional ocean temperatures affect long-term nesting population dynamics for Pacific loggerheads from primary nesting assemblages in Japan and Australia. Researchers chose four nesting sites with a generally long time series to model, two in Japan (Kamouda rookery, declining population, and Yakushima

rookery, generally increasing in the last 20 years), and two in Australia (Woongarra rookery, generally declining through early 1990s and beginning to recover, and Wreck Island rookery, which is generally declining). Analysis of 51 years of mean annual sea surface temperatures around two core foraging areas off Japan and eastern Australia, showed a general warming of the oceans in these regions. In general, nesting abundance for all four rookeries was inversely related to sea surface temperatures; that is, higher sea surface temperatures during the previous year in the core foraging area resulted in lower summer season nesting at all rookeries. Given that cooler ocean temperatures are generally associated with increased productivity and that female sea turtles generally require at least 1 year to acquire sufficient fat stores for vitellogenesis to be completed, as well as the necessary somatic energy reserves required for the breeding season, any lag in productivity due to warmer temperatures has physiological basis. Over the long term, warming ocean temperatures could therefore lead to lower productivity and prey abundance, and thus reduced nesting and recruitment by Pacific loggerheads (Chaloupka *et al.,* 2008).

Other anthropogenic impacts include boat strikes, ingestion of and entanglement in marine debris, and entrainment in coastal power plants.

Natural environmental events, such as cyclones, hurricanes, and tsunamis, may affect loggerheads in the North Pacific Ocean. Typhoons also have been shown to cause severe beach erosion and negatively affect hatching success at many loggerhead nesting beaches in Japan, especially in areas already prone to erosion. For example, during the 2004 season, the Japanese archipelago suffered a record number of typhoons and many nests were drowned or washed out. Extreme sand temperatures at nesting beaches also create highly skewed female sex ratios of hatchlings or threaten the health of hatchlings. Without human intervention to protect clutches against some of these natural threats, many of these nests would be lost (Matsuzawa, 2006).

In summary, we find that the North Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the North Pacific Ocean, including the coastal pound net fisheries off Japan, coastal fisheries impacting juvenile foraging populations off Baja California, Mexico, and undescribed fisheries likely affecting loggerheads in the South China Sea and the North Pacific Ocean, is a significant threat to the persistence of this DPS.

South Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

In the South Pacific Ocean, loggerhead sea turtles nest primarily in Queensland, Australia, and, to a lesser extent, New Caledonia and Vanuatu (Limpus and Limpus, 2003a; Limpus *et al.,* 2006; Limpus, 2009). Over 80 percent of all loggerhead nesting in Queensland occurs within the protected habitat of Conservation Parks and National Parks (Limpus, 2009). However, destruction and modification of loggerhead nesting habitat outside the protected areas in Queensland result from coastal development and construction, beach erosion, placement of erosion control structures, and beachfront lighting (Limpus *et al.,* 2006; Limpus, 2009).

Removal or destruction of native dune vegetation, which enhances beach stability and acts as an integral buffer zone between land and sea, results in erosion of nesting habitat. Preliminary studies on nesting beaches in New Caledonia include local oral histories that attribute the decrease in loggerhead nesting to the removal of vegetation for construction purposes and subsequent beach erosion (Limpus *et al.,* 2006).

Beach armoring presents a barrier to nesting in New Caledonia. On the primary nesting beach in New Caledonia, a rock wall was constructed to prevent coastal erosion, and sea turtle nesting attempts have been unsuccessful. Local residents are seeking authorization to extend the wall further down the beach (Limpus *et al.,* 2006).

Beachfront lighting has been identified as a problem in some areas of Queensland. Hatchling disorientations have been regularly documented on the small nesting beaches adjacent to Mon Repos (Burnett Heads, Neilson Park, Bargara) and at Heron Island (Limpus, 1985; EPA Queensland Turtle Conservation Project unpublished data cited in Limpus, 2009). However, efforts have been made to reduce hatchling disorientations on Burnett Heads beach with the installation of low pressure sodium vapor lighting. Lighting has not been controlled at other beaches (Neilson Park, Bargara, Kellys Beach), and eggs are relocated to nearby dark beaches to protect emerging hatchlings (Limpus, 2009). Hatchling disorientations have been reduced along the Woongarra Coast to a few clutches annually as a result of altered light horizons (Limpus, 2009).

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the South Pacific Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change, though they appear to be minor. However, climate change may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the South Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. However, the majority of nesting is located within protected parks in Queensland, and current threats in both the terrestrial and marine environments appear to be low and are not believed to be significant threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Australian Native Title Legislation (Native Title Act 1993) allows the harvesting of loggerheads and their eggs by indigenous peoples (Environment Australia, 2003). However, egg consumption in Australia is virtually nil and very few loggerheads are taken for food by indigenous Australians (M. Hamann, James Cook University, personal communication, 2010). Outside of Australia, despite national laws, in many areas the poaching of eggs and hunting of adult and juvenile turtles is still a problem, and Limpus (2009) suggests that the harvest rate of loggerheads by indigenous hunters (including the legal take in Australia and the illegal take in neighboring countries) is on the order of 40 turtles per year. Preliminary studies suggest that local harvesting in New Caledonia constitutes about 5 percent of the nesting population (Limpus *et al.,* 2006). Loggerheads also are consumed after being captured incidentally in high-seas fisheries of the southeastern Pacific (Alfaro-Shigueto *et al.,* 2006), and occasionally may be the product of illegal trade throughout the region.

In summary, current legal and illegal harvest of loggerheads in Australia and New Caledonia for human consumption, as well as the consumption of loggerheads incidentally taken in high-seas fisheries, continues to affect the South Pacific Ocean DPS. However, current threats in both the terrestrial

and marine environments appears to be minor to moderate and are not believed to be a significant threat to the persistence of this DPS.

C. Disease or Predation

There are no reports of diseases causing significant loggerhead mortality in the South Pacific (Limpus, 2009). The prevalence of fibropapillomatosis is thought to be small and occurs at low frequency among loggerheads in Moreton Bay and the southern Great Barrier Reef (Limpus and Miller, 1994; Limpus, 2009). Limpus *et al.* (1994) reported 14 of 320 loggerheads (4.4 percent) captured in Moreton Bay, Australia, during 1990–1992 as exhibiting the disease. According to Limpus (2009), there is no evidence this disease is having a significant impact on the population. Predation on nests and hatchlings by terrestrial vertebrates is a major problem at loggerhead rookeries in the South Pacific. At mainland rookeries in eastern Australia, for example, the introduced fox (*Vulpes vulpes*) has been the most significant predator on loggerhead eggs (Limpus, 1985, 2009). Although this has been minimized in recent years (to less than 5 percent; Limpus, 2009), researchers believe the earlier egg loss will greatly impact recruitment to this nesting population in the early 21st century (Limpus and Reimer, 1994). Predation on hatchlings by crabs and diurnal birds is also a threat (Limpus, 2009). In New Caledonia, feral dogs pose a predation threat to nesting loggerheads, and thus far no management has been implemented (Limpus *et al.,* 2006).

In summary, nest and hatchling predation likely was a factor that contributed to the historical decline of this DPS. Current fox predation levels in eastern Australia are greatly reduced from historical levels, although predation by other species still occurs, and predation by feral dogs in New Caledonia has not been addressed and continues to affect the South Pacific Ocean DPS. In addition, a low incidence of the fibropapillomatosis disease exists in Moreton Bay and the southern Great Barrier Reef. However, these threats appear to be minor and are not believed to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the South Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.2.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

A large part of the Great Barrier Reef off the coast of Queensland, Australia, is protected as part of the Great Barrier Reef Marine Park, which helps limit human use impacts such as fishing and tourism. Over 80 percent of all loggerhead nesting in Queensland occurs within the protected ownership (Limpus, 2009). In 1981, in recognition of its rich faunal diversity, the Great Barrier Reef was inscribed on the United Nations Educational, Scientific and Cultural Organization's World Heritage List. One of the key reasons for its listing as the Great Barrier Reef World Heritage Area (GBRWHA) was the presence of internationally significant foraging and nesting populations of sea turtles, including loggerheads. Since its listing, protection of habitats within the GBRWHA has increased, with the current zone-based management plan enacted in 2004 (Dryden *et al.,* 2008). Nesting habitat protection has also increased with the addition of indigenous co-management plans and ecotourism regulations at Mon Repos (M. Hamann, James Cook University, personal communication, 2010). However, destruction and modification of loggerhead nesting habitat outside the protected areas in Queensland result from coastal development and construction, beach erosion, placement of erosion control structures, and beachfront lighting, (Limpus *et al.,* 2006; Limpus, 2009).

Fishery bycatch that occurs throughout the South Pacific Ocean is substantial (see Factor E). Although national and international governmental and non-governmental entities on both sides of the South Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented (*e.g.,* TED requirements in certain trawl fisheries in Australia), it is unlikely that this cumulative bycatch mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets in the southeastern Pacific, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of South Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch across the range of the DPS (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries and shark control programs are a significant threat to the survival of loggerheads throughout the South Pacific. The primary gear types involved in these interactions include longlines, driftnets, set nets, and trawl fisheries. These are employed by both artisanal and industrial fleets, and target a wide variety of species including tunas, sharks, sardines, swordfish, and mahi mahi.

In the southwestern Pacific, bottom trawling gear has been a contributing factor to the decline in the eastern Australian loggerhead population (Limpus and Reimer, 1994). The northern Australian prawn fishery (NPF) is made up of both a banana prawn fishery and a tiger prawn fishery, and extends from Cape York, Queensland (142° E) to Cape Londonberry, Western Australia (127° E). The fishery is one of the most valuable in all of Australia and in 2000 comprised 121 vessels fishing approximately 16,000 fishing days (Robins *et al.,* 2002a). In 2000, the use of TEDs in the NPF was made mandatory, due in part to several factors: (1) Objectives of the Draft

Australian Recovery Plan for Marine Turtles, (2) requirement of the Australian Environment Protection and Biodiversity Conservation Act for Commonwealth fisheries to become ecologically sustainable, and (3) the 1996 U.S. import embargo on wild-caught prawns taken in a fishery without adequate turtle bycatch management practices (Robins *et al.,* 2002a). Data primarily were collected by volunteer fishers who were trained extensively in the collection of scientific data on sea turtles caught as bycatch in their fishery. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate of an estimated 40 percent due to drowning, injuries, or being returned to the water comatose (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). This lower mortality rate also may be based on better sea turtle handling techniques adopted by the fleet. In general, loggerheads were the third most common sea turtle taken in this fishery. In the East Coast otter trawl fishery, Robins (1995) suggests that upwards of 340 turtle mortalities may potentially occur each year, with loggerheads comprising the bulk of the interactions. Despite encouraging signs of reduced impacts to turtles from these and other fisheries operating on the East Coast due to rezoning of the Great Barrier Reef World Heritage site, there remain fisheries threats in nearshore areas that have yet to be abated and that may continue to impact loggerhead sea turtles (Dryden *et al.,* 2008).

Loggerheads also are taken by longline fisheries operating out of Australia (Limpus, 2009). For example, Robins *et al.* (2002b) estimate that approximately 400 turtles are killed annually in Australian pelagic longline fishery operations. Of this annual estimate, leatherbacks accounted for over 60 percent of this total, while unidentified hardshelled turtles accounted for the remaining species. Therefore, the effect of this longline fishery on loggerheads is unknown.

Loggerheads also have been the most common turtle species captured in shark control programs in Australia (Kidston *et al.,* 1992; Limpus, 2009). From 1998–2002, a total of 232 loggerheads was captured with 195 taken on drum lines and 37 taken in nets, both with a low level of direct mortality (Limpus, 2009).

In the southeastern Pacific, significant bycatch has been reported in artisanal gillnet and longline shark and mahi mahi fisheries operating out of Peru (Kelez *et al.,* 2003; Alfaro-Shigueto *et al.,* 2006, 2010) and, to a lesser extent, Chile (Donoso and Dutton, 2010). The fishing industry in Peru is the second largest economic activity in the country, and, over the past few years, the longline fishery has rapidly increased. Currently, nearly 600 longline vessels fish in the winter and over 1,300 vessels fish in the summer. During an observer program in 2003/2004, 588 sets were observed during 60 trips, and 154 sea turtles were taken as bycatch. Loggerheads were the species most often caught (73.4 percent). Of the loggerheads taken, 68 percent were entangled and 32 percent were hooked. Of the two fisheries, sea turtle bycatch was highest during the mahi mahi season, with 0.597 turtles/1,000 hooks, while the shark fishery caught 0.356 turtles/1,000 hooks (Alfaro-Shigueto *et al.,* 2008b). A separate study by Kelez *et al.* (2003) reported that approximately 30 percent of all turtles bycaught in Peru were loggerheads. In many cases, loggerheads are kept on board for human consumption; therefore, the mortality rate in this artisanal longline fishery is likely high because sea turtles are retained for future consumption or sale.

Data on loggerhead bycatch in Chile are limited to the industrial swordfish fleet (Donoso and Dutton, 2010). Since 1990, fleet size has ranged from 7 to 23 vessels with a mean of approximately 14 vessels per year. These vessels fish up to and over 1,000 nautical miles along the Chilean coast with mechanized sets numbering approximately 1,300 to 2,000 hooks (M. Donoso, ONG Pacifico Laud—Chile, personal communication, 2007; Donoso and Dutton, 2010). Loggerhead bycatch is present in Chilean fleets; however, the catch rate is substantially lower than that reported for Peru (Alfaro-Shigueto *et al.,* 2008b, 2010; Donoso and Dutton, 2010).

Other Manmade and Natural Impacts

Other threats such as marine debris ingestion, boat strikes, port dredging, and oil and gas development also impact loggerheads in the South Pacific (Limpus, 2009; M. Hamann, James Cook University, personal communication, 2010). Loggerhead mortality resulting from dredging of channels in Queensland is a persistent, albeit minor problem. From 1999–2002, the average annual reported mortality was 1.7 turtles per year (range = 1–3) from port dredging operations (Limpus, 2009).

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the South Pacific Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change studies for the northern Great Barrier Reef green turtle population indicate that increased sand temperatures will result in the sex ratio of hatchlings produced by this population skewing toward females, as well as lethal incubation temperatures; up to 34 percent of available nesting habitat used by this population may be inundated as a result of sea level rise; and changes in nesting beach sedimentology may result in changes in nesting success, hatchling emerging success, and reduced optimal nesting habitat (Fuentes *et al.,* 2009, 2010a, 2010b, 2010c, 2011). Thus, climate change and sea level rise have the potential to also impact loggerheads in the South Pacific Ocean; however, the impact of these threats for loggerheads has not been quantified (Hamann *et al.,* 2007).

Natural environmental events, such as cyclones or hurricanes, may affect loggerheads in the South Pacific Ocean. These types of events may disrupt loggerhead nesting activity, albeit on a temporary scale. Chaloupka *et al.* (2008) demonstrated that nesting abundance of loggerheads in Australia was inversely related to sea surface temperatures, and suggested that a long-term warming trend in the South Pacific may be adversely impacting the recovery potential of this population.

In summary, we find that the South Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that the cumulative fishery bycatch of loggerheads that occurs throughout the South Pacific Ocean is a significant threat to the persistence of this DPS.

North Indian Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the North Indian Ocean result from coastal development and construction, beachfront lighting, vehicular and pedestrian traffic, beach pollution,

removal of native vegetation, and planting of non-native vegetation (E. Possardt, USFWS, personal observation, 2008).

The primary loggerhead nesting beaches of this DPS are at Masirah Island, Oman, and are still relatively undeveloped but now facing increasing development pressures. Newly paved roads closely paralleling most of the Masirah Island coast are bringing newly constructed highway lights (E. Possardt, USFWS, personal observation, 2008) and greater access to nesting beaches by the public. Light pollution from the military installation at Masirah Island also is evident at the most densely nested northern end of the island and is a likely cause of hatchling disorientation and nesting female disturbance (E. Possardt, USFWS, personal observation, 2008). Beach driving occurs on most of the major beaches outside the military installation. This vehicular traffic creates ruts that obstruct hatchling movements (Mann, 1977; Hosier *et al.,* 1981; Baldwin, 1992; Cox *et al.,* 1994), tramples nests, and destroys vegetation and dune formation processes, which exacerbates light pollution effects. Free ranging camels, sheep, and goats overgraze beach vegetation, which impedes natural dune formation (E. Possardt, USFWS, personal observation, 2008). A new hotel on a major loggerhead nesting beach at Masirah Island was recently completed and, although not yet approved, there are plans for a major resort at an important loggerhead nesting beach on one of the Halaniyat Islands. Armoring structures common to many developed beaches throughout the world are not yet evident on the major loggerhead nesting beaches of this DPS.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the North Indian Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases loggerhead foraging areas coincide with fishing zones. There has been an apparent growth in artisanal and commercial fisheries in waters surrounding Masirah Island (Baldwin, 1992). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the North Indian Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, beachfront lighting, and vehicular beach driving on nesting beaches in Oman are significant threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The use of loggerhead meat for food in Oman is not legal or popular. However, routine egg collection on Masirah Island does occur (Baldwin, 1992). The extent of egg collection as estimated by Masirah rangers and local residents is approximately 2,000 clutches per year (less than 10 percent).

In summary, although the collection of eggs for human consumption is known to occur, it does not appear to be a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the North Indian Ocean. Natural egg predation on Oman loggerhead nesting beaches undoubtedly occurs, but is not well documented or believed to be significant. Predation on hatchlings by Arabian red fox (*Vulpes vulpes arabica*), ghost crabs (*Ocypode saratan*), night herons (*Nycticorax nycticorax*), and gulls (*Larus* spp.) likely occurs. While quantitative data do not exist to evaluate these impacts on the North Indian Ocean loggerhead population, they are not likely to be significant.

In summary, nest predation is known to occur and hatchling predation is likely. The best available data suggest predation is potentially affecting the persistence of this DPS; however, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the North Indian Ocean. The reader is directed to sections 5.1.4. and 5.2.3.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Oman Royal Decree No. 6/2003 (The Law of Nature Conservation and Wildlife) prohibits harm to all species of sea turtles or the collecting of their eggs. Royal Decrees also exist to protect habitat for important green turtle nesting beaches (Ras al Hadd Turtle Reserve) and hawksbills (Damaniyat Nature Reserve). No such protection exists in Oman for the important nesting beaches at Masirah Island and Halaniyat Islands, although a proposed protected area is being developed and considered for Masirah Island for the loggerhead nesting beaches and other endangered wildlife.

Impacts to loggerheads and loggerhead nesting habitat from coastal development, beachfront lighting, and vehicular beach driving on nesting beaches in Oman is substantial (see Factor A). In addition, fishery bycatch that occurs throughout the North Indian Ocean, although not quantified, is likely substantial (see Factor E). Threats to nesting beaches are likely to increase, which would require additional and widespread nesting beach protection efforts (Factor A). Little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the North Indian Ocean DPS; this mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D indicates that existing regulatory mechanisms may be insufficient or may not be sufficiently implemented to address the

needs of loggerheads. The best available data suggest that insufficient or insufficiently implemented regulatory mechanisms in both the terrestrial and marine environments are potentially affecting the persistence of this DPS; however, sufficient data are not available to assess the adequacy of existing regulatory mechanisms on the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The magnitude of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the North Indian Ocean is difficult to assess. A bycatch survey administered off the coast of Sri Lanka between September 1999 and November 2000 reported 5,241 total turtle entanglements, of which 1,310 were loggerheads, between Kalpitiya and Kirinda (Kapurusinghe and Saman, 2001; Kapurusinghe and Cooray, 2002). Sea turtle bycatch has been reported in driftnet and set gillnets, longlines, trawls, and hook and line gear (Kapurusinghe and Saman, 2001; Kapurusinghe and Cooray, 2002; Lewison *et al.,* 2004).

Quantifying the magnitude of the threat of fisheries on loggerheads in the North Indian Ocean is difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.,* 2004; Wallace *et al.,* 2010). While there were no turtle bycatch data available from the North Indian Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured in the Indian Ocean in the year 2000 (Lewison *et al.,* 2004). Interviews with rangers at Masirah Island reveal that shark gillnets capture many loggerheads off nesting beaches during the nesting season. As many as 60 boats are involved in this fishery with up to 6 km of gillnets being fished daily from June through October along the Masirah Island coast. Quantitative estimates of bycatch are not available due to lack of observer coverage; however, rangers reported that loggerhead bycatch is a common occurrence (E. Possardt, USFWS, personal communication, 2008).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, as well as entrainment in coastal power plants, likely apply to loggerheads in the North Indian Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the North Indian Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the North Indian Ocean, but it is not possible to quantify the potential impacts at this point in time.

Natural environmental events, such as cyclones, tsunamis, and hurricanes, affect loggerheads in the North Indian Ocean. For example, during the 2007 season, Oman suffered a rare typhoon. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the North Indian Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the North Indian Ocean, although not quantified, is likely a significant threat to the persistence of this DPS.

Southeast Indo-Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

The primary loggerhead nesting beaches for this DPS occur in Australia on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003), which are undeveloped. Dirk Hartog Island and the Murion Islands recently became part of the Western Australian Protected Area System.

On the mainland, loggerhead nesting habitat is not well protected within the Australian conservation reserve system (Limpus, 2009). Nesting habitat on the Ningaloo Coast is almost entirely contained within the Ningaloo Marine Park; however, management of nesting habitat on this coast is primarily driven by management related to the adjacent pastoral leases. South of the Ningaloo Marine Park, other mainland nesting habitat mostly occurs within pastoral leases (Limpus, 2009). The Gnaraloo section of the coast is a private leasehold, but there are concerns about future coastal development (M. Hamann, James Cook University, personal communication, 2010). The Ningaloo Coast (including Gnaraloo) is currently being considered for World Heritage listing (Commonwealth of Australia, 2010).

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Southeast Indo-Pacific Ocean include fishing practices, channel dredging, oil and gas development, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases, loggerhead foraging areas coincide with fishing zones. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the Southeast Indo-Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in its marine habitats. The best available data suggest that threats to neritic and oceanic habitats are potentially affecting the persistence of this DPS; however, sufficient data are not available to assess the degree of impact of these threats on the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Australian Native Title Legislation (Native Title Act 1993) allows the harvesting of loggerheads and their eggs by indigenous peoples (Environment Australia, 2003). However, egg consumption in Australia is virtually nil, and very few loggerheads are taken for food by indigenous Australians (M. Hamann, James Cook University, personal communication, 2010). Dirk Hartog Island and Murion Islands are largely uninhabited, and poaching of eggs and turtles is likely negligible.

In summary, harvest of eggs and turtles is believed to be negligible and does not appear to be a threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Southeast Indo-Pacific Ocean. On the North West Cape and the beaches of the Ningaloo coast of mainland Australia, a long established feral European red fox (*Vulpes vulpes*) population preyed heavily on eggs and

is thought to be responsible for the lower numbers of nesting turtles on the mainland beaches (Baldwin *et al.,* 2003).

The fox populations have been eradicated on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003), and fox eradication projects currently occur at Gnaraloo and Ningaloo in Western Australia. However, fox predation is still a significant issue on these mainland beaches (Limpus, 2009; Butcher, 2010; Hattingh *et al.,* 2010), but these are minor nesting sites (M. Hamann, James Cook University, personal communication, 2010).

In summary, nest predation likely was a factor that contributed to the historical decline of this DPS. However, foxes have been eradicated on Dirk Hartog Island and Murion Islands, and current fox predation levels on mainland beaches in Western Australia are greatly reduced from historical levels. Therefore, predation no longer appears to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Southeast Indo-Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.4.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Southeast Indo-Pacific Ocean, although not quantified, is likely substantial (see Factor E). With the exception of efforts to reduce loggerhead bycatch in the northern Australian prawn fishery, little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the Southeast Indo-Pacific Ocean DPS. This mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Although national and international governmental and non-governmental entities are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

Loggerheads are listed as Endangered under Australia's Environment Protection and Biodiversity Conservation Act of 1999. As described under Factor A, the primary nesting beaches for this DPS occur in Australia on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003). These islands are undeveloped and recently became part of the Western Australian Protected Area System. On the mainland, loggerhead nesting habitat is not well protected within the Australian conservation reserve system (Limpus, 2009), although the Ningaloo Coast (including Gnaraloo) is currently being considered for World Heritage listing (Commonwealth of Australia, 2010). At this time, loggerhead nesting habitat on the Ningaloo Coast is almost entirely contained within the Ningaloo Marine Park, but the Gnaraloo section of the coast is a private leasehold and there are concerns about future coastal development (M. Hamann, James Cook University, personal communication, 2010).

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Southeast Indo-Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The extent of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the Southeast Indo-Pacific Ocean is unknown. Sea turtles are caught in pelagic and demersal longlines, gillnets, trawls, seines, and pots and traps (Environment Australia, 2003). There is evidence of significant historical bycatch from prawn fisheries, which may have depleted nesting populations long before nesting surveys were initiated in the 1990s (Baldwin *et al.,* 2003).

Quantifying the magnitude of the threat of fisheries on loggerheads in the Southeast Indo-Pacific Ocean is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.,* 2004). While there were no turtle bycatch data available from the Southeast Indo-Pacific Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured in the Indian Ocean in the year 2000. Loggerheads are known to be taken by Japanese longline fisheries operating off of Western Australia (Limpus, 2009).

The northern Australian prawn fishery (NPF) is made up of both a banana prawn fishery and a tiger prawn fishery, and extends from Cape York, Queensland (142° E) to Cape Londonberry, Western Australia (127° E). The fishery is one of the most valuable in all of Australia and in 2000 comprised 121 vessels fishing approximately 16,000 fishing days (Robins *et al.,* 2002a). In 2000, the use of TEDs in the NPF was made mandatory, due in part to several factors: (1) Objectives of the Draft Australian Recovery Plan for Marine Turtles, (2) requirement of the Australian Environment Protection and Biodiversity Conservation Act for Commonwealth fisheries to become ecologically sustainable, and (3) the 1996 U.S. import embargo on wild-caught prawns taken in a fishery without adequate turtle bycatch management practices (Robins *et al.,* 2002a). Data primarily were collected by volunteer fishers who were trained extensively in the collection of scientific data on sea turtles caught as bycatch in their fishery. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate of an

estimated 40 percent, due to drowning, injuries, or being returned to the water comatose (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). This lower mortality rate also may be based on better sea turtle handling techniques adopted by the fleet. In general, loggerheads were the third most common sea turtle taken in this fishery.

Loggerheads also have been the most common turtle species captured in shark control programs in Pacific Australia (Kidston *et al.,* 1992; Limpus, 2009); however, the Western Australian demersal longline fishery for sharks has no recorded interaction with loggerheads. An emerging and expanding fishery for portunid crabs has started up in Western Australia and is known to kill loggerheads as bycatch (R. Prince, Department of Environment and Conservation, Western Australia, personal communication, 2011).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes, oil and gas development, and ingestion or entanglement in marine debris, likely apply to loggerheads in the Southeast Indo-Pacific Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Southeast Indo-Pacific Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the Southeast Indo-Pacific Ocean, but it is not possible to quantify the potential impacts at this point in time.

Natural environmental events, such as cyclones and hurricanes, may affect loggerheads in the Southeast Indo-Pacific Ocean. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the Southeast Indo-Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E; however, many of these threats have not been quantified. Within Factor E, we find that fishery bycatch, particularly from the northern Australian prawn fishery, was a factor that contributed to the historical decline of this DPS. Although loggerhead bycatch has been greatly reduced in the northern Australian prawn fishery, bycatch that occurs elsewhere in the Southeast Indo-Pacific Ocean has not been fully quantified, and there is a new fishery for portunid crabs with known but unquantified bycatch. The best available data suggest the effects of pelagic longline fishing on loggerheads in the Southeast Indo-Pacific are likely substantial when considering the number of industrial and artisanal vessels operating out of nations lining the Indo-Pacific region (FAO Fisheries Statistics [*http://www.fao.org/fishery/statistics/en*], accessed online June 2011). Within Factor E, we find that fishery bycatch that occurs throughout the Southeast Indo-Pacific Ocean, although not quantified, is likely a significant threat to the persistence of this DPS.

Southwest Indian Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Limited information is available on threats in the terrestrial zone. All nesting beaches within South Africa are within protected areas (Baldwin *et al.,* 2003). In Mozambique, nesting beaches in the Maputo Special Reserve (approximately 60 km of nesting beach) and in the Paradise Islands are within protected areas (Baldwin *et al.,* 2003; Costa *et al.,* 2007).

Neritic/Oceanic Zones

Threats to habitat from fishing practices, channel dredging, sand extraction, and marine pollution likely apply to loggerhead neritic and oceanic zones in the Southwest Indian Ocean DPS. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases, loggerhead foraging areas coincide with fishing zones. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the Southwest Indian Ocean DPS of the loggerhead sea turtle is likely negatively affected by ongoing changes in its marine habitats as a result of land and water use practices as considered above in Factor A. The best available data suggest that threats to neritic and oceanic habitats are potentially affecting the persistence of this DPS; however, sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the Southwest Indian Ocean, on the east coast of Africa, subsistence hunting by local people is a continued threat to loggerheads (Baldwin *et al.,* 2003). Illegal hunting of marine turtles and egg harvesting remains a threat in Mozambique as well (Louro *et al.,* 2006).

In summary, harvest of loggerheads and eggs for human consumption on the east coast of Africa, although not quantified, is likely a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Southwest Indian Ocean. Side striped jackals (*Canis adustus*) and honey badgers (*Melivora capensis*) are known to depredate nests (Baldwin *et al.,* 2003).

In summary, nest predation is known to occur. The best available data suggest predation is potentially affecting the persistence of this DPS; however, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Southwest Indian Ocean. The reader is directed to sections 5.1.4. and 5.2.5.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law

and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Southwest Indian Ocean, although not broadly quantified, is likely substantial (see Factor E). This mortality is likely to continue and may increase with expected additional fishing effort from commercial and artisanal fisheries. Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

As described under Factor A, all loggerhead nesting beaches within South Africa are within protected areas (Baldwin *et al.,* 2003). In Mozambique, nesting beaches in the Maputo Special Reserve (approximately 60 km of nesting beach) and in the Paradise Islands are within protected areas (Baldwin *et al.,* 2003; Costa *et al.,* 2007).

In summary, our review of regulatory mechanisms under Factor D indicates that existing regulatory mechanisms may be insufficient or may not be sufficiently implemented to address the needs of loggerheads. The best available data suggest that insufficient or insufficiently implemented regulatory mechanisms in the marine environment are potentially affecting the persistence of this DPS; however, sufficient data are not available to assess the adequacy of existing regulatory mechanisms on the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The full extent of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the Southwest Indian Ocean is unknown. Sea turtles are caught in demersal and pelagic longlines, trawls, gillnets, and seines (Petersen, 2005; Louro *et al.,* 2006; Costa *et al.,* 2007; Fennessy and Isaksen, 2007; Petersen *et al.,* 2007, 2009). There is evidence of significant historical bycatch from prawn fisheries, which may have depleted nesting populations long before nesting surveys were initiated in the 1990s (Baldwin *et al.,* 2003).

Quantifying the magnitude of the threat of fisheries on loggerheads in the Southwest Indian Ocean is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.,* 2004). While there were no turtle bycatch data available from the Southwest Indian Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured in the Indian Ocean in the year 2000. The effect of the longline fishery on loggerheads in the Indian Ocean is largely unknown (Lewison *et al.,* 2004).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, likely apply to loggerheads in the Southwest Indian Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Southwest Indian Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the Southwest Indian Ocean, but it is not possible at this time to predict how and the extent to which climate change will impact this DPS.

Natural environmental events, such as cyclones, tsunamis and hurricanes, may affect loggerheads in the Southwest Indian Ocean. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the Southwest Indian Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the Southwest Indian Ocean, although not quantified, is likely a significant threat to the persistence of this DPS.

Northwest Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the Northwest Atlantic results from coastal development and construction, placement of erosion control structures and other barriers to nesting, placement of nearshore shoreline stabilization structures, beachfront lighting, vehicular and pedestrian traffic, beach erosion, beach sand placement, removal of native vegetation, and planting of non-native vegetation (NMFS and USFWS, 2008).

Numerous beaches in the southeastern United States are eroding due to both natural (*e.g.,* storms, sea level changes, waves, shoreline geology) and anthropogenic (*e.g.,* construction of armoring structures, groins, and jetties; coastal development; inlet dredging) factors. Such shoreline erosion leads to a loss of nesting habitat for sea turtles.

In the southeastern United States, numerous erosion control structures (*e.g.,* bulkheads, seawalls, soil retaining walls, rock revetments, sandbags, geotextile tubes) that create barriers to nesting have been constructed. The proportion of coastline that is armored is approximately 18 percent (239 km) in Florida (Clark, 1992; Schroeder and Mosier, 2000; Witherington *et al.,* 2006b), 9 percent (14 km) in Georgia (M. Dodd, Georgia Department of Natural Resources, personal communication, 2009), 12 percent (29 km) in South Carolina (D. Griffin, South Carolina Department of Natural Resources, personal communication, 2009), and 3 percent (9 km) in North Carolina (M. Godfrey, North Carolina Wildlife Resources Commission, 2009). These estimates of armoring extent do not include structures that are also barriers to sea turtle nesting but do not fit the definition of armoring, such as dune crossovers, cabanas, sand fences, and recreational equipment. Jetties have been placed at many ocean inlets along the U.S. Atlantic coast to keep transported sand from closing the inlet channel. Witherington *et al.* (2005) found a significant negative relationship between loggerhead nesting density and distance from the nearest of 17 ocean inlets on the Atlantic coast of Florida. The effect of inlets in lowering nesting density was observed both updrift and downdrift of the inlets, leading researchers to propose that beach instability from both erosion and

accretion may discourage loggerhead nesting.

Stormwater and other water source runoff from coastal development, including beachfront parking lots, building rooftops, roads, decks, and draining swimming pools adjacent to the beach, is frequently discharged directly onto Northwest Atlantic beaches and dunes either by sheet flow, through stormwater collection system outfalls, or through small diameter pipes. These outfalls create localized erosion channels, prevent natural dune establishment, and wash out sea turtle nests (Florida Fish and Wildlife Conservation Commission, unpublished data). Contaminants contained in stormwater, such as oils, grease, antifreeze, gasoline, metals, pesticides, chlorine, and nutrients, are also discharged onto the beach and have the potential to affect sea turtle nests and emergent hatchlings. The effects of these contaminants on loggerheads are not yet understood. As a result of natural and anthropogenic factors, beach nourishment is a frequent activity, and many beaches are on a periodic nourishment schedule. On severely eroded sections of beach, where little or no suitable nesting habitat previously existed, beach nourishment has been found to result in increased nesting (Ernest and Martin, 1999). However, on most beaches in the southeastern United States, nesting success typically declines for the first year or two following construction, even though more nesting habitat is available for turtles (Trindell *et al.,* 1998; Ernest and Martin, 1999; Herren, 1999).

Coastal development also contributes to habitat degradation by increasing light pollution. Both nesting and hatchling sea turtles are adversely affected by the presence of artificial lighting on or near the beach (Witherington and Martin, 1996). Experimental studies have shown that artificial lighting deters adult female turtles from emerging from the ocean to nest (Witherington, 1992). Witherington (1986) also noted that loggerheads aborted nesting attempts at a greater frequency in lighted areas. Because adult females rely on visual brightness cues to find their way back to the ocean after nesting, those turtles that nest on lighted beaches may become disoriented by artificial lighting and have difficulty finding their way back to the ocean. In some cases, misdirected nesting females have crawled onto coastal highways and have been struck and killed by vehicles (Florida Fish and Wildlife Conservation Commission, unpublished data).

Reports of hatchling disorientation events in Florida alone describe several hundred nests each year and are likely to involve tens of thousands of hatchlings (Nelson *et al.,* 2002); however, this number calculated is likely a vast underestimate. Independent of these reports, Witherington *et al.* (1996) surveyed hatchling orientation at nests located at 23 representative beaches in six counties around Florida in 1993 and 1994 and found that, by county, approximately 10 to 30 percent of nests showed evidence of hatchlings disoriented by lighting. From this survey and from measures of hatchling production (Florida Fish and Wildlife Conservation Commission, unpublished data), the number of hatchlings disoriented by lighting in Florida is calculated in the range of hundreds of thousands per year. Mortality of disoriented clutches is likely very high (NMFS and USFWS, 2008—see Appendix 2).

In the United States, vehicular driving is allowed on certain beaches in northeast Florida (Nassau, Duval, St. Johns, and Volusia Counties), northwest Florida (Walton and Gulf Counties), Georgia (Cumberland, Little Cumberland, and Sapelo Islands), North Carolina (Fort Fisher State Recreation Area, Carolina Beach, Freeman Park, Onslow Beach, Emerald Isle, Indian Beach/Salter Path, Pine Knoll Shores, Atlantic Beach, Cape Lookout National Seashore, Cape Hatteras National Seashore, Nag's Head, Kill Devil Hills, Town of Duck, and Currituck Banks), Virginia (Chincoteague NWR and Wallops Island), and Texas (the majority of beaches except for a highly developed section of South Padre Island and Padre Island National Seashore, San Jose Island, Matagorda Island, and Matagorda Peninsula where driving is not allowed or is limited to agency personnel, land owners, and researchers). Beach driving has been found to reduce the quality of loggerhead nesting habitat in several ways. In the southeastern U.S., vehicle ruts on the beach have been found to prevent or impede hatchlings from reaching the ocean following emergence from the nest (Mann, 1977; Hosier *et al.,* 1981; Cox *et al.,* 1994; Hughes and Caine, 1994). Sand compaction by vehicles has been found to hinder nest construction and hatchling emergence from nests (Mann, 1977). Vehicle lights and vehicle movement on the beach after dark results in reduced habitat suitability, which can deter females from nesting and disorient hatchlings. Additionally, vehicle traffic on nesting beaches contributes to erosion, especially during high tides or on narrow beaches where driving is concentrated on the high beach and foredune.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Northwest Atlantic Ocean include fishing practices, channel dredging, sand extraction, oil exploration and development, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. Although anthropogenic disruptions of natural ecological interactions have been difficult to discern, a few studies have been focused on the effects of these disruptions on loggerheads. For instance, Youngkin (2001) analyzed gut contents from hundreds of loggerheads stranded in Georgia over a 20-year period. His findings point to the probability of major effects on loggerhead diet from activities such as shrimp trawling and dredging. Lutcavage and Musick (1985) found that horseshoe crabs strongly dominated the diet of loggerheads in Chesapeake Bay in 1980–1981. Subsequently, fishermen began to harvest horseshoe crabs, primarily for use as bait in the eel and whelk pot fisheries, using several gear types. Atlantic coast horseshoe crab landings increased by an order of magnitude (0.5 to 6.0 million pounds) between 1980 and 1997, and in 1998 the Atlantic States Marine Fisheries Commission implemented a horseshoe crab fishery management plan to curtail catches (Atlantic States Marine Fisheries Commission, 1998). The decline in horseshoe crab availability has apparently caused a diet shift in juvenile loggerheads, from predominantly horseshoe crabs in the early to mid-1980s to blue crabs in the late 1980s and early 1990s, to mostly finfish in the late 1990s and early 2000s (Seney, 2003; Seney and Musick, 2007). These data suggest that turtles are foraging in greater numbers in or around fishing gears and on discarded bycatch (Seney, 2003). However, Wallace *et al.* (2009) and McClellan *et al.* (2010) reported that neritic crabs (blue crabs, in particular) and whelk comprised the most important dietary items for juvenile loggerheads in neritic areas in North Carolina, indicating that the trend reported by Seney and Musick (2007) might be regional.

Periodic dredging of sediments from navigational channels is carried out at large ports to provide for the passage of large commercial and military vessels. In addition, sand mining (dredging) for

beach renourishment and construction projects occurs in the Northwest Atlantic along the U.S., Mexico, Central American, Colombia, and Venezuela coasts. Although directed studies have not been conducted, dredging activities, which occur regularly in the Northwest Atlantic, have the potential to destroy or degrade benthic habitats used by loggerheads. Channelization of inshore and nearshore habitat and the subsequent disposal of dredged material in the marine environment can destroy or disrupt resting or foraging grounds (including grass beds and coral reefs) and may affect nesting distribution by altering physical features in the marine environment (Hopkins and Murphy, 1980). Oil exploration and development on live bottom areas may disrupt foraging grounds by smothering benthic organisms with sediments and drilling muds (Coston-Clements and Hoss, 1983). The effects of benthic habitat alteration on loggerhead prey abundance and distribution, and the effects of these potential changes on loggerhead populations, have not been determined but are of concern. Climate change also may result in trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the Northwest Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, beachfront lighting, and coastal armoring and other erosion control structures on nesting beaches in the United States are significant threats to the persistence of this DPS. We also find that anthropogenic disruptions of natural ecological interactions as a result of fishing practices, channel dredging, and oil exploration and development are likely a significant threat to the persistence of this DPS. However, compared to many of the other loggerhead DPSs and sea turtle species, the United States has the ability to control a very large proportion of the anthropogenic threats to nesting and foraging habitats used by neritic juveniles and adults. While not minimizing the role of the Caribbean rookeries, the vast majority of nesting is on U.S. beaches, and a great number of large neritic juveniles and adults, the most reproductively valuable age classes, from all rookeries spend a large portion of their time in U.S. waters.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. In the Caribbean, 12 of 29 (41 percent) countries/territories allow the harvest of loggerheads (NMFS and USFWS, 2008—see Appendix 3; A. Bolten, University of Florida, personal communication, 2009); this takes into account the September 2009 ban on the harvest of sea turtles in The Bahamas. Loggerhead harvest in the Caribbean is generally restricted to the non-nesting season with the exception of St. Kitts and Nevis, where turtle harvest is allowed annually from March 1 through September 30, and the Turks and Caicos Islands, where turtle harvest is allowed year-round. Most countries/territories that allow harvest have regulations that favor the harvest of large juvenile and adult turtles, the most reproductively valuable members of the population. Exceptions include the Cayman Islands, which mandates maximum size limits, and Haiti and Trinidad and Tobago, which have no size restrictions. All North, Central, and South American countries in the Northwest Atlantic have enacted laws that mandate complete protection of loggerheads from harvest in their territorial waters with the exception of Guyana. Despite national laws, in many countries the poaching of eggs and hunting of adult and juvenile turtles still occurs at varying levels (NMFS and USFWS, 2008—see Appendix 3). Although unquantified, the extent of legal and illegal take in most locations is believed to be low and occur in locations where loggerhead density is low (NMFS and USFWS, 2008—see Appendix 2; TEWG, 2009). However, take in Cuba, despite the national ban, is thought to be rather extensive (F. Moncada-Gavilan, Cuba Fisheries Research Centre, personal communication, 2009).

In summary, overutilization for commercial purposes likely was a factor that contributed to the historical decline of this DPS. Legal and illegal harvest of loggerheads in the Caribbean for human consumption continues, and the best available data suggest this harvest is potentially affecting the persistence of this DPS; however, quantitative data are not sufficient to assess the degree of impact of overutilization on the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Northwest Atlantic. Viral diseases have not been documented in free-ranging loggerheads, with the possible exception of sea turtle fibropapillomatosis, which may have a viral etiology (Herbst and Jacobson, 1995; George, 1997). Although fibropapillomatosis reaches epidemic proportions in some wild green turtle populations, the prevalence of this disease in most loggerhead populations is thought to be small. An exception is Florida Bay where approximately 9.5 percent of the loggerheads captured exhibit fibropapilloma-like external lesions (B. Schroeder, NMFS, personal communication, 2006). Mortality levels and population-level effects associated with the disease are still unknown. Heavy infestations of endoparasites may cause or contribute to debilitation or mortality in loggerhead sea turtles. Trematode eggs and adult trematodes were recorded in a variety of tissues including the spinal cord and brain of debilitated loggerheads during an epizootic in South Florida, USA, during late 2000 and early 2001. These endoparasites were implicated as a possible cause of the epizootic (Jacobson *et al.,* 2006). Although many health problems have been described in wild populations through the necropsy of stranded turtles, the significance of diseases on the ecology of wild loggerhead populations is not known (Herbst and Jacobson, 1995).

Predation of eggs and hatchlings by native and introduced species occurs on almost all nesting beaches throughout the Northwest Atlantic. The most common predators at the primary nesting beaches in the southeastern United States are ghost crabs (*Ocypode quadrata*), raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), coyotes (*Canis latrans*), armadillos (*Dasypus novemcinctus*), and red fire ants (*Solenopsis invicta*) (Stancyk, 1982; Dodd, 1988). In the absence of well managed nest protection programs, predators may take significant numbers of eggs; however, nest protection programs are in place at most of the major nesting beaches in the Northwest Atlantic.

Non-native vegetation has invaded many coastal areas and often outcompetes native plant species. Exotic vegetation may form impenetrable root mats that can invade and desiccate eggs, as well as trap hatchlings. The Australian pine (*Casuarina equisetifolia*) is particularly harmful to sea turtles. Dense stands have taken over many coastal areas throughout central and south Florida. Australian pines cause excessive shading of the beach that would not otherwise occur.

Studies in Florida suggest that nests laid in shaded areas are subjected to lower incubation temperatures, which may alter the natural hatchling sex ratio (Marcus and Maley, 1987; Schmelz and Mezich, 1988; Hanson *et al.,* 1998). Fallen Australian pines limit access to suitable nest sites and can entrap nesting females (Austin, 1978; Reardon and Mansfield, 1997). The shallow root network of these pines can interfere with nest construction (Schmelz and Mezich, 1988). Davis and Whiting (1977) reported that nesting activity declined in Everglades National Park where dense stands of Australian pine took over native dune vegetation on a remote nesting beach. Beach vitex (*Vitex rotundifolia*) is native to countries in the western Pacific and was introduced to the horticulture trade in the southeastern United States in the mid-1980s and is often sold as a ''dune stabilizer.'' Its presence on North Carolina and South Carolina beaches has a negative effect on sea turtle nesting as its dense mats interfere with sea turtle nesting and hatchling emergence from nests (Brabson, 2006). This exotic plant is crowding out the native species, such as sea oats and bitter panicum, and can colonize large areas in just a few years. Sisal, or century plant, (*Agave americana*) is native to arid regions of Mexico. The plant was widely grown in sandy soils around Florida in order to provide fiber for cordage. It has escaped cultivation in Florida and has been purposely planted on dunes. Although the effects of sisal on sea turtle nesting are uncertain, thickets with impenetrable sharp spines are occasionally found on developed beaches.

Harmful algal blooms, such as a red tide, also affect loggerheads in the Northwest Atlantic. In Florida, the species that causes most red tides is *Karenia brevis,* a dinoflagellate that produces a toxin (Florida Marine Research Institute, 2003) and can cause mortality in birds, marine mammals, and sea turtles. During four red tide events along the west coast of Florida, sea turtle stranding trends indicated that these events were acting as a mortality factor (Redlow *et al.,* 2003). Furthermore, brevetoxin concentrations supportive of intoxication were detected in biological samples from dead and moribund sea turtles during a mortality event in 2005 and in subsequent events (Fauquier *et al.,* 2007). The population level effects of these events are not yet known.

In summary, nest and hatchling predation likely was a factor that contributed to the historical decline of this DPS. Although current predation levels in the United States are greatly reduced from historical levels, predation still occurs in the United States, as well as in Mexico, and could be significant in the absence of the current well managed protection efforts. Although diseases and parasites are known to impact loggerheads in this DPS, the significance of these threats is not known. Overall, however, current threats in both the terrestrial and marine environments are not believed to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Northwest Atlantic Ocean (Conant *et al.,* 2009). Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002). However, efforts continue to establish international instruments for sea turtle protection and to incorporate sea turtle protection into existing instruments. In November 2010, ICCAT approved a proposal to require data reporting on the capture of sea turtles in the Atlantic Ocean and mandated the use of hook-removal and fishing line disentanglement gear.

National Legislation and Protection

Fishery bycatch that occurs throughout the North Atlantic Ocean is substantial (see Factor E). National and international governmental and non-governmental entities on both sides of the North Atlantic are currently working toward reducing loggerhead bycatch. Some positive actions have been implemented in addition to effort reductions occurring in some fisheries as a result of economics and reductions in target species. However, it is still unclear to what degree this source of mortality can be reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the North Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. National legislation and protective measures have been implemented in the past, and in many cases it is yet too early to determine the effectiveness of those actions stemming from the available regulatory mechanisms. With a long age to maturity and transitory dynamics in the populations, the effects of actions taken over 20 years ago may just now be expected to be observed on the nesting beaches. The existing regulatory framework uses the authority of the ESA, as well as that of the Magnuson-Stevens Fishery Conservation and Management Act, as the primary means of providing protection from fishery interactions. Further explanation of specific protective actions taken under these Acts to reduce fishery bycatch are detailed in the discussion of incidental bycatch in fishing gear under Factor E as well as under the Conservation Efforts section. A comprehensive review of the framework for all U.S. fisheries in which turtle (as well as mammal and seabird) bycatch occurs is provided by Moore *et al.* (2009).

Coastal development, coupled with critical beach erosion, has led to the placement of structures (*e.g.,* armoring, sand fences, and other erosion control structures to protect upland property), which have destroyed or degraded nesting habitat. While some States have regulations prohibiting coastal armoring, other State regulations are insufficient to protect nesting habitat. State regulations related to the placement and design of new coastal structures need to be reviewed and revised as appropriate to reduce the need for coastal armoring. Where lighting ordinances have been adopted and adequately enforced, hatchling disorientation has been managed at acceptable levels; however, not all coastal counties or municipalities have adopted or fully enforced effective lighting ordinances and thus additional work is needed to ensure more consistent protective measures.

In summary, our review of regulatory mechanisms under Factor D demonstrates that regulatory mechanisms are in place that should address direct and incidental take of

Northwest Atlantic Ocean loggerheads. While the regulatory mechanisms contained within international instruments are inconsistent and likely insufficient, the mechanisms of existing national legislation and protection are much more adequate. However, it remains to be determined if national measures are being implemented effectively to fully address the needs of loggerheads. The potential strength of the existing national regulatory mechanisms provides a likely advantage to the Northwest Atlantic Ocean DPS compared to other loggerhead DPSs and other sea turtle species, as a very large proportion of the adult and large juvenile stages occur in waters under our national jurisdiction. However, we find that even with the existing regulatory mechanisms there is still a potential threat from both national and international fishery bycatch (Factor E) and coastal development, beachfront lighting, and coastal armoring and other erosion control structures on nesting beaches in the United States (Factor A). More work needs to be done under the existing national regulatory mechanisms, as well as continuing to advance the development and effectiveness of international instruments, to ensure the persistence of this DPS. Therefore, we find that the threat from the inadequacy of existing regulatory mechanisms is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Bycatch of loggerheads in commercial and recreational fisheries in the Northwest Atlantic is a significant threat facing the species in this region. A variety of fishing gears that incidentally capture loggerhead sea turtles are employed including gillnets, trawls, hook and line, longlines, seines, dredges, pound nets, and various types of pots/traps. Among these, gillnets, longlines, and trawl gear contribute to the vast majority of bycatch mortality of loggerheads annually throughout their range in the Atlantic Ocean and Gulf of Mexico with shrimp trawls likely accounting for the majority of bycatch mortality (Epperly *et al.,* 1995; NMFS, 2002, 2004, 2007, 2008; Lewison *et al.,* 2003, 2004; Richards, 2007; Moore *et al.,* 2009; NMFS, unpublished data). Considerable effort has been expended since the 1980s to document and address fishery bycatch, especially in the United States and Mexico. Observer programs have been implemented in some fisheries to collect turtle bycatch data, and efforts to reduce bycatch and mortality of loggerheads in certain fishing operations have been undertaken and implemented or partially implemented. These efforts include developing gear solutions to prevent or reduce captures or to allow turtles to escape without harm (*e.g.,* TEDs, circle hooks and bait combinations), implementing time and area closures to prevent interactions from occurring (*e.g.,* prohibitions on gillnet fishing along the mid-Atlantic coast during the critical time of northward migration of loggerheads), implementation of careful release protocols (*e.g.,* requirements for careful release of turtles captured in longline fisheries), prohibitions of gillnetting in some U.S. State waters, and modifying gear (*e.g.,* requirements to reduce mesh size in the leaders of pound nets in certain U.S. coastal waters to prevent entanglement).

The primary bycatch reduction focus in the Northwest Atlantic, since the 1978 ESA listing of the loggerhead, has been on bycatch reduction in shrimp trawls. The United States has required the use of TEDs throughout the year since the mid-1990s, with modifications required and implemented as necessary (52 FR 24244; June 29, 1987; 57 FR 57348; December 4, 1992; Epperly, 2003). Most notably, in 2003, NMFS implemented new requirements for TEDs in the shrimp trawl fishery to ensure that large loggerheads could escape through TED openings (68 FR 8456; February 21, 2003). Significant effort has been expended to transfer this technology to other shrimping fleets in the Northwest Atlantic; however, not all nations where loggerheads occur require the device be used. Enforcement of TED regulations is difficult and compliance is not believed to be complete in any of the nations requiring TED use, including the United States. Even if compliance was complete, TEDs are not 100 percent effective, as it is estimated that as much as 3 percent of turtles may still be retained and possibly drown in a trawl with a properly installed TED. Therefore, a significant number of loggerheads are estimated to still be killed annually in shrimp trawls throughout the Northwest Atlantic. For the U.S. Southeast food shrimp trawl fishery, NMFS previously estimated the annual mortality of loggerheads in the Gulf of Mexico and southeastern U.S. Atlantic Ocean as 3,948 individuals (95 percent confidence intervals, 1,221–8,498) based upon 2001 effort data (NMFS, 2002). However, shrimping effort by otter trawls in the southeastern United States has significantly declined in both the Gulf of Mexico (2009 effort was 39 percent of 2001 effort) and the South Atlantic (2009 effort was 62 percent of 2001 effort) (NMFS, unpublished data). In 2011 a revised estimate of annual loggerhead mortality for the Southeast food shrimp trawl fishery was calculated using 2009 data (the latest available at the time). It estimated annual mortality to be 778 individuals in the Gulf of Mexico and 673 in the South Atlantic (NMFS, unpublished data).

Other trawl fisheries operating in Northwest Atlantic waters that are known or expected to capture sea turtles include, but are not limited to, summer flounder, calico scallop, sea scallop, blue crab, whelk, cannonball jellyfish, horseshoe crab, and mid-Atlantic directed finfish trawl fisheries and the *Sargassum* fishery. In the United States, the summer flounder fishery is the only trawl fishery (other than the shrimp fishery) with federally mandated TED use (in certain areas). Loggerhead annual bycatch estimates in 2004 and 2005 in U.S. mid-Atlantic scallop trawl gear ranged from 81 to 191 turtles, depending on the estimation methodology used (Murray, 2007). Estimated average annual bycatch of loggerheads in other mid-Atlantic federally managed bottom otter trawl fisheries during 1996–2004 was 616 turtles (Murray, 2006). A more recent study estimated that between the years 2005–2008, an average of 352 loggerheads were caught annually by the U.S. Mid-Atlantic fish and scallop bottom otter trawl fisheries (Warden, 2011). The harvest of *Sargassum* by trawlers can result in incidental capture of post-hatchlings and habitat destruction (Schwartz, 1988; Witherington, 2002); however, this fishery is not currently active. Likewise, the calico scallop fishery was a periodic fishery that did not occur on a regular basis and has not been prosecuted for years: no commercial landings of calico scallop have been reported from the East Coast of Florida since 2003 (NMFS commercial fisheries landings database), and the processing facilities that previously supported these fisheries have been closed, hampering the rapid resumption of a large-scale fishery.

Dredge fishing gear is the predominant gear used to harvest sea scallops off the mid- and northeastern United States Atlantic coast. Turtles can be struck and injured or killed by the dredge frame or captured in the bag where they may drown or be further injured or killed when the catch and heavy gear are dumped on the vessel deck. Total estimated bycatch of loggerhead sea turtles in the U.S. sea scallop dredge fishery operating in the mid-Atlantic region (New York to North

Carolina) from June through November is on the order of several hundred turtles per year (Murray, 2004, 2005, 2007). The impact of the sea scallop dredge fishery on loggerheads in U.S. waters of the Northwest Atlantic remains a serious concern.

Incidental take of oceanic-stage loggerheads in pelagic longline fisheries has recently received significant attention (Balazs and Pooley, 1994; Bolten *et al.,* 1994, 2000; Aguilar *et al.,* 1995; Laurent *et al.,* 1998; Long and Schroeder, 2004; Watson *et al.,* 2005). Large-scale commercial longline fisheries operate throughout the pelagic range of the Northwest Atlantic loggerhead, including the western Mediterranean. The largest size classes in the oceanic stage are the size classes impacted by the swordfish longline fishery in the Azores (Bolten, 2003) and on the Scotian Shelf, Georges Bank, and Grand Banks in Canadian waters (Watson *et al.,* 2005; Brazner and McMillan, 2008), and this is likely the case for other nation's fleets operating in the region, including but not limited to, the European Union, United States, Japan, and Taiwan. The demographic consequences relative to population recovery of the increased mortality of these size classes have been discussed (Crouse *et al.,* 1987; Heppell *et al.,* 2003; Chaloupka, 2003; Wallace *et al.,* 2008). Estimates derived from data recorded by the international observer program suggest that thousands of mostly juvenile loggerheads have been captured in the Canadian pelagic longline fishery in the western North Atlantic since 1999 (Brazner and McMillan, 2008). NMFS (2004) estimates that 635 loggerheads (143 lethal) will be taken annually in the U.S. pelagic longline fishery.

Incidental capture of neritic-stage loggerheads in demersal longline fishing gear has also been documented. Richards (2007) estimated total annual bycatch of loggerheads in the Southeast U.S. Atlantic and U.S. Gulf of Mexico commercial directed shark bottom longline fishery from 2003–2005 as follows: 2003: 302–1,620 (CV 0.45); 2004: 95–591 (CV 0.49); and 2005: 139–778 (CV 0.46). NMFS (2009) estimated the total number of captures of hardshell turtles in the U.S. Gulf of Mexico reef fish fishery (demersal longline fishery) from July 2006–December 2008 as 861 turtles (95 percent confidence intervals, 383–1934). Based on the 2009 biological opinion for the Gulf of Mexico reef fish fishery, estimated takes by the demersal longline portion of the fishery following new regulations on gear restrictions and post-hooking gear removal was determined to be 623 every 3 years, with a mortality of 378 over that time span. This represents a reduction compared to the recent historical take cited above. These estimates are not comprehensive across this gear type (i.e., pelagic and demersal longline) throughout the Northwest Atlantic Ocean. Cumulatively, the bycatch and mortality of Northwest Atlantic loggerheads in longline fisheries is significant.

Gillnet fisheries may be the most ubiquitous of fisheries operating in the neritic range of the Northwest Atlantic loggerhead. Comprehensive estimates of bycatch in gillnet fisheries do not yet exist and, while this precludes a quantitative analysis of their impacts on loggerhead populations, the cumulative mortality of loggerheads in gillnet fisheries is likely high. In the U.S. mid-Atlantic, the average annual estimated bycatch of loggerheads from 1995–2006 was 350 turtles (CV = 0.20., 95 percent confidence intervals over the 12-year period: 234 to 504) (Murray, 2009). From 2007–2009, the U.S. pelagic shark gillnet fishery had a total of three observed loggerhead takes (all in 2007), but insufficient data exist to extrapolate a total estimated take for the fishery (NMFS, unpublished report). In the United States, some States (*e.g.,* South Carolina, Georgia, Florida, Louisiana, and Texas) have prohibited gillnets in their waters, but there remain active gillnet fisheries in other U.S. States, in U.S. Federal waters, Mexico waters, Central and South America waters, and the Northeast Atlantic.

Pound nets are fixed gear with a long mesh leader that can be suspended from the surface by a series of stringers or vertical lines or a mesh supported along its length supported by stakes; both end in a ''heart'' that funnels animals into an impoundment for trapping fish at the terminal point of the gear. Sea turtles incidentally captured in the open top pound are usually safe from injury and can be released when the fishermen pull the nets (Mansfield *et al.,* 2002; Epperly *et al.,* 2007). However, sea turtle mortalities have been documented in the leader of certain pound nets. Large mesh leaders (greater than 12-inch stretched mesh) may act as a gillnet, entangling sea turtles by the head or foreflippers (Bellmund *et al.,* 1987) or may act as a barrier against which turtles may be impinged (NMFS, unpublished data). Nets with small mesh leaders (less than 8 inches stretched mesh) usually do not present a mortality threat to loggerheads, but some mortality has been reported (Morreale and Standora, 1998; Epperly *et al.,* 2000, 2007; Mansfield *et al.,* 2002). In 2002, the United States prohibited, in certain areas within the Chesapeake Bay and at certain times, pound net leaders having mesh greater than or equal to 12 inches and leaders with stringers (67 FR 41196; June 17, 2002). Subsequent regulations have further restricted the use of certain pound net leaders in certain geographic areas and established pound net leader gear modifications (69 FR 24997; May 5, 2004; 71 FR 36024; June 23, 2006).

Pots/traps are commonly used to target crabs, lobsters, whelk, and reef fishes. These traps vary in size and configuration, but all are attached to a surface float by means of a vertical line leading to the trap. Entanglement and mortality of loggerheads has been documented in various pot/trap fisheries in the U.S. Atlantic and Gulf of Mexico. Data from the U.S. Sea Turtle Stranding and Salvage Network indicate that 82 loggerheads (dead and rescued alive) were documented by the stranding network in various pot/trap gear from 1996–2005, of these approximately 30–40 percent were adults and the remainder juvenile turtles (NMFS, unpublished data). Without intervention it is likely that the majority of the live, entangled turtles would die. Additionally, documented strandings represent only a portion of total interactions and mortality. Recently, a small number of loggerhead entanglements also have been recorded in whelk pot bridles in the U.S. Mid-Atlantic (M. Fagan, Virginia Institute of Marine Science, personal communication, 2008). However, no dedicated observer programs exist to provide estimates of take and mortality from pot/trap fisheries; therefore, comprehensive estimates of loggerhead interactions with pot/trap gear are not available, but the gear is widely used throughout the range of the DPS, and poses a continuing threat.

Other Manmade and Natural Impacts

Propeller and collision injuries from boats and ships are becoming more common in sea turtles. In the U.S. Atlantic, from 1997 to 2005, 14.9 percent of all stranded loggerheads were documented as having sustained some type of propeller or collision injuries (NMFS, unpublished data). The incidence of propeller wounds observed in sea turtles stranded in the United States has risen from approximately 10 percent in the late 1980s to a record high of 20.5 percent in 2004, followed by annual rates of 15.2, 15.6, and 16.5 percent from 2005 to 2007, respectively (NMFS, unpublished data). In the United States, propeller wounds are greatest in Southeast Florida; during some years, as many as 60 percent of the loggerhead strandings found in these

areas had propeller wounds (Florida Fish and Wildlife Conservation Commission, unpublished data). However, it is still unclear what proportion of those received the wounds postmortem. As the number of vessels increases, in concert with increased coastal development, and possibly increasing numbers of juvenile sea turtles, especially in nearshore waters, propeller and vessel collision injuries are also expected to rise.

Marine pollution impacts, especially the ingestion of or entanglement in plastic, is another significant anthropogenic impact to loggerhead sea turtles. Studies have shown that approximately 15 percent of post-hatchling loggerheads that emerge from Florida beaches ingest plastics as they forage during their first few weeks in the pelagic environment. Even in small quantities, plastics can kill sea turtles due to obstruction of the esophagus or perforation of the bowel, as well as potentially reducing normal food intake.

Several activities associated with offshore oil and gas production, including oil spills, water quality (operational discharge), seismic surveys, explosive platform removal, platform lighting, and noise from drillships and production activities, are known to impact loggerheads (National Research Council, 1996; Minerals Management Service, 2000; Gregg Gitschlag, NMFS, personal communication, 2007; Viada *et al.,* 2008). Currently, there are 3,443 federally regulated offshore platforms in the Gulf of Mexico dedicated to natural gas and oil production. Additional State-regulated platforms are located in State waters (Texas and Louisiana). There are currently no active leases off the Atlantic coast.

Oil spills also threaten loggerheads in the Northwest Atlantic. Two oil spills that occurred near loggerhead nesting beaches in Florida were observed to affect eggs, hatchlings, and nesting females. Approximately 350,000 gallons of fuel oil spilled in Tampa Bay in August 1993 and was carried onto nesting beaches in Pinellas County. Observed mortalities included 31 hatchlings and 176 oil-covered nests; an additional 2,177 eggs and hatchlings were either exposed to oil or disturbed by response activities (Florida Department of Environmental Protection *et al.,* 1997). Another spill near the beaches of Broward County in August 2000 involved approximately 15,000 gallons of oil and tar (National Oceanic and Atmospheric Administration and Florida Department of Environmental Protection, 2002). Models estimated that approximately 1,500 to 2,000 hatchlings and 0 to 1 adult were injured or killed. Annually about 1 percent of all sea turtle strandings along the U.S. east coast have been associated with oil, but higher rates of 3 to 6 percent have been observed in South Florida and Texas (Rabalais and Rabalais, 1980; Plotkin and Amos, 1990; Teas, 1994). It is not yet clear what the immediate and long-term impacts of the 2010 Deepwater Horizon (Mississippi Canyon 252) oil well blowout and uncontrolled release has had, and will have, on sea turtles in the Gulf of Mexico, including Northwest Atlantic Ocean DPS loggerheads.

In addition to the destruction or degradation of habitat, periodic dredging of sediments from navigational channels can also result in incidental mortality of sea turtles. Direct injury or mortality of loggerheads by dredges has been well documented in the southeastern and mid-Atlantic United States (National Research Council, 1990). Solutions, including modification of dredges and time/area closures, have been successfully implemented to reduce mortalities and injuries in the United States (NMFS, 1991, 1995, 1997; Nelson and Shafer, 1996).

The entrainment and entrapment of loggerheads in saltwater cooling intake systems of coastal power plants has been documented in New Jersey, North Carolina, Florida, and Texas (Eggers, 1989; National Research Council, 1990; Carolina Power and Light Company, 2003; Progress Energy Florida, Inc., 2003; Florida Power and Light Company and Quantum Resources, Inc., 2005). Average annual incidental capture rates for most coastal plants from which captures have been reported amount to several turtles per plant per year. One notable exception is the St. Lucie Nuclear Power Plant located on Hutchinson Island, Florida. During the first 15 years of operation (1977–1991), an average of 128 loggerheads per year was captured in the intake canal with a mortality rate of 6.4 percent. During 1991–2005, loggerhead captures more than doubled (average of 308 per year), while mortality rates decreased to 0.3 percent per year (Florida Power and Light Company and Quantum Resources, Inc., 2005). From 2005–2009, numbers fluctuated in the 200+ to 400+ range (Florida Power and Light Company and Quantum Resources, Inc. take database). Epperly *et al.* (2007) and TEWG (2009) used this dataset, among others, to demonstrate that an examination of all in-water research sites in the United States with data suitable for trend analysis was showing a similar increase. This suggests a possible juvenile population increase.

Although not a major source of mortality, cold stunning of loggerheads has been reported at several locations in the United States, including Cape Cod Bay, Massachusetts (Still *et al.,* 2002); Long Island Sound, New York (Meylan and Sadove, 1986; Morreale *et al.,* 1992); the Indian River system, Florida (Mendonça and Ehrhart, 1982; Witherington and Ehrhart, 1989); and Texas inshore waters (Hildebrand, 1982; Shaver, 1990). Cold stunning is a phenomenon during which turtles become incapacitated as a result of rapidly dropping water temperatures (Witherington and Ehrhart, 1989; Morreale *et al.,* 1992). As temperatures fall below 8–10° C, turtles may lose their ability to swim and dive, often floating to the surface. The rate of cooling that precipitates cold stunning appears to be the primary threat, rather than the water temperature itself (Milton and Lutz, 2003). Sea turtles that overwinter in inshore waters are most susceptible to cold stunning, because temperature changes are most rapid in shallow water (Witherington and Ehrhart, 1989). More recent large-scale cold-stunning events have occurred in January 2010, and December 2010/January 2011. Although the vast majority of the sea turtles were green turtles, some loggerheads were also impacted (Florida Fish and Wildlife Conservation Commission data).

Another natural factor that has the potential to affect recovery of loggerhead sea turtles is aperiodic hurricanes. In general, these events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons. The negative effects of hurricanes on low-lying and developed shorelines may be longer-lasting and a greater threat overall.

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Northwest Atlantic. These potential impacts include beach erosion from rising sea levels, repeated inundation of nests, skewed hatchling sex ratios from rising incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Fish *et al.,* 2005, 2008; Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the Northwest Atlantic Ocean, but it is not possible to predict the impacts at this point in time.

In summary, we find that the Northwest Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the

North Atlantic Ocean, particularly bycatch mortality of loggerheads from gillnet, longline, and trawl fisheries throughout their range in the Atlantic Ocean and Gulf of Mexico, is a significant threat to the persistence of this DPS. In addition, boat strikes are becoming more common, possibly as a result of increased boat traffic, increased juvenile populations, or some combination of both, and are possibly a significant threat to the persistence of this DPS.

Northeast Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the Northeast Atlantic result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, and beach pollution (Formia *et al.,* 2003; Loureiro, 2008).

In the Northeast Atlantic, the only loggerhead nesting of note occurs in the Cape Verde Islands. The Cape Verde government's plans to develop Boa Vista Island, the location of the main nesting beaches, could increase the terrestrial threats to loggerheads (van Bogaert, 2006). Sand extraction on Santiago Island, Cape Verde, may be responsible for the apparent decrease in nesting there (Loureiro, 2008). Both sand extraction and beachfront lighting have been identified as serious threats to the continued existence of a nesting population on Santiago Island (Loureiro, 2008). Scattered and infrequent nesting occurs in western Africa, where much industrialization is located on the coast and population growth rates fluctuate between 0.8 percent (Cape Verde) and 3.8 percent (Côte D'Ivoire) (Abe *et al.,* 2004; Tayaa *et al.,* 2005). Land mines on some of the beaches of mainland Africa, within the reported historical range of nesting by loggerheads (*e.g.,* the Western Sahara region), would be detrimental to nesters and are an impediment to scientific surveys of the region (Tiwari *et al.,* 2001). Tiwari *et al.* (2001) noted a high level of human use of many of the beaches in Morocco—enough that any evidence of nesting activity would be quickly erased. Garbage litters many developed beaches (Formia *et al.,* 2003). Erosion is a problem along the long stretches of high energy ocean shoreline of Africa and is further exacerbated by sand mining and harbor building (Formia *et al.,* 2003); crumbling buildings claimed by the sea may present obstructions to nesting females.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Northeast Atlantic Ocean include fishing practices, marine pollution and climate change. Ecosystem alterations have occurred due to the tremendous human pressure on the environment in the region. Turtles, including loggerheads, usually are included in ecosystem models of the region (see Palomares and Pauly, 2004). In the Canary Current Large Marine Ecosystem (LME), the area is characterized by the Global International Waters Assessment as severely impacted in the area of modification or loss of ecosystems or ecotones and health impacts, but these impacts are decreasing (*http://www.lme.noaa.gov*). The Celtic-Biscay Shelf LME is affected by alterations to the seabed, agriculture, and sewage (Valdés and Lavin, 2002). The Gulf of Guinea has been characterized as severely impacted in the area of solid wastes by the Global International Waters Assessment; this and other pollution indicators are increasing (*http://www.lme.noaa.gov*). Marine pollution, such as oil and debris, has been shown to negatively impact loggerheads and represent a degradation of the habitat (Orós *et al.,* 2005, 2009; Calabuig Miranda and Liria Loza, 2007). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

Additionally, fishing is a major source of ecosystem alteration of the neritic and oceanic habitats of loggerhead sea turtles in the region. Fishing effort off the western African coast is increasing and record low biomass has been recorded for exploited resources, representing a decline in fish biomass by a factor of 13 since 1960 (see Palomares and Pauly, 2004). Throughout the North Atlantic, fishery landings fell by 90 percent during the 20th century, foreboding a trophic cascade and a change in food-web competition (Pauly *et al.,* 1998; Christensen *et al.,* 2003). For a description of the exploited marine resources in the region, see Lamboeuf (1997). The Celtic-Biscay Shelf LME, the Iberian Coastal Ecosystem LME, the Canary Current LME, and the Guinea Current LME all are severely overfished, and effort now is turning to a focus on pelagic fisheries, whereas historically there were demersal fisheries. The impacts continue to increase in the Guinea Current LME despite efforts throughout the region to reduce fishing pressure (*http://www.lme.noaa.gov*).

The threats to bottom habitat for loggerheads include modification of the habitat through bottom trawling. Trawling occurs off the European coast and the area off Northwest Africa is one of the most intensively trawled areas in the world (Zeeberg *et al.,* 2006). Trawling has been banned in the Azores, Madeira, and Canary Islands to protect cold-water corals (Lutter, 2005). Although illegal, trawling also occurs in the Cape Verde Islands (López-Jurado *et al.,* 2003). The use of destructive fishing practices, such as explosives and toxic chemicals, has been reported in the Canary Current area, causing serious damage to both the resources and the habitat (Tayaa *et al.,* 2005).

In summary, we find that the Northeast Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that sand extraction and beachfront lighting on nesting beaches are significant threats to the persistence of this DPS. We also find that anthropogenic disruptions of natural ecological interactions as a result of fishing practices and marine pollution are likely a significant threat to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Deliberate hunting of loggerheads for their meat, shells, and eggs still exists and remains the most serious threat facing nesting turtles in the Northeast Atlantic. Historical records indicate turtles were harvested throughout Macaronesia (see López-Jurado, 2007). Intensive exploitation has been cited for the extirpation of the loggerhead nesting colony in the Canary Islands (López-Jurado, 2007), and heavy human predation on nesting and foraging animals occurred on Santiago Island, Cape Verde, the first in the Archipelago to be settled (Loureiro, 2008), as well as on Sal and Sao Vicente islands (López-Jurado, 2007). Nesting loggerheads and eggs are still harvested at Boa Vista, Cape Verde (Cabrera *et al.,* 2000; López-Jurado *et al.,* 2003). In 2007, over 1,100 (36 percent) of the nesting turtles were hunted, which is about 15 percent of the estimated adult female population (Marco *et al.,* 2010). In 2008, the military protected one of the major nesting beaches on Boa Vista where in 2007 55 percent of the mortality had occurred; with the additional protection, only 17 percent of the turtles

on that beach were slaughtered (Roder *et al.,* in press). On Sal Island, 11.5 percent of the emergences on unprotected beaches ended with mortality, whereas mortality was 3 percent of the emergences on protected beaches (Cozens *et al.,* in press). The slaughter of nesting turtles is a problem wherever turtles nest in the Cape Verde Islands and may approach 100 percent in some places (C. Roder, Turtle Foundation, Münsing, Germany, personal communication, 2009; Cozens, in press). The meat and eggs are consumed locally as well as traded among the archipelago (C. Roder, Turtle Foundation, Münsing, Germany, personal communication, 2009). Hatchlings are collected on Sal Island, but this activity appears to be rare on other islands of the archipelago (J. Cozens, SOS Tartarugas, Santa Maria, Sal Island, Cape Verde, personal communication, 2009). Additionally, free divers target turtles for consumption of meat, often selectively taking large males (López-Jurado *et al.,* 2003). Turtles are harvested along the African coast and, in some areas, are considered a significant source of food and income due to the poverty of many residents along the African coast (Formia *et al.,* 2003). Loggerhead carapaces are sold in markets in Morocco and Western Sahara (Fretey, 2001; Tiwari *et al.,* 2001; Benhardouze *et al.,* 2004).

In summary, overutilization for human consumption likely was a factor that contributed to the historical decline of this DPS. Current harvest of loggerhead sea turtles and eggs for human consumption in both Cape Verde and along the African coast, as well as the sale of loggerhead carapaces in markets in Africa, are a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Northeast Atlantic Ocean. Spontaneous diseases documented in the Northeast Atlantic include pneumonia, hepatitis, meningitis, septicemic processes, and neoplasia (Orós *et al.,* 2005). Pneumonia could result from the aspiration of water from forced submergence in fishing gear. The authors also reported nephritis, esophagitis, nematode infestation, and eye lesions. Fibropapillomatosis does not appear to be an issue in the Northeast Atlantic.

Nest depredation by ghost crabs (*Ocypode cursor*) occurs in Cape Verde (López-Jurado *et al.,* 2000). The ghost crabs feed on both eggs and hatchlings. Arvy *et al.* (2000) reported predation of loggerhead eggs in two nests in Mauritania by golden jackals (*Canis aureus*); a loggerhead sea turtle creating a third nest also had been killed, with meat and eggs eaten, but the predator was not identified.

Loggerheads in the Northeast Atlantic also may be impacted by harmful algal blooms, which have been reported infrequently in the Canary Islands and the Iberian Coastal LME (Ramos *et al.,* 2005; Akin-Oriola *et al.,* 2006; Amorim and Dale, 2006; Moita *et al.,* 2006; *http://www.lme.noaa.gov*).

In summary, disease and predation are known to occur. The best available data suggest these threats are potentially affecting the persistence of this DPS; however, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Northeast Atlantic Ocean. The reader is directed to sections 5.1.4. and 5.2.7.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Ongoing directed lethal take of nesting females and eggs (Factor B), low hatching and emergence success (Factors A, B, and C), and mortality of juvenile and adult turtles from fishery bycatch (Factor E) that occurs throughout the Northeast Atlantic Ocean is substantial. Currently, conservation efforts to protect nesting females are growing, and a reduction in this source of mortality is likely to continue in the near future. Although national and international governmental and non-governmental entities in the Northeast Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in high seas fisheries operating within the range of this DPS, lack of bycatch reduction in coastal fisheries in Africa, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Northeast Atlantic Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for harvest of turtles and eggs for human consumption (Factor B), fishery bycatch (Factor E), and sand extraction and beachfront lighting on nesting beaches (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Loggerhead sea turtles strand throughout the Northeast Atlantic (Fretey, 2001; Tiwari *et al.,* 2001; Duguy *et al.,* 2004, 2005; Witt *et al.,* 2007), and there are indications that the turtles become entangled in nets and monofilament and swallow hooks in the region (Orós *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007). On the European coasts, most stranded loggerheads are small (mean of less than 30 cm SCL), but a few are greater than 60 cm SCL (Witt *et al.,* 2007). Similarly, Tiwari *et al.* (2001) and Benhardouze *et al.* (2004) indicated that the animals they viewed in Morocco and Western Sahara were small juveniles and preliminary genetic analyses of stranded turtles indicate that they are of western Atlantic origin (M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data), whereas Fretey (2001) reported that loggerheads captured and stranded in Mauritania

were both juvenile and adult-sized animals.

Incidental capture of sea turtles in artisanal and commercial fisheries is a threat to the survival of loggerheads in the Northeast Atlantic. Sea turtles may be caught in a multitude of gears deployed in the region: pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, weirs, haul and purse seines, pots and traps, cast nets, and hook and line gear (see Pascoe and Gréboval, 2003; Bayliff *et al.,* 2005; Tayaa *et al.,* 2005; Dossa *et al.,* 2007). Fishing effort off the western African coast has been increasing (see Palomares and Pauly, 2004). Impacts continue to increase in the Guinea Current LME, but, in contrast, the impacts are reported to be decreasing in the Canary Current LME (*http://www.lme.noaa.gov*). Throughout the region, fish stocks are depleted and management authorities are striving to reduce the fishing pressure.

In the Northeast Atlantic, loggerheads, particularly the largest size classes in the oceanic environment (most of which are small juveniles), are captured in surface longline fisheries targeting swordfish (*Ziphias gladius*) and tuna (*Thunnus* spp.) (Ferreira *et al.,* 2001; Bolten, 2003). Bottom longlines in Madeira Island targeting black-scabbard (*Aphanopus carbo*) capture and kill small juvenile loggerhead sea turtles as the fishing depth does not allow hooked turtles to surface (Dellinger and Encarnaçâo, 2000; Delgado *et al.,* in press).

In United Kingdom and Irish waters, loggerhead bycatch is uncommon but has been noted in pelagic driftnet fisheries (Pierpoint, 2000; Rogan and Mackey, 2007). Loggerheads have not been captured in pelagic trawls, demersal trawls, or gillnets in United Kingdom and Irish waters (Pierpoint, 2000), but have been captured in nets off France (Duguy *et al.,* 2004, 2005).

International fleets of trawl fisheries operate in Mauritania and have been documented to capture sea turtles, including loggerheads (Zeeberg *et al.,* 2006). Despite being illegal, trawling occurs in the Cape Verde Islands and has the potential to capture and kill loggerhead sea turtles; one piece of abandoned trawl net washed ashore with eight live and two dead loggerheads (López-Jurado *et al.,* 2003). Longlines, seines, and hook and line have been documented to capture loggerheads 35–73 cm SCL off the northwestern Moroccan coast (Benhardouze, 2004).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, also apply to loggerheads in the Northeast Atlantic. Propeller and boat strike injuries have been documented in the Northeast Atlantic (Orós *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007). Exposure to crude oil is also of concern. Loggerhead strandings in the Canary Islands have shown evidence of hydrocarbon exposure as well as ingestion of marine debris, such as plastic and monofilament (Orós *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007), and in the Azores and elsewhere plastic debris is found both on the beaches and floating in the waters (Barrerios and Barcelos, 2001; Tiwari *et al.,* 2001). Pollution from heavy metals is a concern for the seas around the Iberian Peninsula (European Environmental Agency, 1998) and in the Guinea Current LME (Abe *et al.,* 2004). Bioaccumulation of metals in loggerheads has been measured in the Canary Islands and along the French Atlantic Coast (Caurant *et al.,* 1999; Torrent *et al.,* 2004). However, the consequences of long-term exposure to heavy metals are unknown (Torrent *et al.,* 2004).

Natural environmental events, such as climate change, could affect loggerheads in the Northeast Atlantic. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Northeast Atlantic, and the changes may be further exacerbated by the burning of fossil fuels and deforestation. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the Northeast Atlantic Ocean, but it is not possible to quantify the potential impacts at this point in time. Tropical and sub-tropical storms occasionally strike the area and could have a negative impact on nesting, although such an impact would be of limited duration.

In summary, we find that the Northeast Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the Northeast Atlantic Ocean, particularly bycatch mortality of loggerheads from longline and trawl fisheries, is a significant threat to the persistence of this DPS.

Mediterranean Sea DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

In the Mediterranean, some areas known to host nesting activity in the past have been lost to turtles (*e.g.,* Malta) or severely degraded (*e.g.,* Israel) (Margaritoulis *et al.,* 2003). Destruction and modification of loggerhead nesting habitat in the Mediterranean result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (Baldwin, 1992; Margaritoulis *et al.,* 2003). These activities may directly impact the nesting success of loggerheads and survivability of eggs and hatchlings. Nesting in the Mediterranean almost exclusively occurs in the Eastern basin, with the main concentrations found in Cyprus, Greece, Turkey, and Libya (Margaritoulis *et al.,* 2003; Laurent *et al.,* 1999); therefore, the following threats to the nesting habitat are concentrated in these areas.

The Mediterranean experiences a large influx of tourists during the summer months, coinciding with the nesting season. Margaritoulis *et al.* (2003) stated that extensive urbanization of the coastline, largely a result of tourism and recreation, is likely the most serious threat to loggerhead nesting areas. The large numbers of tourists that use Mediterranean beaches result in an increase in umbrellas, chairs, garbage, and towels, as well as related hotels, restaurants, and stationary (*e.g.,* street lights, hotels) and moving (*e.g.,* cars) lighting, all which can impact sea turtle nesting success (Demetropoulos, 2000). Further, the eastern Mediterranean is exposed to high levels of pollution and marine debris, in particular the nesting beaches of Cyprus, Turkey, and Egypt (Camiñas, 2004).

Construction and infrastructure development also have the potential to alter nesting beaches and subsequently impact nesting success. The construction of new buildings on or near nesting beaches has been a problem in Greece and Turkey (Camiñas, 2004). The construction of a jetty and waterworks around Mersin, Turkey, has

contributed significantly to the continuous loss of adjacent beach (Camiñas, 2004).

Beach erosion and sand extraction also pose a problem for sea turtle nesting sites. The noted decline of the nesting population at Rethymno, Island of Crete, Greece, is partly attributed to beach erosion caused by construction on the high beach and at sea (*e.g.,* groins) (Margaritoulis *et al.,* 2009). A 2001 survey of Lebanese nesting beaches found severe erosion on beaches where previous nesting had been reported, and in some cases the beaches had disappeared completely (Venizelos *et al.,* 2005). Definitive causes of this erosion were found to be sand extraction, offshore sand dredging, and sediment removal from river beds for construction and military purposes. Beach erosion also may occur from natural changes, with the same deleterious effects to loggerhead nesting. On Patara, Turkey, beach erosion and subsequent inundation by waves and shifting sand dunes are responsible for about half of all loggerhead nest losses (Camiñas, 2004). Erosion can further be exacerbated when native dune vegetation, which enhances beach stability and acts as an integral buffer zone between land and sea, is degraded or destroyed. This in turn often leaves insufficient nesting opportunities above the high tide line, and nests may be washed out. In contrast, the planting or invasion of less stabilizing, non-native plants can lead to increased erosion and degradation of suitable nesting habitat. Finally, sand extraction has been a serious problem on Mediterranean nesting beaches, especially in Turkey (Türkozan and Baran, 1996), Cyprus (Demetropoulos and Hadjichristophorou, 1989; Godley *et al.,* 1996), and Israel (Levy, 2003).

While the most obvious effect of nesting beach destruction and modification may be to the existence of the actual nests, hatchlings are also threatened by habitat alteration. In the Mediterranean, disorientation of hatchlings due to artificial lighting has been recorded mainly in Greece (Rees, 2005; Margaritoulis *et al.,* 2007, 2009), Turkey (Türkozan and Baran, 1996), and Lebanon (Newbury *et al.,* 2002). Additionally, vehicle traffic on nesting beaches may disrupt the natural beach environment and contribute to erosion, especially during high tides or on narrow beaches where driving is concentrated on the high beach and foredune. On Zakynthos Island in Greece, Venizelos *et al.* (2006) reported that vehicles drove along the beach and sand dunes throughout the tourist season on East Laganas and Kalamaki beaches, leaving deep ruts in the sand, disturbing sea turtles trying to nest, and impacting hatchlings trying to reach the sea.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Mediterranean Sea include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Trawling occurs throughout the Mediterranean, most notably in areas off Albania, Algeria, Croatia, Egypt, France, Greece, Italy, Libya, Morocco, Slovenia, Spain, Tunisia, and Turkey (Gerosa and Casale, 1999; Camiñas, 2004; Casale, 2008). This fishing practice has the potential to destroy bottom habitat in these areas. Fishing methods affect neritic zones by not only impacting bottom habitat and incidentally capturing loggerheads but also depleting fish populations, and thus altering ecosystem dynamics. For example, depleted fish stocks in Zakynthos, Greece, likely contributed to predation of adult loggerheads by monk seals (*Monachus monachus*) (Margaritoulis *et al.,* 1996). Further, by depleting fish populations, the trophic dynamics will be altered, which may then in turn affect the ability of loggerheads to find prey resources. If loggerheads are not able to forage on the necessary prey resources, their long-term survivability may be impacted. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

Marine pollution, including direct contamination and structural habitat degradation, can affect loggerhead neritic and oceanic habitat. As the Mediterranean is an enclosed sea, organic and inorganic wastes, toxic effluents, and other pollutants rapidly affect the ecosystem (Camiñas, 2004). The Mediterranean has been declared a ''special area'' by the MARPOL Convention, in which deliberate petroleum discharges from vessels are banned, but numerous repeated offenses are still thought to occur (Pavlakis *et al.,* 1996). Some estimates of the amount of oil released into the region are as high as 1,200,000 metric tons (Alpers, 1993). Direct oil spill events also occur as happened in Lebanon in 2006 when 10,000 to 15,000 tons of heavy fuel oil spilled into the eastern Mediterranean (United Nations Environment Programme, 2007).

Destruction and modification of loggerhead habitat also may occur as a result of other activities. For example, underwater explosives have been identified as a key threat to loggerhead habitat in internesting areas in the Mediterranean (Margaritoulis *et al.,* 2003). Further, the Mediterranean is a site of intense tourist activity, and corresponding boat anchoring also may impact loggerhead habitat in the neritic environment.

In summary, we find that the Mediterranean Sea DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, placement of barriers to nesting, beachfront lighting, and erosion resulting from sand extraction, offshore sand dredging, and sediment removal from river beds are significant threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Mediterranean turtle populations were subject to severe exploitation until the mid-1960s (Margaritoulis *et al.,* 2003). Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. For example, Nada and Casale (2008) found that egg collection (for individual consumption) still occurs in Egypt. In some areas of the Mediterranean, like on the Greek Island of Zakynthos, nesting beaches are protected (Panagopoulou *et al.,* 2008), so egg harvest by humans in those areas is likely negligible.

Exploitation of juveniles and adults still occurs in some Mediterranean areas. In Tunisia, clandestine trade for local consumption is still recorded, despite prohibition of the sale of turtles in fish markets in 1989 (Laurent *et al.,* 1996). In Egypt, turtles are sold in fish markets despite prohibitive laws; of 71 turtles observed at fish markets in 1995 and 1996, 68 percent were loggerheads (Laurent *et al.,* 1996). Nada (2001) reported 135 turtles (of which 85 percent were loggerheads) slaughtered at the fish market of Alexandria in 6 months (December 1998–May 1999). Based on observed sea turtle slaughters in 1995 and 1996, Laurent *et al.* (1996) estimated that several thousand sea turtles were probably killed each year in Egypt. More recently, a study found that the open selling of sea turtles in Egypt generally has been curtailed due to enforcement efforts, but a high level of intentional killing for the black market or for direct personal consumption still exists (Nada and Casale, 2008). Given the high numbers of turtles caught in this area, several hundred turtles are currently estimated to be slaughtered

each year in Egypt (Nada and Casale, 2008). This estimate likely includes both juvenile and adult loggerheads, as Egyptian fish markets have been documented selling different sized sea turtles. While the mean sea turtle size was 65.7 cm CCL (range 38–86.3 cm CCL; n = 48), 37.5 percent of observed loggerhead samples were greater than 70 cm CCL (Laurent *et al.,* 1996).

In summary, overutilization for commercial purposes likely was a factor that contributed to the historical declines of this DPS. Current illegal harvest of loggerheads in Egypt for human consumption continues as a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Mediterranean. Endoparasites in loggerheads have been studied in the western Mediterranean. While the composition of the gastrointestinal community of sea turtles is expected to include digeneans, nematodes, and aspidogastreans, loggerheads in the Mediterranean were found to harbor only four digenean species typical of marine turtles (Aznar *et al.,* 1998). There have been no records of fibropapillomatosis in the Mediterranean. While there is the potential for disease in this area, information on the prevalence of such disease is lacking.

In the Mediterranean Sea, loggerhead hatchlings and eggs are subject to depredation by wild canids (*i.e.,* foxes (*Vulpes vulpes*), golden jackals (*Canis aureus*)), feral/domestic dogs, and ghost crabs (*Ocypode cursor*) (Margaritoulis *et al.,* 2003). Predators have caused the loss of 48.4 percent of loggerhead clutches at Kyparissia Bay, Greece (Margaritoulis, 1988), 70–80 percent at Dalyan Beach, Turkey (Erk'akan, 1993), 36 percent (includes green turtle clutches) in Cyprus (Broderick and Godley, 1996), and 44.8 percent in Libya (Laurent *et al.,* 1995). A survey of the Syrian coast in 1999 found 100 percent nest predation, mostly due to stray dogs and humans (Venizelos *et al.,* 2005). Loggerhead eggs are also depredated by insect larvae in Cyprus (McGowan *et al.,* 2001), Turkey (Özdemir *et al.,* 2004), and Greece (Lazou and Rees, 2006). Ghost crabs have been reported preying on loggerhead hatchlings in northern Cyprus and Egypt, suggesting 66 percent of emerging hatchlings succumb to this mortality source (Simms *et al.,* 2002). Predation also has been influenced by anthropogenic sources. On Zakynthos, Greece, a landfill site next to loggerhead nesting beaches has resulted in an artificially high level of seagulls (*Larus* spp.), which results in increased predation pressure on hatchlings (Panagopoulou *et al.,* 2008). Planting of non-native plants also can have a detrimental effect on nests in the form of roots invading eggs (*e.g.,* tamarisk tree (*Tamarix* spp.) roots invading eggs in Zakynthos, Greece) (Margaritoulis *et al.,* 2007).

Predation on adult and juvenile loggerheads has also been documented in the Mediterranean. Predation of nesting loggerheads by golden jackals has been recorded in Turkey (Peters *et al.,* 1994). During a 1995 survey of loggerhead nesting in Libya, two nesting females were found killed by carnivores, probably jackals (Laurent *et al.,* 1997). Off the sea turtle nesting beach of Zakynthos, Greece, adult loggerheads were found being predated upon by Mediterranean monk seals (*Monachus monachus*). Of the eight predated turtles observed or reported, 62.5 percent were adult males (Margaritoulis *et al.,* 1996). Further, stomach contents were examined from 24 Mediterranean white sharks (*Carcharodon carcharias*), and 17 percent contained remains of marine turtles, including two loggerheads, one green, and one unidentifiable turtle (Fergusson *et al.,* 2000). One of the loggerhead sea turtles ingested was a juvenile with a carapace length of approximately 60 cm (length not reported as either SCL or CCL). Fergusson *et al.* (2000) report that white shark interactions with sea turtles are likely rare east of the Ionian Sea, and while the impact of shark predation on turtle populations is unknown, it is probably small compared to other sources of mortality.

The Mediterranean is a low-productivity body of water, with high water clarity as a result. However, harmful algal blooms do occur in this area (*e.g.,* off Algeria in 2002), and the problem is particularly acute in enclosed ocean basins such as the Mediterranean. In the northern Adriatic Sea, fish kills have occurred as a result of noxious phytoplankton blooms and anoxic conditions (Mediterranean Sea LME). While fish may be more susceptible to these harmful algal blooms, loggerheads in the Mediterranean also may be impacted by such noxious or toxic phytoplankton to some extent.

In summary, nest and hatchling predation likely was a factor that contributed to the historical decline of this DPS. The best available data suggest that current nest and hatchling predation on several Mediterranean nesting beaches is a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Mediterranean Sea. The reader is directed to sections 5.1.4. and 5.2.8.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Mediterranean Sea (see Factor E), as well as anthropogenic threats to nesting beaches (Factor A) and eggs/hatchlings (Factors A, B, C, and E), is substantial. Although conservation efforts to protect some nesting beaches are underway, more widespread and consistent protection is needed. Although national and international governmental and non-governmental entities in the Mediterranean Sea are currently working toward reducing loggerhead bycatch, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in commercial and artisanal fisheries operating within the range of this DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Mediterranean Sea loggerheads, these

regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and impacts to nesting beach habitat (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other anthropogenic and natural factors affecting loggerhead survival include incidental bycatch in fisheries, vessel collisions, marine pollution, climate change, and cyclonic storm events. Fishing practices alone have been estimated to result in over 150,000 sea turtle captures per year, with approximately 50,000 mortalities (Casale, 2008; Lucchetti and Sala, 2009), and sea turtle bycatch in multiple gears in the Mediterranean is considered among the most urgent conservation priorities globally (Wallace *et al.,* 2010).

The only estimation of loggerhead survival probabilities in the Mediterranean was calculated by using capture-mark-recapture techniques from 1981–2003 (Casale *et al.,* 2007b). Of the 3,254 loggerheads tagged, 134 were recaptured at different sites throughout the Mediterranean. Most recaptured animals were juveniles (mean 54.4 cm CCL; range 25–88 cm CCL), but the study did not delineate between juvenile life stages. This research estimated a loggerhead annual survival probability of 0.73 (95 percent confidence intervals; 0.67–0.78), recognizing that there are methodological limitations of the technique used. Nonetheless, Casale *et al.* (2007c) stated that assuming a natural survivorship no higher than 0.95 and a tag loss rate of 0.1, a range of 0.1–0.2 appears reasonable for the additional human induced mortality (from all sources).

Incidental Bycatch in Fishing Gear

Incidental capture of sea turtles in artisanal and commercial fisheries is a significant threat to the survivability of loggerheads in the Mediterranean. Sea turtles may be caught in pelagic and demersal longlines, drift gillnets, set gillnets and trammel nets, bottom and mid-water trawls, seines, dredges, traps/pots, and hook and line gear. In a 2004 FAO Fisheries Report, Camiñas (2004) stated that the main fisheries affecting sea turtles in the Mediterranean Sea (at that time) were Spanish and Italian longline, North Adriatic Italian, Tunisian, and Turkish trawl, and Moroccan and Italian driftnet. Available information on sea turtle bycatch by gear type is discussed below. There is growing evidence that artisanal/small vessel fisheries (set gillnet, bottom longline, and part of the pelagic longline fishery) may be responsible for a comparable or higher number of captures with higher mortality rates than the commercial/large vessel fisheries (Casale, 2008) as previously suggested by indirect clues (Casale *et al.,* 2005b).

Mediterranean fish landings have increased steadily since the 1950s, but the FAO 10-year capture trend from 1990–1999 shows stable landings (Mediterranean LME, *http://www.lme.noaa.gov*). However, stable fish landings may result from stable fishing effort at the same catch rates, or higher fishing effort at lower catch rates. As fish stocks in the Mediterranean are being depleted (P. Casale, MTSG–IUCN Italy, personal communication, 2009), fishing effort in some areas may be increasing to catch the available fish. This trend has not yet been verified throughout the Mediterranean, but fishing pressures may be increasing even though landings appear stable.

Longline Fisheries. In the Mediterranean, pelagic longline fisheries targeting swordfish (*Ziphias gladius*) and albacore (*Thunnus alalunga*) may be the primary source of loggerhead bycatch. It appears that most of the incidental captures occur in the western and central portions of the area (Demetropoulos and Hadjichristophorou, 1995). The most severe bycatch in the Mediterranean occurs around the Balearic Islands where 1,950–35,000 juveniles are caught annually in the surface longline fishery (Mayol and Castelló Mas, 1983; Camiñas, 1988, 1997; Aguilar *et al.,* 1995). Specifically, the following regions have reported annual estimates of total turtle bycatch from pelagic longlines: Spain—17,000 to 35,000 turtles (Aguilar *et al.,* 1995; Camiñas *et al.,* 2003); Italy (Ionian Sea)—1,084 to 4,447 turtles (Deflorio *et al.,* 2005); Morocco—3,000 turtles (Laurent, 1990); Greece—280 to 3,310 turtles (Panou *et al.,* 1999; Kapantagakis and Lioudakis, 2006); Italy (Lampedusa)—2,100 turtles (Casale *et al.,* 2007c); Malta—1,500 to 2,500 turtles (Gramentz, 1989); South Tunisia (Gulf of Gabès)—486 turtles (Jribi *et al.,* 2008); and Algeria—300 turtles (Laurent, 1990).

For the entire Mediterranean pelagic longline fishery, an extrapolation resulted in a bycatch estimate of 60,000 to 80,000 loggerheads in 2000 (Lewison *et al.,* 2004). Further, a more recent paper used the best available information to estimate that Spain, Morocco, and Italy have the highest level of sea turtle bycatch, with over 10,000 turtle captures per year for each country, and Greece, Malta, Libya, and Tunisia each catch 1,000 to 3,000 turtles per year (Casale, 2008). Available data suggest the annual number of loggerhead sea turtle captures by all Mediterranean pelagic longline fisheries may be greater than 50,000 (Casale, 2008). Note that these are not necessarily individual turtles, as the same sea turtle can be captured more than once.

Mortality estimates in the pelagic longline fishery at gear retrieval appear to be lower than in some other types of gear (*e.g.,* set gillnet). Although limited to observations of direct mortality at gear retrieval, Carreras *et al.* (2004) found mortality to be low (0–7.7 percent) in the longline fishery off the Balearic Islands, and Jribi *et al.* (2008) reported 0 percent direct mortality in the southern Tunisia surface longline fishery. These estimates are consistent with those found in other areas; direct mortality was estimated at 4.3 percent in Greece (n = 23), 0 percent in Italy (n = 214), and 2.6 percent in Spain (n = 676) (Laurent *et al.,* 2001). However, considering injured turtles and those released with hooks, the potential for mortality is likely much higher. Based upon observations of hooked loggerhead sea turtles in captivity, Aguilar *et al.* (1995) estimated 20–30 percent of animals caught in longline gear may eventually die. More recently, Casale *et al.* (2008b) reported, given variations in hook position affecting survivability, the mortality rate of turtles caught by pelagic longlines could be higher than previously thought (17–42 percent; Lewison *et al.,* 2004). Considering direct and post-release mortality, Casale (2008) used a conservative approach to arrive at 40 percent for the average mortality from Mediterranean pelagic longlines. The result is an estimated 20,000 turtles killed per year by pelagic longlines (Casale, 2008).

In general, most of the turtles captured in the Mediterranean surface longline fisheries are juvenile animals (Aguilar *et al.,* 1995; Panou *et al.,* 1999; Camiñas *et al.,* 2003; Casale *et al.,* 2007c; Jribi *et al.,* 2008), but some adult loggerhead bycatch is also reported. Considering data from many Mediterranean areas and research studies, the average size of turtles caught by pelagic longlines was 48.9 cm CCL (range 20.5–79.2 cm CCL; n = 1868) (Casale, 2008). Specifically, in the Spanish surface longline fishery, 13 percent of estimated carapace sizes (n = 455) ranged from 75.36 to 107 cm CCL, considered to be adult animals (Camiñas *et al.,* 2003), and in the Ionian Sea, 15

percent of a total 157 loggerhead sea turtles captured in swordfish longlines were adult animals (estimated size at greater than or equal to 75 cm) (Panou *et al.,* 1999).

Bottom longlines are also fished in the Mediterranean, but specific capture rates for loggerheads are largely unknown for many areas. The countries with the highest number of documented captures (in the thousands per year) are Tunisia, Libya, Greece, Turkey, Egypt, Morocco, and Italy (Casale, 2008). Available data suggest the annual number of loggerhead sea turtle captures (not necessarily individual turtles) by all Mediterranean demersal longliners may be greater than 35,000 (Casale, 2008). Given available information and using a conservative approach, mortality from bottom longlines may be at least equal to pelagic longline mortality (40 percent; Casale, 2008). The result is an estimated 14,000 turtles killed per year in Mediterranean bottom longlines (Casale, 2008). It is likely that these animals represent mostly juvenile loggerheads, Casale (2008) reported an average turtle size of 51.8 cm CCL (n = 35) in bottom longlines based on available data throughout the Mediterranean.

Artisanal longline fisheries also have the potential to take sea turtles. A survey of 54 small boat (4–10 meter length) artisanal fishermen in Cyprus and Turkey resulted in an estimated minimum bycatch of over 2,000 turtles per year, with an estimated 10 percent mortality rate (Godley *et al.,* 1998a). These small boats fished with a combination of longlines and trammel/gillnets. However, note that it is likely that a proportion (perhaps a large proportion) of the turtle bycatch estimated in this study are green turtles.

Set Net (Gillnet) Fisheries. As in other areas, sea turtles have the potential to interact with set nets (gillnets or trammel nets) in the Mediterranean. Mediterranean set nets refer to gillnets (a single layer of net) and trammel nets, which consist of three layers of net with different mesh size. Casale (2008) estimated that the countries with the highest number of loggerhead captures (in the thousands per year) are Tunisia, Libya, Greece, Turkey, Cyprus, and Croatia. Italy, Morocco, Egypt, and France likely have high capture rates as well. Available information suggests the annual number of loggerhead captures by Mediterranean set nets may be greater than 30,000 (Casale, 2008).

Due to the nature of the gear and fishing practices (*e.g.,* relatively long soak times), incidental capture in gillnets is among the highest source of direct sea turtle mortality. An evaluation of turtles tagged then recaptured in gillnets along the Italian coast found 14 of 19 loggerheads (73.7 percent) to be dead (Argano *et al.,* 1992). Gillnets off France were observed to capture six loggerheads with a 50 percent mortality rate (Laurent, 1991). Six loggerheads were recovered in gillnets off Croatia between 1993 and 1996; 83 percent were found dead (Lazar *et al.,* 2000). Off the Balearic Islands, 196 sea turtles were estimated to be captured in lobster trammel nets in 2001, with a CPUE of 0.17 turtles per vessel (Carreras *et al.,* 2004). Mortality estimates for this artisanal lobster trammel net fishery ranged from 78 to 100 percent. Given this mortality rate and the number of turtles reported in lobster trammel nets, Carreras *et al.* (2004) estimate that a few thousand loggerhead sea turtles are killed annually by lobster trammel nets in the whole western Mediterranean. Considering data throughout the entire Mediterranean, as well as a conservative approach, Casale (2008) considered mortality by set nets to be 60 percent, with a resulting estimate of 16,000 turtles killed per year. Most of these animals are likely juveniles; Casale (2008) evaluated available set net catch data throughout the Mediterranean and found an average size of 45.4 cm CCL (n = 74).

As noted above, artisanal set net fisheries also may capture numerous sea turtles, as observed off Cyprus and Turkey (Godley *et al.,* 1998a).

Driftnet Fisheries. Historically, driftnet fishing in the Mediterranean caught large numbers of sea turtles. An estimated 16,000 turtles were captured annually in the Ionian Sea driftnet fishery in the 1980s (De Metrio and Megalofonou, 1988). The United Nations established a worldwide moratorium on driftnet fishing effective in 1992, but unregulated driftnetting continued to occur in the Mediterranean. For instance, a bycatch estimate of 236 loggerhead sea turtles was developed for the Spanish swordfish driftnet fishery in 1994 (Silvani *et al.,* 1999). While the Spanish fleet curtailed activity in 1994, the Moroccan, Turkish, French, and Italian driftnet fleets continued to operate. Tudela *et al.* (2005) presented bycatch rates for driftnet fisheries in the Alboran Sea and off Italy. The Moroccan Alboran Sea driftnet fleet bycatch rate ranged from 0.21 to 0.78 loggerheads per haul, whereas the Italian driftnet fleet had a lower bycatch rate of 0.046 to 0.057 loggerheads per haul (Di Natale, 1995; Camiñas, 1997; Silvani *et al.,* 1999). The use of driftnets in the Mediterranean continues to be illegal: the General Fisheries Commission for the Mediterranean prohibited driftnet fishing in 1997; a total ban on driftnet fishing by the European Union fleet in the Mediterranean went into effect in 2002; and ICCAT banned driftnets in 2003. Nevertheless, there are an estimated 600 illegal driftnet vessels operating in the Mediterranean, including fleets based in Algeria, France, Italy, Morocco, and Turkey (Environmental Justice Foundation, 2007). In particular, the Moroccan fleet, operating in the Alboran Sea and Straits of Gibraltar, comprises the bulk of Mediterranean driftnetting, and has been found responsible for high bycatch, including loggerhead sea turtles (Environmental Justice Foundation, 2007; Aksissou *et al.,* 2010). Driftnet fishing in the Mediterranean, and accompanying threats to loggerhead sea turtles, continues to occur.

Trawl Fisheries. Sea turtles are known to be incidentally captured in trawls in Albania, Algeria, Croatia, Egypt, France, Greece, Italy, Libya, Morocco, Slovenia, Spain, Tunisia, and Turkey (Gerosa and Casale, 1999; Camiñas, 2004; Casale, 2008). Laurent *et al.* (1996) estimated that approximately 10,000 to 15,000 sea turtles (most of which are loggerheads) are captured by bottom trawling in the entire Mediterranean. More recently, Casale (2008) compiled available trawl bycatch data throughout the Mediterranean and reported that Italy and Tunisia have the highest level of sea turtle bycatch, potentially over 20,000 captures per year combined, and Croatia, Greece, Turkey, Egypt, and Libya each catch more than 2,000 turtles per year. Further, Spain and Albania may each capture a few hundred sea turtles per year (Casale, 2008). Available data suggest the annual number of sea turtle captures by all Mediterranean trawlers may be greater than 40,000 (Casale, 2008). Although juveniles are incidentally captured in trawl gear in many areas of the Mediterranean (Casale *et al.,* 2004, 2007c; Jribi *et al.,* 2007), adult turtles are also found. In Egypt, 25 percent of loggerheads captured in bottom trawl gear (n = 16) were greater than or equal to 70 cm CCL, and in Tunisia, 26.2 percent (n = 62) were of this larger size class (Laurent *et al.,* 1996). Off Lampedusa Island, Italy, the average size of turtles caught by bottom trawlers was 51.8 cm CCL (range 22–87 cm CCL; n = 368), and approximately 10 percent of the animals measured greater than 75 cm CCL (Casale *et al.,* 2007c). For all areas of the Mediterranean, Casale (2008) reported that medium to large turtles are generally caught by

bottom trawl gear (mean 53.9 cm CCL; range 22–87 cm CCL; n = 648).

While there is a notable interaction rate in the Mediterranean, it appears that the mortality associated with trawling is relatively low. Incidents of mortality have ranged from 3.3 percent (n = 60) in Tunisia (Jribi *et al.,* 2007) and 3.3 percent (n = 92) in France (Laurent, 1991) to 9.4 percent (n = 32) in Italy (Casale *et al.,* 2004). Casale *et al.* (2004) found that mortality would be higher if all comatose turtles were assumed to die. It also should be noted that the mortality rate in trawls depends on the duration of the haul, with longer haul durations resulting in higher mortality rates (Henwood and Stuntz, 1987; Sasso and Epperly, 2006). Jribi *et al.* (2007) stated that the low recorded mortality in the Gulf of Gabès is likely due to the short haul durations in this area. Based on available information from multiple areas of the Mediterranean, and assuming that comatose animals die if released in that condition, the overall average mortality rate for bottom trawlers was estimated to be 20 percent (Casale, 2008). This results in at least 7,400 turtles killed per year by bottom trawlers in all of the Mediterranean, but the number is likely more than 10,000 (Casale, 2008).

Mid-water trawling may have less total impact on sea turtles found in the Mediterranean than some other gear types, but interactions still occur. Casale *et al.* (2004) found that while no turtles were caught on observed mid-water trawl trips in the North Adriatic Sea, vessel captains reported 13 sea turtles captured from April to September. Considering total fishing effort, these reports resulted in a minimum total catch estimate of 161 turtles a year in the Italian mid-water trawl fishery. Off Turkey, 71 loggerheads were captured in mid-water trawls from 1995–1996, while 43 loggerheads were incidentally taken in bottom trawls (Oruç, 2001). In this same study, of a total 320 turtles captured in mid-water trawls (loggerheads and greens combined), 95 percent were captured alive and apparently healthy. While the total catch numbers throughout the Mediterranean have not been estimated, mid-water trawl fisheries do present a threat to loggerhead sea turtles.

Other Gear Types. Seine, dredge, trap/pot, and hook and line fisheries operate in Mediterranean waters and may affect loggerhead sea turtles, although incidental captures in these gear types are largely unknown (Camiñas, 2004). Artisanal fisheries using a variety of gear types also have the potential for sea turtle takes, but the effects of most artisanal gear types on sea turtles have not been estimated.

Other Manmade and Natural Impacts

Other anthropogenic threats, such as interactions with recreational and commercial vessels, marine pollution, and intentional killing, also impact loggerheads found in the Mediterranean. Propeller and collision injuries from boats and ships are becoming more common in sea turtles, although it is unclear as to whether the events are increasing or just the reporting of the injuries. Speedboat impacts are of particular concern in areas of intense tourist activity, such as Greece and Turkey. Losses of nesting females from vessel collisions have been documented in Zakynthos and Crete in Greece (Camiñas, 2004). In the Gulf of Naples, 28.1 percent of loggerheads recovered from 1993–1996 had injuries attributed to boat strikes (Bentivegna and Paglialonga, 1998). Along the Greece coastline from 1997–1999, boat strikes were reported as a seasonal phenomenon in stranded turtles (Kopsida *et al.,* 2002), but numbers were not presented.

Direct or indirect disposal of anthropogenic debris introduces potentially lethal materials into loggerhead foraging habitats. Unattended or discarded nets, floating plastics and bags, and tar balls are of particular concern (Camiñas, 2004; Margaritoulis, 2007). Monofilament netting appears to be the most dangerous waste produced by the fishing industry (Camiñas, 2004). In the Mediterranean, 20 of 99 loggerhead sea turtles examined from Maltese fisheries were found contaminated with plastic or metal litter and hydrocarbons, with crude oil being the most common pollutant (Gramentz, 1988). Of 54 juvenile loggerhead sea turtles incidentally caught by fisheries in Spanish Mediterranean waters, 79.6 percent had debris in their digestive tracts (Tomás *et al.,* 2002). In this study, plastics were the most frequent type of marine debris observed (75.9 percent), followed by tar (25.9 percent). However, an examination of stranded sea turtles in Northern Cyprus and Turkey found that only 3 of 98 animals were affected by marine debris (Godley *et al.,* 1998b).

Pollutant waste in the marine environment may impact loggerheads, likely more than other sea turtle species. Omnivorous loggerheads stranded in Cyprus, Greece, and Scotland had the highest organochlorine contaminant concentrations, as compared to green and leatherback turtles (Mckenzie *et al.,* 1999). In northern Cyprus, Godley *et al.* (1999) found heavy metal concentrations (mercury, cadmium, and lead) to be higher in loggerheads than green turtles. Even so, concentrations of contaminants from sea turtles in Mediterranean waters were found to be comparable to other areas, generally with levels lower than concentrations shown to cause deleterious effects in other species (Godley *et al.,* 1999; Mckenzie *et al.,* 1999). However, lead concentrations in some Mediterranean loggerhead hatchlings were at levels known to cause toxic effects in other vertebrate groups (Godley *et al.,* 1999).

As in other areas of the world, intentional killing or injuring of sea turtles has been reported to occur in the Mediterranean. Of 524 strandings in Greece, it appeared that 23 percent had been intentionally killed or injured (Kopsida *et al.,* 2002). While some turtles incidentally captured are used for consumption, it has been reported that some fishermen kill the sea turtles they catch for a variety of other reasons, including non-commercial use, hostility, prejudice, recovery of hooks, and ignorance (Laurent *et al.,* 1996; Godley *et al.,* 1998a; Gerosa and Casale, 1999; Casale, 2008).

Natural environmental events also may affect loggerheads in the Mediterranean. Cyclonic storms that closely resemble tropical cyclones in satellite images occasionally form over the Mediterranean Sea (Emanuel, 2005). While hurricanes typically do not occur in the Mediterranean, researchers have suggested that climate change could trigger hurricane development in this area in the future (Gaertner *et al.,* 2007). Any significant storm event that may develop could disrupt loggerhead nesting activity and hatchling production, but the results are generally localized and rarely result in whole-scale losses over multiple nesting seasons.

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Mediterranean. Over the long term, Mediterranean turtle populations could be threatened by the alteration of thermal sand characteristics (from global warming), resulting in the reduction or cessation of female hatchling production (Camiñas, 2004; Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Further, a significant rise in sea level would restrict loggerhead nesting habitat in the eastern Mediterranean.

In summary, we find that the Mediterranean Sea DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the

Mediterranean Sea, particularly bycatch mortality of loggerheads from pelagic and bottom longline, set net, driftnet, and trawl fisheries, is a significant threat to the persistence of this DPS. In addition, boat strikes are becoming more common and are likely also a significant threat to the persistence of this DPS.

South Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the South Atlantic result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (D'Amato and Marczwski, 1993; Marcovaldi and Marcovaldi, 1999; Naro-Maciel *et al.,* 1999; Marcovaldi *et al.,* 2002b, 2005; Marcovaldi, 2007).

The primary nesting areas for loggerheads in the South Atlantic are in the States of Sergipe, Bahia, Espírito Santo, and Rio de Janeiro in Brazil (Marcovaldi and Marcovaldi, 1999). These primary nesting areas are monitored by Projeto TAMAR, the national sea turtle conservation program in Brazil. Since 1980, Projeto TAMAR has worked to establish legal protection for nesting beaches (Marcovaldi and Marcovaldi, 1999). As such, human activities, including sand extraction, beach nourishment, seawall construction, beach driving, and artificial lighting, that can negatively impact sea turtle nesting habitat, as well as directly impact nesting turtles and their eggs and hatchlings during the reproductive season, are restricted by various State and Federal laws (Marcovaldi and Marcovaldi, 1999; Marcovaldi *et al.,* 2002b, 2005). Nevertheless, tourism development in coastal areas in Brazil is high, and Projeto TAMAR works toward raising awareness of turtles and their conservation needs through educational and informational activities at their Visitor Centers that are dispersed throughout the nesting areas (Marcovaldi *et al.,* 2005).

In terms of non-native vegetation, the majority of nesting beaches in northern Bahia, where loggerhead nesting density is highest in Brazil (Marcovaldi and Chaloupka, 2007), have coconut plantations dating back to the 17th century backing them (Naro-Maciel *et al.,* 1999). It is impossible to assess whether this structured habitat has resulted in long-term changes to the loggerhead nesting rookery in northern Bahia.

Neritic/Oceanic Zones

Human activities that impact bottom habitat in the loggerhead neritic and oceanic zones in the South Atlantic Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change (*e.g.,* Ibe, 1996; Silva *et al.,* 1997). General human activities have altered ocean ecosystems, as identified by ecosystem models (*http://www.lme.noaa.gov*). On the western side of the South Atlantic, the Brazil Current LME region is characterized by the Global International Waters Assessment as suffering severe impacts in the areas of pollution, coastal habitat modification, and overexploitation of fish stocks (Marques *et al.,* 2004). The Patagonian Shelf LME is moderately affected by pollution, habitat modification, and overfishing (Mugetti *et al.,* 2004). On the eastern side of the South Atlantic, the Benguela Current LME has been characterized as moderately impacted in the area of overfishing, with future conditions expected to worsen by the Global International Waters Assessment (Prochazka *et al.,* 2005). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and distribution.

In summary, we find that the South Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in its marine habitats as a result of land and water use practices as considered above in Factor A. The best available data suggest that threats to neritic and oceanic habitats are potentially affecting the persistence of this DPS; however, sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. Limited numbers of eggs are taken for human consumption in Brazil, but the relative amount is considered minor when compared to historical rates of egg collection (Marcovaldi and Marcovaldi, 1999; Marcovaldi *et al.,* 2005; Almeida and Mendes, 2007). Use of sea turtles including loggerheads for medicinal purposes occasionally occurs in northeastern Brazil (Alves and Rosa, 2006). Use of bycaught loggerheads for subsistence and medicinal purposes is likely to occur in southern Atlantic Africa, based on information from central West Africa (Fretey, 2001; Fretey *et al.,* 2007).

In summary, the harvest of loggerheads in Brazil for their meat, shells, and eggs likely was a factor that contributed to the historical decline of this DPS. However, current harvest levels are greatly reduced from historical levels. Although harvest is known to still occur in Brazil and southern Atlantic Africa, it no longer appears to be a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the South Atlantic Ocean. There have been five confirmed cases of fibropapillomatosis in loggerheads in Brazil (Baptistotte, 2007). There is no indication that this disease poses a major threat for this species in the eastern South Atlantic (Formia *et al.,* 2007).

Eggs and nests in Brazil experience depredation, primarily by foxes (Marcovaldi and Laurent, 1996). Nests laid by loggerheads in the southern Atlantic African coastline, if any, likely experience similar predation pressures to those on nests of other species laid in the same area (*e.g.,* jackals depredate green turtle nests in Angola; Weir *et al.,* 2007).

Loggerheads in the South Atlantic also may be impacted by harmful algal blooms (Gilbert *et al.,* 2005).

In summary, disease and predation are known to occur. The best available data suggest these threats are potentially affecting the persistence of this DPS; however, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the South Atlantic Ocean. The reader is directed to sections 5.1.4. and 5.2.9.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address

sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the South Atlantic Ocean is substantial (see Factor E). Although national and international governmental and non-governmental entities on both sides of the South Atlantic are currently working toward reducing loggerhead bycatch in the South Atlantic, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the commercial and artisanal fisheries operating in the South Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In the primary nesting areas in the States of Sergipe, Bahia, Espírito Santo, and Rio de Janeiro in Brazil, human activities, including sand extraction, beach nourishment, seawall construction, beach driving, and artificial lighting, are restricted by various State and Federal laws (Marcovaldi and Marcovaldi, 1999; Marcovaldi *et al.,* 2002b, 2005).

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of South Atlantic Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture of sea turtles in artisanal and commercial fisheries is a significant threat to the survivability of loggerheads in the South Atlantic. Sea turtles may be caught in pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, fishing dredges, pound nets and weirs, haul and purse seines, pots and traps, and hook and line gear. In the western South Atlantic, there are various efforts aimed at mitigating bycatch of sea turtles in various fisheries. In Brazil, there is the *National Action Plan to Reduce Incidental Capture of Sea Turtles in Fisheries,* coordinated by Projeto TAMAR (Marcovaldi *et al.,* 2006). This action plan focuses on both artisanal and commercial fisheries, and collects data directly from fishers as well as on-board observers. Although loggerheads have been observed as bycatch in all fishing gear and methods identified above, Marcovaldi *et al.* (2006) have identified longlining as the major source of incidental capture of loggerhead sea turtles. Reports of loggerhead bycatch by pelagic longlines come mostly from the southern portion of the Brazilian Exclusive Economic Zone, between 20° S. and 35° S. latitude. Bugoni *et al.* (2008) reported a loggerhead bycatch rate of 0.52 juvenile turtles/1,000 hooks by surface longlines targeting dolphinfish. Pinedo and Polacheck (2004) reported seasonal variation in bycatch of juvenile loggerheads (and other sea turtle species) by pelagic longlines in the same region of Brazil, with the highest rates (1.85 turtles/1,000 hooks) in the austral spring. Kotas *et al.* (2004) reported the highest rates of loggerhead bycatch (greater than 10 turtles/1,000 hooks) by pelagic longlines in the austral summer/fall months. A study based on several years found that the highest rate of loggerhead bycatch in pelagic longlines off Uruguay and Brazil was in the late austral summer month of February: 2.72 turtles/1,000 hooks (López-Medilaharsu *et al.,* 2007). Sales *et al.* (2008) reported a loggerhead bycatch rate of 0.87/1,000 hooks near the Rio Grande Elevacao do Rio Grande, about 600 nautical miles off the coast of southern Brazil. In Uruguayan waters, the primary fisheries with loggerhead bycatch are bottom trawlers and longlines (Domingo *et al.,* 2006). Domingo *et al.* (2008) reported bycatch rates of loggerheads of 0.9–1.3/1,000 hooks by longline deployed south of 30° S. latitude. In waters off Argentina, bottom trawlers also catch some loggerheads (Domingo *et al.,* 2006).

In the eastern South Atlantic, sea turtle bycatch in fisheries has been documented from Gabon to South Africa (Fretey, 2001). Limited data are available on bycatch of loggerheads in coastal fisheries, although loggerheads are known (or strongly suspected) to occur in coastal waters from Gabon to South Africa (Fretey, 2001; Bal *et al.,* 2007; Weir *et al.,* 2007). Coastal fisheries implicated in bycatch of loggerheads and other turtles include gillnets, beach seines, and trawlers (Bal *et al.,* 2007).

In the high seas, longlines are used by fishing boats targeting tuna and swordfish in the eastern South Atlantic. A recent study by Honig *et al.* (2008) estimates 7,600–120,000 sea turtles are incidentally captured by commercial longlines fishing in the Benguela Current LME; 60 percent of these are loggerheads. Petersen *et al.* (2007, 2009) reported that the rate of loggerhead bycatch in South African longliners was around 0.02 turtles/1,000 hooks, largely in the Benguela Current LME. In the middle of the South Atlantic, loggerhead bycatch by longlines was reported to be low, relative to other regions in the Atlantic (Mejuto *et al.,* 2008).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, also apply to loggerheads in the South Atlantic. Bugoni *et al.* (2001) have suggested the ingestion of plastic and oil may contribute to loggerhead mortality on the southern coast of Brazil. Plastic marine debris in the eastern South Atlantic also may pose a problem for loggerheads and other sea turtles (Ryan, 1996). Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the South Atlantic. This includes beach erosion and loss from rising sea levels, repeated inundation of nests, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Hawkes *et al.,* 2009; Poloczanska *et al.,* 2009). Climate change impacts could have profound long-term impacts on nesting populations in the South Atlantic Ocean, as is the case for all DPSs, but at this time we cannot predict what those impacts may be.

Oil reserve exploration and extraction activities also may pose a threat for sea turtles in the South Atlantic. Seismic surveys in Brazil and Angola have recorded sea turtle occurrences near the seismic work (Gurjão *et al.,* 2005; Weir *et al.,* 2007). While no sea turtle takes were directly observed on these surveys, increased equipment and presence in the water that is associated with these

activities also increases the likelihood of sea turtle interactions (Weir *et al.,* 2007).

Natural environmental events may affect loggerheads in the South Atlantic. However, while a rare hurricane hit Brazil in March 2004, typically hurricanes do not occur in the South Atlantic (McTaggart-Cowan *et al.,* 2006). This is generally due to higher windspeeds aloft, preventing the storms from gaining height and therefore strength.

In summary, we find that the South Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch, particularly bycatch mortality of loggerheads from pelagic longline fisheries, is a significant threat to the persistence of this DPS.

Supplemental Extinction Risk Assessments

In addition to the status evaluation and Section 4(a)(1) 5-factor analysis provided above, the BRT conducted two independent analyses to further assess extinction risks of the nine identified DPSs. Although these analyses provided some additional insights into the status of the nine DPSs, ultimately the conclusions and determinations made were primarily based on an assessment of population sizes and trends, current and anticipated threats, and conservation efforts for each DPS.

The first analysis used the diffusion approximation approach based on time series of counts of nesting females (Lande and Orzack, 1988; Dennis *et al.,* 1991; Holmes, 2001; Snover and Heppell, 2009). This analysis provided a metric (SQE) to determine if the probability of a population's risk of quasi-extinction is high enough to warrant a particular listing status (Snover and Heppell, 2009). The term ''quasi-extinction'' is defined by Ginzburg *et al.* (1982) as the minimum number of individuals (often females) below which the population is likely to be critically and immediately imperiled. The diffusion approximation approach is based on stochastic projections of observed trends and variability in the numbers of mature females at various nesting beaches. The second analysis used a deterministic stage-based population model that focused on determining the effects of known anthropogenic mortalities on each DPS with respect to the vital rates of the species. Anthropogenic mortalities were added to natural mortalities and possible ranges of population growth rates were computed as another metric of population health. Because this approach is based on matrix models, the BRT referred to it as a threat matrix analysis. This approach focused on how additional mortalities may affect the future growth and recovery rate of a loggerhead sea turtle DPS. The first approach (SQE) was solely based on the available time-series data on the numbers of nests at nesting beaches, whereas the second approach (threat matrix analysis) was based on the known biology of the species, natural mortality rates, and anthropogenic mortalities, independent of observed nesting beach data.

The BRT found that for three of five DPSs with sufficient data to conduct the SQE analysis (North Pacific Ocean, South Pacific Ocean, and Northwest Atlantic Ocean), these DPSs were at risk of declining to levels that are less than 30 percent of the current numbers of nesting females (QETs <0.30). The BRT found that for the other two DPSs with sufficient data to conduct the SQE analysis (Southwest Indian Ocean and South Atlantic Ocean), the risk of declining to any level of quasi-extinction is negligible using the SQE analysis because of the observed increases in the nesting females in both DPSs. There were not enough data to conduct the SQE analysis for the North Indian Ocean, Southeast Indo-Pacific Ocean, Northeast Atlantic Ocean, and Mediterranean Sea DPSs. It is important to note that the BRT's analysis was not based on the actual population size at the end of the 100-year projection period, but was based on reaching a certain proportion (2.5 and 97.5 percent) of the current population size. Thus, it is possible to greatly diminish a population but still have a large population size after 100 years.

According to the threat matrix analysis using a majority of experts' opinions in the matrix model framework, the BRT determined that all loggerhead sea turtle DPSs have the potential to decline in the future. Although some DPSs are indicating increasing trends at nesting beaches (Southwest Indian Ocean and South Atlantic Ocean), available information about anthropogenic threats to juvenile and adult loggerheads in neritic and oceanic environments indicate possible unsustainable additional mortalities. According to the threat matrix analysis, the potential for future decline is greatest for the North Indian Ocean, Northwest Atlantic Ocean, Northeast Atlantic Ocean, Mediterranean Sea, and South Atlantic Ocean DPSs.

The BRT's approach to the risk analysis presented several important points. First, the lack of precise estimates of age at first reproduction hindered precise assessment of the status of any DPS. Within the range of possible ages at first reproduction of the species, however, some DPSs could decline rapidly regardless of the exact age at first reproduction because of high anthropogenic mortality.

Second, the lack of precise estimates of anthropogenic mortalities resulted in a wide range of possible status using the threat matrix analysis. For the best case scenario, a DPS may be considered healthy, whereas for the worst case scenario the same DPS may be considered as declining rapidly. The precise prognosis of each DPS relies on obtaining precise estimates of anthropogenic mortality and vital rates.

Third, the assessment of a population without the information on natural and anthropogenic mortalities is difficult. Because of the longevity of the species, loggerhead sea turtles require high survival rates throughout their life to maintain a population. Anthropogenic mortality on the species occurs at every stage of their life, where the exact magnitude of the mortality is often unknown. As described in the Status Review, the upper end of natural mortality can be computed from available information.

Nesting beach count data for the North Pacific Ocean DPS indicated a decline of loggerhead sea turtle nesting in the last 20 years. The SQE approach reflected the observed decline. However, in the threat matrix analysis, the asymptotic population growth rates (λ) with anthropogenic mortalities ranged from less than one to greater than one, indicating a large uncertainty about the future of the DPS. Fishery bycatch along the coast of the Baja Peninsula and the nearshore waters of Japan are the main known sources of mortalities. Mortalities in the high-seas, where a large number of juvenile loggerhead sea turtles reside (Kobayashi *et al.,* 2008), from fishery bycatch are still unknown.

The SQE approach indicated that, based on nest count data from the mid-1970s through the early to mid-2000s, the South Pacific Ocean DPS is at risk and thus likely to decline in the future. These results were based on recently published nesting census data for loggerhead sea turtles at index beaches in eastern Australia (Limpus, 2009). The threat matrix analysis provided uncertain results: in the case of the lowest anthropogenic threats, the South Pacific Ocean DPS may recover, but in the worst-case scenario, the DPS may substantially decline in the future. These results are largely driven by the ongoing threats to juvenile and adult loggerheads from fishery bycatch that

occur throughout the South Pacific Ocean and the uncertainty in estimated mortalities.

For the North Indian Ocean DPS, there were no nesting beach data available to conduct the SQE analysis. The threat matrix analysis indicated a decline of the DPS in the future, primarily as a result of fishery bycatch in neritic habitats. Cumulatively, substantial threats may exist for eggs/hatchlings. Because of the lack of precise estimates of bycatch, however, the range of possible λ values was large.

Similar to the North Indian Ocean DPS, no nesting beach data were available for the Southeast Indo-Pacific Ocean DPS. The level of anthropogenic mortalities is low for the Southeast Indo-Pacific Ocean DPS, based on the best available information, resulting in relatively large Pλ (the proportion of λ values greater than 1) and a narrow range. The greatest threats for the Southeast Indo-Pacific Ocean DPS exist for the first year of the life stages (eggs and hatchlings).

For the Southwest Indian Ocean DPS, the SQE approach, based on a 37-year time series of nesting female counts at Tongaland, South Africa (1963–1999), indicated this segment of the population, while small, has increased, and the likelihood of quasi-extinction is negligible. The threat matrix analysis, on the other hand, provided a wide range of results: In the best case scenario, the DPS would grow slowly, whereas in the worst case scenario, the DPS would decline in the future. The results of the threat matrix analysis were driven by uncertainty in anthropogenic mortalities in the neritic environment and the eggs/hatchlings stage.

Within the Northwest Atlantic Ocean DPS, four of the five identified recovery units have adequate time series data for applying the original SQE analysis; these are the Northern, Peninsular Florida, Northern Gulf of Mexico, and Greater Caribbean Recovery Units. The original SQE analysis indicated differences in SQEs among these four recovery units. Although the Northern Gulf of Mexico Recovery Unit indicated the worst result among the four recovery units assessed the length of the time series was shortest (12 data points). The other three recovery units, however, appeared to show similar declining trends, which were indicated through the SQE approach. A revision of the SQE analysis, however, had different results. Including nesting data through 2009 instead of just 2007, and redoing the analysis to use a range of adult female abundance estimates as QETs, it was determined that there was little risk (SQE <0.3) of the Peninsular Florida Recovery Unit (comprising approximately 80 percent of the Northwest Atlantic Ocean DPS) reaching 1,000 or fewer females in 100 years. This revised analysis was done by the same member of the BRT that performed the original SQE analysis. The threat matrix analysis indicated a likely decline of the DPS in the future. The greatest threats to the DPS result from cumulative fishery bycatch in neritic and oceanic habitats.

Sufficient nesting beach data for the Northeast Atlantic Ocean DPS were not available to conduct the SQE analysis. The high likelihood of the predicted decline of the Northeast Atlantic Ocean DPS from the threat matrix analysis is largely driven by the ongoing harvest of nesting females, low hatchling and emergence success, and mortality of juvenile and adult turtles from fishery bycatch throughout the Northeast Atlantic Ocean. The threat matrix analysis indicated a consistently pessimistic future for the DPS.

Representative nesting beach data for the Mediterranean Sea DPS were not available to conduct the SQE analysis. The threat matrix analysis indicated the DPS is likely to decline in the future. The primary threats are fishery bycatch in neritic and oceanic habitats.

The two approaches for determining risks to the South Atlantic Ocean DPS provided different, although not incompatible, results. The SQE approach indicated that, based on nest count data for the past 2 decades, the population was unlikely to decline in the future. These results were based on recently published nesting beach trend analyses by Marcovaldi and Chaloupka (2007) and this QET analysis was consistent with their conclusions. However, the SQE approach was based on past performance of the DPS, specifically only nesting beach data, and did not address ongoing or future threats to segments of the DPS that might not have been or might not yet be reflected by nest count data. The threat matrix approach indicated that the South Atlantic Ocean DPS is likely to decline in the future. These results were largely driven by the ongoing mortality threats to juvenile turtles from fishery bycatch that occurs throughout the South Atlantic Ocean. Although conservation efforts by national and international groups in the South Atlantic are currently working toward mitigating bycatch in the South Atlantic, it is unlikely that this source of mortality can be greatly reduced in the near future, largely due to inadequate funding and knowledge gaps that together inhibit implementation of large-scale management actions (Domingo *et al.,* 2006).

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires us to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American tribes and organizations. Also, Federal, tribal, State, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our policy implementing this provision (68 FR 15100; March 28, 2003) we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination.

North Pacific Ocean DPS

NMFS has formalized two conservation actions to protect foraging loggerheads in the North Pacific Ocean, both of which were implemented to reduce loggerhead bycatch in U.S. fisheries. Prior to 2001, the Hawaii-based longline fishery had annual interaction levels of 300 to 500 loggerhead sea turtles. The temporary closure of the shallow-set swordfish fishery in 2001 in large part over concerns of turtle interactions brought about the immediate need to develop effective solutions to reduce turtle interactions while maintaining the viability of the industry. Since the reopening of the swordfish sector in 2004, the fishery has operated under strict management measures, including the use of large circle hooks and fish bait, restricted annual effort, annual caps on loggerhead interactions (17 annually), and 100 percent onboard observer coverage (50 CFR 665.3). As a result of these measures, loggerhead interactions in the swordfish fishery have been reduced by over 90 percent (Gilman *et al.,* 2007). Furthermore, in 2003, NMFS implemented a time/area closure in southern California during forecasted or existing El Niño-like conditions to reduce the take of loggerheads in the California/Oregon drift gillnet fishery (68 FR 69962;

December 16, 2003). While this closure has not been implemented since the passage of these regulations due to the lack of conditions occurring in the area, such a closure is expected to reduce interactions between the large-mesh gillnet fishery and loggerheads by over 70 percent. NMFS has also developed a mapping product known as TurtleWatch that provides a near real time product that recommends areas where the deployment of pelagic longline shallow sets should be avoided to help reduce interactions between Hawaii-based pelagic longline fishing vessels and loggerhead sea turtles (Howell *et al.,* 2008).

Loggerhead interactions and mortalities with coastal fisheries in Mexico and Japan are of concern and are considered a major threat to North Pacific loggerhead recovery. NMFS and U.S. non-governmental organizations have worked with international entities to: (1) Assess bycatch mortality through systematic stranding surveys in Baja California Sur, Mexico; (2) reduce interactions and mortalities in two bottom-set fisheries in Mexico; (3) conduct gear mitigation trials to reduce bycatch in Japanese pound nets; and (4) convey information to fishers and other stakeholders through participatory activities, events and outreach.

In 2003, the Grupo Tortuguero's ProCaguama (Operation Loggerhead) was initiated to partner directly with fishermen to assess and mitigate their bycatch while maintaining fisheries sustainability in Baja California, Mexico. ProCaguama's fisher-scientist team discovered the highest turtle bycatch rates documented worldwide and has made considerable progress in mitigating anthropogenic mortality in Mexican waters (Peckham *et al.,* 2007, 2008). As a result of the 2006 and 2007 tri-national fishermen's exchanges run by ProCaguama, Sea Turtle Association of Japan, and the Western Pacific Fisheries Management Council, in 2007 a prominent Baja California Sur fleet retired its bottom-set longlines (Peckham *et al.,* 2008; Peckham and Maldonado-Diaz, in press). Prior to this closure, the longline fleet interacted with an estimated 1,160–2,174 loggerheads annually, with nearly all (89 percent) of the takes resulting in mortalities (Peckham *et al.,* 2008). Because this fleet no longer interacts with loggerheads, conservation efforts have resulted in the continued protection of approximately 1,160–2,174 juvenile loggerheads annually.

Led by the Mexican wildlife service (Vida Silvestre), a Federal loggerhead bycatch reduction task force was organized in 2008 to ensure loggerheads receive the protection they are afforded by Mexican law. The task force is comprised of Federal and State agencies, in addition to non-governmental organizations, to address the bycatch problem, meeting ProCaguama's bottom-up initiatives with complementary top-down management and enforcement resources. In 2009, while testing a variety of potential solutions, ProCaguama's fisher-scientist team demonstrated the commercial viability of substituting bycatch-free hook fishing for gillnet fishing. Local fishers are interested in adoption of this gear because the technique results in higher quality catch offering access to higher-value markets and potentially higher sustainability with zero bycatch. ProCaguama, in coordination with the task force, is working to develop a market-based bycatch solution consisting of hook substitution, training to augment ex-vessel fish value, development of fisheries infrastructure, linkage of local fleets with regional and international markets, and concurrent strengthening of local fisheries management.

The United States has also funded non-governmental organizations to convey bycatch solutions to local fishers as well as to educate communities on the protection of all sea turtles (*i.e.,* reduce directed harvest). The effectiveness of these efforts are difficult to quantify without several post-outreach years of documenting reductions in sea turtle strandings, directed takes, or bycatch in local fisheries.

Due to concerns of high adult loggerhead mortality in mid-water pound nets, as documented in 2006, Sea Turtle Association of Japan researchers began to engage the pound net operators in an effort to study the impact and reduce sea turtle bycatch. This work was expanded in 2008 with U.S. support and, similar to outreach efforts in Mexico, is intended to engage local fishermen in conservation throughout several Japanese prefectures. Research opportunities will be developed with and for local fishermen in order to assess and mitigate bycatch.

The Southeast Asian Fisheries Development Center (SEAFDEC), an intergovernmental organization established in 1967 to promote sustainable fisheries development, also has made progress in managing sea turtle bycatch in the North Pacific region. SEAFDEC activities include research for the enhancement of sea turtle populations that is comprised of a sea turtle tagging and satellite telemetry study aimed at determining migration routes, inter-nesting and foraging habitats, and other relevant biological information of sea turtles in the region; investigation of the interaction between fisheries activities and sea turtle mortality; and an assessment of the effectiveness of the use of TEDs and circle hooks in reducing sea turtle mortality (SEAFDEC 2009, 2010). Since 2003, with the assistance of the United States, the Sea Turtle Association of Japan and, in recent years with the Grupo Tortuguero, has conducted nesting beach monitoring and management at several major loggerhead nesting beaches, with the intent of increasing the number of beaches surveyed and protected. Due to logistical problems and costs, the Sea Turtle Association of Japan's program had been limited to five primary rookeries. At these areas, hatchling production has been augmented through: (1) Relocation of doomed nests; and (2) protection of nests *in situ* from trampling, desiccation, and predation. Between 2004 and 2008, management activities have been successful with over 160,000 hatchlings released from relocated nests that would have otherwise been lost to inundation or erosion, with many more hatchlings produced from *in situ* nests.

The United States plans to continue supporting this project in the foreseeable future, increasing relocation activities at other high-density nesting beaches, implementing predator control activities to reduce predation by raccoon dogs and raccoons, and assessing the effects of light pollution at a major nesting beach (Maehama Beach). Determination of hatching success will also be initiated at several key nesting beaches (Inakahama, Maehama, Yotsuse, and Kurio, all in Yakushima) to provide information to support the removal of armoring structures and to evaluate the success of relocation and other nest protection activities. Outreach and education activities in coastal cities will increase public awareness of problems with foot traffic, light pollution, and armoring.

Egg harvest was common in Japan until the 1970s, when several of the major nesting areas (notably Yakushima and Miyazaki) led locally based efforts to ban or eliminate egg harvest. As a result, egg harvest at Japanese nesting beaches was eliminated by the early 1980s.

The establishment of the Sea Turtle Association of Japan in 1990 created a network of individuals and organizations conducting sea turtle monitoring and conservation activities in Japan for the first time. The Sea Turtle Association of Japan also served

to standardize data collection methods (for tagging and measuring). The Association greatly depends on its members around Japan to gather nesting data as well as to conduct various conservation measures.

Shoreline erosion and bycatch are some of the major concerns the Sea Turtle Association of Japan is dealing with today. Much of Japan's coastline is ''armored'' using concrete structures to prevent and minimize impacts to coastal communities from natural disasters. These structures have resulted in a number of nesting beaches losing sand suitable for sea turtle nesting, and nests are often relocated to safe areas or hatcheries to protect them from further erosion and inundation. In recent years, a portion of the concrete structures at a beach in Toyohashi City, Aichi Prefecture, was experimentally removed to create better nesting habitat. The Sea Turtle Association of Japan, along with various other organizations in Japan, are carrying out discussions with local and Federal Government agencies to develop further solutions to the beach erosion issue and to maintain viable nesting sites. Beach erosion and armament still remain one of the most significant threats to nesting beaches in Japan.

While conservation efforts for the North Pacific Ocean DPS are substantive and improving and may be reflected in the recent increases in the number of nesting females, they still remain inadequate to ensure the long-term viability of the population. For example, while most of the major nesting beaches are monitored, some of the management measures in place are inadequate and may be inappropriate. On some beaches, hatchling releases are coordinated with the tourist industry or nests are being trampled on or are unprotected. The largest threat on the nesting beach, reduced availability of habitat due to heavy armament and subsequent erosion, is just beginning to be addressed but without immediate attention may ultimately result in the demise of the highest density beaches. Efforts to reduce loggerhead bycatch in known coastal fisheries off Baja California, Mexico, and Japan is encouraging, but concerns remain regarding the mortalities of adult and juvenile turtles in mid-water pound nets and the high costs that may be involved in replacing or mitigating this gear. With these coastal fishery threats still emerging, there has not yet been sufficient time—or a nationwide understanding of the threat—to develop appropriate conservation strategies or work to fully engage with the government of Japan. Greater international cooperation and implementation of the use of circle hooks in longline fisheries operating in the North Pacific Ocean is necessary, as well as understanding fishery related impacts in the South China Sea. Further, it is suspected that there are substantial impacts from illegal, unreported, and unregulated fishing, which we are unable to mitigate without additional fisheries management efforts and international collaborations. While conservation projects for this population have been in place since 2004 for some important areas, efforts in other areas are still being developed to address major threats, including fisheries bycatch and long-term nesting habitat protection.

South Pacific Ocean DPS

The New Caledonia Aquarium and NMFS have collaborated since 2007 to address and influence management measures of the regional fishery management organization. Their intent is to reduce pelagic fishery interactions with sea turtles through increased understanding of pelagic habitat use by South Pacific loggerheads using satellite telemetry, oceanographic analysis, and juvenile loggerheads reared at the Aquarium. NMFS augments this effort by supporting animal husbandry, education and outreach activities coordinated through the New Caledonia Aquarium to build capacity, and public awareness regarding turtle conservation in general.

The United States has collaborated on at-sea conservation of sea turtles with Chile under the US–Chile Fisheries Cooperation Agreement, and with Peru in collaboration with El Instituto del Mar del Peru and local non-governmental organizations. Research from this collaboration showed that loggerheads of southwestern Pacific stock origin interact with commercial and artisanal longline fisheries off the South American coast. NMFS has supported efforts by Chile to reduce bycatch and mortality by placing observers that have been trained and equipped to dehook, resuscitate, and release loggerheads on vessels. Since 2002, Chile also has closed the northernmost sector where the loggerheads interactions occur to longline fishing (Miguel Donoso, Pacifico Laud, personal communication, 2009). Local non-governmental organizations, such as Pacifico Laud (Chile), Associacion Pro Delphinus (Peru), and Areas Costeras y Recursos Marinos (Peru), have been engaged in outreach and conservation activities promoting loggerhead bycatch reduction, with support from NMFS.

Coastal trawl fisheries also threaten juvenile and adult loggerheads foraging off eastern Australia, particularly the northern Australian prawn fishery (estimated to take between 5,000 and 6,000 turtles annually in the late 1980s/early 1990s). However, since the introduction and requirement for these fisheries to use TEDs in 2000, that threat has been drastically reduced, to an estimated 200 turtles/year (Robins *et al.,* 2002a). TEDs were also made mandatory in the Queensland East Coast trawl fisheries (2000), the Torres Strait prawn fishery (2002), and the Western Australian prawn and scallop fisheries (2002) (Limpus, 2009).

Predation of loggerhead eggs by foxes was a major threat to nests laid in eastern Australia through the late 1970s, particularly on Mon Repos and Wreck Rock. Harassment by local residents and researchers, as well as baiting and shooting, discouraged foxes from encroaching on the nesting beach at Mon Repos so that by the mid-1970s predation levels had declined to trivial levels. At Wreck Rock, fox predation was intense through the mid-1980s, with a 90–95 percent predation rate documented. Fox baiting was introduced at Wreck Rock and some adjacent beaches in 1987, and has been successful at reducing the predation rate to low levels by the late 1990s (Limpus, 2009). To reduce the risk of hatchling disorientation due to artificial lighting inland of the nesting beaches adjacent to Mon Repos and Heron Island, low pressure sodium vapor lights have been installed or, where lighting has not been controlled, eggs are relocated to artificial nests on nearby dark beaches. Limpus (2009) reported that hatchling mortality due to altered light horizons on the Woongara coast has been reduced to a handful of clutches annually.

Since the Great Barrier Reef's listing on the United Nations Educational, Scientific and Cultural Organization's World Heritage List in 1981, protection of habitats within the GBRWHA has increased, with the current zone-based management plan enacted in 2004 (Dryden *et al.,* 2008). Nesting habitat protection has also increased with the addition of indigenous co-management plans and ecotourism regulations at Mon Repos (M. Hamann, James Cook University, personal communication, 2010).

While most of the conservation efforts for the South Pacific Ocean DPS are long-term, substantive, and improving, given the low number of nesting females, the declining trends, and major threats that are just beginning to be addressed, they still remain inadequate to ensure the long-term viability of the

population. The use of TEDs in most of the major trawl fisheries in Australia has certainly reduced the bycatch of juvenile and adult turtles, as has the reduction in fox predation on important nesting beaches. However, the intense effort by longline fisheries in the South Pacific, particularly from artisanal fleets operating out of Peru, and its estimated impact on this loggerhead population, particularly oceanic juveniles, remains a significant threat that is just beginning to be addressed by most participating countries, including the regional fishery management council(s) that manages many of these fleets. Modeling by Chaloupka (2003) showed the impact of this fleet poses a greater risk than either fox predation at major nesting beaches (90 percent egg loss per year during unmanaged periods) or past high mortalities in coastal trawl fisheries. The recent sea turtle conservation resolution by the Western and Central Pacific Fisheries Commission, requiring longline fleets to use specific gear and collect information on bycatch, is encouraging but took effect in January 2010, so improvement in the status of this population may not be realized for many years. Potentially important pelagic foraging habitat in areas of high fishing intensity remains poorly studied but is improving through U.S. and international collaborations. While a comprehensive conservation program for this population has been in place for important nesting beaches, efforts in other areas are still being developed to address major threats, including fisheries bycatch.

North Indian Ocean DPS

The main threats to North Indian Ocean loggerheads are fishery bycatch and nesting beach habitat loss and degradation. Royal Decree 53/81 prohibits the hunting of turtles and eggs in Oman. The Ministry of Environment and Climate Affairs (MECA) and Environmental Society of Oman (ESO) are collaborating to carry out a number of conservation measures at Masirah Island for the nesting loggerhead population. First and foremost are standardized annual nesting surveys to monitor population trends. Standardized surveys were first implemented in 2008. Less complete nesting surveys have been conducted in some previous years beginning in 1977, but the data have yet to be adequately analyzed to determine their usefulness in determining population size and trends. Nine kilometers of nesting habitat within the Masirah Air Force Base is largely protected from tourist development but remains subject to light pollution from military operations. The remaining 50 kilometers of loggerhead nesting beaches are not protected from egg harvest, lighting, or beach driving. Currently, MECA is in the process of developing a protected area proposal for Masirah Island that will address needed protection of nesting beaches, including protection from egg collection and beach driving. In the meantime, development is continuing and it is uncertain how much, when, and if nesting habitat will receive adequate protection. MECA is beginning to regulate artificial lighting in new development. In 2010, a major outreach effort in the form of a Turtle Celebration Day is planned at Masirah Island to raise greater awareness of the local communities about the global importance of the Masirah Island loggerhead nesting population and to increase community involvement in conservation efforts. Nesting surveys are also being conducted on the Halaniyat Islands. There are no specific efforts underway to designate Halaniyat nesting beaches as Protected Areas in the face of proposed development plans. Although important management actions are underway on the nesting beaches, their effectiveness has yet to be determined and the potential for strong habitat protection and restoration of degraded nesting habitat remains uncertain. At present, hatchling production is not measured.

The only research that has been conducted on the nesting population to date was a study of internesting and post-nesting movements conducted in 2006 when 20 nesting females were fitted with satellite transmitters. This research identified important inter-seasonal foraging grounds but is considered incomplete, and additional nesting females were satellite tagged in 2011 to assess clutch frequency, determine inter-nesting and post-nesting movements, and identify potential overlap of loggerhead habitat use with coastal fisheries. In 2009, efforts to investigate loggerhead bycatch in gillnet fisheries at Masirah were initiated, and some fisherman are cooperating and documenting bycatch.

While conservation efforts for the North Indian Ocean loggerhead DPS are substantive and improving, they still remain inadequate to ensure the long-term viability of the population. For example, there is currently no assessment of hatchling production on the main nesting beaches, no efforts underway to restore the largely degraded nesting habitat on the major nesting beaches, and little understanding or knowledge of foraging grounds for juveniles or adults and the extent of their interactions with fisheries. There is no information on bycatch from fisheries off the main nesting beaches other than reports that this bycatch occurs. A comprehensive conservation program for this population is under development, but is incomplete relative to fisheries bycatch and long-term nesting habitat protection.

Southeast Indo-Pacific Ocean DPS

The level of anthropogenic mortalities is low for the Southeast Indo-Pacific Ocean DPS, based on the best available information. However, there are many known opportunities for conservation efforts that would aid recovery. Some significant conservation efforts are underway.

One of the principal nesting beaches for this DPS, Australia's Dirk Hartog Island, is part of the Shark Bay World Heritage Area and recently became part of Australia's National Park System. This designation may facilitate monitoring of nesting beaches and enforcement of prohibitions on direct take of loggerheads and their eggs. Loggerheads are listed as Endangered under Australia's Environment Protection and Biodiversity Conservation Act of 1999.

Conservation efforts on nesting beaches have included invasive predator control. On the North West Cape and the beaches of the Ningaloo coast of mainland Australia, a long established feral European red fox (*Vulpes vulpes*) population preyed heavily on eggs and is thought to be responsible for the lower numbers of nesting turtles on the mainland beaches (Baldwin *et al.,* 2003). Fox populations have been eradicated on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003), and threat abatement plans have been implemented for the control of foxes (1999) and feral pigs (2005).

In 2000, the use of TEDs in the Northern Australian Prawn Fishery (NPF) was made mandatory. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate estimated to be 40 percent (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). Initial progress has been made to measure the threat of incidental capture of sea turtles in other artisanal and commercial fisheries in the Southeast Indo-Pacific Ocean (Lewison *et al.,* 2004; Limpus, 2009); however, the data remain inadequate for population assessment.

As in other DPSs, persistent marine debris poses entanglement and ingestion hazards to loggerheads. In 2009, Australia's Department of the Environment, Water, Heritage and the Arts published a threat abatement plan for the impacts of marine debris on vertebrate marine life.

In spite of these conservation efforts, considerable uncertainty in the status of this DPS lies with inadequate efforts to measure bycatch in the region, a short time-series of monitoring on nesting beaches, and missing vital rates data necessary for population assessments.

Southwest Indian Ocean DPS

The Southwest Indian Ocean DPS is small but has experienced an increase in numbers of nesting females. Although there is considerable uncertainty in anthropogenic mortalities, especially in the water, the DPS may have benefitted from important conservation efforts at the nesting beaches.

All principal nesting beaches, centered in South Africa, are within protected areas (Baldwin *et al.,* 2003). In Mozambique, nesting beaches in the Maputo Special Reserve (approximately 60 kilometers of nesting beach) and in the Paradise Islands are also within protected areas (Baldwin *et al.,* 2003; Costa *et al.,* 2007).

The international regulatory mechanisms described in Section 5.1.4. of the Status Review apply to loggerheads found in the Southwest Indian Ocean. In addition, loggerheads of this DPS benefit from the Indian Ocean–South-East Asian Marine Turtle Memorandum of Understanding (IOSEA) and the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

In spite of these conservation efforts, caution in the status of this DPS lies with its small population size, inadequate efforts to measure bycatch in the region, and missing vital rates data necessary for population assessments.

Northwest Atlantic Ocean DPS

The main threats to Northwest Atlantic Ocean loggerheads include fishery bycatch mortality, particularly in gillnet, longline, and trawl fisheries; nesting beach habitat loss and degradation (*e.g.,* beachfront lighting, coastal armoring); and ingestion of marine debris during the epipelagic lifestage. In addition, mortality from vessel strikes is increasing and likely also a significant threat to this DPS.

Mortality resulting from domestic and international commercial fishing is the most significant threat to Northwest Atlantic loggerheads. Fishing gear types include gillnets, trawls, hook and line (*e.g.,* longlines), seines, dredges, and various types of pots/traps. Among these, gillnets, longlines, and trawl gear collectively result in tens of thousands of Northwest Atlantic loggerhead deaths annually throughout their range (see for example, NMFS, 2002, 2004; Lewison *et al.,* 2004; Wallace *et al.,* 2008, 2010).

Considerable effort has been expended since the 1980s to document and reduce commercial fishing bycatch mortality. NMFS has implemented observer programs in many federally managed and some State-managed fisheries to collect turtle bycatch data and estimate mortality. NMFS, working with industry and other partners, has reduced bycatch in some fisheries by developing technological solutions to prevent capture or to allow most turtles to escape without harm (*e.g.,* TEDs), by implementing time and area closures to prevent interactions from occurring (*e.g.,* prohibitions on gillnet fishing along the mid-Atlantic coast during the periods of high loggerhead abundance), and by modifying gear (*e.g.,* requirements to reduce mesh size in the leaders of pound nets to prevent entanglement, requirements to use large circle hooks with certain bait types in segments of the pelagic longline fishery). Many of these measures have been implemented within the lifetime of one generation of loggerhead sea turtles, and thus the conservation benefits may not yet be observed on the nesting beaches. NMFS is currently working to implement a coastwide, comprehensive strategy to reduce bycatch of sea turtles in State and Federal fisheries in the U.S. Atlantic and Gulf of Mexico. This approach was developed to address sea turtle bycatch issues on a per-gear basis, rather than a fishery by fishery basis, with a goal of developing and implementing coastwide solutions for reducing turtle bycatch inshore, nearshore, and offshore.

The development and implementation of TEDs in the shrimp trawl fishery is arguably the most significant conservation accomplishment for Northwest Atlantic loggerheads in the marine environment since their listing. In the southeastern United States and Gulf of Mexico, TEDs have been mandatory in shrimp and flounder trawls for over a decade. However, TEDs are not required in all trawl fisheries, and significant loggerhead mortality continues in some trawl fisheries. In addition, enforcement of TED regulations depends on available resources, and illegal or improperly installed TEDs continue to contribute to mortality. Current observer coverage in the shrimp fishery is very limited, at around 2 percent of total directed effort, as a result of the size of the fishery and the expense of observer programs.

Gillnets of various mesh sizes are used extensively to harvest fish in the Atlantic Ocean and Gulf of Mexico. All size classes of loggerheads in coastal waters are prone to entanglement in gillnets, and, generally, the larger the mesh size the more likely that turtles will become entangled. State resource agencies and NMFS have been addressing this issue on several fronts. In the southeastern United States, gillnets are prohibited in the State waters of South Carolina, Georgia, Florida, and Texas and are restricted to fishing for pompano and mullet in saltwater areas of Louisiana. Reducing bycatch of loggerheads in the remaining State and federally regulated gillnet fisheries of the U.S. Atlantic and Gulf of Mexico has not been fully accomplished. NMFS has addressed the issue for several federally managed fisheries, such as the large-mesh gillnet fishery (primarily for monkfish) along the Atlantic coast, where gillnets larger than 8-inch stretched mesh are now regulated in North Carolina and Virginia through rolling closures timed to match the northward migration of loggerheads along the mid-Atlantic coast in late spring and early summer. The State of North Carolina, working with NMFS through the ESA section 10 process, has been making some progress in reducing bycatch of loggerheads in gillnet fisheries operating in Pamlico Sound though that fishery predominantly catches green and Kemp's ridley turtles, with loggerheads accounting for a smaller percentage. The large mesh driftnet fishery for sharks off the Atlantic coast of Florida and Georgia remains a concern as do gillnet fisheries operating elsewhere in the range of the DPS, including Mexico and Cuba.

Observer programs have documented significant bycatch of loggerheads in the U.S. longline fishery operating in the Atlantic Ocean and Gulf of Mexico. In recent years, NMFS has dedicated significant funding and effort to address this bycatch issue. In partnership with academia and industry, NMFS has funded and conducted field experiments in the Northwest Atlantic Ocean to develop gear modifications that eliminate or significantly reduce loggerhead bycatch and mortality. As a result of these experiments, NMFS now requires the use of circle hooks fleet-wide and larger circle hooks in combination with whole finfish bait in the Northeast Distant area (69 FR 40734; July 6, 2004). Gear limitations, seasonal restrictions, and sea turtle release gear

and handling requirements in the Gulf of Mexico and South Atlantic bottom longline fisheries are also expected to reduce loggerhead bycatch and mortality.

The incidental capture and mortality of loggerheads by international longline fleets operating in the North Atlantic Ocean and Mediterranean Sea is of great concern. The United States has been attempting to work through Regional Fisheries Management Organizations, such as the International Commission for the Conservation of Atlantic Tunas, to encourage member nations to adopt gear modifications (*e.g.,* large circle hooks) that have been shown to significantly reduce loggerhead bycatch. As stated previously, in late 2010, ICCAT approved a proposal to require data reporting on the capture of sea turtles in the Atlantic Ocean and mandated the use of hook-removal and fishing line disentanglement gear. To date, limited success in reducing loggerhead bycatch has been achieved in these international forums, but efforts are ongoing.

Although numerous efforts are underway to reduce loggerhead bycatch in fisheries, and many positive actions have been implemented, it is unknown whether this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the North Atlantic, the lack of comprehensive information on fishing distribution and effort (primarily international, but even some State fisheries), limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. The advent of TED requirements, longline requirements, and other conservation measures, along with the decline of some fisheries, especially trawling and surface longlining, have primarily occurred within one generation of loggerhead sea turtles. A number of measures (larger TED openings and longline requirements among the most important) occurred only in the past 8 years or less. Therefore, the conservation benefit to loggerhead populations is difficult to gauge at this time as the effect on the nesting population may only be starting to be realized.

In the southeastern U.S., nest protection efforts have been implemented on the majority of nesting beaches, and progress has been made in reducing mortality from human-related impacts on the nesting beach. A key effort has been the acquisition of Archie Carr National Wildlife Refuge in Florida, where nesting densities often exceed 600 nests per km (1,000 nests per mile). Over 60 percent of the available beachfront acquisitions for the Refuge have been completed as the result of a multi-agency land acquisition effort. In addition, 14 additional refuges, as well as numerous coastal national seashores, military installations, and State parks in the Southeast where loggerheads regularly nest are also provided protection. However, despite these efforts, alteration of the coastline continues, and outside of publicly owned lands, coastal development and associated coastal armoring remains a serious threat.

Efforts are also ongoing to reduce light pollution on nesting beaches. A significant number of local governments in the southeastern U.S. have enacted lighting ordinances designed to reduce the effects of artificial lighting on sea turtles. However, enforcement of the lighting ordinances varies considerably and efforts to strengthen these measures are ongoing.

With regard to marine debris, the MARPOL Convention (International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978) is the main international convention that addresses prevention of pollution (including oil, chemicals, harmful substances in packaged form, sewage, and garbage) of the marine environment by ships from operational or accidental causes. However, challenges remain to implementation and enforcement of the MARPOL Convention and marine pollution remains an issue of concern.

The seriousness of the threat caused by vessel strikes to loggerheads in the Atlantic and Gulf of Mexico is not fully understood at this time, but is expected to be significant. This growing problem is particularly difficult to address. In some cases, NMFS, through section 7 of the ESA, has worked with the U.S. Coast Guard in an attempt to reduce the probability of vessel strikes during permitted offshore race events. However, most vessel strikes occur outside of these venues and the growing number of licensed vessels over the years, especially inshore and nearshore, exacerbates the conflict.

A number of regulatory instruments at international, regional, national, and local levels have been developed that provide legal protection for loggerhead sea turtles globally and within the Northwest Atlantic Ocean. The Status Review identifies and includes a discussion of these regulatory instruments (Conant *et al.,* 2009). The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. Continued efforts are needed to develop and strengthen these international initiatives.

In summary, while conservation efforts for the Northwest Atlantic Ocean loggerhead DPS are substantive and improving, it is still too soon to tell if they are adequate to ensure the long-term viability of the population.

Northeast Atlantic Ocean DPS

Since 2002, all sea turtles and their habitats in Cape Verde have been protected by law (Decreto-Regulamentar n° 7/2002). The reality, however, is that the laws are not respected or enforced and that in recent years until 2008 up to 25–30 percent of nesting females were illegally killed for meat each year on the nesting beaches. Egg collection is also a serious threat on some of the islands. Other major threats include developments and commensurate light pollution behind one important nesting beach on Boa Vista and the most important nesting beach on Sal, as well as sand mining on many of the islands. Other planned and potential developments on these and other islands present future threats. Bycatch and directed take in coastal waters is likely a significant mortality factor to the population given the importance of the coastal waters as loggerhead foraging grounds and the extensive fisheries occurring there. Adult females nesting in Cape Verde have been found foraging along the mainland coast of West Africa as well as in the oceanic environment, thereby making them vulnerable to impacts from a wide range of fisheries (Hawkes *et al.,* 2006). Unfortunately, law enforcement on the nesting beaches and in the marine environment is lacking in Cape Verde.

Conservation efforts in Cape Verde began in the mid-1990s and focused on efforts to raise local, national, and international awareness of the importance of the Cape Verdian loggerhead population and the ongoing slaughter of nesting females. A field camp set up by the non-governmental organization Cabo Verde Natura 2000 in 1999 on the 10-kilometer Ervatao Beach, the single most important nesting beach at Boa Vista, grew out of this initial effort. This camp established a presence to deter poaching and gather data on nesting and poaching activity. In 2008, The Turtle Foundation, another non-

governmental organization, began to work at Porto Ferreira Beach, the second most important nesting area on Boa Vista. The non-governmental organization SOS Tartarugas began conservation work on the important nesting beaches of Sal in 2008. In May 2009, USFWS funded a workshop in Cape Verde to bring together representatives from the three non-governmental organizations and the universities involved with loggerhead conservation in Cape Verde and government representatives from the Ministry of Environment, Military and Municipalities to discuss the threats, current conservation efforts, and priority actions needed. A Sea Turtle Network was established to better coordinate and expand conservation efforts throughout the Cape Verdean islands.

Cabo Verde Natura 2000 has continued its efforts on Ervatao Beach and in 2009 assumed responsibility for work on Porto Ferreira Beach. Cabo Verde Natura 2000 has reduced poaching to about 5 percent on these two important beaches, which represent 75 percent of the nesting on Boa Vista. The Turtle Foundation also conducts extensive public outreach on sea turtle conservation issues. The Turtle Foundation covered four other important beaches in 2009 with the assistance of the Cape Verdian military and likewise believes poaching was reduced to about 5 percent of nesting females on the beaches covered. The University of Algarve established a research project on Santiago Island in 2007; activities included nest monitoring and protection, collecting biological data and information on poaching, and outreach through the media and to the government representatives (Loureiro, 2008). This project minimized its efforts in 2009. The Turtle Foundation continued to focus its primary efforts on patrolling beaches to protect nesting females on Boa Vista with the assistance of the military. SOS Tartarugas has also been doing regular monitoring of beaches with support from the military, extensive public outreach on light pollution behind nesting beaches, and relocating nests to a hatchery to alleviate hatchling disorientation, as well as assisting with training of turtle projects on the islands of Maio and Sao Nicolau.

In the last 2 years, new efforts to better coordinate and expand projects being conducted by the three non-governmental organizations, as well as engage the national and municipal governments, are dramatically decreasing the poaching of nesting turtles and with sustained and planned efforts may be able to reduce it to less than 1 percent in the next few years. The issues of light pollution, sand mining on nesting beaches, long-term protection of even the most important nesting beaches, law enforcement, and bycatch have not even begun to be addressed. While there is definite improvement in a once gloomy situation as recent as 2 years ago, the future of the population is tenuous.

Mediterranean Sea DPS

The main threats to Mediterranean Sea loggerheads include fishery bycatch, as well as pollution/debris, vessel collisions, and habitat destruction impacting eggs and hatchlings at nesting beaches. Most Mediterranean countries have developed national legislation to protect sea turtles and nesting habitats (Margaritoulis, 2007). National protective legislation generally prohibits intentional killing, harassment, possession, trade, or attempts at these (Margaritoulis *et al.,* 2003). Some countries have site specific legislation for turtle habitat protection. In 1999, a National Marine Park was established on Zakynthos in western Greece, with the primary aim to provide protection to loggerhead nesting areas (Dimopoulos, 2001). Zakynthos represents approximately 43 percent of the average annual nesting effort of the major and moderate nesting areas in Greece (Margaritoulis *et al.,* 2003) and about 26 percent of the documented nesting effort in the Mediterranean (Touliatou *et al.,* 2009). It is noteworthy for conservation purposes that this site is legally protected. While park management has improved over the last several years, there are still some needed measures to improve and ensure sufficient protection at this Park (Panagopoulou *et al.,* 2008; Touliatou *et al.,* 2009).

In Turkey, five nesting beaches (Belek, Dalyan, Fethiye, Goksu Delta, and Patara) were designated Specially Protected Area status in the context of the Barcelona Convention (Margaritoulis *et al.,* 2003). Based on the average annual number of nests from the major nesting sites, these five beaches represent approximately 56 percent of nesting in Turkey (World Wildlife Fund, 2005). In Cyprus, the two nesting beaches of Lara and Toxeftra have been afforded protection through the Fisheries Regulation since 1989 (Margaritoulis, 2007), and Alagadi is a Specially Protected Area (World Wildlife Fund, 2005). Of the major Cyprus nesting sites included in the 2005 World Wildlife Fund Species Action Plan, the nesting beaches afforded protection represent 51 percent of the average annual number of nests in Cyprus. Note, however, that the annual nesting effort in Cyprus presented in Margaritoulis *et al.* (2003) includes additional sites, so the total proportion of protected nesting sites in Cyprus is much lower, potentially around 22 percent. In Italy, a reserve to protect nesting on Lampedusa was established in 1984 (Margaritoulis *et al.,* 2003). In summary, Mediterranean loggerhead nesting primarily occurs in Greece, Libya, Turkey, and Cyprus, and a notable proportion of nesting in those areas is protected through various mechanisms. It is important to recognize the success of these protected areas, but as the protection has been in place for some time and the threats to the species remain (particularly from increasing tourism activities), it is unlikely that the conservation measures discussed here will change the status of the species as outlined in Conant *et al.* (2009).

Protection of marine habitats is at the early stages in the Mediterranean, as in other areas of the world. Off Zakynthos, the National Marine Park established in 1999 also included maritime zones. The marine area of Laganas Bay is divided into three zones controlling maritime traffic from May 1 to October 31: Zone A—no boating activity; Zone B—speed limit of 6 knots, no anchoring; Zone C—speed limit of 6 knots. The restraints on boating activity are particularly aimed at protecting the internesting area surrounding the Zakynthos Laganas Bay nesting area. However, despite the regulations, there has been insufficient enforcement (especially of the 6 knot speed limit), and a high density of speedboats and recorded violations within the marine area of the Park have been reported. In 2009, 13 of 28 recorded strandings in the area of the National Marine Park bore evidence of watercraft injuries and fishing gear interactions, and four live turtles were found with fishing gear lines/hooks. Another marine zone occurs in Cyprus; off the nesting beaches of Lara and Toxeftra, a maritime zone extends to the 20 meter isobath as delineated by the Fisheries Regulation (Margaritoulis, 2007).

The main concern to loggerheads in the Mediterranean includes incidental capture in fisheries. While there are country specific fishery regulations that may limit fishing effort to some degree (to conserve the fishery resource), little, if anything, has been undertaken to reduce sea turtle bycatch and associated mortality in Mediterranean fisheries. Given the lack of conservation efforts to address fisheries and the limited in-water protection provided to turtles to reduce the additional impacts of vessel

collisions and pollution/debris interactions, it is unlikely that the status of the species will change given the measures discussed here.

It appears that international and national laws are not always enforced or followed. This minimizes the potential success of these conservation efforts. For example, in Egypt, international and national measures to protect turtles were not immediately adhered to, but in recent years, there has been a notable effort to enforce laws and regulations that prohibit the trade of sea turtles at fish markets. However, the illegal trade of turtles in the Alexandria fish market has persisted and a black market has been created (Nada and Casale, 2008). This is an example of ineffective sea turtle protection and continuing threat to the species, even with conservation efforts in place.

South Atlantic Ocean DPS

The only documented and confirmed nesting locations for loggerhead sea turtles in the South Atlantic occur in Brazil, and major nesting beaches are found in the States of Rio de Janeiro, Espirito Santo, Bahia, and Sergipe (Marcovaldi and Marcovaldi, 1999). Protection of nesting loggerheads and their eggs in Brazil is afforded by national law that was established in 1989 and most recently reaffirmed in 2008. Illegal practices, such as collecting eggs or nesting females for consumption or sale, are considered environmental crimes and are punishable by law. Other State or Federal laws have been established in Brazil to protect reproductive females, incubating eggs, emergent hatchlings, and nesting habitat, including restricting nighttime lighting adjacent to nesting beaches during the nesting/hatching seasons and prohibiting vehicular traffic on beaches. Projeto TAMAR, a semi-governmental organization, is responsible for sea turtle conservation in Brazil. In general, nesting beach protection in Brazil is considered to be effective and successful for loggerheads and other species of nesting turtles (*e.g.* Marcovaldi and Chaloupka, 2007; Thomé *et al.,* 2007; da Silva *et al.,* 2007). Efforts at protecting reproductive turtles, their nests, hatchlings and their nesting beaches have been supplemented by the establishment of federally mandated protected areas that include major loggerhead nesting populations: Reserva Biologica de Santa Isabel (established in 1988 in Sergipe) and Reserva Biologica de Comboios (established in 1984 in Espirito Santo); at the State level, Environmental Protection Areas have been established for many loggerhead nesting beaches in Bahia and Espirito Santo (Marcovaldi *et al.,* 2005). In addition, Projeto TAMAR has initiated several high-profile public awareness campaigns, which have focused national attention on the conservation of loggerheads and other marine turtles in Brazil.

Loggerhead sea turtles of various sizes and life stages occur throughout the South Atlantic, although density/observations are more limited in equatorial waters (Ehrhart *et al.,* 2003). Within national waters of specific countries, various laws and actions have been instituted to mitigate threats to loggerheads and other species of sea turtles; less protection is afforded in the high seas of the South Atlantic. Overall, the principal in-water threat to loggerheads in the South Atlantic is incidental capture in fisheries. In the southwest Atlantic, the South Atlantic Association is a multinational group that includes representatives from Brazil, Uruguay, and Argentina, and meets bi-annually to share information and develop regional action plans to address threats including bycatch (*http://www.tortugasaso.org/*). At the national level, Brazil has developed a national plan for the reduction of incidental capture of sea turtles that was initiated in 2001 (Marcovaldi *et al.,* 2002a). This national plan includes various activities to mitigate bycatch, including time-area restrictions of fisheries, use of bycatch reduction devices, and working with fishermen to successfully release live-captured turtles. In Uruguay, all sea turtles are protected from human impacts, including fisheries bycatch, by presidential decree (Decreto presidencial 144/98). The Karumbe conservation project in Uruguay has been working on assessing in-water threats to loggerheads and marine turtles for several years (see *http://www.seaturtle.org/promacoda*), with the objective of developing mitigation plans in the future. In Argentina, various conservation organizations are working toward assessing bycatch of loggerheads and other sea turtle species in fisheries, with the objective of developing mitigation plans for this threat (see *http://www.prictma.com.ar*). Overall, more effort to date has been expended on evaluating and assessing levels of fisheries bycatch of loggerhead sea turtles, than concretely reducing bycatch in the Southwest Atlantic, but this information is necessary for developing adequate mitigation plans. In the southeastern Atlantic, efforts have been directed toward assessing the distribution and levels of bycatch of loggerheads in coastal waters of southwestern Africa (Petersen *et al.,* 2007, 2009; Weir *et al.,* 2007). Bycatch of loggerheads has been documented in longline fisheries off the Atlantic coasts of Angola, Namibia, and South Africa (Petersen *et al.,* 2007), and several authors have highlighted the need to develop regional mitigation plans to reduce bycatch of loggerheads and other sea turtle species in coastal waters (Formia *et al.,* 2003; Weir *et al.,* 2007; Petersen *et al.,* 2009). On the high seas of the South Atlantic, little is known about exact bycatch levels, but there are some areas of higher concentration of longline effort that are likely to result in loggerhead bycatch (Lewison *et al.,* 2004).

Overall, conservation efforts for loggerhead sea turtles in the South Atlantic are dichotomous. On the nesting beaches (almost exclusively in Brazil), conservation actions are successful at protecting nesting females and their clutches, resulting in large numbers of hatchlings being released each year. In contrast, fisheries bycatch in coastal and oceanic waters remains a serious threat, despite regional emphasis on assessing bycatch rates in various fisheries on both sides of the South Atlantic. Comprehensive management actions to reduce or eliminate bycatch mortality are lacking in most areas, which is likely to result in a decline of this DPS in the future.

Finding

We find that nine loggerhead sea turtle DPSs exist. We have carefully considered the best scientific and commercial data available regarding the past, present and future threats faced by the nine loggerhead sea turtle DPSs. We are listing the North Pacific Ocean, South Pacific Ocean, North Indian Ocean, Northeast Atlantic Ocean, and Mediterranean Sea DPSs of the loggerhead sea turtle as endangered and the Southeast Indo-Pacific Ocean, Southwest Indian Ocean, Northwest Atlantic Ocean, and South Atlantic Ocean DPSs as threatened for the reasons described below for each DPS.

North Pacific Ocean DPS

In the North Pacific, loggerhead nesting is essentially restricted to Japan where monitoring of loggerhead nesting began in the 1950s on some beaches, and expanded to include most known nesting beaches since approximately 1990. While nesting numbers have gradually increased in recent years and the number for 2009 is similar to the start of the time series in 1990, historical evidence indicates that there has been a substantial decline over the

last half of the 20th century and that current nesting represents a fraction of historical nesting levels. In addition, based on nest count data for nearly the past 2 decades, the North Pacific population of loggerheads is small. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section suggested that the North Pacific Ocean DPS appears to be declining, is at risk, and is thus likely to decline in the future. The stage-based deterministic modeling approach suggested that the North Pacific Ocean DPS could grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by the mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the North Pacific Ocean, including the coastal pound net fisheries off Japan, coastal fisheries impacting juvenile foraging populations off Baja California, Mexico, and undescribed fisheries likely affecting loggerheads in the South China Sea and the North Pacific Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the North Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. In addition to fishery bycatch, coastal development and coastal armoring on nesting beaches in Japan continues as a substantial threat (Factor A). Coastal armoring, if left unaddressed, will become an even more substantial threat as sea level rises as a result of climate change. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS beyond the concern noted above.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. In light of the small nesting range and small size of the nesting population, an estimated decline between 50–90 percent in the size of the nesting population since the 1950s, significant and ongoing threats to the nesting beaches, significant and continuing fishery bycatch with limited bycatch reduction success except in the Hawaii longline fishery, and only limited efforts at conservation thus far, we have determined that the North Pacific Ocean DPS is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered. In other words, we believe that a threatened status is not appropriate for this DPS because of the significance of the threats, the small size of the nesting population, and the estimated historical decline in the nesting population.

South Pacific Ocean DPS

In the South Pacific, loggerhead nesting is almost entirely restricted to eastern Australia (primarily Queensland) and New Caledonia. In eastern Australia, there has been a marked decline in the number of females breeding annually since the mid-1970s, with an estimated 50 to 80 percent decline in the number of breeding females at various Australian rookeries up to 1990 and a decline of approximately 86 percent by 1999. Comparable nesting surveys have not been conducted in New Caledonia however. Information from pilot surveys conducted in 2005, combined with oral history information collected, suggest that there has been a decline in loggerhead nesting (see the Status and Trends of the Nine Loggerhead DPSs section above for additional information). Similarly, studies of eastern Australia loggerheads at their foraging areas revealed a decline of 3 percent per year from 1985 to the late 1990s on the coral reefs of the southern Great Barrier Reef. A decline in new recruits was also measured in these foraging areas. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section suggested that, based on nest count data from the mid-1970s through the early to mid-2000s, the population is at risk and thus likely to decline in the future. These results were based on published nesting census data for loggerhead sea turtles at index beaches in eastern Australia. The stage-based deterministic modeling approach provided a wide range of results: in the case of the lowest anthropogenic mortality rates (or the best case scenario), the deterministic model suggests that the South Pacific Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the South Pacific Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the South Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets in the southeastern Pacific, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. In light of the small nesting range and small size of the nesting population, a marked decline in the number of females nesting annually since the mid-1970s, and significant and continuing fishery bycatch with limited bycatch reduction success except in the northern Australian prawn fishery, we have determined that the South Pacific Ocean DPS is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered. In other words, we believe that a threatened status is not appropriate for this DPS because of the significance of the threats, the small size of the nesting population, and the observed marked decline in the nesting population.

North Indian Ocean DPS

In the North Indian Ocean, nesting occurs in greatest density on Masirah Island. Reliable trends in nesting cannot be determined due to the lack of standardized surveys at Masirah Island prior to 2008. However, a reinterpretation of the 1977–1978 and 1991 estimates of nesting females was compared to survey information collected since 2008 and results suggest a significant decline in the size of the nesting population, which is consistent with observations by local rangers that the population has declined dramatically in the last three decades. Nesting trends cannot be determined elsewhere in the North Indian Ocean where loggerhead nesting occurs because the time series of nesting data based on standardized surveys is not available. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section is based on nesting data; however, an adequate time series of nesting data for this DPS was not available. Therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the North Indian Ocean DPS is likely to decline in the future. These results are driven by cumulative mortality from a variety of sources across all life stages. Threats to nesting beaches are likely to increase, which would require additional and widespread nesting beach protection efforts (Factor A). Little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the North Indian Ocean DPS; this mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. In light of the estimated significant decline in the number of females nesting annually since the late 1970s, significant and increasing threats on nesting beaches, insufficient monitoring and reduction of bycatch in neritic and oceanic fisheries, and only limited efforts at conservation thus far, we have determined that the North Indian Ocean DPS is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered. In other words, we believe that a threatened status is not appropriate for this DPS because of the significance of the threats and the estimated significant decline in the nesting population.

Southeast Indo-Pacific Ocean DPS

The Services originally published a proposed rule (75 FR 12598; March 16, 2010) in which a Southeast Indo-Pacific Ocean DPS would be established and listed as endangered under the ESA. Subsequently, based on information provided by one of the peer reviewers and information gathered in response, the Services determined that the Southeast Indo-Pacific Ocean population warranted DPS designation, but that the proposed listing status of the Southeast Indo-Pacific Ocean DPS needed to be revisited prior to making a final determination. The Services ultimately determined that the Southeast Indo-Pacific Ocean DPS should be listed as threatened because the majority of nesting occurs on protected lands and nesting trends have been stable. However, the nesting survey effort and methods have varied over the last 2 decades and currently there are no nesting population estimates available to suggest any positive trend in nesting populations. In addition, some of the fisheries bycatch impacts appear to have been resolved through requirement of TEDs in shrimp trawlers, and longline fishery effort has declined due to fish stock decreases and economic reasons. However, a new fisheries effort has emerged for portunid crabs and is posing new threats to loggerheads, and longline fishing effort for tuna and billfish is also subject to increase if and when economics and fish populations improve.

In the Southeast Indo-Pacific Ocean, loggerhead nesting is restricted to Western Australia, with the greatest number of loggerheads nesting on Dirk Hartog Island. Loggerheads also nest on the Muiron Islands and North West Cape, but in smaller numbers. Although data are insufficient to determine trends, evidence suggests the nesting population in the Muiron Islands and North West Cape region was depleted before recent beach monitoring programs began. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section is based on nesting data; however, an adequate time series of nesting data for this DPS was not available; therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach provided a wide range of results: in the case of the lowest anthropogenic mortality rates, the deterministic model suggests that the Southeast Indo-Pacific Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the region, as can be inferred from data from Australia's Pacific waters (Factor E). However, the current level of anthropogenic mortalities is low for the Southeast Indo-Pacific Ocean DPS, based on the best available information. In addition, some significant conservation efforts are underway. One of the principal nesting beaches for this DPS, Australia's Dirk Hartog Island, is part of the Shark Bay World Heritage Area and recently became part of Australia's National Park System. Control of red foxes, formerly a significant threat to nests laid on the principal nesting beaches for this DPS, has been extremely successful with fox populations now eradicated on Dirk Hartog Island and Murion Islands. A requirement for the mandatory use of TEDs in the Northern Australian Prawn Fishery in 2000 has substantially reduced the annual bycatch of sea turtles in this fishery. Regardless, although national and international governmental and non-governmental entities are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that mortality from fishery bycatch that occurs throughout the entire region can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. In spite of the actions identified in the Conservation

Efforts section above, considerable uncertainty in the status of this DPS still exists relative to inadequate efforts to measure bycatch throughout the entire region, a short time-series of monitoring on nesting beaches, and missing vital rates data necessary for population assessments. While climate change may have adverse effects on all the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. Although the nesting population is small, the primary nesting beaches on Dirk Hartog Island and the Murion Islands are undeveloped and are now both protected under the Western Australian Protected Area System; Dirk Hartog also recently became a National Park. In addition, nest predation and bycatch from the northern Australian prawn fishery that contributed to the historical decline of this DPS have been greatly reduced and are no longer significant threats. However, bycatch in other fisheries, including a new fishery for portunid crabs and pelagic longline fishing, are believed to be substantial. As a result, we have determined that the Southeast Indo-Pacific Ocean DPS of the loggerhead sea turtle is not currently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Therefore, we are listing it as threatened. In other words, we believe that an endangered status is not appropriate for this DPS because of the protected status of the primary nesting beaches and the successful conservation efforts that have significantly reduced some of the key threats that historically affected this DPS.

Southwest Indian Ocean DPS

In the Southwest Indian Ocean, the highest concentration of nesting occurs on the coast of Tongaland, South Africa, where surveys and management practices were instituted in 1963. A trend analysis of index nesting beach data from this region from 1965 to 2008 indicates an increasing nesting population between the first decade of surveys and the last 8 years. These data represent approximately 50 percent of all nesting within South Africa and are believed to be representative of trends in the region. Loggerhead nesting occurs elsewhere in South Africa, but sampling is not consistent and no trend data are available. Similarly, in Madagascar, loggerheads have been documented nesting in low numbers, but no trend data are available. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section, based on a 37-year time series of nesting female counts at Tongaland, South Africa (1963–1999), indicated this segment of the population, while small, has increased, and the likelihood of quasi-extinction is negligible. We note that the SQE approach we used is based on past performance of the DPS (nesting data from 1963–1999) and does not fully reflect ongoing and future threats to all life stages within the DPS. The stage-based deterministic modeling approach provided a wide range of results: in the case of the lowest anthropogenic mortality rates, the deterministic model suggests that the Southwest Indian Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile loggerheads from fishery bycatch that occurs throughout the Southwest Indian Ocean (Factor E). This mortality is likely to continue and may increase with expected additional fishing effort from commercial and artisanal fisheries. Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. Although there is uncertainty in anthropogenic mortalities, especially in the water, this DPS has likely benefitted from important conservation efforts at the nesting beaches. All principal nesting beaches, centered in South Africa, are within protected areas. In Mozambique, nesting beaches in the Maputo Special Reserve and in the Paradise Islands are also within protected areas. However, in spite of the actions identified in the Conservation Efforts section above, caution in the status of this DPS lies with its small, although increasing, population size, inadequate efforts to measure bycatch in the region, and missing vital rates data necessary for population assessments. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. Although the nesting population is small, increased nesting has been observed since the 1960s in Tongaland where the highest concentration of nesting occurs for this DPS, and this trend is believed to be representative of nesting trends for the entire DPS. However, fishery bycatch in neritic and oceanic fisheries remains of concern and is not yet fully addressed. As a result, we have determined that the Southwest Indian Ocean DPS of the loggerhead sea turtle is not currently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Therefore, we are listing it as threatened. In other words, we believe that an endangered status is not appropriate for this DPS because of the observed increase in the nesting population, the protected status of the primary nesting beaches, and the success of conservation efforts on the nesting beaches.

Northwest Atlantic Ocean DPS

The Services originally published a proposed rule (75 FR 12598; March 16, 2010) in which a Northwest Atlantic Ocean DPS would be established and listed as endangered under the ESA. Subsequently, the Services determined that the Northwest Atlantic Ocean population warranted DPS designation, but that the proposed listing status of the Northwest Atlantic Ocean DPS needed to be revisited prior to making a final determination. Nesting data available after the proposed rule was published, information provided by commenters on the proposed rule, and further discussions within the Services were taken into account to determine whether this DPS should be classified as threatened or endangered. A working group comprised of biologists and managers from NMFS and USFWS met in November 2010 to discuss these issues and begin working toward a final agreement on the listing status for both the Northwest Atlantic Ocean DPS and the North Pacific Ocean DPS. Subsequent discussions and review of the full range of information available occurred over the months following the working group meeting, with the Services ultimately determining that it was more appropriate to list the Northwest Atlantic Ocean DPS as threatened. The rationale for that decision is contained in the information presented in the previous sections, and is summarized below.

The two primary lines of evidence upon which the Services ultimately determined that the Northwest Atlantic Ocean DPS should be listed as

threatened were population abundance and population trend. As detailed previously, the absolute magnitude of the population is calculated to be in the millions, with just mature adult individuals numbering over 60,000. The adult population exceeds that of any other ESA-listed marine species in the Atlantic. While population abundance is important, population trend is also a vital component of the status of a species. For sea turtles in general, including the Northwest Atlantic Ocean DPS, there is currently a large gap in our knowledge of population trends. As a result, nesting trends are typically used as a proxy. Although using the most complete and consistent dataset (Florida Index Nesting Beach Survey data starting with 1989), the nesting trend for this DPS was determined to be declining through the 2007 nesting season. With the addition of nesting data available after the proposed rule was published (data through 2010), the nesting trend is slightly negative, but not statistically different from zero. Although not as complete and consistent as the nesting dataset, Epperly *et al.* (2007) and TEWG (2009) examined data from in-water research sites in the United States that they determined were suitable for trend analysis and concluded these data suggested a likely increasing juvenile population. Additionally, a revision of the SQE analysis conducted in the Status Review indicated that the Northwest Atlantic Ocean DPS had a lower risk of extinction with the addition of nesting data available after the proposed rule was published. Including nesting data through 2009, and redoing the analysis to use a range of adult female abundance estimates as QETs, it was determined that there was little risk (SQE <0.3) of the Peninsular Florida Recovery Unit (comprising over 80 percent of the Northwest Atlantic Ocean DPS) reaching 1,000 or fewer females in 100 years. This revised analysis was done by the same member of the BRT that performed the original SQE analysis.

In addition to population abundance and trends, an understanding of the threats faced by the listed entity and effects of conservation efforts must be taken into consideration when making a determination on whether a species would be more appropriately classified as threatened or as endangered. As described previously, loggerhead sea turtles of the Northwest Atlantic Ocean DPS face a multitude of threats. The scope of these threats are examined, in the context of the DPS' population abundance and trends, and conservation efforts, to determine whether the DPS is in danger of extinction or likely to become so and therefore more appropriate to classify the DPS as threatened or as endangered. The primary threat to the Northwest Atlantic Ocean DPS was determined to be fisheries bycatch and mortality, although other anthropogenic impacts also play an important role. Although bycatch and bycatch mortality levels of Northwest Atlantic Ocean DPS loggerheads in domestic and foreign fisheries remain high, and continued efforts are necessary to reduce those impacts, it is too early to determine if the bycatch and mortality reduction measures to date are adequate. Many of the most significant bycatch and bycatch mortality reduction efforts have occurred within the past generation of loggerhead sea turtles, and many fisheries have experienced effort reductions in recent years, and thus the benefits may not yet be observed on the nesting beaches. This does not, however, mean that the Services are to take a ''wait and see'' approach; continued efforts to reduce bycatch and bycatch mortality, as well as reduce other sources of anthropogenic impacts, are a priority of the Services. Because the majority of nesting of loggerhead sea turtles within the Northwest Atlantic Ocean DPS is on U.S. beaches, and a great number of large neritic juveniles and adults from this DPS spend a substantial portion of their time in U.S. waters, this provides us the opportunity to use U.S. regulatory mechanisms to afford a greater degree of protection to the Northwest Atlantic Ocean DPS compared to other loggerhead DPSs. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. Although this DPS faces significant threats from fishery bycatch, particularly bycatch mortality from gillnet, longline, and trawl fisheries throughout their range in the Atlantic Ocean and Gulf of Mexico, as well as negative impacts to both its terrestrial and marine habitats, the nesting population is large and widespread, and the nesting population trend appears to be stabilizing. As a result, we have determined that the Northwest Atlantic Ocean DPS of the loggerhead sea turtle is not currently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Therefore, we are listing it as threatened. In other words, we believe that an endangered status is not appropriate for this DPS because of the large size of the nesting population, the overall nesting population remains widespread, the trend for the nesting population appears to be stabilizing, and substantial conservation efforts are underway to address threats.

Northeast Atlantic Ocean DPS

In the Northeast Atlantic Ocean, the Cape Verde Islands support the only large nesting population of loggerheads in the region. Nesting occurs at some level on most of the islands in the archipelago with the largest nesting numbers reported from the island of Boa Vista where studies have been ongoing since 1998. Due to limited data available, a population trend cannot currently be determined for the Cape Verde population; however, available information on the directed killing of nesting females suggests that this nesting population is under severe pressure and likely significantly reduced from historical levels. In addition, based on interviews with elders, a reduction in nesting from historical levels at Santiago Island has been reported. Elsewhere in the northeastern Atlantic, loggerhead nesting is non-existent or occurs at very low levels. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section is based on nesting data. However, we had insufficient nest count data over an appropriate time series for this DPS and could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the Northeast Atlantic Ocean DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. These results are largely driven by the ongoing directed lethal take of nesting females and eggs (Factor B), low hatching and emergence success (Factors A, B, and C), and mortality of juveniles and adults from fishery bycatch (Factor E) that occurs throughout the Northeast Atlantic Ocean. Currently, conservation efforts to protect nesting females are growing, and a reduction in this source of mortality is likely to continue in the near future. Although national and international governmental and non-governmental entities in the Northeast Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in

the near future because of the lack of bycatch reduction in high seas fisheries operating within the range of this DPS, lack of bycatch reduction in coastal fisheries in Africa, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. In light of available information indicating significant directed killing of nesting females and eggs for consumption at the main nesting beaches, evidence indicating the nesting population is significantly reduced from historical levels, significant and unaddressed fishery bycatch, particularly bycatch in longline and trawl fisheries, and only limited efforts at conservation thus far, we have determined that the Northeast Atlantic Ocean DPS is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered. In other words, we believe that a threatened status is not appropriate for this DPS because of the significance of the threats, particularly directed harvest and fishery bycatch, and evidence that the nesting population is significantly reduced from historical levels.

Mediterranean Sea DPS

Nesting occurs throughout the central and eastern Mediterranean in Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, the Sinai, Egypt, Libya, and Tunisia. In addition, sporadic nesting has been reported from the western Mediterranean, but the vast majority of nesting (greater than 80 percent) occurs in Greece and Turkey. There is no discernible trend in nesting at the two longest monitoring projects in Greece, Laganas Bay and southern Kyparissia Bay. However, the nesting trend at Rethymno Beach, which hosts approximately 7 percent of all documented loggerhead nesting in the Mediterranean, shows a highly significant declining trend (1990–2004). In Turkey, intermittent nesting surveys have been conducted since the 1970s with more consistent surveys conducted on some beaches only since the 1990s, making it difficult to assess trends in nesting. A declining trend (1993–2004) has been reported at Fethiye Beach, which represents approximately 10 percent of loggerhead nesting in Turkey. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section is based on nesting data; however, region-wide nesting data for this DPS were not available. Therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the Mediterranean Sea DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the Mediterranean Sea (Factor E), as well as anthropogenic threats to nesting beaches (Factor A) and eggs/hatchlings (Factors A, B, C, and E). Although conservation efforts to protect some nesting beaches are underway, more widespread and consistent protection is needed. Although national and international governmental and non-governmental entities in the Mediterranean Sea are currently working toward reducing loggerhead bycatch, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in commercial and artisanal fisheries operating within the range of this DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. In light of the significant fishery bycatch that occurs throughout the Mediterranean Sea, particularly ongoing bycatch mortality from pelagic and bottom longline, set net, driftnet, and trawl fisheries, as well as ongoing threats to terrestrial and marine habitats, current illegal harvest of loggerheads in Egypt for human consumption, and only limited efforts at bycatch reduction thus far, we have determined that the Mediterranean Sea DPS is in danger of extinction throughout all of its range. Therefore, we are listing it as endangered. In other words, we believe that a threatened status is not appropriate for this DPS because of the significance of the threats, particularly fishery bycatch, and ineffective protection of loggerheads even with some conservation efforts in place.

South Atlantic Ocean DPS

In the South Atlantic nesting occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro. Prior to 1980, loggerhead nesting populations in Brazil were considered severely depleted. More recently, a long-term, sustained increasing trend in nesting abundance has been observed over a 16-year period from 1988 through 2003 on 22 surveyed beaches containing more than 75 percent of all loggerhead nesting in Brazil. The SQE approach described in the Status and Trends of the Nine Loggerhead DPSs section suggested that, based on nest count data for the past 2 decades, the population is unlikely to decline in the future. These results are consistent with Marcovaldi and Chaloupka's (2007) nesting beach trend analyses. We note that the SQE approach is based on past performance of the DPS (nesting data) and does not fully reflect ongoing and future threats to all life stages within the DPS. The stage-based deterministic modeling approach indicated the South Atlantic Ocean DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. This result is largely driven by mortality of juvenile loggerheads from fishery bycatch that occurs throughout the South Atlantic Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the South Atlantic are currently working toward reducing loggerhead bycatch in the South Atlantic, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the commercial and artisanal fisheries operating in the South Atlantic, the lack of comprehensive

information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. While climate change may have adverse effects on all of the loggerhead sea turtle DPSs, it is not possible to predict exactly what those would be and the extent to which they would affect this DPS.

We have considered the five factors described above in the Summary of Factors Affecting the Nine Loggerhead DPSs, efforts to protect the DPS, and the population size and trends of the DPS. Although the nesting population is small and is believed to be severely depleted from historical levels, trends observed since the 1980s have shown a more recent increase in nesting abundance, nesting beach protection in Brazil has been effective and successful, and many important nesting beaches have been placed in protected status. However, fishery bycatch is believed to be a significant threat to this DPS. Although efforts have been made to evaluate and assess levels of fishery bycatch, actions to reduce or eliminate bycatch mortality are lacking in most areas. As a result, we have determined that the South Atlantic Ocean DPS of the loggerhead sea turtle is not currently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Therefore, we are listing it as threatened. In other words, we believe that an endangered status is not appropriate for this DPS because of the increased trend in nesting abundance observed since the 1980s, the protected status of many of the important nesting beaches, and successful efforts to address threats on the nesting beaches.

Take Prohibitions

The existing take prohibitions and exceptions contained in 50 CFR 17.31, 17.42(b), 223.205, 223.206, and 223.207 remain in effect and continue to apply to those DPSs listed as threatened sea turtle species, which are the Southeast Indo-Pacific Ocean, Southwest Indian Ocean, Northwest Atlantic Ocean, and South Atlantic Ocean DPSs.

Critical Habitat

Section 3(5)(A) of the ESA defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretaries of Commerce and Interior that such areas are essential for the conservation of the species.'' Section 3(3) of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(2) provides that designation of critical habitat must be based on the best scientific data available. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to section 7's requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that the Services consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct the Services to ''focus on the principal biological or physical constituent elements * * * that are essential to the conservation of the species,'' and specify that the ''Known primary constituent elements shall be listed with the critical habitat description.'' The regulations identify primary constituent elements (PCEs) as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.''

The ESA also directs the Secretaries of Commerce and Interior to consider the economic, national security, and other relevant impacts of specifying any particular area as critical habitat, and under section 4(b)(2) the Secretaries may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. In addition, the Secretaries may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretaries determine in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation (see section 318(a)(3) of the National Defense Authorization Act, Public Law 108–136). We also cannot designate critical habitat in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(h)).

At this time, we lack the comprehensive data and information necessary to identify and describe physical and biological features of the marine and terrestrial habitats of the loggerhead sea turtle. Accordingly, we find designation of critical habitat to be ''not determinable'' at this time.

Public Comments Solicitied

We request interested persons to submit information related to the identification of critical habitat and essential physical or biological features for this species, as well as economic or other relevant impacts of designation of critical habitat, for the U.S. marine and terrestrial habitats of loggerhead sea turtles occurring within the U.S. range of the North Pacific Ocean DPS and the Northwest Atlantic Ocean DPS. We solicit information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. You may submit this information by any one of several methods (see **ADDRESSES**).

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information

Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. We obtained independent peer review of the scientific information compiled in the 2009 Status Review (Conant *et al.,* 2009) that supported the proposed rule (75 FR 12598; March 16, 2010) to list nine DPSs of the loggerhead sea turtle as endangered or threatened. The Status Review underwent independent peer review by nine scientists with expertise in loggerhead sea turtle biology, genetics, and modeling. We also solicited technical review of the proposed listing determination from six independent experts, and received reviews from all six of these experts.

On July 1, 1994, the Services published a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. We solicited the expert opinions of six qualified and independent specialists from the academic and scientific community. We have addressed their comments in the Summary of Comments section and incorporated them as appropriate in this final rule.

References

A complete list of the references and all non-copyrighted publications cited in this final rule are available on the Internet at *http://www.regulations.gov.*

Classification

National Environmental Policy Act

ESA listing decisions are exempt from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) (NOAA Administrative Order 216–6.03(e)(1); *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981)). Thus, we have determined that the final listing determinations for the nine loggerhead DPSs described in this notice are exempt from the requirements of NEPA.

Information Quality Act

The Information Quality Act directed the Office of Management and Budget to issue government wide guidelines that ''provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.'' Compliance of this document with NOAA guidelines is evaluated below.

- Utility: The information disseminated is intended to describe a species' life history, population status, threats, and risks; management actions; and the effects of management actions. The information is intended to be useful to State and Federal agencies, non-governmental organizations, industry groups and other interested parties so they can understand the listing status of the species.
- Integrity: No confidential data were used in the analysis of the impacts associated with this document. All information considered in this document and used to analyze the proposed action, is considered public information.
- Objectivity: The NOAA Information Quality Guidelines require disseminated information to be presented in an accurate, clear, complete, and unbiased manner. This document was prepared with these objectives in mind. It was also reviewed by a variety of biologists, policy analysts, and attorneys from NMFS and USFWS.

Administrative Procedure Act

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process and to give the public notice and an opportunity to comment before the agency promulgates new regulations. These public notice and comment procedures have been completed in this rulemaking as further explained in the Background.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved State coastal zone management programs to the maximum extent practicable. NMFS and USFWS have determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, Hawaii, Puerto Rico, and the U.S. Virgin Islands. Letters documenting our determination, along with the proposed rule, were sent to the coastal zone management program offices of these States. A list of the specific State contacts and a copy of the letters are available upon request. A copy of the final rule will be sent to the coastal zone management programs in these States.

Executive Order 13132 Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt State law or impose substantial direct compliance costs on State and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, the proposed rule was provided to each State in which the subject species occurs, and the State was invited to comment. We considered and incorporated their comments and recommendations into this final determination where applicable. We also provided responses to their comments in the Summary of Comments section.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The final listing determinations are not expected to have a disproportionate effect on minority or low-income communities because the implications of these listing actions do not adversely affect the human health of low-income, minority, or other populations or the environment in which these various populations live.

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act (PRA)

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts shall not be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under Executive Order 12866. This rule does not contain a collection-of-information requirement for the purposes of the PRA.

List of Subjects

50 CFR Part 17

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

50 CFR Part 223

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

50 CFR Part 224

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

Dated: September 9, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, FWS and NOAA amend 50 CFR parts 17, 223, and 224 as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11(h) revise the entry for ''Sea turtle, loggerhead'', which is in alphabetical order under REPTILES, 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						
*	*	*	*	*	*	*	
Sea turtle, loggerhead, Mediterranean Sea.	*Caretta caretta*	Mediterranean Sea Basin.	Mediterranean Sea east of 5°36′ W. Long.	E	794	NA	NA
Sea turtle, loggerhead, North Indian Ocean.	*Caretta caretta*	North Indian Ocean Basin.	North Indian Ocean north of the equator and south of 30° N. Lat.	E	794	NA	NA
Sea turtle, loggerhead, North Pacific Ocean.	*Caretta caretta*	North Pacific Ocean Basin.	North Pacific north of the equator and south of 60° N. Lat.	E	794	NA	NA
Sea turtle, loggerhead, Northeast Atlantic Ocean.	*Caretta caretta*	Northeast Atlantic Ocean Basin.	Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., and east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36′ W. Long.	E	794	NA	NA
Sea turtle, loggerhead, Northwest Atlantic Ocean.	*Caretta caretta*	Northwest Atlantic Ocean Basin.	Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long.	T	794	NA	NA
Sea turtle, loggerhead, South Atlantic Ocean.	*Caretta caretta*	South Atlantic Ocean Basin.	South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long.	T	794	NA	NA
Sea turtle, loggerhead, South Pacific Ocean.	*Caretta caretta*	South Pacific Ocean Basin.	South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 141° E. Long.	E	794	NA	NA
Sea turtle, loggerhead, Southeast Indo-Pacific Ocean.	*Caretta caretta*	Southeast Indian Ocean Basin; South Pacific Ocean Basin as far east as 141° E. Long.	Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 141° E. Long.	T	794	NA	NA
Sea turtle, loggerhead, Southwest Indian Ocean.	*Caretta caretta*	Southwest Indian Ocean Basin.	Southwest Indian Ocean north of the equator, south of 30° N. Lat., west of 20° E. Long., and east of 80° E. Long.	T	794	NA	NA
*	*	*	*	*	*	*	

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. Amend the table in § 223.102 by revising paragraph (b) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
(b) SEA TURTLES				
(1) Green sea turtle [2]	*Chelonia mydas*	Wherever found, except where listed as endangered under § 224.101(c); circumglobal in tropical and temperate seas and oceans.	43 FR 32800; Jul 28, 1978.	63 FR 46693; Sep 2, 1998, 64 FR 14052; Mar 23, 1999.
(2) Loggerhead sea turtle—Northwest Atlantic Ocean DPS [2].	*Caretta caretta*	Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(3) Loggerhead sea turtle—South Atlantic Ocean DPS [2].	*Caretta caretta*	South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(4) Loggerhead sea turtle—Southeast Indo-Pacific Ocean DPS [2].	*Caretta caretta*	Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 141° E. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(5) Loggerhead sea turtle—Southwest Indian Ocean DPS [2].	*Caretta caretta*	Southwest Indian Ocean north of the equator, south of 30° N. Lat., west of 20° E. Long., and east of 80° E. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(6) Olive ridley sea turtle [2].	*Lepidochelys olivacea* ...	Wherever found, except where listed as endangered under § 224.101(c); circumglobal in tropical and temperate seas.	43 FR 32800; Jul 28, 1978.	NA.
*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 5. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 6. Amend § 224.101 by revising paragraph (c) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(c) *Sea turtles.* The following table lists the common and scientific names of endangered sea turtles, the locations where they are listed, and the citations for the listings and critical habitat designations. Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
(1) Green sea turtle	*Chelonia mydas*	Breeding colony populations in Florida and on the Pacific coast of Mexico.	43 FR 32800; Jul 28, 1978.	NA.
(2) Hawksbill sea turtle ...	*Eretmochelys imbricata*	Wherever found; tropical seas	35 FR 8491; Jun 2, 1970.	47 FR 27295; Jun 24, 1982, 63 FR 46693; Sep 2, 1998, 64 FR 14052; Mar 23, 1999.
(3) Kemp's ridley sea turtle.	*Lepidochelys kempii*	Wherever found; tropical and temperate seas in Atlantic Basin, incl. Gulf of Mexico.	35 FR 18319; Dec 2, 1970.	NA.

Species[1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(4) Leatherback sea turtle.	*Dermochelys coriacea* ..	Wherever found; tropical, temperate, and subpolar seas.	35 FR 8491; Jun 2, 1970.	43 FR 43688; Sep 26, 1978, 44 FR 17710; Mar 23, 1979, 64 FR 14052; Mar 23, 1999.
(5) Loggerhead sea turtle—Mediterranean Sea DPS.	*Caretta caretta*	Mediterranean Sea east of 5°36′ W Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(6) Loggerhead sea turtle—North Indian Ocean DPS.	*Caretta caretta*	North Indian Ocean north of the equator and south of 30° N. Lat.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(7) Loggerhead sea turtle—North Pacific Ocean DPS.	*Caretta caretta*	North Pacific north of the equator and south of 60° N. Lat.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(8) Loggerhead sea turtle—Northeast Atlantic Ocean DPS.	*Caretta caretta*	Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., and east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36′ W. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(9) Loggerhead sea turtle—South Pacific Ocean DPS.	*Caretta caretta*	South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 141° E. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA.
(10) Sea turtle, olive ridley.	*Lepidochelys olivacea* ...	Breeding colony populations on the Pacific coast of Mexico.	43 FR 32800; Jul 28, 1978.	NA.

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2011–23960 Filed 9–16–11; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 76 Thursday,
No. 184 September 22, 2011

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Casey's June Beetle and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0019; MO 92210–0–0009]

RIN 1018–AV91

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Casey's June Beetle and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for Casey's June beetle (*Dinacoma caseyi*) under the Endangered Species Act of 1973, as amended (Act). We are also designating approximately 587 acres (237 hectares) of land as critical habitat for the species in Riverside County, California.

DATES: This rule becomes effective on October 24, 2011.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat are available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/carlsbad/*. Comments and materials received, as well as supporting documentation used in preparing this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011 (telephone 760–431–9440; facsimile 760–431–5901). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss in this final rule only those topics directly relevant to the listing and designation of critical habitat for Casey's June beetle under the Act (16 U.S.C. 1531 *et seq.*). The genus *Dinacoma* and approximately 90 other genera constitute the New World members of the subfamily Melolonthinae (*i.e.*, May beetles, June beetles, and chafers) of the scarab beetle family (Scarabaeidae) (Smith and Evans 2005). Despite past references to potentially new species or subspecies of *Dinacoma* (Blaisdell 1930, pp. 173–174; La Rue pers. comm., 2006), Casey's June beetle, *Dinacoma caseyi* Blaisdell, and *D. marginata* (Casey) Casey remain the only described taxonomic entities in the genus (Evans and Smith 2009, p. 44). For additional information on the taxonomy, biology, and ecology of Casey's June beetle, and the history of this rulemaking, refer to the August 8, 2006, 90-day finding (71 FR 44960), the July 5, 2007, 12-month finding (72 FR 36635), the July 9, 2009, proposed listing and critical habitat rule (74 FR 32857), and the March 31, 2010, document making available the draft economic analysis (DEA) (75 FR 16046) published in the **Federal Register**. These documents are available on the Internet at *http://www.fws.gov/Carlsbad*.

New Species Information

In our proposed listing and critical habitat rule (74 FR 32857; July 9, 2009), we requested comments on any new species information. One peer reviewer suggested we clarify the fact that female Casey's June beetles are known to be flightless, because our wording in one sentence was not clear in that regard. Information submitted by peer reviewers and an expert in scarab beetles (Hawks, University of California, Riverside, pers. comm. 2010) also disagreed with the appropriateness of primary constituent element (PCE) 2. We have made the appropriate changes to this final listing and critical habitat rule.

New Species Occupancy and Habitat Information

Multiple commenters and one peer reviewer further suggested that the species may occupy areas outside proposed critical habitat. To determine if areas outside of the proposed critical habitat designation harbor the Casey's June beetle, we funded a survey of likely habitat within the species' known historical range and beyond. While the survey focused on areas north of Palm Springs (*i.e.*, immediately south of the Chino Cone) and south to Palm Desert, we have yet to receive a final report from the surveyor (*i.e.*, David Hawks). Nonetheless, preliminary survey information received to date primarily supports our determination of the species' current range and population distribution, and modification of PCEs to include disturbed soils and predominantly, but not exclusively, native vegetation (*i.e.*, not the two specific ''intact'' vegetation types listed in the proposed rule) (Hawks pers. comm., 2010; see below discussion).

Hawks (pers. comm. 2010, 2011a and b) located two occupied Casey's June beetle sites outside of proposed critical habitat, in natural remnants of the Palm Canyon Wash channel surrounded by golf course landscaping just east of the easternmost section of wash proposed as critical habitat, in the vicinity of Golf Club Drive. These wash habitat remnants total 17 acres (ac) (7 hectares (ha)), and are downstream from the confluence of Palm Canyon Wash and Tahquiz Creek, where additional streamflow occurs following a storm event. Although it is possible these habitat remnants could contribute to species recovery, their ability to support occupancy long-term is questionable because these areas are subject to scouring flood events, which would remove available habitat and displace and most likely extirpate any individuals occupying the sites. In addition, the frequency of scouring flood events likely to extirpate resident individuals is expected to increase with climate change (see *E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species* section below). Therefore, at this time, we have determined that these wash habitat remnants do not meet the definition of critical habitat. However, we will continue to gather information regarding the potential for this wash habitat area to contribute to species recovery.

Hawks' comprehensive survey (pers. comm. 2010) included potential Casey's June beetle habitat remnants identified throughout the City of Palm Springs, including many vacant lots within the developed areas of the cities of Palm Springs and Cathedral City Hawks (pers. comm. 2010) documented numerous female emergence holes and observed many female beetles during his surveys, confirming occupancy of Coachella fine sand series (CpA), and Myoma fine sands (MaB) soil types. Hawks (pers. comm. 2010) stated he never found emergence holes in the Carsitas cobbly sand series (ChC) soil type. However, he believes ChC soil may be occupied if it is an inclusion surrounded by Carsitas gravelly sand series (CdC) soil, and if it is not part of the landscape defining the edge of the floodplain, such as along South Palm Canyon Drive to the west. Based on this information from Hawks (pers. comm. 2010) we determined that ChC soils not 100 percent surrounded by CdC and Riverwash (RA) soils do not meet the definition of critical habitat (see Summary of Changes From the 2009 Proposed Critical Habitat Rule, Physical or Biological Features, and

Criteria Used To Identify Critical Habitat sections below).

Hawks' (pers. comm. 2010) positive survey results generally supported our estimation of Casey's June beetle population distribution within proposed critical habitat, with the exception of newly discovered occupied wash habitat remnants described above that represent a slight northeastern distribution extension, and the lack of occupancy in some southern areas that were determined not to meet the definition of critical habitat and therefore were not designated (see Summary of Changes From the 2009 Proposed Critical Habitat Rule, Physical or Biological Features, and Criteria Used To Identify Critical Habitat sections below). In a subsequent communication, Hawks (pers. comm. 2011a) described his survey results from the southern population distribution area: ''Adults of both sexes of [Casey's June beetle] as well as emergence holes were observed in the wash and in [adjacent] floodplain areas west of the wash between Bogert Trail and Acanto Drive. Adults of both sexes as well as emergence holes were observed in the wash and in floodplain areas west of the wash from Acanto and south for a few hundred meters. South of this area, [Casey's June beetle] emergence holes were observed in late June 2010 (after the adult emergence period) in both the wash and the floodplain habitat adjacent to the wash as far south as the fence and almost to the small dam and this is as far south as we surveyed. Emergence holes were less common towards the southern extent of this area, and, especially in the wash, they were not apparent in the close vicinity of the dam (within about [328 feet (ft) (100 meters (m))]). The wash [close to the dam] is narrow and much more disturbed (apparently by turbulent water flow), gravelly, and rocky in this area, and is perhaps unsuitable as [Casey's June beetle] habitat.'' This new information confirms occupancy of the southernmost wash and upland designated critical habitat areas where beetles had not previously been reported (as described in Barrows 1998, p. 1), and increases the highest elevation for a Casey's June beetle observation (southernmost wash area) to approximately 580 ft (177 m).

New survey information shed light on the occupancy and suitability status of lands proposed for critical habitat designation at the southern extreme of the population distribution. Light trap surveys of southern portions of the species' population distribution were conducted by Jim Cornett (2010, pp. 10–11) in upland habitat, from South Palm Canyon Drive south into Indian Canyons Preserve. Although Cornet (2010, p. 14) did not trap any male Casey's June beetles or observe any females, Hawks' (pers. comm. 2011a) observations do not support Cornett's conclusion that uplands contiguous with the wash south of Acanto Drive are not occupied. Traps on the eastern edge of Cornett's ''Area 3'' (Cornett 2010, p. 10), where he sampled in April, were within approximately 660 ft (200 m) of locations where Hawks reported Casey's June beetle occupancy in May. Cornett did not survey for females or emergence holes in 2010. Conversely, the results of Hawks' (pers. comm. 2011b) and Cornett's (2010, pp. 10 and 14) surveys in western areas adjacent to South Palm Canyon Drive were all negative. Furthermore, Hawks (pers. comm. 2011b) reported unsuitable habitat conditions for this western area, similar to those described by Hovore (1997a, p. 3) and evident on current aerial imagery. Therefore, we believe habitat in this southwestern portion associated with South Palm Canyon Drive is not occupied and not likely occupiable. However, as noted in the preceding paragraph, Hawks' (pers. comm. 2011a and b) new information does indicate occupancy in the southernmost mapped contiguous CdC and RA soil areas.

New habitat information resulted in changes to our habitat area estimates. Hawks' (pers. comm. 2010) discovery of 17 ac (7 ha) of occupied Casey's June beetle habitat outside of proposed critical habitat in Palm Canyon Wash increased our estimates of extant and historic occupied habitat. However, based on the currently available information, we have determined that this newly discovered occupied habitat does not meet the definition of critical habitat (see above discussion). Multiple tribal commenters further suggested the species may no longer occupy areas within the southern portion of the proposed critical habitat unit, and that these habitat areas were no longer suitable for Casey's June beetle occupancy (see *Comments 5* and *8* below in the Summary of Comments and Recommendations section). Survey information from 2010 supports this hypothesis for areas in the southwestern portion of the proposed critical habitat unit associated with South Palm Canyon Drive (see above discussion). The determination that the southwestern portion of the proposed critical habitat unit associated with South Palm Canyon Drive is no longer occupied or contains suitable habitat decreased the total area estimate of remaining suitable habitat (despite the addition of the two newly discovered occupied sites in a natural remnant of the Palm Canyon Wash channel discussed above). As a result of this new information, we have made appropriate changes to this final rule.

New Information on Casey's June Beetle Diet and Movement

We found one new study on the diet of another endangered June beetle, and some new information on June beetle movement distances. Hill and O'Malley (2009, p. 1) found that the frass pellets (pelletized fecal matter) of larvae of the Mount Hermon June beetle (*Polyphylla barbata*) contained a variety of plant species and fungi material demonstrating that they are not specialist host plant feeders but are microhabitat specialists. Hawks' (pers. comm. 2010) observations at Smoke Tree Ranch indicate Casey's June beetle may be similar when he stated that, ''We did not observe females at Smoke Tree [Ranch], but many hundreds of emergence holes associated with native vegetation [and nonnative vegetation such as] irrigated tamarisk, fan palms, oleander, and olive. We still are not sure what plants of any sort mean to [Casey's June beetle] grubs. * * *'' These results support our hypothesis that Casey's June beetles do not require particular species of host plants for feeding. However, native plant species likely are important habitat components in other ways not fully understood at this time, because native plant species are an integral component of the ecosystem in which Casey's June beetle evolved. We incorporated this information into the Primary Constituent Elements for Casey's June Beetle section below.

The observation of a male Casey's June beetle at a street light in a suburban neighborhood approximately 750 ft (230 m) from the nearest suitable habitat (Hovore 2003, p. 6; Google Earth historical imagery 1996 and 2002) indicates that movement of males among occupied areas occurs over at least that distance, and it is likely that potential movement is much farther. The maximum male dispersal distance recorded for male Mount Hermon June beetles, a related species that also has flightless females, is 923 ft (281 m) (Arnold, Entomological Consulting Services, Ltd., pers. comm. 2011). Arnold (pers. comm. 2011) noted this datum was from a mark-release-recapture study limited to his study site, and therefore it is ''entirely possible'' adult male June beetles are capable of making longer distance movements. This information supports the conclusion articulated in our Criteria Used To Identify Critical Habitat section below that all lands meeting the definition of critical habitat are likely

occupied at the population level and fall within the distribution of a single population. Please see Summary of Comments and Recommendations section below for further discussion of comments and information received.

Previous Federal Actions

In our July 5, 2007, 12-month finding (72 FR 36635), we determined that listing Casey's June beetle as an endangered species was warranted but precluded. Because of the lack of funding for the large number of candidate species we were unable to propose and finalize the listing for Casey's June beetle at that time. In Fiscal Year 2007, we had more than 120 species with a listing priority number (LPN) of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Although funding to work on a proposed listing determination was not available at the time of the 12-month finding, we subsequently received funding for development of proposed and final listing with critical habitat rules. On July 9, 2009 (74 FR 32857), we published in the **Federal Register** a proposal to list Casey's June beetle as endangered and to designate critical habitat. In this final rule, we determine endangered status for Casey's June beetle and designate critical habitat.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly, or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Casey's June beetle is part of a genus of beetles that has naturally restricted ranges (LaRue, University of California, Riverside, pers. comm. 2006). Casey's June beetle is adapted to specialized habitat and soil types found in the Palm Canyon Wash area of Palm Springs, California. We do not know the exact historical population footprint of Casey's June beetle due to the generality and paucity of location descriptions from early collection records (see discussion in the 90-day finding (71 FR 44962; August 8, 2006)). However, museum specimen records indicate the historical range can be described as the eastern foothills of the San Jacinto Mountains from the City of Palm Springs south to the community of Indian Wells. This historical range, while far greater than the current known population distribution, is nonetheless relatively restricted compared to most species.

We used soils data correlated with occupancy data to estimate the historical suitable habitat distribution of Casey's June beetle. Our review of the soil and occupancy data showed that over 97 percent of habitat likely to have been included in Casey's June beetle historical population distributions has been converted to development or rendered unsuitable by the impacts of adjacent development. Of the approximately 605 ac (245 ha) of remaining extant suitable habitat, approximately 70 percent remains relatively unprotected by existing regulations (see *D. The Inadequacy of Existing Regulatory Mechanisms* section below). Approximately 50 percent of the unprotected habitat areas are tribal reservation lands and 30 percent are in private ownership. The remaining approximately 20 percent is owned by local entities (City of Palm Springs and County Flood Control) for roads, flood control, and water facilities. Casey's June beetle habitat on tribal reservation land consists of approximately 11 ac (4 ha) in tribal trust, and 152 ac (62 ha) in fee-title and allotted lands. The majority of tribal reservation lands are at risk of development, as are any undeveloped portions of the relatively unprotected lands owned by local governments and private landowners.

The population of the City of Palm Springs increased from 42,805 to 47,251 between 2000 and 2008, an increase of 10 percent (CDF 2008, Table 1, Table E–1). The City is predicted to grow by 25 percent between 2000 and 2020 (SCAG 2004, Table 2004GF). The current growth rate has increased development pressure on properties zoned for residential and commercial use, uses which would encroach upon Casey's June beetle habitat.

Development

We analyzed suburban development within southern Palm Springs from 2003 to 2007 to determine the habitat impacts of completed and pending projects as cited in the petition to list Casey's June beetle (Wright *et al.* 2004, pp. 8–9) and referenced in the July 5, 2007, 12-month finding (72 FR 36635). We were unable to identify all projects cited in the petition, as the petitioners did not provide specific geographic descriptions, and the extent of area of proposed development projects cited did not exactly match calculations in our most recent analysis. However, based on site visits and digital aerial photographs, we identified at least seven projects that removed or impacted occupied and likely occupied habitat within the distribution described above in the 5 years between 2003 and 2007. Habitat disturbance activities such as development can result in direct mortality of larvae and adults.

The Monte Sereno project north of Bogart Trail adjacent to Palm Canyon Wash (tribal reservation lands) impacted approximately 39 ac (16 ha) of occupied habitat in 2005. Expected mitigation measures described by Dudek and Associates (2001, p. 24) for impacts to Casey's June beetle habitat were an in-lieu payment of $600 per ac ($240 per ha) (total of $21,960) to the City of Palm Springs or a habitat conservation entity designated by the City for loss of approximately 37 ac (15 ha) of ''creosote bush scrub habitat'' (no specified use of these funds), and re-creation of 9 ac (4 ha) of lost ''desert wash scrub habitat'' (no specified cost). To our knowledge, no appropriate habitat has yet been conserved or restored for Casey's June beetle to offset the Monte Sereno project impacts.

In 2006, the City of Palm Springs issued a mitigated negative declaration for Smoke Tree Ranch Cottages (City of Palm Springs 2006, p. 2) (''Casitas'' development cited in the 90-day finding (71 FR 44960; August 8, 2006)), finding ''no significant impact'' to Casey's June beetle. However, at least 7 ac (3 ha) of occupied habitat were developed (Cornett 2004, pp. 18–27). The Smoke Tree Commons shopping center impacted approximately 18 ac (7 ha) of habitat for Casey's June beetle. The project's environmental impact report (EIR) stated that the City of Palm Springs was responsible for enforcing and monitoring Casey's June beetle mitigation measures prior to issuing a grading permit to the developer, including recording a conservation easement and developing a management plan for Casey's June beetle on

conserved habitat (Pacific Municipal Consultants 2005, p. 9). A conservation easement was established; however, a management plan was not drafted prior to issuance of the grading permit, and monitoring and management activities for Casey's June beetle are not assured (Ewing, City of Palm Springs, pers. comm. 2007).

The other four identified projects that removed or impacted occupied and likely occupied habitat are: (1) The 2-ac (1-ha) Desert Water Agency wells and pipeline project in the Smoke Tree Ranch development; (2) the 34-ac (14-ha) Alta project north of Acanto Drive and west of Palm Canyon Wash on tribal reservation lands; (3) the 24-ac (10-ha) Estancias subdivision north of Acanto Drive; and (4) the 3-ac (1-ha) Palm Canyon project at South Palm Canyon Drive and Murray Canyon Drive.

These seven projects resulted in the loss of, or impacts to, approximately 126 ac (51 ha) of occupied and likely occupied Casey's June beetle habitat from 2003 to 2008. An additional 5 ac (2 ha) of Casey's June beetle habitat has been impacted by small projects (for example, single home lots and pipeline development). Hovore (2003, p. 4) hypothesized that the destruction and isolation of occupied habitat caused by the Monte Sereno and Alta projects in 2003 ''* * * overall may reduce the known range and extant population of [Casey's June beetle] by about one third.'' Streit (2009, pp. 12–13) noted that although Hovore was always conscientious and reported any Casey's June beetle observation, not all biologists do so, and in at least one case a biologist apparently omitted Casey's June beetle observations from their environmental impact report for a proposed golf course project in the early 1990s. Streit (2009, pp. 12–13) did not identify the exact location he referenced, although his description that it is found in ''the vicinity of the mouth of Palm Canyon, adjacent to Palm Springs, Riverside County, California,'' and approximate construction dates of golf course projects based on digital aerial photography indicate the referenced project is the current Indian Canyons Golf Resort, located between Smoke Tree Ranch and the Monte Sereno project north of Bogart Trail and adjacent to Palm Canyon Wash (tribal reservation lands).

We conducted an analysis for the 12-month finding (72 FR 36635) that used available digital aerial photographs taken at various intervals from 1991 to 2005 (Anderson and Love 2007, pp. 1–2) and 2006 field surveys (Anderson 2006, pp. 1–36), which determined that Casey's June beetle experienced an approximate 25 percent reduction in contiguous occupied habitat from 770 ac (312 ha) in 1991 to 576 ac (233 ha) in 2006. Based on new biological surveys and information provided to us since 2006, we now know an area larger than 770 ac (312 ha) was occupied by Casey's June beetle in 1991. With this new information and 2008 digital aerial photographs, we determined that there was approximately 1,018 ac (412 ha) of occupied habitat in 1991. Therefore, our new analysis showed that Casey's June beetle has experienced an approximately 22 percent reduction in occupied habitat from 1,018 ac (412 ha) in 1991 to 794 ac (314 ha) in 2008. Our updated calculations accounted for these additional acres and revealed that habitat was lost at a rate of 1.6 percent per year from 1991 to 1996, at a rate of 0.6 percent per year from 1996 to 2003, at a rate of 3.8 percent per year from 2003 to 2005, and at a rate of 0.7 percent per year from 2005 to 2008 (dates based on available photographs). Although habitat loss since 2005 has slowed (likely due to the economic downturn), after our 2008 analysis was completed (post-12 month finding; 72 FR 36635, July 5, 2007) we discovered approximately 5 ac (2 ha) of habitat where two adjacent development pads were cleared on the Agua Caliente Band of Cahuilla Indian's reservation south of Acanto Drive, removing the PCEs from the majority of the parcel (per available satellite imagery). The loss of this graded area is of particular concern because it comprises approximately one-fourth of a formerly contiguous occupied upland habitat area adjacent to an area of the wash.

Since publication in the **Federal Register** of the July 5, 2007, 12-month finding (72 FR 36635), the City of Palm Springs completed the California Environmental Quality Act (CEQA) environmental review process for the 80- to 100-ac (32 to 40 ha) Eagle Canyon residential development project planned on tribal reservation lands (Davis, Agua Caliente Band of Cahuilla Indians, pers. comm. 2007; Park, Agua Caliente Band of Cahuilla Indians, pers. comm. 2007). The project is in the area containing CdC soils west of South Palm Canyon Drive near Bogart Trail and Acanto Drive (tentative tract number 30047) (City of Palm Springs 2008, p. 14). We believe this area is not likely to be occupied by Casey's June beetle or occupiable in the future based on historical and recent disturbances (Hovore 1997a, p. 3; Google Earth imagery 2011) (see *New Species Information* section above), and because recent surveys conducted within and adjacent to the Eagle Canyon project area (Osborne 2008a, p. 3, Cornett 2010 p. 10 and 14; Hawks pers. comm. 2011b) where occupancy was previously documented (Hovore 1995, pp. 4–5) were negative.

Extant habitat estimations include wash habitat where Casey's June beetle may not be able to maintain occupancy following severe flood events (Hovore 2003, p.11; Cornett 2004, p. 14). Of the total 794 ac (321 ha) of estimated remaining habitat in 2008, only 523 ac (212 ha) was upland habitat. Upland habitat refers to any upland terrace area that is outside of the wash and does not occur on Riverwash (RA) soils. According to data from the Coachella Valley General Plan (Riverside County 2005), all remaining upland habitat on tribal land north of Acanto Drive is projected to be developed at a density of two homes per ac (0.5 per ha) by the year 2020, even though some parcels designated as parks and recreation in the 2020 General Plan (code GP2020 = ''1145'') have already been developed with three homes per ac (7.5 per ha). Undeveloped habitat on tribal reservation land south of Acanto Drive has the same initial land use designation as adjacent land north of Acanto Drive (LU93 = ''3100'') (Riverside County 2005, pp. 94–120) in the East Bogart Trail area, except that it is outside the city limit of Palm Springs (code GP2020 = ''58''). Code GP2020 = ''58'' signifies tribal land or open space in the General Plan; lands with this code have been developed at a density as high as 3 homes per ac (more than 7 homes per ha). Land use projections (Riverside County 2005) indicate that more than 48 percent of the approximately 523 ac (212 ha) of upland Casey's June beetle habitat that we estimated to be extant in 2008 could be impacted by development.

Further indicating that development in Casey's June beetle habitat is likely, the Director of Planning Services for the City of Palm Springs stated in a communication to economists writing the DEA (Ewing pers. comm. 2009) that ''* * * much of the [proposed critical habitat] is within the urban boundaries of the city and along a major thoroughfare (and former state highway). These lands are of significant economic value to the community and have already been the subject of entitlement applications, processing, and approval.''

Development is the greatest threat to habitat in upland CdC soils that are believed to support Casey's June beetle; however, development threats are not limited to upland terrace habitat. For example, entire sections of Palm Canyon

Wash east of occupied habitat near Gene Autry Trail have been converted to golf course landscaping (Anderson and Love 2007, p. 3). LaRue (pers. comm. 2006) emphasized the magnitude of development threats to *Dinacoma* spp. population survival: ''Most *Dinacoma* [spp.] have experienced range reduction because of unprecedented habitat destruction and modification for recreational, residential and urban development resulting in serious distributional fragmentation throughout [their] former already naturally limited ranges. Consequently, several populations [of the genus *Dinacoma*] have been extirpated, especially those that once existed in Los Angeles County (for example, Glendale, Eaton Canyon).'' Therefore, habitat modification for recreational, residential, and urban development reduces an already limited range for Casey's June beetle and poses a substantial threat to this species'' survival, both now and in the foreseeable future.

Soil Disturbance

In addition to the threat of habitat loss, soil disturbance activities may degrade habitat quality and can cause direct Casey's June beetle mortality (also see *E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species* below). Analysis of 2008 aerial photography in Palm Canyon Wash indicates numerous land-disturbance activities affecting occupied wash habitat managed by the Riverside County Flood Control and Water Conservation District (Riverside County FCWCD). In the vicinity of the State Route 111 bridge and Araby Drive, there are road maintenance and flood control activities, as well as unregulated off-road vehicle (ORV) disturbance (based on examination of Google Earth imagery, both current and historical). Cornett (2004, p. 12) noted similar ORV impacts during Casey's June beetle surveys on a nearby site adjacent to Whitewater Wash and the Palm Springs Airport. ORV use impacts desert soils and associated biota by increasing erosion (Snyder *et al.* 1976, pp. 29–30; Rowlands 1980, p. 169), reducing both plant and vertebrate diversity (Bury *et al.* 1977, Table 4, Figure 6; Rowlands 1980, pp. 63–74; Lathrop 1983, pp. 153–166; Cornett 2004, p. 15), and changing soil density through compaction, which may also influence soil water retention capacity (Adams *et al.* 1982, pp. 167–175; Lathrop and Rowlands 1983, pp. 144–145; Webb 1983, pp. 51–79). Indirect evidence suggests that land disturbance impacts the species' burrows and larvae that occur in the soil and the flightless females when they rest at the top of the burrows (Cornett 2004, p. 15). Any activities that cause direct adult mortality, compact or disturb soils when adult beetles are active, or affect soils to a depth where immature stages or resting adults are found may affect the species' persistence in those areas or dispersal to adjacent areas. Waste dumping at habitat edges, as discovered through review of digital aerial photography of proposed critical habitat areas and described in the Summary of Comments and Recommendations section (see *Comment 12*) below, or frequent use for horseback riding by local riding clubs (as described by Hawks pers. comm. 2011b) can also cause direct mortality of adult females and may have detrimental effects on habitat. Therefore, land disturbance activities likely pose a threat to the species' survival; however, the magnitude of impacts is unknown.

Habitat Fragmentation

Casey's June beetle habitat in Palm Springs has been increasingly fragmented by development in recent years (see above discussion regarding development). Continued fragmentation of already limited, remnant habitat compromises the ability of various species to disperse and establish new, or augment declining, populations (Collinge 2000, pp. 2211–2226; Freemark 2002, pp. 58–83; Driscoll and Weir 2005, pp. 182–194) and can isolate segments of a population (Picket and White 1986, pp. 189–192). Elimination of dispersal areas and isolation of population segments increase chances of extirpation by stochastic events (Hanski *et al.* 1995, pp. 21–28; Collinge 2000, pp. 2211–2226). This process, as it applies to Casey's June beetle, is evident in the development history of the City of Palm Springs and the distribution of Casey's June beetle populations (Cornett 2004, pp. 11, 14). Casey's June beetle is especially impacted by smaller-scale habitat fragmentation because females are flightless and unable to move between fragmented patches (Hovore 1995, p. 7). Although male beetles can move between habitat patches, thereby maintaining genetic mixing on a population scale, fragmented patches that no longer support any female Casey's June beetles may be attractive to male beetles and act as population sinks. The risk of local extinction is widely noted to increase as the fraction of occupied habitat patches, occupied patch area, and density of occupied patches decrease (Forman and Godron, 1986, pp. 87–91; Hanski 1991, pp. 17–38; Hanski *et al.* 1995, pp. 21–28; Hokit and Branch 2003, pp. 1060–1068).

Hovore (2003, p. 3) indicated that population movement would be ''slow and indirect,'' and suggested the population structure for Casey's June beetle in any given area could be described as ''clusters of individuals around areas of repeated female emergence.'' This would, in Hovore's (2003, p. 4) assessment, make the species ''susceptible to extirpation resulting from land use changes that would remove or alter surface features'' that isolate colonies into non-contiguous habitat fragments. Although fragmentation of habitat occupied by females within a population still allows mixing of genes by males visiting multiple habitat fragments (habitat is not fragmented with regard to male movement), it would preclude recolonization of an area if all flightless females were eliminated from that fragment. Fragmentation of suitable habitat into smaller patches increases the risk of colony loss and decreases the probability of the species' survival.

Current Conservation Measures

Indian Canyons Master Plan

We reviewed the Indian Canyons Master Plan (Master Plan; ACBCI 2007) and the zoning designations in it to determine what type of protective measures it provides Casey's June beetle and its habitat. Upon review of the Master Plan we noted that the planning area encompasses all Casey's June beetle habitat south of Acanto Drive (including some trust, fee, and allotted lands). The majority of this habitat falls within allotted lands owned by tribal members (ACBCI 2007, p. 17). According to acquisition priorities articulated in the Master Plan, some parcels identified as Casey's June beetle habitat (south of the east-west aligned portion of South Palm Canyon Drive) represent the highest priority for acquisition because they contain valuable cultural, natural, and scenic resources, and have the highest potential for future development plans that are incompatible with resource protection goals (ACBCI 2007 pp. 27 and 29). Allotted lands identified as Casey's June beetle habitat within Palm Canyon Wash between Acanto Drive and the east-west aligned portion of South Palm Canyon Drive fall within the Master Plan Low Density Residential (2 single family dwellings per acre (0.4 ha)) land use category (ACBCI 2007 pp. 35 and 37). In summary, the Master Plan provides some protection of some Casey's June beetle habitat on tribal land, but does not assure protection.

The Agua Caliente Band of Cahuilla Indians prepared and submitted a draft habitat conservation plan (HCP) to the

Service, which has undergone public review in accordance with the National Environmental Policy Act (72 FR 58112; October 12, 2007). The Tribe informed us in an October 28, 2008, letter that they removed Casey's June beetle from the list of species addressed in the draft Tribal HCP; however, they indicated they will ''continue to informally coordinate with the Service regarding this species where it occurs on the Reservation.'' The Tribe stated they are deferring to the Service to allow ''the Service to take the lead in addressing how to effectively conserve and protect this species'' (ACBCI 2008, p. 1). Although the Tribe has suspended their pursuit of a section 10(a) permit (ACBCI 2010a, p. 1), they are continuing to implement the draft HCP and will continue to protect and manage natural resources within the Tribe's jurisdiction (ACBCI, 2010a, p. 1; ACBCI 2010b, p. ES–1). We will continue to work cooperatively with the Tribe on efforts to conserve Casey's June beetle.

Our analysis indicates that although some tribal environmental policies do exist (ACBCI 2000; ACBCI 2007) that provide some conservation benefit for the species and its habitat, they do not adequately protect Casey's June beetle and its habitat. Therefore, we do not believe that existing tribal regulatory documents ensure conservation of Casey's June beetle. The Service will continue to work with the Tribe to obtain any other information that illustrates how tribal actions or policies would help conserve Casey's June beetle habitat and protect the species. Currently, we do not have information documenting how occupied or potentially occupied habitat for Casey's June beetle is protected from development and other impacts on all tribal reservation lands.

Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)

Some non-Federal lands within the purported historical range of Casey's June beetle are proposed for management under the Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP). The Service issued a single incidental take permit (Service file: TE–104604–0 (Service 2008)) under section 10(a)(1)(B) of the Act to 19 permittees under the Coachella Valley MSHCP for a period of 75 years on October 1, 2008. Although Casey's June beetle was initially considered for coverage under the Coachella Valley MSHCP, the 10(a)(1)(B) permit did not include Casey's June beetle as a covered species. Because it is not a covered species, the Coachella Valley MSHCP does not provide specific measures for the protection or conservation of the species and its habitat, nor does the incidental take permit authorize take of the species. We are working with individual permittees within the species' range to address the species' needs in their planned projects. We are engaged in discussions with the City of Palm Springs, Riverside County FCWCD, and the California Department of Transportation (Caltrans) to avoid, minimize, and offset impacts to the species appropriately. However, actions taking place after the effective date of this final rule would require any take associated with their activities be exempted from the prohibitions of section 9 of the Act through section 7 consultation (where appropriate) or permitted under an amendment to the Coachella Valley MSHCP or a separate HCP focused on the Casey's June beetle. No such amendment or permit is currently in place.

Summary of Factor A

Within the historical distribution of Casey's June beetle, we estimate that over 97 percent of habitat likely to have been occupied by Casey's June beetle has been converted to development or rendered unsuitable due to impacts of adjacent development. Loss of occupied habitat has continued since the early 1990s. Twenty-eight percent (287 ac (116 ha)) of the 1,018 ac (412 ha) of contiguous suitable habitat for Casey's June beetle identified as extant (based on 1991 aerial photographs) has been lost to development. From 2003 to 2005, the loss of occupied Casey's June beetle habitat occurred at a rate of 3.8 percent per year. Although habitat loss since 2005 has slowed (likely due to the economic downturn), development and habitat impact trends are continuing (see above discussion of Eagle Canyon project approved by the City of Palm Springs), and we anticipate additional upland habitat for the beetle may be impacted or lost in the foreseeable future. Based on recent information and calculations, we estimate the amount of undeveloped habitat currently occupied by the species is approximately 605 ac (245 ha) (including all non-contiguous habitat containing any soil types used by the species). Based on current projected development and habitat impacts, the loss of historically occupied locations, the limited distribution of Casey's June beetle, existing and future habitat fragmentation, habitat disturbance, and land use changes associated with urbanization, we find that the threats associated with the present and threatened destruction, modification, and curtailment of Casey's June beetle habitat are significant. These threats are currently ongoing and will continue into the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information regarding overutilization of Casey's June beetles for commercial, recreational, scientific, or educational purposes and do not consider collection for these activities to be a threat to the species at this time.

C. Disease or Predation

We are not aware of any information regarding threats of disease or predation to Casey's June beetle and do not consider disease or predation to be a threat to the species at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for Casey's June beetle include: (1) Federal laws and regulations; (2) State laws and regulations; and (3) local land use processes and ordinances (for example, tribal environmental policies). However, these regulatory mechanisms are not preventing continued habitat modification and fragmentation. There are no regulatory mechanisms that specifically or indirectly address the management or conservation of habitat for Casey's June beetle. However, there are regulatory mechanisms that could provide incidental benefit to Casey's June beetle. The following section discusses these mechanisms.

Federal Laws

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) of 1970 for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that, in their environmental impact statements, agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). NEPA itself is a disclosure law that provides an opportunity for the public to submit comments on the particular project and propose other conservation measures that may directly benefit listed species; however, it does not require subsequent

minimization or mitigation measures by the Federal agency involved. Any such measures are typically voluntary in nature and are not required by the statute. Activities are subject to NEPA regardless of ownership if there is a Federal nexus, such as under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and tribal lands held in trust by the Bureau of Indian Affairs.

The Clean Water Act (CWA) is the primary mechanism in the United States for surface water quality protection. It establishes the basic structure for regulating discharges of pollutants into waters of the United States. It employs a variety of regulatory and non-regulatory tools to reduce direct water quality impacts, finance water treatment facilities, and manage polluted run-off. The CWA made it unlawful to discharge any pollutant from a point source into navigable water unless a permit was obtained. The EPA's National Pollutant Discharges Eliminations System permit program controls discharges. The EPA determines water quality standards for each State, and the CWA requires States to either adopt this level or determine another with documentation (EPA 2000, p. 31682). Under section 404, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, which include navigable and isolated waters, headwaters, and adjacent wetlands (33 U.S.C. 1344). In general, the term ''wetland'' refers to areas meeting the Corps' criteria of hydric soils, hydrology (either sufficient annual flooding or water on the soil surface), and hydrophytic vegetation (plants specifically adapted for growing in wetlands). Any action with the potential to impact waters of the United States must be reviewed under the CWA. These reviews require consideration of impacts to water quality and recommendations for mitigation of significant impacts. Most wash habitat suitable for Casey's June beetle could meet the definition of waters of the United States; thus some impacts to this sensitive taxon and its habitat within the wash could potentially fall under Corps' jurisdiction and be averted. However, the CWA has not proven sufficient to alleviate threats to Casey's June beetle and its habitat to date.

State Laws

The California Environmental Quality Act (CEQA) requires disclosure of potential environmental impacts resulting from public or private projects carried out or authorized by all non-Federal agencies in California. The CEQA guidelines require a finding of significance if a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species' (CEQA Guideline 15065). As a candidate species for Federal listing, Casey's June beetle is considered rare under CEQA Guideline 15380. The lead agency can either require mitigation for unavoidable significant effects or decide that overriding considerations make mitigation infeasible (CEQA Guideline 21002). Although such overrides are rare, the possibility remains that projects that cause significant environmental damage, such as taking of endangered species or destruction of their habitat, will be approved. Therefore, protection of listed species through CEQA is dependent upon the discretion of the agency involved. Furthermore, because the availability of occupied and suitable Casey's June beetle habitat is extremely limited, regulatory protections such as CEQA that do not prohibit mortality or habitat loss, nor require acquisition of available habitat to mitigate such losses, would not be sufficient to reduce threats or prevent the species' extinction.

The California Endangered Species Act (CESA) provides protections for many species of plants, animals, and some invertebrate species. However, insect species, such as Casey's June beetle, are not afforded protection under CESA. Therefore, this existing regulatory mechanism does not provide for the protection of Casey's June beetle or its habitat.

Existing Tribal Regulatory Mechanisms

Based on occurrence of soil types and species collection records, historically (pre-European settlement), Casey's June beetle potentially occupied 5,834 ac (2,361 ha) (18 percent) of tribal land. Lands within the Agua Caliente Band of Cahuilla Indians'' reservation encompass 274 ac (111 ha), or approximately 45 percent of the estimated extant Casey's June beetle habitat. All post-1996 development of occupied habitat, with the exception of the Smoke Tree Commons and Cottages projects, has occurred on Agua Caliente Band of Cahuilla Indians'' reservation land. The remaining undeveloped suitable upland habitat on the Agua Caliente Band of Cahuilla Indians'' reservation land is relatively flat and adjacent to, or surrounded by, recent development (Anderson and Love 2007, pp. 1–3), and some of these lands are approved for development by the City of Palm Springs and will likely be developed (see the discussion of the Eagle Canyon project under *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* section above).

In a letter to the Carlsbad Fish and Wildlife Office's Field Supervisor dated October 10, 2006, the Tribe stated they had ''* * * enacted a Tribal Environmental Policy Act to, among other things, ensure protection of natural resources and the environment. See Tribal Ordinance No. 28 at I.B., (2000).'' The referenced Tribal Environmental Policy Act (Tribal Act) (ACBCI 2000) states that the Agua Caliente Band of Cahuilla Indians (Tribe) is the lead for preparing environmental review documents, and that tribal policy is to protect the natural environment, including ''all living things.'' According to the Tribal Act (ACBCI 2000, p. 4), the Tribe will consult with any Federal, State, and local agencies that have special expertise with respect to environmental impacts. In a second letter dated April 29, 2010, the Tribe further stated they have chosen not to delegate land use authority to a local agent (such as the City of Palm Springs) in the area of the reservation south of Acanto Drive. Instead, the Tribe stated they directly regulate land use in this area through the Indian Canyons Master Plan and tribal zoning designation.

Several projects implemented on tribal reservation lands since the enactment of the Tribal Act have impacted Casey's June beetle habitat. Casey's June beetle occupancy of the Bogert Trail site in the vicinity of South Palm Canyon Drive on tribal land (Duff 1990, pp. 2–3, 4; Hovore 1997b, p. 4; Barrows and Fisher 2000, p. 1; Hovore 2003, p. 4; Cornett 2004, p. 3) has been greatly reduced, if not eliminated, by development since our receipt of the petition to list the Casey's June beetle in 2004 (see *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* above). The Alta and Monte Sereno development projects eliminated most of the species' upland habitat estimated to have been occupied in 2003 outside of Smoke Tree Ranch. Hovore (2003, p. 4) estimated that grading for the Alta project near South Palm Canyon Drive and Bogert Trail in May 2003 reduced the known extant Casey's June beetle population size by ''about one-third.''

No Federal, State, or local agencies that have special expertise with respect to environmental impacts to Casey's June beetle were consulted and no review documents were prepared by the Tribe prior to the recent development of the Alta and Monte Sereno projects in occupied Casey's June beetle habitat. Therefore, our conclusion is that the

Tribal Act does not effectively protect the species'' habitat. The Chief Planning and Development Officer for the Tribe (Davis, pers. comm. 2007) affirmed that the Tribal Act does not apply to all tribal reservation lands; for example, the currently planned Alturas development project (see *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* above) is not covered, because it is ''fee land.'' Although State environmental review documents (CEQA Environmental Impact Reports) were prepared by private consultants and reviewed by the City of Palm Springs for the Eagle Creek development project, the Tribe did not participate in the review or comment with regard to Casey's June beetle (Davis, pers. comm. 2007). Summary of Factor D

Existing regulatory mechanisms are not adequate to protect Casey's June beetle or its habitat. Occupied habitat continues to be lost to development projects, such as those in the Bogert Trail area, which were constructed without any Casey's June beetle mitigation. Because existing regulatory mechanisms do not provide adequate protection for this species or its habitat throughout its range, we believe this presents a significant threat to the survival of Casey's June beetle, both now and in the foreseeable future.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The Casey's June beetle population may be impacted by other natural or anthropogenically influenced factors, such as changing environmental conditions resulting from climate change, increased intensity and frequency of scouring events in wash habitat, and indirect effects associated with adjacent development. However, there are no species-specific, scientific, published models describing or predicting the magnitude of these threats, and this should be the subject of future research.

Stream Channelization

Past and ongoing development adjacent to Palm Canyon Wash, channelization of the wash to protect development, and development of associated flood-control levees are all likely to increase Casey's June beetle mortality during flood events. Urban development adjacent to natural creek beds or washes concentrates stream flow by constraining channel width, thereby increasing the speed of water flowing past a given location (Poff *et al.* 1997, p. 772). Therefore, scouring events that cause species mortality are likely to occur more frequently today than they did prior to development. Scouring events may temporarily eliminate Casey's June beetles within Palm Canyon Wash (Hovore 2003, p. 9; Cornett 2004, p. 14). After scouring or long-term inundation events, depopulated wash habitats would be slowly repopulated by females from neighboring occupied, higher elevation habitat. However, if scouring events increase in frequency, there may be insufficient time for females to emigrate from higher elevation refugia between scouring flow events. We do not know how far or how fast females can emigrate from upland refugia; however, we expect that travel across land would be relatively slow and occur over short distances compared to males that can fly. Should these recolonization events fail, Casey's June beetles may become extirpated from Palm Canyon Wash, which comprises a significant portion of the known occupied habitat area. We believe the increased frequency of scouring events due to indirect effects of development adjacent to the Wash poses at least a moderate threat to Casey's June beetle, both now and in the foreseeable future.

Climate Change

Casey's June beetle is sensitive to changes in climate factors, such as increased windspeed and temperatures (that dry alluvial soils and disperse female pheromones), and increased catastrophic flood events (Noss *et al.* 2001, p. 42; LaRue pers. comm. 2006). As discussed above, increased intensity and frequency of flooding and scouring events from habitat modification in Palm Canyon Wash is of particular concern for Casey's June beetle. However, this increased flooding and scouring may also result from changes in climatic conditions. The global frequency of heavy precipitation events has increased since 1960, consistent with warming and observed increases of atmospheric water vapor, and it is ''very likely'' (90 percent confidence) that heavy precipitation will generally become even more frequent over most land areas (IPCC 2007, pp. 2 and 8–9). A review of literature and historic climate data specific to the area of Casey's June beetle (Anderson 2007, pp. 1–6) indicated temperature, precipitation, peak stream flow (NWIS 2008), and other weather patterns since 1950, are consistent with global patterns described and predicted by the IPCC (2007 p. 2, pp. 8–9, and 15). General Circulation Models predict a 1 to 3 °Fahrenheit (°F) (0.5 to 1.7 °Celsius (°C)) rise in temperature and at least a 25 percent increase in precipitation by 2050, to as much as a 50 percent increase in precipitation as early as 2030 for California (Giorgi *et al.* 1994, pp. 375–399; Field *et al.* 1999, pp. 5–10), and increasing intensity of flood and drought events (Giorgi *et al.* 1994, pp. 375–399; Dessens 1995, pp. 1241–1244). Downscaled average climate model predictions for Casey's June beetle habitat calculated using Climate Wizard (Maurer *et al.* 2007; medium A1 scenario for 2050) predict an increase in temperature of 5 °F (2.8 °C) and a 5 percent increase in annual precipitation. Increased temperatures, combined with concentration of total annual precipitation into more extreme storm events with associated high wind speeds should cause soil drying, as a result of increased evaporation and runoff, regardless of an increase in total annual precipitation (Field *et al.* 1999; pp. 9 and 20). Therefore, per Field *et al.* (1999, pp. 9 and 20) and the above Climate Wizard predictions, drought frequency, soil dryness, and the frequency of flash flood scouring events over saturated winter soils are expected to increase in the future. Alternating drought and flash flood events may exacerbate threats already facing the species as a result of its small population size and threats to its habitat.

The Application of the NatureServe Climate Change Vulnerability Index (NatureServe 2010) ranked Casey's June beetle as extremely vulnerable (abundance and range extent within geographical area assessed extremely likely to substantially decrease or disappear by 2050) based primarily on climate model predictions, dependence on a moisture regime, vulnerability to disturbance regime change, restricted mobility, historical reduction of occupied habitat, and its narrow endemic status (Anderson 2010, p. 1). Therefore, the best available science indicates ongoing changing environmental conditions resulting from climate change effects pose a significant threat to Casey's June beetle, both now and in the foreseeable future.

Artificial Light

Insect surveys using light traps have recorded male Casey's June beetles traveling up to 328 ft (100 m) to artificial light sources (Osborne, Osborne Biological Consulting, pers. comm. 2008a). Such artificial light sources as black lights or mercury vapor lights may draw males in a line-of-sight radius from existing habitat (Hovore 2003, p. 3). As males fly in search of female pheromone plumes (Domek *et al.* 1990, pp. 271–276), they may become distracted by light sources that attract

them to sites that are out of suitable habitat for this species where they are preyed upon, or to local swimming pools, that are also an unnatural source of light even if it is only reflected, where they end up in pool skimmers and often drown. Swimming pools are one common source for male Casey's June beetle specimens (Barrows 1998, p. 1; Barrows and Fisher 2000, p. 1; Cornett 2004, p. 5) and may serve as a genetic sink for this species. If large numbers of male Casey's June beetles are lost as a result of these indirect effects of development, there could be reduced genetic diversity in males available for mating. Male beetles located at habitat patch edges closer to light sources would be more susceptible to distraction than those located at the center of patches. The loss of large numbers of these male Casey's June beetles would diminish the overall genetic diversity of the population. We believe that loss of male beetles due to unnatural light sources attracting beetles into development adjacent to upland habitat poses at least a moderate threat to Casey's June beetle, both now and in the foreseeable future.

Soil Disturbing Activities

Foot, vehicle, and horse traffic and other soil disturbing activities from adjacent developed areas are likely to cause direct mortality of adults because adult female Casey's June beetles are flightless. It is also likely that vehicle traffic could compress or compact soils to a depth deep enough to kill Casey's June beetle larvae. Discing, grading, soil removal, and soil filling all have the potential to harm individuals below the soil surface. These activities are a common occurrence, as evidenced by eyewitness accounts (Anderson 2006, pp. 17, 20, 22; Hawks pers. comm. 2011b) and aerial imagery from multiple years.

Small Population Size and Restricted Range

As stated above, Casey's June beetle is part of a genus of beetles that have naturally restricted ranges, and it is adapted to specialized habitat and soil types within the eastern foothills of the San Jacinto Mountains from the City of Palm Springs south to the community of Indian Wells. Casey's June beetle occupies only a portion of this area, and the majority of the occupied area is threatened by development, habitat fragmentation, or other anthropogenic or natural factors. In addition to having a restricted range and small population size, the species also has limited dispersal capabilities (Hovore 2003, p. 3). These conditions most likely increase the degree of threat due to chance events, such as floods or drought, that are beyond the natural variability of the ecosystem (Lande 1993, p. 912). The risk of local extinction is widely noted to increase as the fraction of occupied habitat patches, occupied patch area, and density of occupied patches decrease (Forman and Godron, 1986, pp. 87–91; Hanski 1991, pp. 17–38; Hanski *et al.* 1995, pp. 21–28; Hokit and Branch 2003, pp. 1060–1068).

Summary of Factor E

Casey's June beetle is negatively affected by increased intensity and frequency of catastrophic flood events; environmental effects resulting from changing climatic patterns; loss of individuals due to foot, vehicle, horse traffic and other soil disturbing activities; and loss of individuals due to attraction to light sources. We conclude from available information that climate change is likely to reduce Casey's June beetle population densities by increasing scouring events and decreasing water retention in the soil. Additional development within or adjacent to Casey's June beetle habitat will likely increase traffic into habitat areas and include external lighting and swimming pools, all of which may result in additional losses and will continue to adversely affect the existing population. Therefore, we find that other natural or manmade factors in total pose a significant threat to the continued existence of Casey's June beetle, both now and in the foreseeable future.

Determination

Section 3 of the Act, defines the term ''endangered species'' to mean any species which is in danger of extinction throughout all or a significant portion of its range. The term ''threatened species'' is defined as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We carefully assessed the best available scientific and commercial information regarding the past, present, and future threats to Casey's June beetle. We also consulted with recognized Casey's June beetle experts on the species' status and trends. Although quantification of population numbers has not been possible, given the cryptic nature of this species and limited historical survey data, this species' highly restricted geographic range relative to its historical distribution (as evidenced by documented loss of occupied habitat; see above discussion), ongoing habitat impacts and losses, and slow female dispersal rate make it particularly susceptible to extinction from random events such as flood scouring or isolation through habitat fragmentation.

As described in detail above, projections for human population growth extend out to 2030 in Palm Springs (SCAG 2004). Such projections frame our analysis as they help us understand what factors can reasonably be anticipated to meaningfully affect the species'' future conservation status. We updated our original analysis by Anderson and Love (2007, pp. 1–2) to determine rates of habitat loss in southern Palm Springs from 1991 to 2008. During that time, Casey's June beetle experienced an approximate 22 percent reduction in contiguous, undeveloped habitat from 1,001 ac (405 ha) in 1991 to 794 ac (321 ha) in 2008. Habitat loss was greatest in the 2003 to 2005 time period, and impacts have continued to occur. Habitat has been lost at a rate of 1.6 percent per year from 1991 to 1996, 0.6 percent per year from 1996 to 2003, 3.8 percent per year from 2003 to 2005, and 0.7 percent per year from 2005 to 2008. These habitat loss estimates do not include the area west of South Palm Canyon Drive that we determined is not likely suitable habitat (see *New Species Information* section above and Summary of Changes From the 2009 Proposed Critical Habitat Rule section below).

In summary, the most significant threat to Casey's June beetle, as described in the Factor A discussion, is loss of its habitat. This species faces immediate and continuing threats from development of habitat and habitat fragmentation and degradation. Additionally, a variety of other threat factors (which fall under Factor E) continue to negatively affect the species (including changes in environmental conditions resulting from climate change impacts, attraction to artificial light sources, swimming pools, and other sources of direct mortality). Furthermore, as described in the Factor D discussion, existing regulatory mechanisms provide insufficient protection of Casey's June beetle habitat, the loss of which is the most significant threat to the species. The threats described above for Casey's June beetle occur uniformly across its entire range, resulting in a negative impact on the species' distribution, abundance, and survivability. As discussed in the July 9, 2009, proposed rule (74 FR 32859), what we believe is a single remaining Casey's June beetle population (fragmented into several areas) may already have reached the point where it is not naturally sustainable.

Therefore, based on the best available scientific and commercial information that has identified the species as having an extremely restricted range and uniformly facing ongoing and projected threats, we find that Casey's June beetle is in danger of extinction throughout all of its range. The threats that Casey's June beetle face are currently occurring, and we see evidence that the threats have already negatively impacted the species, and that the species is endangered now. The threats to its continued existence are not commencing in the foreseeable future, which would result in a status determination of threatened. Consequently, we are listing Casey's June beetle as an endangered species under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by agencies such as the Department of Defense, U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; leases on Tribal Trust lands that require Bureau of Indian Affairs approval; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration. We are engaged in discussions with Caltrans (designated non-Federal representative for the Federal Highway Administration) to avoid, minimize, and offset impacts to Casey's June beetle as part of projects funded by that agency.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. We are engaged in discussions with the City of Palm Springs, Riverside County FCWCD, and Caltrans to avoid, minimize, and offset impacts to the species resulting from activities undertaken by those entities under an amendment to the Coachella Valley MSHCP or a separate HCP focused on the Casey's June beetle, but no such amendment or permit is currently in place.

Critical Habitat Designation for Casey's June Beetle

Critical Habitat Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for Casey's June beetle in this section of the final rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or

critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it is listed must contain the physical or biological features that are essential to the conservation of a species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing in on the principal biological or physical constituent elements (primary constituent elements) within the defined area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. According to regulations at 50 CFR 424.12, we designate critical habitat in areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any potential recovery planning for the species, articles in peer-reviewed journals, conservation plans developed by States and counties for this or similar species, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). See discussion regarding climate change and impacts on Casey's June beetle and its habitat under *E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species* above.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for Casey's

June beetle from studies of the species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule published in the **Federal Register** on July 9, 2009 (74 FR 32857).

Space for Individual and Population Growth and for Normal Behavior

Casey's June beetle is associated with native Sonoran (Coloradan) desert vegetation located on desert alluvial fans and bajadas (compound alluvial fans) at the base of the Santa Rosa Mountains in the Coachella Valley, Riverside County, California. Sonoran desert habitat is characterized as scattered assemblages of broad-leaved microphyll shrubs with an open canopy (Mayer and Laudenslayer 1988, p. 114). The open canopy provides space for male beetles to fly in search of females and fulfill normal life-history activities. Disturbed and altered habitats harboring nonnative species that are dominated by native vegetation also support the species (see Summary of Changes From the 2009 Proposed Critical Habitat Rule section below). This habitat also provides the micro-habitat space inhabited by Casey's June beetle. Individual shrubs provide refugia for the underground stage of the beetle's life history, protecting emergence holes from anthropogenic disturbance and enhancing survival of individuals.

Habitats utilized by Casey's June beetles experience varying levels and types of anthropogenic disturbance. In general, the species uses soil surfaces to burrow and deposit eggs. After beetles emerge, emergence holes are easily detectable beneath shrub canopies where they are protected from human activity. Many emergence holes do occur in the open, but are apparently destroyed or disturbed by ''equestrians, vehicles, and other human activities'' (Hovore 2003, p. 3). Therefore, the habitat where subterranean larvae, and females waiting on the surface for mates, are protected from human impacts is clustered around trees and shrubs where there is intact crustal soil (Hovore 2003, p. 3). These individual shrubs are refugia for the underground and reproductive stages of the beetle's life history, which protect them from anthropogenic disturbance. The emergence holes in undisturbed soil do not reflect the entire distribution of the emergence holes (the primary indicator of occupancy) because disturbance easily destroys evidence of the hole, but instead represent the remaining intact holes observable following a disturbance (Hovore 2003, p. 3; Hawks pers. comm. 2011b). Driscoll and Weir (2005, pp. 182–194) reported that flightless or subterranean beetle species that lived in disturbed, fragmented habitats were at greater risk of extirpation compared to those in intact, less-disturbed habitats. See the *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements* section for more specific information on soil characteristics and nutritional requirements.

In addition to anthropogenic disturbance, Casey's June beetle habitat undergoes natural disturbance. Palm Canyon Wash experiences intense flooding and scouring about once every 10 years (Cornett 2004, p.14), with turbulence that can excavate and unearth sand where the species may occur (Wright, independent biological consultant, pers. comm. 2003; NWIS 2008). These events are likely to extirpate Casey's June beetles from locations within the wash; however, these areas may subsequently be recolonized by beetles from surrounding upland areas or local refugia. It is hypothesized that the wash serves as a sink area (an area where the rate of immigration exceeds emigration and the population segment is dependent on immigration to maintain a nonnegative growth rate) for Casey's June beetle (Cornett 2004, p.14), but wash habitat may also serve as a source area when population densities are high between flooding events. If correct, these concepts indicate the need to conserve both upland and wash habitat to achieve conservation of the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Vegetation, soil, and climate contribute to the nutritional and physiological requirements of Casey's June beetle. It is hypothesized that beetle larvae feed on organic matter and detritus below ground (Hovore 2003, p. 2; LaRue pers. comm. 2004). Observations of adult Casey's June beetles feeding underground have not yet occurred (Hovore 1995, p. 2); however, accumulation of leaves around shrubs contribute to surface litter and subsurface detritus. Additionally, annual plants and grasses growing in association with these desert scrubs also contribute to surface litter and likely provide an additional food source such as radiculum (plant rootlets) (Simpson 1968, p. 500; LaRue, pers. comm. 2004). Hill and O'Maly (2009, p. 1) found that the frass pellets of larvae of another endangered June beetle (Mount Hermon June Beetle) contained a variety of plant species and fungi material demonstrating that they are not specialist host plant feeders but are microhabitat specialists. Hawk's (2010, p. 2) observations at Smoke Tree Ranch indicate Casey's June beetle may be similar, ''We did not observe females at Smoke Tree [Ranch], but many hundreds of emergence holes associated with native vegetation, irrigated tamarisk, fan palms, oleander, and olive. We still are not sure what plants of any sort mean to [Casey's June beetle] grubs * * *.'' Therefore, the hypothesis that Casey's June beetles feed on organic matter and detritus below ground is supported by the best available scientific information.

The Palm Springs area has slightly higher precipitation than surrounding areas in the eastern Coachella Valley, due to its proximity to the base of the San Jacinto and Santa Rosa Mountains (LaRue pers. comm. 2006). This precipitation keeps the underlying soil damp, which is an important component for Casey's June beetle life history because they, like many other subterranean scarab beetles, prefer the interface between surface soil and damp subsoil (Hovore 1995, p. 6; LaRue pers. comm. 2008). The depth of the damp soil is generally between 4 inches (in) (10 centimeters (cm)) to 8 in (20 cm) (Hovore 1995, p. 5) and averages 72 to 78 °F (22 to 26 °C) (USDA 1980, p. 11). This depth coincides with the depth at which larvae are usually found (2 in (5 cm) to 8 in (20 cm)) (LaRue pers. comm. 2004). Individual scrub plant architecture has developed for maximum capture of precipitation, channeling water along stems to the central root system. Moisture in the soil layer prevents desiccation of larvae and eggs and maintains a constant temperature (LaRue pers. comm. 2008). Additionally, areas with higher soil moisture are associated with a higher density of vegetation and microorganisms, such as fungi and bacteria believed to provide a more diverse food source for beetle larvae (LaRue pers. comm. 2008).

The Sonoran desert plant community endemic to the Palm Canyon Wash and adjacent terraces also serves to maintain habitat consistency. The Carsitas series soils have a water table located from 2 to 6 ft (0.6 to 1.9 m) deep. Shrubs are important in water and nutrient cycling in desert ecosystems (Sala *et al.* 1989, pp. 501–505; McAuliffe 1994, pp. 111–148). Desert shrubs have deeper root systems that bring water from lower levels up to higher levels, cycle nutrients through the soil, and mediate diurnal temperature variations. Midday temperatures are lower near the center of desert scrub patches than in areas outside the canopy (Weins 1985, pp. 174–176). The combination of moisture

cycling, diurnal temperature variation, and seasonal climate variation (Rosenburg 1974, pp. 66–74) may provide beetle larvae with a gradient of micro-environments to inhabit in the subsoil through the year, thereby allowing them to maintain optimal body temperature and humidity levels. Therefore, the precipitation within the Palm Canyon area, and its influence on the local plant community, may be a unique factor required for Casey's June beetle.

Soils associated with known occurrences of Casey's June beetles are described by Hovore (2003, p. 2) as almost entirely of the Carsitas Series (CdC), typically gravelly sand, single grain, slightly effervescent, moderately alkaline (pH 8.4), loose, non-sticky and non-plastic, and deposited on 0 to 9 percent slopes. These soils show light braiding and some organic deposition on alluvial terraces and where they occur within washes, although they generally do not receive scouring surface flows (Hovore 2003, p. 2). Additionally, Casey's June beetle is associated with RA and ChC soils (Anderson 2007, p.1), usually occurring in these soils when they are contiguous with CdC soil. The CdC type soils may also contain small inclusions of fine or coarse soils, such as MaB and CpA (USDA 1980, pp. 11–12, 16, and 23).

Riverwash (RA) soil is also an important component of Casey's June beetle habitat because organic matter and vegetation is uprooted, redistributed, and buried in the wash during flood events. Debris deposited by these hydrological processes and periodic flooding are essential to maintain alluvial soils in Palm Canyon Wash and may serve as new or re-conditioned habitat.

Cover or Shelter

The upland terraces and Palm Canyon Wash are the majority of remaining areas known to be inhabited by Casey's June beetle. The upland terraces offer the only known shelter from flooding and scouring events and ORV impacts, as vehicles tend to remain within the wash. Because the Palm Canyon Wash experiences periodic flooding and scouring that is likely to impact the species, upland terraces are essential to the conservation of Casey's June beetle for long-term maintenance of the population. Systematic surveys in wash areas contiguous with upland habitat indicate this area is also important to the long-term survival of the species (per above discussion, when population segment numbers have increased to the point where the emigration rate exceeds immigration and the habitat is a ''source''). Both the upland terraces and Palm Canyon Wash contain soil types and vegetation conducive to burrowing and support the nutritional and physiological processes essential for the species.

Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring That Are Protected From Disturbance

Casey's June beetle breeding and dispersal mechanisms require specific habitat important to species'' reproduction. During breeding, adults of the species are most active at dusk. Females emit pheromones to attract males to burrows for the purposes of mating. Breeding success depends on males'' ability to detect pheromones and ability to maneuver to remain in contact with the pheromone plume (Domek *et al.* 1990, pp. 271–276). The southern Palm Springs area is surrounded by mountains and ridges that protect the area from the high winds that are frequent in the Coachella Valley (Wright pers. comm. 2004), thus providing conditions that are conducive to successful male flight, and pheromone detection and tracking. Therefore, successful reproduction depends on shelter provided by the surrounding mountains and ridges.

Hawks (pers. comm. 2011a and b) noted that RA soil in the Palm Canyon Wash above approximately 580 ft (177 m) in elevation (just below the dam) becomes too disturbed, likely by natural scouring, to support Casey's June beetle. These data indicate suitable habitat associated with the wash is likely limited to soils contiguous with the wash up to 580 ft (177 m) in elevation (this includes some CdC soils contiguous with the wash at 580 ft (177 m) that extend up to approximately 620 ft (189 m) in elevation). These data also indicate relatively small patches of CdC soil that are only contiguous with more disturbed portions of the wash above 580 ft (177 m) in elevation in Palm Canyon are not likely to support Casey's June beetle occupancy because they appear isolated with regard to female immigration and are especially vulnerable to flood scouring. Hawks (pers. comm. 2011a) also noted that he had never observed emergence holes in ChC soil and expressed doubt that ChC soil not distributed as an inclusion in CdC soil provided habitat for Casey's June beetle.

Dispersal of Casey's June beetle is also limited by the flightlessness of females. This adaptation significantly hinders this species' ability to disperse or recolonize an area. Because female Casey's June beetles are flightless, the species' breeding system and the ability of females to disperse over land (which is uncertain but much reduced compared to flight-capable males) is restricted geographically to a relatively small area. Females appear to emerge from burrows and remain on the surface nearby and then either re-enter these burrows or dig new burrows to lay eggs. If an isolated portion of the population were extirpated it would be difficult if not impossible for females to recolonize that area depending on the nature and extent of isolating factors (de Vries *et al.* 1996, pp. 332–342; Driscoll and Weir 2005, pp. 192–193) because flightless females disperse only by crawling and likely by water flow in wash areas (although it is unclear what the survival rate would be under water-flow dispersal). Because male Casey's June beetles cannot repopulate an area by themselves, and females are flightless, habitat fragmentation and isolation are significant threats to gene flow in this species. Therefore, connectivity of suitable habitats that provides for dispersal over multiple generations is essential to the conservation of the species.

Minimally disturbed suitable habitat is also essential to Casey's June beetle. As stated above, the adults of this species burrow in alluvial soils to lay eggs and the larval stages are known to live out this life stage in alluvial soil as well. Surfaces such as highly manipulated nonnative ornamental landscaping do not serve the same function as native or minimally disturbed habitat. Although Casey's June beetles are documented to occur in abundance within the residential community of Smoke Tree Ranch (Cornett 2004, Table 1; Hawks pers. comm. 2010), it is likely that breeding and female movement is largely restricted to the relatively undisturbed natural areas within the Smoke Tree Ranch property, and species abundance is primarily the result of: (1) Minimal past disturbance within a regulated and gated community; (2) a relatively large, contiguous, occupied, minimally disturbed, upland habitat area dominated by native plants; and (3) supplemental soil moisture from landscape watering.

Primary Constituent Elements for Casey's June Beetle

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Casey's June beetle within the geographical area occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific

elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements (PCEs) specific to Casey's June beetle are:

(1) Soils of the Carsitas (CdC) gravelly sand and Riverwash (RA) series, or inclusions of Carsitas cobbly sand (ChC) series soils, or inclusions of Myoma fine sands (MaB) or Coachella fine sands (CpA) within CdC soils, at or below 620 ft (189 m) in elevation, associated with washes and alluvial fans deposited on 0 to 9 percent slopes to provide space for population growth and reproduction, moisture, and food sources; and

(2) Predominantly native desert vegetation, to provide shelter from traffic-related mortality and food for the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and which may require special management considerations or protection. Special management of the physical or biological features is required in these areas to reduce threats to habitat. Major threats to Casey's June beetle habitat include: (1) Habitat disturbance; (2) habitat loss and fragmentation associated with development (such as grading, building roads and other infrastructure, and constructing commercial and residential structures); and (3) recreational activities (for example, ORV use and equestrian activities) as described in the Factor A and Factor E discussions in the Summary of Factors Affecting the Species section above.

Anderson and Love (2007) examined the rate of habitat loss since 1996, and additional analyses identified continuing habitat loss over the last 2 years. Because Casey's June beetle is now restricted to a relatively small area compared to its known historical range, and habitat loss and fragmentation are threats to the long-term viability of Casey's June beetle, special management considerations or protection of the PCEs are needed to address development or urban expansion impacts. Urban expansion should be avoided within or adjacent to Casey's June beetle habitat and linkage corridors between habitat patches should be provided to address the protection necessary for this species at this time. Preserving habitat and corridors linking habitat patches have been shown, in general, to be vital for the conservation of many species, and it stands to reason this is true for a species such as Casey's June beetle that has flightless females.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species.

We designated critical habitat in areas we determined are within the species'' present range and contain the physical or biological features essential to the conservation of the species. When determining the possible distribution of areas that meet the definition of critical habitat for Casey's June beetle, we considered all possibly suitable habitat patches remaining within the species'' historical range, from the northeastern San Jacinto Mountain foothills, south to the City of Palm Desert. For Casey's June beetle, we limited critical habitat to the known present population distribution of the species (occupied habitat), because the only potentially suitable habitat patches outside that area occur primarily in small, fragmented, disjunct parcels, and many are highly disturbed. In this designation we have included both upland and wash habitats as well as connecting habitats which we determined are essential to the conservation of the species. Additional potential habitat outside the species'' known present range (unoccupied areas) is relatively remote in relation to the likely flight movement distances of male beetles or terrain through which female beetles are likely to travel from occupied areas. Based on the best scientific information currently available, including recent negative surveys (see New Species Information section above), it is unlikely that these disjunct habitat patches would be capable of supporting reintroduced populations or remain viable due to their isolated, fragmented, and sometimes disturbed nature.

We consider all known occurrences of Casey's June beetle to constitute a single population based on currently available data. Because of the limitations of surveys to detect insect occupancy, the population level is the appropriate scale at which to determine occupancy of areas designated as critical habitat. We assume all known occupied areas are within the same population distribution based on the potential for male movement among sites that contain the physical or biological features (see *New Species Information* section above). We determined all existing CdC and RA soils, and inclusions (all relatively small) of ChC, MaB, or CpA soils within CdC soils, that are contiguous with soils containing Casey's June beetle observation locations are occupied. We made this determination because larval and adult male and female occupancy of CdC and RA soils, and the likelihood of adult female and male movement within all these PCE soils defines occupancy appropriately for this species with regard to the definition of critical habitat. Therefore, we have determined all areas we are designating as critical habitat are currently occupied.

We used the following factors to delineate critical habitat: All areas (1) comprised of contiguous CdC or RA soils containing recent occurrence locations (1995 to present), or within the flight range of adult male Casey's June beetles from these recent locations; or (2) comprised of ChC, MaB, and CpA soils contiguous with these CdC or RA soils; and (3) that were not denuded, graded or landscaped; and (4) that are below 620 ft (189 m) in elevation; and (5) that were not otherwise determined to be unsuitable due to development-associated degradation (*e.g.*, isolation, soil compaction). The designated critical habitat is designed to encompass the estimated Casey's June beetle population distribution and the soils and native vegetation needed for its long-term conservation. Changes to the PCEs from those described in the proposed rule (see Summary of Changes from the 2009 Proposed Critical Habitat Rule, below) did not affect our criteria, because areas containing the revised PCEs were already included in proposed critical habitat.

We delineated the critical habitat boundaries using the following steps:

(1) We mapped observations of Casey's June beetles from Bruyea (2006), Cornett (2004), Hovore (1997), Hovore (1995), Powell (2003), and Simonsen-Marchant (2000, 2001). These records were initially mapped over digital aerial photographs of the Palm Canyon area in the City of Palm Springs, California, acquired in June 2005 with a ground resolution of 3.28 ft (1 m). We believe these surveys are the best available data

on Casey's June beetle current distribution and provide a logical starting point for the delineation of critical habitat.

(2) We incorporated digital soil data produced by the USDA Natural Resources Conservation Service for all soils in the Palm Canyon area (USDA 2000). These data delineated CdC, RA, ChC, MaB, and CpA soils. We included areas where CdC soils were within the likely flight range of adult male Casey's June beetles from recent occurrence locations (1995–present). This mapping delineated the soils that are suitable for, and occupied by, the beetle.

(3) After mapping the soils, we examined the elevations of all Casey's June beetle observations. We determined the highest elevation of an occurrence was 580 ft (177 m), and we extended the boundary elevation 40 ft (12 m) to account for gradients between soil types and to include CdC soils contiguous with portions of the wash that are known to be occupied. As a result, we are limiting designation of critical habitat to areas below the 620-ft (189-m) contour.

(4) We utilized digital aerial photographs acquired in April 2008 with a ground resolution of 6 in (15 cm) to closely examine remaining areas to ensure they captured the physical or biological features necessary to support Casey's June beetle life-history functions. Specifically, we removed areas that did not have appropriate soils (such as golf course greens) or that contained large denuded or graded areas to eliminate areas that likely do not and could not support Casey's June beetles.

(5) We reviewed new scientific information regarding the species' southern population distribution limits and determined some areas were not likely to support occupancy now or in the foreseeable future and therefore did not meet the definition of critical habitat. Based on Hawk's (pers. comm. 2011a) observation that wash habitat soil suitability and occupancy ended at approximately 580 ft (177 m) in elevation, and did not extend south of the small dam in Palm Canyon, we determined that non-contiguous patches of CdC soils at the southern extreme of the area proposed as critical habitat are not likely within the current population distribution of the species, and are not likely to support occupancy in the future (see *New Species Information* and *Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring that are Protected from Disturbance* sections above). We further determined that the western isolated fragments of formerly occupied habitat associated with South Palm Canyon Drive and Bogert Trail in the southern portion of the species' distribution were no longer occupied, and were too isolated by development and disturbed to support occupancy in the future (see *New Species Information* section above). Therefore, these areas were removed.

(6) Based on Hawks' (pers. comm. 2011a) observation that no burrow holes have ever been observed in ChC soil (see *New Species Information* section above), we removed all patches of ChC soil not completely surrounded by CdC and RA soils.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack physical or biological features for Casey's June beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this designated critical habitat are excluded by text in this final rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action may affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we consider to be occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential to the conservation of Casey's June beetle.

Summary of Changes From the 2009 Proposed Critical Habitat Rule

Based on comments received during the public comment periods (see *Comments 2* and *4* in the Summary of Comments and Recommendations section below), and new survey information, we added explanations in the *New Species Information* and Criteria Used To Identify Critical Habitat sections above to better characterize our knowledge of the species' present range and the potential for occupied habitat outside the known present range.

The most significant changes from the 2009 proposed critical habitat rule to this final rule include:

(1) We determined two areas included in the proposed critical habitat designation do not contain the physical or biological features essential to the conservation of the species and, therefore, do not meet the definition of critical habitat (see Critical Habitat Background section above for the definition of critical habitat). We determined the easternmost proposed critical habitat polygon located on State Route 111 between Broadmoor Drive and Golf Club Drive did not contain areas mapped as Carsitas (CdC) gravelly sand soil series (PCE 1). Based on new information submitted by a commenter and examination of digital aerial photography, we also determined a portion of land in the vicinity of Araby Drive was composed of elevated fill dirt and, therefore, did not contain the physical or biological features essential to the conservation of the species (see Summary of Comments and Recommendations section, *Comment 12,* below). The edge of the elevated fill dirt correlated with the parcel map boundary. Based on recent survey and habitat information (see *New Species Information* and *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* sections above) we determined that formerly occupied CdC and associated soils adjacent to and west of South Palm Canyon Drive are no longer likely to be occupied or to support occupancy in the future, and are therefore not essential for the conservation of the species. Therefore, these areas do not meet the definition of critical habitat. We further determined that the southernmost non-contiguous patches of CdC soil in Palm Canyon and two areas of ChC soil (in Palm Canyon and near Araby Drive) not completely surrounded by CdC and RA soil do not meet the definition of critical habitat. See *New Species Information* and Criteria Used To Identify Critical Habitat sections above for further discussion. Removal of these lands that were determined not to meet the definition of critical habitat resulted in a total reduction of 179 ac (73 ha) from the areas proposed for critical habitat designation in 2009.

(2) Per peer reviewer *Comment 2* in the Summary of Comments and Recommendations section below (see also *Comment 10*), satellite image assessment, and field survey information provided by David Hawks (pers. comm. 2010), we modified PCE 2 to include other Sonoran vegetation types and disturbed habitat. In the proposed rule it specified ''Intact, native Sonoran (Coloradan) desert scrub vegetation and native desert wash vegetation that provide shelter and food for the species.'' In this rule, we specify PCE2 as, ''Predominantly native desert vegetation, to provide shelter from

traffic-related mortality and food for the species.'' This change to PCE 2 did not change areas identified as meeting the definition of critical habitat. The altered PCE more accurately characterized lands we had already determined met the definition of critical habitat.

(3) In the 2009 proposed rule, we stated we were not considering or proposing for exclusion under section 4(b)(2) of the Act tribal lands owned or managed by the Agua Caliente Band of Cahuilla Indians. Following review of tribal comments and an evaluation of our partnership with the Tribe, we determined that the benefits of exclusion outweigh the benefits of inclusion for tribal trust reservation lands (*i.e.*, non-fee, non-allotted lands), and that exclusion of these lands will not result in extinction of the species. We believe that excluding Agua Caliente Band of Cahuilla Indians tribal trust reservation lands from this final critical habitat will preserve our partnership with the Tribes and foster future development of habitat management plans with Agua Caliente Band of Cahuilla Indians and other tribes, thus positively affecting other listed species. Therefore, the Secretary is exercising his discretion to exclude a total of approximately 11 ac (4 ha) of non-fee, non-allotted tribal lands owned or managed by the Agua Caliente Band of Cahuilla Indians in this final critical habitat designation. For a complete discussion of the benefits of inclusion and exclusion, see *Application of Section 4(b)(2) of the Act,* below.

Of the approximately 777 ac (314 ha) of land proposed for critical habitat designation in 2009, approximately 587 ac (237 ha) are included in this final critical habitat designation. Our decision to not designate all of the proposed critical habitat does not imply that these non-designated areas are unimportant to Casey's June beetle. Projects with a Federal nexus that occur in these areas, or other areas potentially occupied by Casey's June beetle, which may affect the beetle must still undergo section 7 consultation. Our decision to not designate critical habitat in these areas does not reduce the consultation requirement for Federal agencies participating in, funding, permitting, or carrying out activities in these areas.

Final Critical Habitat Designation

We are designating one unit as critical habitat for Casey's June beetle. The critical habitat area described below constitutes our best assessment at this time of areas that meet the definition of critical habitat.

The approximate area of designated critical habitat for Casey's June beetle is shown in Table 1 and totals 587 ac (237 ha), including 152 ac (62 ha) of tribal allotment and fee land, 141 ac (57 ha) of local government land, and approximately 301 ac (122 ha) of private and quasi-public (flood control and water conservation district) land. Area estimates reflect all land within the critical habitat unit boundaries. Area values were computer-generated using GIS software, rounded to nearest whole number, and then summed.

TABLE 1—DESIGNATED CRITICAL HABITAT FOR CASEY'S JUNE BEETLE

Location	Federal and state lands ac (ha)	Local government ac (ha)	Tribal allotment and fee lands ac (ha)	Private ac (ha)	Total ac (ha)
Palm Springs	0 (0)	141 (57)	152 (62)	301 (122)	587 (237)
Total Area Final Critical Habitat	0 (0)	141 (57)	152 (62)	301 (122)	587 (237)

Note: Area sizes may not sum due to rounding.

We present a brief unit description, and reasons why the unit meets the definition of critical habitat for Casey's June beetle, below.

Palm Springs Unit

The unit consists of 587 ac (237 ha) and is located in Riverside County, California, and extends from the confluence of Andreas Canyon Wash with Palm Canyon Wash northward along the toe of slope northeastward (downstream) along Palm Canyon Wash, crossing East Palm Canyon Drive to south and east of Gene Autry Trail. The unit includes Palm Canyon Wash and contiguous suitable soils from the entrance of Indian Canyons north to Calle Arriba, and one area south of and adjacent to East Palm Canyon Drive (SR 111) west of Gene Autry Trail.

The entire critical habitat unit is considered occupied by Casey's June beetle and contains the physical or biological features essential to the conservation of the species, including alluvial soils of the CdC, RA, ChC (if mapped as completely surrounded by CdC and RA soils), MaB, and CpA soil series at or below 620 ft (189 m) in elevation, associated with washes and alluvial fans deposited on 0 to 9 percent slopes (PCE 1), and predominantly native desert vegetation (PCE 2).

Habitat in the unit is threatened by development, soil disturbance, fragmentation, effects of stream channelization, and effects of climate change. Specifically, urban expansion, in-fill development, and recreational activities continue to result in the loss and degradation of habitat. Therefore, the features essential to the conservation of the species in this unit require special management considerations or protection to minimize impacts resulting from these threats (see Special Management Considerations or Protection section above).

Approximately 25 percent of this unit (152 ac (62 ha)) is on Agua Caliente Band of Cahuilla Indians reservation land. As described above (see Factor D), the Tribe informed us in an October 28, 2008, letter that they removed Casey's June beetle from the list of species addressed in the draft Tribal HCP; however, they indicated they will ''continue to informally coordinate with the Service regarding this species where it occurs on the Reservation.'' The Tribe stated they are deferring to the Service to allow ''the Service to take the lead in addressing how to effectively conserve and protect this species'' (ACBCI 2008, p. 1). We continue to work with the Agua Caliente Band of Cahuilla Indians to encourage management of Casey's June beetle habitat. We determined that at this time it is appropriate to exclude 11 ac (4 ha) tribal trust reservation lands (*i.e.*, non-fee and non-allotted lands) from the critical habitat unit (see *Tribal Reservation Lands* under Exclusions section below).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened

species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical or biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

Federal activities that may affect Casey's June beetle or its critical habitat require section 7 consultation under the Act. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''Reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Casey's June beetle. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. Generally, the conservation role of Casey's June beetle's critical habitat unit is to support a viable, self-sustaining population of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Examples of activities that, when authorized, funded, or carried out by a Federal agency, may affect critical habitat and, therefore should result in consultation for Casey's June beetle include, but are not limited to, actions that would cause disturbance, loss, or fragmentation of critical habitat. Such activities could include, but are not limited to, development, grading, building roads and other infrastructure, constructing commercial and residential structures, and recreational activities (for example, ORV use and equestrian activities). These activities could permanently destroy critical habitat, compact soil, or alter soil moisture levels. Compacted or dry soils do not allow the species to burrow into, move, and feed in the soil as needed during the time they are underground. Please see Summary of Factors Affecting the Species section above for a more detailed discussion of the impacts of these actions to the listed species.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the designation. Therefore, we are not exempting lands from this critical habitat designation for Casey's June beetle pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

Tribal Reservation Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's Memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); President's Memorandum of November 5, 2009, ''Tribal Consultation'' (74 FR 57881); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are more appropriately managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. In most cases, designation of tribal lands as critical habitat provides very little additional conservation benefit to endangered or threatened species. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, and may negatively impact a positive government-to-government relationship between the Service and tribal governments essential to achieving a mutual goal of successfully managing ecosystems upon which endangered and threatened species depend. When conducting our analysis under section 4(b)(2) of the Act, we consider our existing and future partnerships with tribes and existing conservation actions that tribes have implemented or are currently implementing. We also take into consideration conservation actions that are planned as a result of ongoing government-to-government consultations with tribes.

Agua Caliente Band of Cahuilla Indians

A Federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, Executive Order, or Federal statute or administrative action as permanent tribal homelands, and where the Federal government holds title to the land in trust on behalf of a tribe. The Agua Caliente Indian Reservation consists of a checkerboard of parcels found primarily in the City of Palm Springs, and the Cities of Cathedral City and Rancho Mirage, and unincorporated Riverside County, California. Lands within the Agua Caliente Indian Reservation boundary include Tribal trust land, allotted trust land, Tribe-owned fee land, privately owned (Tribal members and non-Indians) fee land, and public land. Individual sections of Agua Caliente Indian Reservation land are interspersed with public land owned or under the control of various Federal and State agencies, and privately owned land under the jurisdiction of the County and/or one of the three municipalities (ACBCI 2010b p. 1–1). Tribal trust reservation lands are those lands that are under the sovereign control of the Tribe. Through our ongoing coordination with the Tribe, we have established a partnership that has benefitted natural resource management on tribal lands. For our 4(b)(2) balancing analysis we considered our partnership with the Tribe and, therefore, analyzed the benefits of including and excluding those lands under the sovereign control of the Tribe (tribal trust reservation lands) that met the definition of critical habitat. Because Tribe-owned fee, private fee, or allotted lands are potentially subject to other jurisdictions and not under the sovereign control of the Tribe, we did not include these lands in our exclusion analysis.

Based on the detailed analysis presented below, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude approximately 11 ac (4 ha) of Agua Caliente Band of Cahuilla Indians tribal

trust reservation lands (*i.e.,* non-fee, non-allotted land held in trust by the Federal government for the Tribe) from this final critical habitat designation for Casey's June beetle.

Benefits of Inclusion—Agua Caliente Band of Cahuilla Indians

The principle benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. However, for some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. All lands considered for exclusion are currently considered occupied by Casey's June beetle and will be subject to the consultation requirements of the Act in the future. Although a jeopardy and adverse modification analysis must satisfy two different standards, because any modifications to proposed actions resulting from a section 7 consultation to minimize or avoid impacts to Casey's June beetle will be habitat-based, it is not possible to differentiate any measures implemented solely to minimize impacts to the critical habitat from those implemented to minimize impacts to the beetle. Additionally, this species' highly restricted geographic range relative to its historical distribution (as evidenced by documented loss of occupied habitat), ongoing habitat impacts and losses, and slow female dispersal rate, increase the likelihood an action that adversely affects Casey's June beetle will jeopardize the continued existence of the species. Therefore, in the case of Casey's June beetle, we believe the benefits of critical habitat designation are very similar to the benefits of listing, and in some respects would be indistinguishable from the benefits of listing.

Public education is often cited as another possible benefit of including lands in critical habitat as it may help focus conservation efforts on areas of high value for certain species. Partnership efforts with the Agua Caliente Band of Cahuilla Indians to conserve Casey's June beetle and other federally listed species addressed in their draft tribal HCP have resulted in heightened awareness about the species. However, we believe there is little, if any, educational benefit attributable to critical habitat beyond those achieved from listing of Casey's June beetle under the Act, and the Tribe's efforts to develop a HCP. The Service is conducting ongoing coordination with Agua Caliente Band of Cahuilla Indians and other southern California tribes. Service coordination includes attending meetings with tribal representatives to discuss ongoing projects, management plans, and other issues as they arise. We believe our continuing coordination with the Agua Caliente Band of Cahuilla Indians will further promote awareness of the species and its conservation needs, and will facilitate development of additional management plans (beyond those already in existence), as well as address Casey's June beetle conservation on tribal lands.

We believe existing tribal regulations, the Indian Canyons Master Plan, and current management of Heritage Park will ensure any land use actions, including those funded, authorized, or carried out by Federal agencies, are not likely to result in the destruction or adverse modification of all lands considered for exclusion. For example, in a letter dated April 29, 2010 (ACBCI 2010c, p. 3), the Tribe stated that, rather than delegating land use authority to a local agent such as the City of Palm Springs in the Planning Area (*i.e.,* in Casey's June beetle habitat south of Acanto Drive), the Tribe will directly regulate land use in this area through its Indian Canyons Master Plan and tribal zoning. The Tribe indicated they would use their existing regulatory structure and active role in regulating land use and development in this area to protect Casey's June beetle and its habitat (ACBCI 2010c, p. 3). Furthermore, all lands being excluded are included in Heritage Park (ACBCI 2007, p. 5), an area within Indian Canyons acquired with funds from the 1988 California Wildlife, Coastal, and Park Land Conservation Act (1988 Bond Act) (ACBCI 2007, p. 2). The 1988 Bond Act requires Heritage Park to be managed to preserve Indian heritage and native palms and other plants. The 1988 Bond Act further stipulated that: ''[a]fter that acquisition, the state shall convey title to all those lands to the United States in trust for the [Tribe] as part of the [Agua Caliente Indian Reservation] on the conditions that * * * the lands be open to the public, subject to reasonable restrictions * * * and the lands be used for protection of wildlife habitat and other resources.'' Any potential impacts to Casey's June beetle from future proposed activities on the tribal trust reservation lands will be addressed through the Indian Canyons Master Plan or through a section 7 consultation using the jeopardy standard, and such activities would also be subject to the take prohibitions in section 9 of the Act. As a result we believe the regulatory benefits of critical habitat designation on tribal trust reservation land would largely be redundant with the combined benefits of listing and existing tribal regulations.

The designation of Casey's June beetle critical habitat may strengthen or reinforce some Federal laws, such as NEPA or Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental law; however, the listing process, HCP planning efforts, and consultations (which included conferencing on effects to Casey's June beetle) that have already occurred will provide this benefit. Therefore, in this case we view this benefit as redundant with the benefit the species will receive from listing under the Act.

In summary, we do not believe that designating critical habitat within Agua Caliente Band of Cahuilla Indians tribal trust reservation lands will provide additional benefits for Casey's June beetle. Projects on these lands with a Federal nexus (*e.g.,* funded, approved, or carried out by Federal agencies, such as the Bureau of Indian Affairs, Indian Health Services, or U.S. Army Corps of Engineers) will require section 7 consultation with the Service (regardless of critical habitat designation) because the habitat is occupied (see *New Species Information* section above) by Casey's June beetle. Furthermore, a high level of protection is already provided to tribal trust reservation lands that meet the

definition of critical habitat by existing conservation, regulations, and management. The ongoing coordination between the Service and the Tribe has already raised the level of awareness about the species, and we believe our ongoing coordination with the Tribe will facilitate development of species-specific management actions for these lands to address the conservation of Casey's June beetle.

Benefits of Exclusion—Agua Caliente Band of Cahuilla Indians

Under Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes and tribal sovereignty while striving to ensure that tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation. In accordance with the Presidential memorandums of April 29, 1994, and November 9, 2009, we believe that, to the maximum extent possible, tribes are the appropriate governmental entities to manage their lands and tribal trust resources, and that we are responsible for strengthening government-to-government relationships with tribes. Federal regulation through critical habitat designation will adversely affect the tribal working relationships we now have and which we are strengthening throughout the United States. Maintaining positive working relationships with tribes is key to implementing natural resource programs of mutual interest, including habitat conservation planning efforts. In light of the above-mentioned orders and for a variety of other reasons described in their comment letters and communications, critical habitat designation is typically viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance. In comments submitted during the public comment periods on this proposed rule, and in comments submitted on other proposed critical habitat rules (such as the 2009 proposed revised critical habitat designation for arroyo toad (*Anaxyrus californicus*) (74 FR 52611; October 13, 2009)), several tribes stated that designation of critical habitat would negatively impact government-to-government relations.

In the case of the Casey's June beetle proposed critical habitat, the Agua Caliente Band of Cahuilla Indians submitted comments indicating they are opposed to critical habitat designation and believe reservation lands should be excluded. The Agua Caliente Band of Cahuilla Indians cited Executive Order 13175, Secretarial Order 3206, and the President's Memorandum on Tribal Consultation (74 FR 57881; November 9, 2009) in their comments to the Service and their interpretation of these Federal enactments as meaning ''no Federal agency, and especially not any agency of the Department of the Interior, such as the Service, will inflict regulatory, economic, or governmental burdens on tribes and their members when adequate alternatives exist, such as avoidance, cooperation on a government-to-government basis, or reliance on tribal measures'' (ACBCI 2010c, p. 4). In their comments to the Service on the proposed rule, the Tribe indicated they would use their existing regulatory structure and active role in regulating land use and development in this area to protect Casey's June beetle and its habitat (ACBCI 2010c, p. 3). These communications clearly indicate that designation of tribal trust reservation lands as critical habitat for Casey's June beetle would impact future conservation partnership opportunities with the Tribe. Therefore, a critical habitat designation could potentially damage our relationship with the Agua Caliente Band of Cahuilla Indians.

We believe significant benefits would be realized by forgoing designation of critical habitat on tribal trust reservation (*i.e.*, non-fee, non-allotted) lands managed by the Agua Caliente Band of Cahuilla Indians. These benefits include:

(1) Continuing and strengthening of our effective relationship with the Tribe to promote conservation of Casey's June beetle and its habitat;

(2) Allowing continued meaningful collaboration and cooperation in working toward recovering this species, including conservation actions that might not otherwise occur; and

(3) Encouraging other tribes to complete management plans in the future on other reservations for other federally listed and sensitive species and engage in meaningful collaboration and cooperation.

Because the Tribe is the entity that enforces protective regulations on tribal trust reservation land, and we have a working relationship with them, we believe exclusion of these lands will yield a significant partnership benefit. There has been a substantial amount of government-to-government consultation between the Tribe and Service on developing the draft Tribal HCP and this rulemaking process for Casey's June beetle. Although the Tribe informed us in an October 28, 2008, letter that they removed Casey's June beetle from the list of species addressed in the draft Tribal HCP, they indicated they will ''continue to informally coordinate with the Service regarding this species where it occurs on the Reservation.'' The Tribe stated they are deferring to the Service to allow ''the Service to take the lead in addressing how to effectively conserve and protect this species'' (ACBCI 2008, p. 1). Although the Tribe has suspended their pursuit of a section 10(a) permit (ACBCI 2010a, p. 1), they are continuing to implement the draft HCP and will continue to protect and manage natural resources within the Tribe's jurisdiction (ACBCI, 2010a, p. 1; ACBCI 2010b, p. ES–1). We will continue to work cooperatively with the Tribe on efforts to conserve Casey's June beetle. Therefore, excluding these lands from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnerships and the potential of fostering new tribal partnerships.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Agua Caliente Band of Cahuilla Indians

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of Agua Caliente Band of Cahuilla Indians tribal trust reservation lands as critical habitat for Casey's June beetle. We believe past, present, and future coordination with the Agua Caliente Band of Cahuilla Indians has provided and will continue to provide sufficient education regarding Casey's June beetle habitat conservation needs on tribal trust lands, such that there would be no additional educational benefit from designation of critical habitat. Further, because any potential impacts to Casey's June beetle from future projects will be addressed through the Indian Canyons Master Plan or through a section 7 consultation with us under the jeopardy standard, we believe critical habitat designation on tribal trust reservation land would largely be redundant with the combined benefits of listing and existing tribal regulations and management. Therefore, the benefits of designating critical habitat on tribal trust reservation lands are not significant.

On the other hand, the benefits of excluding Agua Caliente Band of Cahuilla Indians tribal trust reservation lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with the Tribe, reinforce those we are building with other tribes, and foster future partnerships and development of

management plans; whereas inclusion will negatively impact our relationships with the Tribe and other southern California tribes. We are committed to working with the Agua Caliente Band of Cahuilla Indians to further the conservation of Casey's June beetle and other endangered and threatened species. The Tribe will continue to use their existing regulatory structure and active role in regulating land use and development in this area to protect Casey's June beetle and its habitat (ACBCI 2010c, p. 3). The Tribe continues to provide for some indirect conservation of Casey's June beetle by implementing provisions of the draft HCP. Therefore, in consideration of the relevant impact to our partnership and our government-to-government relationship with the Agua Caliente Band of Cahuilla Indians, and the ongoing conservation management practices of the Tribe and our current and future conservation partnerships with other tribes, we determined the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

In summary, we find that excluding Agua Caliente Band of Cahuilla Indians tribal trust reservation lands from this final critical habitat will preserve our partnership and may foster future habitat management and species conservation plans with the Tribe and with other tribes now and in the future. These partnership benefits are significant and outweigh the insignificant additional regulatory and educational benefits of including these lands in final critical habitat for Casey's June beetle.

Exclusion Will Not Result in Extinction of the Species—Tribal Lands

We determined that the exclusion of 11 ac (4 ha) of tribal trust reservation lands from the designation of Casey's June beetle critical habitat will not result in extinction of the species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to Casey's June beetle occupancy and protection provided by the Indian Canyons Master Plan provide assurances that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Therefore, based on the above discussion the Secretary is exercising his discretion to exclude approximately 11 ac (4 ha) of tribal trust reservation lands managed by the Agua Caliente Band of Cahuilla Indians from this final critical habitat designation.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis (DEA) of the critical habitat designation and related factors (Industrial Economics, Incorporated (IEc) 2010A, pp. 1–75). The DEA, dated February 22, 2010, was made available for public review from March 31, 2010, through April 30, 2010 (75 FR 16046). Following the close of the comment period, a final analysis (dated June 1, 2010) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEc 2010b, pp. 1–84). Substantive comments and information received on the DEA are summarized in the Summary of Comments and Recommendations section below.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for Casey's June beetle; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.*, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks at baseline impacts expected to occur due to listing and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks and considers those costs that may occur in the 20 years following listing and the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies economic impacts of Casey's June beetle conservation efforts associated with the following categories of activity: (1) Residential and commercial development, and (2) flood damage reduction. Baseline impacts include the potential economic impacts of all actions relating to the conservation of the Casey's June beetle, including costs associated with sections 7, 9, and 10 of the Act. Baseline impacts also include the economic impacts of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation in the area evaluated in the DEA. In other words, baseline impacts include those impacts associated with the listing of the species and not associated with critical habitat. Incremental impacts are those potential future economic impacts of conservation actions relating to the designation of critical habitat; these impacts would not be expected to occur without the designation of critical habitat.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for Casey's June beetle. Conservation efforts related to development activities constitute the majority of total baseline costs to areas proposed for critical habitat (approximately 86 percent). Impacts to flood control activities compose the remaining approximately 12 percent of impacts. Total future baseline impacts are estimated to be $19,242,100 in present value terms using a 7 percent discount rate over the next 20 years (2010 to 2029) in the areas proposed as critical habitat.

Approximately 100 percent of incremental impacts attributed to the critical habitat designation are expected to be related to development activities. The FEA estimates total potential

incremental economic impacts in areas proposed as critical habitat over the next 20 years (2010 to 2029) to be $6,173,340 in present value terms using a 7 percent discount rate, equivalent to $582, 320 in annualized economic impact over the analysis timeframe. This value is based on an assumption of total avoidance of designated acres and thus represents the upper-bound potential cost for each project. As such, it likely overstates the expected absolute cost of future actions to protect critical habitat.

The FEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA estimates lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the critical habitat designation might unduly burden a particular group or economic sector.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary has determined not to exercise his discretion to exclude any areas from this designation of critical habitat for Casey's June beetle based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for Casey's June beetle are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Summary of Comments and Recommendations

We requested written comments from the public and contacted appropriate Federal, State, and local agencies; tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule to list Casey's June beetle as endangered and designate critical habitat during two comment periods. The first comment period associated with the publication of the proposed rule (74 FR 32857) opened on July 9, 2009, and closed on September 8, 2009. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened March 31, 2010, and closed on April 30, 2010 (75 FR 16046). We did not receive any requests for a public hearing, with the exception of one that specified it be conducted only in the event their property was not excluded from critical habitat (see response to *Comment 18* below). During the comment periods, we requested all interested parties submit comments or information related to the proposed revisions to critical habitat, including (but not limited to) the following: Unit boundaries; species occurrence information and distribution; land use designations that may affect critical habitat; potential economic effects of the proposed designation; benefits associated with critical habitat designation; areas proposed for designation and associated rationale for the non-inclusion or considered exclusion of these areas; and methods used to designate critical habitat.

During the first comment period, we received 11 comments addressing the proposed listing and critical habitat designation: 5 from peer reviewers, 5 from public organizations or individuals, and one from a Native American tribe. During the second comment period, we received 14 comments addressing the proposed listing and critical habitat designation and the DEA. Of these latter comments, 3 were from Native American tribes and tribal members, and 11 were from public organizations or individuals.

We reviewed all comments we received from the peer reviewers and the public for substantive issues and new information regarding Casey's June beetle listing and critical habitat designation. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles pertinent to the species. We received responses from five peer reviewers who provided additional information, clarifications, and suggestions.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing and designation of critical habitat for Casey's June beetle. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: All five peer reviewers expressed general and specific support of our proposal to list Casey's June beetle and designate critical habitat. Support of the proposed rule includes the following:

(a) The first peer reviewer stated that the peer reviewer's collection data support our estimated population distribution. The first peer reviewer further concluded: (1) The cooler, more moist, and wind-protected environment found in the southwestern corner of Palm Springs is a required component of suitable habitat; (2) Casey's June beetle daily and seasonal activity is dependent on specific temperature and wind conditions; and (3) a single night ''or more'' (unspecified) of negative survey results are not sufficient to demonstrate absence.

(b) The second peer reviewer stated ''Given the natural history of the beetle and the accelerated fragmentation, modification, and loss of habitat, this species is in imminent danger of extirpation in part of its currently known range, and possibly extinction.'' The peer reviewer agreed that Factor A threats likely negatively affect all life stages of Casey's June beetle throughout the year, and generally agreed with our analyses for threat Factors B, C, and D. This reviewer further stated that even the slightest disturbance to relatively

small upland habitat areas is likely to have a significant and lasting effect on the patchily distributed sedentary females and larvae. The second peer reviewer also expressed the opinion that the central portion of Palm Canyon Wash is unlikely to support reproduction and larval development, and at best is used by males for movement. The peer reviewer believed it is prudent and biologically sound to treat all of the known occurrences of Casey's June beetle as a single population, and that the basic soil and vegetation types associated with Casey's June beetle are appropriate PCEs. Finally, the peer reviewer indicated that all Casey's June beetle habitat proposed as critical habitat currently under the jurisdiction of the Agua Caliente Band of Cahuilla Indians met the definition of critical habitat.

(c) The third peer reviewer believed our case for listing was compelling. The reviewer expressed concern that Casey's June beetle listing appears overdue because the species is found in such a small area with rapidly shrinking available habitat, also noting that this species is arguably the most habitat-restricted scarab beetle in the United States. The reviewer agreed that the continued survival of the species cannot depend on occupancy at a single locality (such as Smoke Tree Ranch) because of the possibility of stochastic events eliminating local occupancy. This reviewer argued that because the continued survival of Casey's June beetle depends on persistence in multiple locations, remaining available habitat meets the definition of critical habitat.

(d) The fourth peer reviewer agreed the present distribution of Casey's June beetle is well-known based on numerous formal and informal surveys conducted during the past several years by qualified biologists. The reviewer further stated that because of its present restricted distribution and imminent threats to remaining habitat, Casey's June beetle is one of the most imperiled species of insects, and probably the most endangered scarab beetle.

(e) The fifth peer reviewer stated the current distribution of Casey's June beetle was well-documented in the proposed rule, as was its soil type association and land use trends within the species'' range. The reviewer noted that given Casey's June beetle's extremely limited area of occurrence and ongoing habitat loss, it clearly ranks as Critically Endangered under the current International Union for the Conservation of Nature and Natural Resources (IUCN) criteria; therefore, Casey's June beetle's long-term persistence requires the highest level of protection possible under the law. The reviewer further noted our methods to determine what lands meet the definition of critical habitat seem robust enough to capture lands where probability of long-term persistence of the species is highest.

Our Response: We appreciate the peer reviewers'' critical review. Because all peer reviewers generally agreed on the validity of our methods and determinations, we believe the proposed listing and critical habitat designation is well-supported. With regard to the specific recommendation to include Agua Caliente Band of Cahuilla Indians reservation lands in critical habitat, we received some new information indicating some areas proposed as critical habitat on the reservation do not meet the definition of critical habitat. We further considered the possible benefits of including and excluding Agua Caliente Band of Cahuilla Indians'' tribal trust reservation lands that met the definition of critical habitat. Because benefits provided by critical habitat designation in this instance are very similar to the benefits of listing, and in some respects would be indistinguishable from benefits provided by listing and existing regulations (to minimize the benefits of inclusion), we find that excluding Agua Caliente Band of Cahuilla Indians tribal trust reservation lands from this final critical habitat will preserve our partnership with the Tribe and foster future development of habitat management plans with Agua Caliente Band of Cahuilla Indians and other tribes. Furthermore, we determined that exclusion of tribal trust reservation lands would not result in the extinction of the species. Therefore, we are excluding 11 ac (4 ha) of tribal trust reservation (*i.e.*, non-fee, non-allotment) lands from this final critical habitat designation (see also *Comment 7* below).

We agree with the third peer reviewer's statement that continued survival of the species cannot depend on occupancy at a single locality (such as Smoke Tree Ranch) because of the possibility of stochastic events eliminating local occupancy. We believe the species may be threatened by natural or anthropogenically influenced factors, such as climate change, increased intensity and frequency of scouring events in wash habitat, and small population size. However, we note that no species-specific, scientific, published models describing or predicting the magnitude of these threats have yet been conducted, and these threats should be the subject of future research (see below).

Comment 2: Four peer reviewers supplied information or opinions regarding species'' biology, and some suggested associated edits or revisions to proposed critical habitat.

(a) The first peer reviewer agreed that additional studies are needed to determine the effects of flooding on Casey's June beetle within its critical habitat. The reviewer also believes one of the greatest threats posed by developed areas adjacent to critical habitat is artificial lighting in habitat corridors during Casey's June beetle flight season because potentially large numbers of males are drawn away from females and die before they can mate. The peer reviewer stated that artificial light sources could lead to unnatural concentrations of Casey's June beetle occupancy that makes them more vulnerable to catastrophic events. The reviewer also stated that based on the known larval habits of other members of the tribe Melolonthini, Casey's June beetle larvae most likely feed on roots. The peer reviewer noted all surveys for Casey's June beetle have occurred in undeveloped upland habitats, and their observation of a small number of beetles along State Route 111 one night 30 years ago leads the peer reviewer to think there might still be small pockets of occupancy that persist within some of the more developed areas of Palm Springs west and south of State Route 111. They believe that knowing if and where these pockets exist would help biologists understand Casey's June beetle tolerance of landscaping and other land disturbance. The peer reviewer suggested future surveys should include storefronts, pools, and other established light sources within the urban landscape. The peer reviewer also suggested changing the wording of PCE 2 (74 FR 32874; July 9, 2009) because Casey's June beetle continues to occupy a few highly disturbed, weedy, and even previously graded or disked fields along State Route 111. They asserted that desert scrub or wash vegetation is not a requirement for Casey's June beetle presence and survival. Finally, the peer reviewer expressed the opinion that given the extent of the known population, conservation of anything less than proposed critical habitat would likely result in eventual extinction of the species.

(b) The second peer reviewer emphasized the most important single factor for continued species'' survival is that female beetles are flightless. Introduction of females would be the only way to reestablish the species in

isolated suitable areas where occupancy has been eliminated; therefore, locations where breeding females are currently found must be protected. The peer reviewer also stated persistence of the species at Smoke Tree Ranch (despite the annual death of many males due to lighting) indicates the number of males that survive has been sufficient to support continued reproduction; however, such a chronic drain on the number of males could eventually have long-term effects on species'' survival.

(c) The third peer reviewer stated that potential Casey's June beetle habitat is best characterized as any open space still existing within its former known distributional boundaries. They further clarified that they believe the species' known distribution is defined by female flightlessness and factors of soil type which are historical biogeographic factors that may never be fully understood.

(d) The fourth peer reviewer stated that because Casey's June beetle has experienced the loss of 97 percent of its original habitat, they recommend including additional isolated patches of suitable habitat outside the current known range in critical habitat where reintroduction could potentially maintain population size in the ''medium term.'' They suggested including habitat patches located on upland sites above floodplain areas vulnerable to periodic washout in critical habitat.

Our Response: Regarding the first peer reviewer's concern about artificial lighting, we understand that artificial lighting likely has some negative impact on Casey's June beetle and therefore, should be addressed though management actions to avoid take in occupied habitat (see *E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species* section above). Artificial lighting attracts only males in flight, often resulting in their death, but not necessarily impacting the abundance of female and immature individuals. Artificial lighting has no effect on the distribution of flightless females, and this life stage determines the spatial concentration of all other life stages. We agree that unnatural light sources attracting beetles into development adjacent to upland habitat poses at least a moderate threat to Casey's June beetle.

We agree with the all the peer reviewers that the following issues should be research priorities for this species' recovery: (1) The impact of male mortality on population abundance and fitness; (2) species' occupancy patterns within Palm Canyon Wash; (3) the effects of periodic flooding on individual mortality and movement; (4) delineation and protection of breeding areas; and (5) larval diet. As discussed in the proposed rule, one expert particularly familiar with the biology and taxonomy of the genus *Dinacoma* stated Casey's June beetle ''* * * exhibits no specific host preferences and larvae likely consume any available organic resources—including stratified detritus—encountered within the alluvial habitat'' (LaRue pers. comm. 2006). Furthermore, Hill and O'Maly (2009, p. 1) recently found that the frass pellets of larvae of another endangered June beetle (Mount Hermon June Beetle, *Polyphylla barbata*) contained a variety of plant species and fungi material, demonstrating that they are not specialist feeders but are microhabitat specialists. Therefore, while they will be helpful in prioritizing research objectives, we do not believe any of the peer reviewers' comments on research priorities require revisions to text in the *New Species Information* section above.

We agree with the first peer reviewer that more surveys should occur to validate our current knowledge of habitat occupancy. Most surveys that have occurred in the past have had variable methodologies and durations, and focused almost exclusively on attracting males in flight from an unknown distance to light traps. We will develop recommendations regarding where and how surveys should be done, and will likely require 10(a)(1)(A) recovery permit holders to follow a survey protocol that maximizes the likelihood of male and female Casey's June beetle detection at occupied sites. We will also continue to facilitate and fund surveys outside of designated critical habitat (Service 2009, p. 3) and encourage biologists and the public to examine urban light sources and report any observations of male Casey's June beetles to us for analysis.

We considered the first peer reviewer's recommendation to change proposed PCE 2 to not include desert scrub or wash vegetation to allow for incorporation of disturbed, weedy, and previously graded or disked fields. In order to confirm the validity of this recommendation, we reviewed satellite imagery of the sites where occupancy was recently documented that best fit the description of ''disturbed, weedy, and previously graded or disked fields'' and noted the presence or absence of desert scrub or wash vegetation. We also obtained field survey information regarding habitat conditions (Hawks pers. comm. 2010). We determined the peer reviewer had raised a valid point and edited PCE 2 to include other Sonoran vegetation types and disturbed habitat (as long as they were not isolated by development and unlikely to return to their natural state). In the proposed rule we specified PCE 2 to include ''Intact, native Sonoran (Coloradan) desert scrub vegetation and native desert wash vegetation * * *.'' In this final rule we use the more inclusive language of ''predominantly native desert vegetation.''

Regarding the fourth peer reviewer's recommendation to include additional areas as critical habitat, we carefully considered all patches of apparently suitable habitat within the species' historical (versus current) range for proposal as critical habitat, even areas of suitable habitat where reintroduction of beetles would be necessary for them to be utilized (see Criteria Used To Identify Critical Habitat section). We emphasized the importance of upland sites least likely to be subject to periodic flooding and explained their value as refugia (see Background section of proposed rule). However, the amount of remaining undeveloped land within the species' historical range that meets the definition of critical habitat is extremely limited. All areas designated as critical habitat are within likely flight distance of occupied habitat for male Casey's June beetles (considered occupied at the population level); as a result several relatively small non-contiguous habitat areas without occupancy records were also designated as critical habitat. No unoccupied habitat patches outside the likely flight range of adult males were clearly large enough or otherwise suitable to support an independent population based on our current knowledge of the species; therefore, we did not determine that any of these areas met the definition of critical habitat.

Comment 3: One peer reviewer emphasized they felt it is important for the Service to work closely with the Agua Caliente Band of Cahuilla Indians to develop a management and public education plan for the species and for habitat on tribal reservation lands. The reviewer also stated development and implementation of an overall management plan that simultaneously provides guidance for the restoration and enhancement of existing critical habitat and educates citizens about the importance of conserving Casey's June beetle is crucial to the species' survival. The peer reviewer asserted that a public education program must be developed along with habitat management guides and plans.

Our Response: We agree that management and conservation planning and public outreach are important

aspects of endangered species recovery planning. As stated above, we believe our continuing coordination with the Agua Caliente Band of Cahuilla Indians should provide sufficient future education, facilitate development of additional management plans (beyond those already in existence on the reservation), and help promote Casey's June beetle conservation on tribal reservation lands. In the Spotlight Species Action Plan (Service 2009, p. 2), we state that in order to reduce or eliminate threats to Casey's June beetle we will need to determine current occupancy (presence or absence) within portions of the population distribution (which was done in 2010, see *New Species Occupancy and Habitat Information* above), conserve occupied habitat, and gain scientific information required to inform recovery criteria. Actions recommended in the Spotlight Species Action Plan (Service 2009, p. 3) include developing agreements with landowners to conserve habitat. We will continue to work with all stakeholders, including the Agua Caliente Band of Cahuilla Indians, to conserve habitat, conduct public outreach, and recover Casey's June beetle.

Comment 4: One peer reviewer had specific text edit recommendations. They suggested changing the word ''considered'' under the *Life History and Habitat* section on page 32858 of the proposed rule to ''known to be,'' because it is a fact that the females are flightless, and the word ''family'' on page 32859, line 1 under Factor A, to ''genus'' (74 FR 32857; July 9, 2009).

Our Response: We agree with the suggested text and taxonomic corrections and made edits to the *New Species Information* above and the Factor A discussion in the Summary of Factors Affecting the Species section, above.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' We did not receive any comments from the State regarding the listing of Casey's June beetle or the designation of its critical habitat.

Public Comments

Comments From Tribes

Comment 5: The Agua Caliente Band of Cahuilla Indians (Tribe) asserted there is not enough information known regarding the biology of the species or its distribution to justify listing. They argued it is not known what the species eats or how long it remains in the soil, and the species' distribution may be significantly greater than estimated in the proposed rule. They argued specifically that soils named in the PCEs are widely distributed throughout the Coachella Valley where more Casey's June beetles might be found and are not appropriate to use as PCEs. They further stated there has been no systematic effort to locate Casey's June beetle elsewhere in the Coachella Valley or desert areas further south, and that they know of a Casey's June beetle captured ''well outside'' the proposed critical habitat and another report of what may be a Casey's June beetle from a site near the City of Yuma, Arizona. The Tribe concluded the Service needs to conduct or fund new surveys to determine the species' range before listing is justified.

The Tribe claimed no recent surveys have detected the species south of Bogert Trail or west of South Palm Canyon Drive, and indicated they believe unoccupied land should, therefore, not be designated as critical habitat. The Tribe further indicated they believe the data on which the proposed rule was based should have been subject to peer review prior to publication of the draft rule.

Finally, the Tribe stated that in drawing the conclusion that existing tribal regulatory structure is not adequate to protect Casey's June beetle, the Service did not consider the Tribe's active role in regulating land use and development. They cited the Indian Canyons Master Plan and tribal development zoning that apply to reservation lands south of Acanto Drive.

Our Response: A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act (see Summary of Factors Affecting the Species section above). As required by section 4(b)(1)(A) of the Act the Secretary shall determine whether any species is an endangered or a threatened species solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure our decisions are based on the best scientific data available. We used primary and original sources of information as the basis for our recommendations. We acknowledge the Tribe's concern that little information is known about Casey's June beetle life habits. While lifespan and diet information will help inform species recovery actions, we believe the status of the species is clear without this knowledge. Species' decline and habitat loss, as well as the imminence of threats to species' habitat and survival for Casey's June beetle have been clearly demonstrated (see Summary of Factors Affecting the Species section and *Comment 1* above). Furthermore, the need for listing is determined ''solely on the basis of the best scientific and commercial data available,'' even though biological information is typically incomplete for rare species in need of protection. Therefore, we believe our determination that Casey's June beetle is in danger of extinction throughout all of its range is supported by the best available scientific and commercial information.

We respectfully disagree with the Tribe's comment that Casey's June beetle has a wider distribution than estimated. As required by section 4(b)(1)(A) of the Act, the Secretary shall determine whether any species is an endangered or a threatened species solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species. Two researchers have undertaken recent and relatively widespread assessments of Casey's June beetle occupancy and habitat distribution (Hovore 1997a, p. 1–3; 1997b, p. 1–3; 1997c, p. 2–17; Cornett 2004, p. 8). Both studies generally agree with our conclusions regarding the limited distribution of Casey's June beetle habitat, and both concluded the distribution was more restricted than we described in our proposed rule (Hovore 1997b, p. 1–3; 1997c, p. 2–17; Cornett 2004, p. 13). A species expert has examined specimens and populations of *Dinacoma* species found in locations as proximal as Joshua Tree National Park and the City of Hemet and described them as different species (LaRue pers. comm. 2006). We are also aware of a collection (one individual) by Cornett (Anderson, Service, pers. comm. 2009) that resembled Casey's June beetle from a site near the City of Yuma, Arizona. We have communicated with the collector, and they confirmed it resembles Casey's June beetle. However, they have not determined the taxonomic identity of this specimen, nor have they had taxonomic experts examine it (Anderson, pers. comm. 2009; Cornett, James Cornett Biological Consultants,

pers. comm. 2009a, 2009b). We do not believe this specimen will be identified as a Casey's June beetle because it was collected far from known collection locations, and in an area topographically different from areas known to support Casey's June beetle (see *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements* and *Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring that are Protected from Disturbance* sections above for further discussion). Most recently, David Hawks conducted a survey in 2010 funded by the Service specifically focused on surveying suitable soils north (just south of the Chino Cone in the City of Palm Springs) and south (past Palm Desert as far as La Quinta) of the current known species distribution. Hawks did collect Casey's June beetles outside the current known range (see *New Species Information* section above for more information), but only within a patch of remnant wash channel just outside of proposed critical habitat and still within the City of Palm Springs (Hawks pers. comm. 2010).

Regarding the Tribe's assertion that we used widely distributed soil types to inappropriately define critical habitat, we do not agree. To clarify, Casey's June beetle critical habitat is first defined by other environmental factors (such as soil moisture and wind conditions) unique to the base of the San Jacinto and Santa Rosa mountains (see *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements* section and our response to *Comment 1* above). We identify critical habitat by first defining the area of occupancy or potential occupancy (which is by default limited to those areas where the unique environmental factors mentioned above are found), then second by ''focusing in on the principal biological or physical constituent elements (primary constituent elements) within the defined area'' (see Critical Habitat Background section above). PCEs are only one component of the definition of critical habitat (see Critical Habitat Background section above). Therefore, based on the best scientific information available regarding species' taxonomy and distribution, it is likely the species was not historically distributed beyond the eastern San Jacinto Mountain foothills outside of the City of Palm Springs. We will continue to recommend and facilitate surveys to refine our knowledge of the species' distribution, but we believe our current biological conclusions and the need to list Casey's June beetle as endangered under the Act are well supported by the best available scientific and commercial data.

The Tribe's comment that no recent surveys have detected the species south of Bogert Trail or west of South Palm Canyon Drive is not supported by available occupancy data. Most recently, David Hawks (pers. comm. 2010; 2011a; 2011b) detected numerous adult male and female Casey's June beetles in Palm Canyon Wash south of Bogert Trail and south of Acanto Drive (south of Acanto Drive these observations were made incidentally without the aid of light traps), indicating this area is a current population density center (see *New Species Information* section above for more information). In 2004, Cornett (2004, p. 8) detected Casey's June beetle south of Bogert Trail, north of Acanto Drive, and midway between South Palm Canyon Drive and Palm Canyon Wash. In 2001, Simonsen-Marchant (2001, p. 6) detected Casey's June beetles south of Bogert Trail and north of Acanto Drive in upland habitat adjacent to Palm Canyon Wash; this area remains undeveloped. It is true no Casey's June beetles have been recently detected west of South Palm Canyon Drive, and the sparse remaining suitable soils are heavily degraded. Furthermore, two separate surveys in 2010 (Hawks, pers. comm. 2011; Cornett 2010, pp. 10 and 14) in areas adjacent to and west of South Palm Canyon Drive were negative (see *New Species Information* section above). Therefore, based on the best available data we believe the majority of lands proposed for designation south of Bogert Trail are occupied and meet the definition of critical habitat. However, lands adjacent to and west of South Palm Canyon Drive approximately west of Via Fortuna, and the southernmost non-contiguous patches of CdC soil within Palm Canyon, are not occupied nor appear to be occupiable and therefore do not meet the definition of critical habitat because they would not contribute to the conservation of the species (see Summary of Changes From the 2009 Proposed Critical Habitat Rule, above).

With regard to the Tribe's question of our peer review practices, the purpose of a proposed rule is to allow peer and public review of data and conclusions drawn from the data, so that we can make appropriate adjustments prior to publication of the final rule. It is our policy that peer review be conducted during the public comment period (Policy for Peer Review in Endangered Species Act Activities, July 1, 1994, 59 FR 34270); we can not allow outside review of pre-decisional internal draft proposed rules. Nevertheless, we do commonly, and did in this case, discuss the data we use and the biological implications of those data with species experts who collect it in a scientific context as needed prior to publication of the proposed rule. We believe we followed the best scientific practices in writing the proposed and final rules.

Finally, regarding the Tribe's assertion that existing tribal regulatory structure is adequate to protect Casey's June beetle, we subsequently considered the Tribe's active role in regulating land use and development via the Indian Canyons Master Plan and tribal development zoning (as articulated by the Master Plan) that apply to reservation lands south of Acanto Drive. We did not determine these documents were adequate to address the threats placing the species in danger of extinction and, therefore, meeting the definition of an endangered species (see *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* section above).

Comment 6: The Tribe asserted that critical habitat should include only the minimum amount of habitat needed to avoid short-term jeopardy to the species. The Tribe further stated that designation of critical habitat on their reservation is not needed because they are required to conduct section 7 consultations for many activities that might potentially pose a threat to the species.

Our Response: As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat (see Critical Habitat Background and Criteria Used To Identify Critical Habitat above). Critical habitat is defined as the specific areas within the geographical area occupied by a species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed that are essential for the conservation of the species. ''Conservation'' means all methods and procedures necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary (the recovery standard, see Critical Habitat Background section above). Therefore, critical habitat is not defined as the minimum amount of habitat needed to avoid short-term jeopardy to the species. Whether or not section 7 consultation is required is not a factor in determining those areas that meet the definition of critical habitat. However, when we analyze the benefits of

including versus excluding an area as critical habitat, we do consider, among other relevant factors, whether the regulatory benefit of designation may be largely redundant with listing.

Comment 7: The Tribe stated that if the Casey's June beetle is listed, the Service should at least find the benefits of excluding ''the lands of the Agua Caliente Indian Reservation'' outweigh the benefits of including them in critical habitat. The Tribe cited multiple regulatory and tribal sovereignty documents including Secretarial Order 3206 (June 5, 1997), Executive Order 13175 (65 FR 67249; November 9, 2000), and two other critical habitat rules where tribal land was excluded based on partnerships in support of their request for exclusion. The Tribe stated the ''relevant thrust'' of the cited Federal enactments is that no agency of the Department of the Interior will inflict regulatory, economic, or governmental burdens on tribes and their members when adequate alternatives exist.

Our Response: We considered the Tribes' request that reservation lands be excluded from critical habitat based on partnership benefits and the existence of adequate alternatives to the regulatory, economic, and governmental burdens of designating Casey's June beetle critical habitat. The Act specifies that the Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor (see Exclusions section above).

We considered the possible benefits of including and excluding Agua Caliente Band of Cahuilla Indians' tribal trust reservation lands that met the definition of critical habitat. For our exclusion analysis we considered our partnership with the Tribe and, therefore, analyzed the benefits of including and excluding those lands under the sovereign control of the Tribe (tribal trust reservation lands) that met the definition of critical habitat. Because Tribe-owned fee, private fee, or allotted lands are potentially subject to other jurisdictions and not under the sovereign control of the Tribe, we did not include these lands in our exclusion analysis (see Agua Caliente Band of Cahuilla Indians under *Tribal Reservation Lands*, above). We find that existing regulations and listing provide habitat protection of tribal trust reservation lands and are largely redundant with protections that would be provided by critical habitat designation (minimizing the benefits of inclusion), and we find that excluding Agua Caliente Band of Cahuilla Indians tribal trust reservation lands from this final critical habitat will help preserve our partnership with the Tribe and foster future development of habitat management plans with Agua Caliente Band of Cahuilla Indians and other tribes (maximizing the benefits of exclusion). Furthermore, we determined that exclusion of tribal trust reservation lands would not result in the extinction of the species. Therefore, we are excluding 11 ac (4 ha) of tribal trust reservation (*i.e.*, non-fee, non-allotment) lands from this final critical habitat designation. See *Tribal Reservation Lands* under Exclusions, above, for further discussion.

Comment 8: Two members of the Tribe who own allotted land in proposed critical habitat south of Acanto Drive, north and adjacent to South Palm Canyon Drive commented that: (1) The reasoning that the soil type ''lends itself to potential habitat'' is not sufficient scientific evidence their land meets the definition of critical habitat and sounds speculative; (2) their properties are not occupied because surveys of one commenter's parcel were negative, and the second commenter's parcel is adjacent to the surveyed parcel; (3) the proposed designation would affect tribal reservation land in a disproportionate manner since over 60 percent of the land identified is on the reservation; and (4) their land is too far from the wash to meet the definition of critical habitat. The commenters submitted a tract map and two letters from a consultant in support of their statements.

Another apparent tribal allottee expressed similar concerns. The commenter made the following statements with regard to their property: (1) Surveys by James Cornett were negative; (2) in order to occupy on-site habitat, Casey's June beetles would have to travel a distance greater than 1 mi (2 km) over several concrete dams and a concrete dike; (3) 75 percent is rock or hillside, and 10 to 15 percent of the remainder is imported material behind a 100-year flood wall; and (4) Riverside County FCWCD periodically removes several feet of material from behind the flood wall to maintain the wash depth. They concluded that for the above reasons their property should not be designated as Casey's June beetle critical habitat.

Our Response: The commenters gave several reasons for why they believed their lands should not be designated as critical habitat. We address their reasons in this response in the order presented. We could not find the quoted language regarding soil type in our proposed rule to which objection was made. Nonetheless, we understand the comment did not agree with the soil type associations articulated in the PCEs. We believe language in the text of this rule clearly reflects the strong relationship of soil type (PCE 1) to habitat suitability (see *Primary Constituent Elements for Casey's June Beetle*, and *Comment 1* above). Historical occupancy data (Hovore 1997, p. 4; Hovore 2003, p. 4), 2004 survey data (Cornett 2004, p. 8), 2010 survey data (Hawks pers. comm. 2010, 2011a and b), and soil maps indicate some properties south of Acanto Drive fall within currently occupied Casey's June beetle habitat. Furthermore, documented occupancy of a particular site is not required for land to meet the definition of critical habitat; however, if the particular site is within the geographical area occupied by the species at the time of listing, it must support physical or biological features essential to the conservation of the species (see Critical Habitat Background, above).

We understand the first two commenters' concern that a relatively large amount of proposed critical habitat falls within the Tribe's reservation. It is not our intent to designate critical habitat in a disproportionate manner. Rather, the distribution of lands that meet the definition critical habitat on tribal land is a result of past biological and social factors we cannot change. However, based on new scientific information we determined these commenters' lands did not meet the definition of critical habitat, and therefore they are not included in this critical habitat designation for that reason (see *New Species Information* and Criteria Used To Identify Critical Habitat sections above). We further excluded all tribal trust reservation land from critical habitat, thus reducing the amount of reservation designated as critical habitat (see *Tribal Reservation Lands* under Exclusions above). Therefore, we believe these commenters' concerns have been addressed to the extent appropriate.

The third commenter stated their property is not occupied and is situated such that Casey's June beetle immigration is precluded. In order to assess the validity of these comments we would need to know the exact location of the commenter's property

and details of any surveys conducted. We were not able to determine the precise location of the commenter's property based on the information provided. Furthermore, the commenter did not provide survey documentation, nor a date surveys were conducted. Therefore, we were not able to assess the validity of the commenter's statements with regard to occupancy.

The third commenter generally described their property as not containing the PCEs. All areas proposed as Casey's June beetle critical habitat were defined as the specific areas within the geographical area occupied by the species on which are found the physical or biological features essential to the conservation of the species (see Critical Habitat Background, above). Without knowing exactly where the property is located, we are not able to make a determination on the characteristics of the site. However, we based our designation partly on the soil type and landscape-level characteristics we determined are important for the beetle and consider all areas occupied by the species and to contain the PCEs. Any developed lands that do not contain the PCEs inadvertently left inside critical habitat boundaries shown on the maps of this designated critical habitat are excluded by text in this final rule (see Criteria Used To Identify Critical Habitat section above).

Comments Related to Biological Information That Informed Our Listing or Critical Habitat Determinations

Comment 9: Three commenters stated that Casey's June beetle is more widely distributed than the proposed rule described, based on observations of Casey's June beetles at their homes. The first commenter from the City of Palm Desert said they observed many Casey's June beetles during the early morning at their home during a 3-week period in June, dropping off the first week of July. The second commenter said they observed Casey's June beetle at their home in La Quinta several times during the late spring and early summer months of 2009. The third commenter said they had observed Casey's June beetle ''a few miles north of the reported [proposed critical habitat] boundary'' and at 393 West Mesquite Ave in the City of Palm Springs. They stated they hope this information helps protect the species because they believe it is important no species become extinct.

Our Response: There are other species of June beetles in the Palm Desert and La Quinta areas that are related and similar in appearance to Casey's June beetle (Cornett 2004, pp. 4–5). As stated in the proposed rule, Casey's June beetles are crepuscular, meaning they are active at dusk, not in the early morning (Hovore 2003, p. 3). Although it is commonly called a ''June'' beetle, peak abundance for this species typically occurs in April and May, not during the summer months of June and July (Cornett 2004, pp. 4, 18–26). The timing of the first two commenters' observations indicates the beetles they observed were a species of common June beetle in the genus *Phyllophagia* (see Cornett 2004, p. 4–5). Additionally, none of the commenters provided any substantiating information to support the comment they had observed Casey's June beetles, such as identifying characteristics of specimens, or experience on which their ability to identify Casey's June beetle was based. Casey's June beetle surveys were conducted in 2010, during the flight season in potential habitat in the areas described by the third commenter (vicinity of Tahquiz Creek in western foothills of the City of Palm Springs); however, no Casey's June beetles were detected (Hawks pers. comm. 2010). Therefore, we believe it is unlikely that beetles observed by the commenters were Casey's June beetles.

Comment 10: Four commenters argued there is not enough information known regarding the biology of the species or its distribution to justify listing. They argued it is not known what the species eats or how long it remains in the soil, and the species' distribution may be significantly greater than estimated in the proposed listing and critical habitat rule. They collectively stated or implied there has been no systematic effort to locate Casey's June beetle elsewhere in the Coachella Valley or desert areas farther south, and such an effort is needed before listing would be warranted. The first two commenters specifically stated they know of a Casey's June beetle captured ''well outside'' the proposed critical habitat, and another report of what may be a Casey's June beetle from a site near the City of Yuma, Arizona.

The second commenter made several statements questioning the scientific credibility of the proposed listing and critical habitat rule. The commenter argued: (1) Survey methodology requires further development and may be skewed because light traps require access to electricity; (2) the Service's assumption that all areas occupied by Casey's June beetle comprise a single population is not based on scientific data; (3) proposed PCE 2 (intact, native Sonoran desert scrub vegetation and native desert wash vegetation) is not valid (citing James Cornett's detection of the species in the Smoke Tree Ranch maintenance yard and the tennis court, and consistent species observations in a dry wash characterized as Sonoran creosote bush scrub and desert wash vegetation, portions of which were disturbed); and (4) preliminary results from spring 2010 surveys conducted by James Cornett confirm an association with ''non-native tamarisk'' (submitted an email communication from James Cornett). They concluded the species' biological and physical requirements are so poorly understood that proposed PCE 2 is not valid, and data contradict the assumption habitat disturbance threatens the species' continued survival; therefore, the proposed critical habitat designation is arbitrary and capricious. They further commented this ''fundamental legal flaw'' renders the proposed listing determination in violation of the Act's best available scientific evidence standard and is, therefore, also arbitrary and capricious.

The third commenter stated listing was not warranted because it is not clear what actions would be required to recover the species, and because Casey's June beetle appears to be less susceptible to human interaction than is currently recognized. They specifically stated the species has been collected in higher numbers where habitat has greater exposure to human impacts.

Our Response: The comment regarding the species'' known range and a need for surveys is the same as the Tribe's above (Comment 5), and the commenter's statement that Casey's June beetle listing and critical habitat designation are not supported by the best available scientific data is similar to the Tribe's comment as well. We believe our current biological conclusions and the need to list Casey's June beetle as endangered under the Act are well supported by the best available scientific and commercial data. Please see our response to *Comment 5* above for further discussion.

Regarding the second commenter's specific statements numbered above: (1) Some past surveys may have been biased by trap placement proximal to electricity sources; however, some light traps are battery-powered, and past trapping efforts represent the best available scientific data. (2) We agree it is possible all individuals in currently occupied habitat areas do not belong to a single population. Nevertheless, we believe we adequately acknowledged this uncertainty in the proposed rule by stating, ''We consider all known occurrences of Casey's June beetle to constitute a single population based on currently available data. However, additional studies are needed to confirm this assumption.'' Our consideration is

based on the flight and movement potential of male Casey's June beetles, as well as the fact that all currently occupied habitat areas were historically contiguous. Furthermore, it is not unusual for species'' population distributions to be ill-described prior to listing (see *Euphydryas editha quino* (Quino checkerspot butterfly) final revised critical habitat rule; 74 FR 28775, June 17, 2009). (3) We agree that the proposed PCEs were overly restrictive; therefore, we edited PCE 2 to include other Sonoran vegetation types and disturbed habitat. In the proposed revised rule we specified ''Intact, native Sonoran (Coloradan) desert scrub vegetation and native desert wash vegetation * * *.'' In this final revised rule we use the more inclusive language in PCE 2, *i.e.*, ''predominantly native desert vegetation'') (see *Primary Constituent Elements for Casey's June Beetle* and response to peer reviewer *Comment 2* above). (4) The email from James Cornett describing his preliminary 2010 survey results presents inconclusive and incomplete data. Cornett listed beetle abundance data from 3 nights of collection using an unspecified number of traps of unspecified design placed ''near'' cheesebush (*Hymenoclea salsola*) and tamarisk (*Tamarix spp.*). The first 2 nights he reported higher numbers of male Casey's June beetle attracted to traps located near *Tamarix spp.;* however, on the third night he collected almost twice as many individuals from traps located near *Hymenoclea salsola.* Cornett did not discuss any other possible habitat correlations with trap placement that could have affected his results. Furthermore, preliminary results from David Hawks'' 2010 (pers. comm.) surveys on Smoke Tree Ranch indicate no correlation of female Casey's June beetle emergence holes with any particular species or type of plant, not even native plants (see *New Species Information* and *Primary Constituent Elements for Casey's June Beetle* sections above). Hawks'' (pers. comm. 2010) study indicated soil type, moisture content, and other factors were more likely determinants of habitat than associated plant species or types.

Therefore, based on information discussed in the response above, and reasons discussed in the response to *Comment 5* above, we conclude there is no valid basis for the second commenter's statement that this critical habitat designation or listing determination are arbitrary and capricious.

We considered the third commenter's statements that listing is not warranted because it is not clear what actions are required to recover the species, and the species appears to survive equally well in habitats exposed to disturbance. Until a species is recovered there is always some level of uncertainty regarding actions required to achieve recovery; furthermore actions required for recovery are not typically analyzed or described until a species is listed and a recovery outline or plan is developed. Articulated recovery actions are not a prerequisite for listing. On the disturbance issue, the data do not support that the species has been collected in higher abundance where human impacts are greatest. Some of the highest observed numbers and most consistent collections of male Casey's June beetles have been in the gated community of Smoke Tree Ranch, where the largest and most protected area of remaining occupied habitat is found. Therefore, we do not believe the best scientific and commercial data available support the commenter's statement that listing is not warranted.

Comment 11: Three commenters argued specific areas proposed for critical habitat designation and considered occupied are not occupied and should not be included in the final critical habitat designation. The first commenter stated surveys conducted in 2009 indicate habitat south of Bogart Trail and west of South Palm Canyon Drive is not occupied, and stated this area should not be designated as critical habitat. The second commenter stated the proposed critical habitat south of State Route 111 near Gene Autry Trail as mapped appears to extend arbitrarily beyond what was mapped as occupied in the 2006 Bruyea report. The third commenter stated multiple past surveys of their property (the easternmost polygon of proposed critical habitat), and a survey conducted in April of 2010, were all negative. The third commenter submitted a letter from James Cornett documenting negative survey results.

Our Response: The commenters'' statements that areas proposed as critical habitat must be occupied to meet the definition of critical habitat appear to be based on the assumptions that negative surveys are definitive, the scale of occupancy described in a critical habitat rule is the same as that determined in the smallest-scale presence-absence project-based survey, and occupancy is a requirement for critical habitat designation. First, it is not uncommon for Casey's June beetle surveys, for which we have not yet developed a robust survey protocol, to not detect occupancy where it in fact exists. For example, Cornett's (2004, p. 8) surveys near Gene Autry Trail at the wash crossing and at another site near the State Route 111 intersection with Gene Autry Trail did not detect Casey's June beetle; however, Powell (2003, p. 4) had reported collecting 70 male Casey's June beetles in the first 15 minutes and ''many afterwards'' one night at the wash crossing, while Bruyea (2006, pp. 10–11) reported traps ''consistently attracted [Casey's June beetle] during each of the four survey visits'' at the State Route 111 intersection site. Second, the scale of occupancy described in critical habitat rules is at the population distribution scale, not the individual, local scale sometimes determined by smaller-scale presence-absence surveys. Because population distributions could expand and contract over time at the local scale depending on habitat conditions and other factors, individual-or ''colony-'' scale occupancy may not reflect the greater longer-term population distribution. We also note the first commenter did not provide any further information regarding the referenced survey, and we do not have any information corresponding with the described survey. Therefore, with regard to Casey's June beetle occupancy status, we believe the designation of critical habitat would be appropriate for those areas referred to by the commenters.

We did, however, determine the third commenter's property does not contain the primary soil type specified in PCE 1 (CdC) required to meet the definition of critical habitat. Therefore, we determined this property did not meet the definition of critical habitat (see also Summary of Changes From the 2009 Proposed Critical Habitat Rule, above) and did not include it in this final critical habitat designation.

Comment 12: One commenter asserted the maintained Palm Canyon Wash channel and levee system does not meet the definition of critical habitat because the reoccurrence of scouring and sediment deposition within the channel and levee system likely precludes any long-term development of viable Casey's June beetle PCEs. They stated that published annual peak stream flow information from the U.S. Geological Survey shows Palm Canyon Wash has experienced at least 16 peak flow events of over 1,000 cubic feet per second (cfs) (28 cubic meters per second (cms)) since 1980, and these peak streamflows have occurred at a minimum of every 1 to 3 years.

Two other commenters gave reasons why they believed their property did not meet the definition of critical habitat. The second commenter stated their property is surrounded on three sides by existing homes and was ''pretty

well torn up'' 2 years ago when they were compelled to clean up a vegetation dump created by their neighbors. The third commenter objected to the proposed designation of their property in the vicinity of Araby Drive (''Araby Cove'') as critical habitat. The reasoning the third commenter articulated in support of their objection was: (1) Their property is elevated with fill dirt (and therefore does not contain the PCEs); (2) no experts have evaluated their property to establish soil suitability; and (3) they have been at their property for 5 years at dusk and evening and never observed any beetle species. The commenter suggested the Service could maintain the total area proposed as critical habitat by moving mapped proposed critical habitat off their property to include ''non-buildable,'' adjacent, undisturbed land. They stated that designating their residential lot and not any other neighboring properties with similar physical and biological features is illegal. The commenter submitted several photographs in support of their written comments.

Our Response: We considered the first commenter's statement that the Palm Canyon Wash channel and levee system does not meet the definition of critical habitat. We also acknowledge that some portions of Palm Canyon Wash are not likely to support occupancy by females and immature life stages. While it makes sense that some level of scouring intensity would extirpate occupancy in some places, at relatively small scales within the Palm Canyon Wash channel, the correlation between flood intensity and mortality at a given life stage is unknown. Many collections of adult males have been made within and adjacent to Palm Canyon Wash, even where there is no adjacent upland habitat (such as Powell 2003, p. 4). The best available data also indicate that all areas of Palm Canyon Wash will always contain both PCEs. We believe any conclusions regarding peak stream flow effects on Casey's June beetle occupancy in Palm Canyon Wash are premature, and use of the channel and levee system by adult males also justifies inclusion of this area as designated critical habitat.

Lands which are ''occupied'' in some capacity but do not contain the PCEs (for example areas where only movement of males in flight is possible) do not meet the definition of Casey's June beetle critical habitat; therefore, any levees or areas elevated by fill dirt inadvertently mapped as designated critical habitat would not be considered critical habitat. When determining the critical habitat boundaries, we made every effort to map precisely only the areas that contain the PCEs and provide for the conservation of Casey's June beetle. However, due to the mapping scale that we use to determine critical habitat boundaries, we cannot guarantee that every fraction of critical habitat contains the PCEs. Additionally, we made every attempt to avoid including developed areas such as lands underlying buildings, paved areas, and other structures that lack PCEs for Casey's June beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures (such as a developed levee) and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this critical habitat designation are excluded by text in this rule and are not designated as critical habitat. Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the PCEs in adjacent critical habitat (see Critical Habitat Background section above). Therefore, we believe designation of the Palm Canyon Wash channel and other lands as critical habitat, as mapped in this final rule, is warranted.

We considered the third commenter's statements that they have never observed any beetle species on their property and that designating their residential lot and not any other neighboring properties with similar physical and biological features is illegal. We further considered their suggestion we could maintain the total area proposed as critical habitat by ''moving'' mapped critical habitat off their property to include adjacent, undisturbed land. The Act specifies we use the best commercial and scientific data available to determine what lands meet the definition of critical habitat (see Critical Habitat Background, above). We do not base our designation on a particular size area or property boundaries. For us to alter the mapped final critical habitat designation to remove their property as the commenter suggested, without sound scientific or commercial data to support our actions, would be arbitrary and capricious in our decision making. Therefore, we did not alter mapped final critical habitat to avoid the commenter's property based on any of these statements.

Regarding the third commenter's statement that their property did not contain the PCEs, we examined digital aerial photography and did not include buildings and structures and surrounding areas that appeared to be constructed on raised fill dirt (their entire property) in this final critical habitat designation (see Summary of Changes from the 2009 Proposed Critical Habitat Rule, above).

Comment 13: One commenter argued that although their property (a patch of habitat near the intersection of Gene Autry Drive and State Route 111) is occupied, it should not be designated as Casey's June beetle critical habitat. They stated the Casey's June beetle population on their property is isolated and not viable because: (1) The habitat is not contiguous with other occupied habitats and is 0.5 miles (1 km) distant from the nearest occupied location; (2) females are flightless; (3) male beetle movement appears to be limited to less than 7 ft (2 m) above the ground and to ''short distances;'' (4) the property is bordered by a road and developed areas where artificial lights would attract and disorient male beetles resulting in mortality; (5) the property is disturbed and has compacted soils; and (6) the ''low'' numbers of Casey's June beetles collected on this property relative to typical collections in other habitats indicate a relatively small population size. They concluded their property does not meet the definition of critical habitat.

The letter from James Cornett submitted by the commenter further stated, ''To successfully immigrate or emigrate from [this habitat] site, a beetle would need to fly higher than the species ever does, or fly in a straight line and head directly down highway 111 or Gene Autry Trail at the approximate level of rapidly moving motor vehicles (thereby risking substantial harm). The limited distribution of the species strongly suggests these latter scenarios rarely, if ever, happen.''

Our Response: Beetle behaviors described in the best available scientific and commercial data do not support the commenter's statements. It is less than 1 mi (less than 2 km) to the nearest occupied habitat (Palm Canyon Wash) through undeveloped foothills below 600 ft (180 m) in elevation, and approximately 0.5 mi (1 km) through residential development to the north or the west. No available scientific information we reviewed indicates any beetle species must fly in a straight line down roads. In fact, Casey's June beetles could take an equally direct route of equal distance to occupied wash habitat through residential homes from any number of points on the property other than the road intersection indicated by Cornett. While it is true the male beetle's attraction to lights is known to cause some mortality (*e.g.*, drowning in

pools and attraction to light-based bug traps), there is no data indicating all individuals attracted to lights in residential areas die. If males are disoriented the lights may also cause them to move in a wandering, indirect fashion through a development. No data were provided to support the assertion they never fly above 7 ft (2 m), nor were any data presented that indicated how far or in how much of a straight line male Casey's June beetles are likely to fly. Therefore, as long as females on site are not eradicated, there is potential for population survival and genetic exchange with individuals in other occupied habitats.

We considered the commenter's statement that habitat on their property is too degraded and isolated to support a viable Casey's June beetle population. We acknowledge habitat suitability may have been compromised; however disturbance, nonnative plant invasion, and soil compaction are all habitat features that may require management to maintain PCEs. Furthermore, in a habitat assessment conducted by Hovore (1997c, p. 4), he described this area as ''of sufficient size to sustain viable populations despite having [SR] 111 pass along [its] margin.'' Inspection of historical Google Earth imagery from 1996 indicates the amount of undeveloped land in this area has not changed significantly since Hovore's assessment. Therefore even with some undesirable habitat features, this property meets the definition of critical habitat.

We further considered James Cornett's statement submitted by the commenter that the limited distribution of the species strongly suggests flight of male Casey's June beetles more than 0.5 miles (1 km) or above 7 ft (2 m) rarely, if ever, occurs. An equally plausible explanation for the species' limited distribution is direct mortality of females during habitat disturbance and loss, coupled with adaptation of the species to limiting habitat factors such as wind exposure and soil moisture content that we do not yet fully understand. Therefore, we do not agree the limited species' distribution suggests a limited movement capability of male Casey's June beetles.

Comment 14: One commenter stated they fully support listing Casey's June beetle as endangered for reasons identified in the original petition (threatened by loss and degradation of habitat, mortality due to artificial lighting and vehicular traffic, fragmentation of habitat, chance catastrophic events such as flooding, small population size, and inadequate regulatory protection) and the subsequent information provided in the proposed listing rule. The commenter also stated they support the designation of critical habitat for this species.

Our Response: We appreciate the commenter's review of our proposed rule. Please see *Comment 1* and our response for further discussion of the scientific validity of this final rule.

Comment 15: One commenter stated they were concerned the proposed critical habitat is ''limited * * * to the present range of the species'' and did not include any unoccupied habitat that may be necessary for recovery of the species. They stated critical habitat must include areas required for species recovery, not just survival. They argued that past attempts by the Service to disregard the critical habitat recovery standard under the Act have repeatedly been found unlawful (see *Gifford Pinchot Task Force* v. *U.S. Fish & Wildlife Serv.,* 378 F.3d 1059, 1069–70 (9th Cir. 2004), citing *Sierra Club* v. *U.S. Fish & Wildlife Serv.,* 245 F.3d 434, 441–42 (5th Cir. 2001) and *N.M. Cattle Growers Ass'n* v. *U.S. Fish & Wildlife Serv.,* 248 F.3d 1283 & n.2 (10th Cir. 2001)). The commenter cited the Ninth Circuit Court, ''[i]f the [Service] follows its own regulation, then it is obligated to be indifferent to, if not to ignore, the recovery goal of critical habitat'' and such an interpretation ''would drastically narrow the scope of protection commanded by Congress under the Endangered Species Act'' (*Gifford Pinchot,* 378 F.3d at 1070). The commenter concluded that the Service should consider designation of additional areas of unoccupied habitat that may be necessary to provide sufficient habitat to support recovery of Casey's June beetle.

Our Response: We considered the commenter's argument that our proposed critical habitat designation may have been too limited in scope. As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining the specific areas within the geographical area occupied by the species that contain the features essential to the conservation of species which may require special management considerations or protection, as well as when determining if any specific areas outside the geographical area occupied by the species are essential for the conservation of the species. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure our decisions are based on the best scientific data available. We used primary and original sources of information as the basis for our recommendations. We only designate areas outside the geographical area occupied by a species when the Secretary determines that a designation limited to a species' present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). We carefully considered all patches of apparently suitable habitat within the species' historical (versus current) range for proposal as critical habitat, even where reintroduction could potentially occur (see Criteria Used To Identify Critical Habitat section). As defined in section 3(5)(A) of the Act, we believe we have designated all specific areas that the best available scientific data indicate meet the definition of critical habitat. We do not believe there is sufficient scientific data to indicate specific areas outside the geographical area occupied by the species are essential for conservation of the species. Section 3(5)(C) of the Act states that except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the endangered or threatened species. As we learn more about the biology of this species and its habitat requirements we may identify additional habitat areas necessary for conservation of the species. Please see *Comment 2* and response above for further discussion of this issue.

Comments Relating to Potential Exclusions From Critical Habitat Designation

Comment 16: One commenter requested exclusion of Palm Canyon Wash and two ''isolated'' proposed critical habitat areas within the approved Palm Springs Master Drainage Plan Line 41, Stage 3 project alignment located east of Palm Canyon Wash and south of Palm Canyon Drive based on economic hardship and public health and safety. They stated inclusion of the maintained flood control system within the final critical habitat designation would trigger a lengthy section 7 consultation process and likely prevent timely construction and maintenance essential to safeguard the physical and economic well-being of the city of Palm Springs and its citizens. The commenter believes that potential direct and indirect impacts of critical habitat designation include but are not limited to: (1) Increased costs associated with

species surveys and the section 7 consultation process; (2) increased risk that the flood control system may fail to provide the full measure of its crucial public health and safety benefits due to a lengthy section 7 consultation process and any requirements imposed through that process to minimize effects of the action; (3) increased costs (such as increased flood insurance rates) imposed on the local community through the National Flood Insurance Program as a result of not meeting Federal Emergency Management Agency (FEMA) requirements; (4) potential damages to the communities that may result if critical maintenance activities are delayed; and (5) ''additional mitigation costs and potential conflicts associated with flood control facilities.'' Specifically, they stated the Palm Springs Master Drainage Plan Line 41, Stage 3 project alignment will provide 100-year flood protection to existing downstream development currently located within a FEMA-mapped Special Flood Hazard Area.

The commenter argued that exclusion of the wash would not result in extinction of the species because the species is frequently extirpated from the wash by scouring events. The commenter also stated exclusion of the two isolated areas proposed as critical habitat would not result in extinction of the species because continued occupancy and reproduction on-site is not viable long-term. They argued that occupancy in these two sites depends on flightless females for reproduction, and claimed the sites are isolated from Palm Canyon Wash by existing contiguous development and steep rocky hillsides. They further stated that a past Casey's June beetle survey indicated that species' density in these areas may be low (cited Bruyea 2006), and beetles occupying this area may be a remnant colony of past conditions when dense urban development did not separate it from Palm Canyon Wash. The commenter concluded that occupancy would eventually be lost and recolonization from Palm Canyon Wash would be unlikely.

Our Response: We considered the commenter's statement that Palm Canyon Wash and areas within the approved Palm Springs Master Drainage Plan Line 41, Stage 3 project alignment should be excluded from critical habitat designation based on economic hardship and public health and safety. Any emergency or critical infrastructure projects undertaken to protect public health and safety can be appropriately and quickly addressed through emergency consultations. Furthermore, the DEA and subsequent FEA attributed the majority of flood control activity costs to the listing of the species as endangered (baseline impacts), not to designation of critical habitat (incremental impacts). We will work with the responsible agencies to facilitate and expedite any consultations regarding projects that may affect public health and safety. Therefore, we do not believe exclusion of Palm Canyon Wash and areas within the approved Palm Springs Master Drainage Plan Line 41, Stage 3 project alignment from critical habitat designation is justified.

Regarding the commenter's conclusion that recolonization is unlikely following eventual loss of occupancy in some areas designated as critical habitat, we may determine that artificial recolonization and management will be required to achieve species' recovery. See also our response to *Comment 2* above regarding Casey's June beetle occupancy.

Comment 17: One commenter stated they believe the designation of critical habitat for Casey's June beetle in Palm Springs is not appropriate because it does not ''conform'' to the Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP).

A second commenter objected to designation of the same property as critical habitat for Casey's June beetle ''or any other species.'' They stated this property is planned for development as a senior continued care retirement community for the gay and lesbian community in the city of Palm Springs. They further asserted it is the last available ''[tribal] fee site'' in the city of Palm Springs large enough for the planned development project, and is ideally located for senior citizens because it is close to medical care, grocery stores, and public transportation. They stated they should get special consideration because gays and lesbians have ''been declared a suspect and protected class of state citizens by the California State Court.''

Our Response: We reexamined the soil maps with regard to the property identified by these commenters, and have determined the primary soil type specified in PCE 1 (CdC) required for critical habitat is not mapped on this property. Therefore, we determined this property does not meet the definition of critical habitat (see also Summary of Changes From the 2009 Proposed Critical Habitat Rule, and response to *Comment 11* above) and did not designate it as critical habitat. While we appreciate the commenters' concerns, because we determined that these lands do not meet the definition of critical habitat, we did not further consider the commenters' request for exclusion of this area under section 4(b)(2) of the Act.

Comment 18: One commenter argued portions of Smoke Tree Ranch should be excluded from the final critical habitat designation. The commenter stated they spent over 2 years negotiating a Casey's June beetle Candidate Conservation Agreement (''CCA'') with the Service. They argued that, although the CCA was not finalized, they remain committed to implementing the terms of the CCA and have proceeded to implement it. They further stated the Service, the Center for Biological Diversity, the Sierra Club, and the commenter spent 2 years evaluating Smoke Tree Ranch habitat, and areas identified as valuable habitat have been placed under a conservation easement monitored by the Center for Natural Lands Management. The commenter provided a copy of the conservation easement deed in support of their statement. The commenter argued they are the only landowner who has, to date, entered into binding agreements to protect beetle habitat, and the portions of their land not covered by a conservation easement should be considered for exclusion. The commenter proposed to continue their conservation partnership with the Service to finalize the CCA if the species is not listed or, should the species be listed, to explore additional habitat conservation within the easement, or provide for adaptive management. They cited exclusion precedents they believe supported their request that critical habitat designation should be limited to areas covered by the conservation easement, and the remainder of Smoke Tree Ranch property should be excluded from critical habitat.

The commenter further argued the Service's proposal to designate most of Smoke Tree Ranch, including all homes and property of residents, does not reflect the best scientific data available and ignores the definition of the species' PCEs. The commenter suggested designation of private homes and other developed areas as critical habitat is unprecedented. They expressed concern that although the proposed rule text purports to exclude ''lands covered by developed areas, such as buildings, pavement, and other structures' from the critical habitat, it includes areas around homes and structures and only applies to existing structures. They further concluded the ''mere threat of Service regulation of improvement or modification of an existing home or structure undermines public support for the [Act] and distracts the scarce resources of the Service from real and important conservation challenges.''

They stated even if the Service elects not to exercise regulatory authority over the activities of private homeowners at Smoke Tree Ranch, the designation of critical habitat will create a powerful legal weapon for the use of third parties. They stated Smoke Tree Ranch has also recorded deed restrictions on all of the property that restrict development and retain native desert habitat as the prominent property feature. The commenter submitted a ''form'' of deed restrictions (superseded) and an excerpt of current Smoke Tree Ranch covenants, conditions, and restrictions in support of their statements.

Our Response: We considered the commenter's statements regarding potential impacts resulting from the critical habitat designation and their request for exclusion of lands within Smoke Tree Ranch not covered by the conservation easement. We recognize and appreciate the efforts made by Smoke Tree Ranch, Inc., to assist in the conservation of Casey's June beetle, and look forward to continuing to work with these partners to assure that long-term conservation and management is assured for the species. However, after considering the relevant impacts, the Secretary is declining to exercise his discretion to exclude these lands, in part because we determined there were no existing regulations or other measures in place on these lands redundant with protection provided by critical habitat designation.

We do not agree that inclusion of private homes and other developed areas in areas mapped as designated critical habitat is unprecedented. We routinely include structures such as single-family dwellings, and other features that do not contain PCEs, in areas mapped as designated critical habitat because the scale of our mapping does not allow us to remove such areas from our maps. The cost and time required to remove all areas that do not contain the PCEs at the scale of a single-family dwelling would be prohibitive. In the case of Smoke Tree Ranch, there are occupied habitat patches distributed within the developed area, making it especially difficult to remove structures from mapped areas. Where inclusion of developed lands lacking PCEs in mapped critical habitat cannot be avoided, these areas are excluded by text in this final rule and are not designated as critical habitat.

Comments Related to Legal and Procedural Issues

Comment 19: Two commenters expressed concern that they were not personally notified of the proposed critical habitat designation, and expressed concern that their legal rights might be violated in the future. The first commenter expressed concern that they were ''denied'' a requested public hearing. The second commenter specifically requested an extension of the 30-day comment period (initiated on March 31, 2010, at 75 FR 16046) under 50 CFR 424.16(c)(2) because they were not notified by the Service of the proposed rule. They stated they were not aware of the proposed rulemaking until the City of Palm Springs informed them in a letter on April 19, 2010. They also stated that if their property was not excluded from the final critical habitat designation, they were requesting a public hearing under 50 CFR 424.16(c)(3). Finally, the second commenter argued that designation of critical habitat would constitute regulatory ''taking'' of their property.

Our Response: We considered the commenters' concerns regarding notification of our proposed rulemaking and the associated request for comment period extension. Under 50 CFR 424.16(c)(2) the Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. Under 50 CFR 424.16(c)(1)(iii), we gave notice of the proposed regulation to local authorities and private individuals known to be affected by the rule. In particular we notified the Tribe and the City of Palm Springs who have jurisdiction over the commenters' properties. We did not know the commenter would be affected by the rule because we do not know the identity of most private property owners within a proposed critical habitat designation prior to publication. However, under 50 CFR 424.16(c)(1)(vi), we published a public notice of the proposed rulemaking on July 20, 2009, in the local Desert Sun newspaper, at the beginning of the first comment period. Furthermore, as the second commenter stated, the City notified them personally of our proposed rulemaking and open comment period on April 19, 2010, in time to submit their comments. Therefore, we determined that lack of personal notification of the commenters upon publication of the proposed rule was not a good cause to extend the 30-day comment period.

We considered the commenters' concerns and requests regarding the opportunity for a public hearing. Under 50 CFR 424.16(c)(3), the Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of the proposed regulation (during the first 60-day comment period). The commenters submitted their requests more than 45 days after the proposed rule published, during the second comment period. We believe we fulfilled our obligation under the Act to notify the public of our proposed rulemaking, and provided sufficient time to prepare and submit comments (see above discussion). Therefore, we informed the commenters of our policies and notifications, and did not hold a public hearing as requested.

Regarding the commenter's statement that designating the property as critical habitat would result in a ''taking'' of the property, we have determined that the designation of critical habitat for Casey's June beetle does not pose significant takings implications for lands within or affected by the designation (see *Takings—Executive Order 12630*, under Required Determinations, below).

Comments Related to the Draft Economic Analysis

Comments From Tribes

Comment 20: The Tribe and one tribal member stated the Service's methodological approach of separately estimating incremental impacts of the designation relative to existing baseline protections has been invalidated in court and violates the Act.

Our Response: The estimation of incremental impacts is consistent with direction provided by the Office of Management and Budget (OMB) to Federal agencies for the estimation of the costs and benefits of Federal regulations (see OMB, Circular A–4, 2003). It is also consistent with several recent court decisions, including *Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior*, 344 F. Supp. 2d 108 (D.D.C.) and *Center for Biological Diversity* v. *U.S. Bureau of Land Management*, 422 F. Supp. 2d 1115 (N.D. Cal. 2006). Those decisions found that estimation of incremental impacts stemming solely from the designation of critical habitat is proper.

Comment 21: The Tribe and one other commenter stated the DEA's assignment of costs to the baseline and incremental scenarios relies on the untested assumption that there is a 25-percent chance of a negative or false negative survey for the beetle at a given project site. They asserted this approach is inconsistent with real world experience where project proponents, Federal agencies, and the Service develop and negotiate minimization and mitigation strategies.

Our Response: Where a Federal nexus is present, project proponents typically engage biologists and survey to determine whether listed species are

present prior to determining whether consultation with the Service is required. Thus, the presence or absence of the beetle is a key factor in determining whether a consultation will go forward absent critical habitat. The assumption about likely outcomes of future surveys is necessary to estimate the possible impacts in our FEA.

Comment 22: The Tribe asserted that if 100 percent of critical habitat is essential, then the economic analysis should assume 100 percent of the area will be fully and equally conserved due to that critical habitat designation, not only 25 percent.

Our Response: This comment appears to reflect a misunderstanding of the DEA, confusing all costs associated with listing and critical habitat designation with total costs of conserving areas designated as critical habitat. The DEA assumed 75 percent of all costs associated with listing would occur due to occupancy regardless if critical habitat were designated (baseline), and where there was no occupancy detected (25 percent of the time), costs would be attributable solely to critical habitat. In areas where the beetle has been previously identified, we expect positive surveys, and all costs are attributed to the baseline. The analysis assumes 100-percent conservation of the designated habitat; however, the majority of the time, these areas would have been conserved anyway as a result of the presence of the beetle at the site.

Comment 23: The Tribe clarified it has chosen not to delegate land use authority to a local agent (*e.g.*, the City of Palm Springs) in the area of its reservation south of Acanto Drive. This area is subject to the Tribe's Indian Canyons Master Plan and tribal zoning. The Tribe states it was not contacted for land use information in this area and that the economic analysis should be revised to consider tribal land uses and controls in this area.

Our Response: The Service's consultants responsible for preparing the DEA attempted to contact the Tribe to collect information about land uses and the potential impact of the designation on reservation lands via email and telephone multiple times between August and October 2009; however, the Tribe did not respond. Therefore, consultants relied on economic and other data they obtained from the Tribe at the end of 2007 during the preparation of the economic analysis of the proposed designation of critical habitat for the *Ovis canadensis nelsoni* (Peninsular bighorn sheep). At that time, the Tribe identified several planned development projects north of Acanto Drive that overlap proposed critical habitat for the beetle, including the Eagle Canyon (Alturas) Project, the Monte Sereno residential development, and an unnamed residential development project also identified in the City of Palm Springs' Canyon South Specific Plan. Data provided by the Tribe did not identify any planned projects on tribal reservation lands south of Acanto Drive.

We reviewed the Indian Canyons Master Plan, which includes tribal zoning maps, and have revised the economic analysis to incorporate this newer information. Specifically, that plan identifies allotted trust and tribal trust lands south of Acanto Drive zoned for low density residential development (2 dwelling units per ac (0.4 ha)) and open space—rural development (1 dwelling unit per ac (0.4 ha)). The Tribe's master plan outlines a vision for the type of development it would like to see, as opposed to demand, for development expressed by the market. The likelihood these lots will be converted to residential housing in the reasonably foreseeable future (*e.g.*, the next 10 to 20 years) is difficult to predict. The City of Palm Springs is predominantly built-out, increasing the value of remaining, developable land. In addition, parcels south of Acanto Drive are adjacent to recently developed parcels to the north and east, suggesting this area may be subject to development as the City of Palm Springs'' population grows. However, in its 2007 General Plan, the City of Palm Springs reports higher than optimal housing vacancy rates, which is likely to depress housing prices and the demand for raw land.

Data on sales transactions for these or similar, undeveloped parcels are scarce, and because the lands are not subject to local real estate taxes, assessed values are not available. Furthermore, lacking information about the demand for and timing of future development, it is not possible to estimate the present value of these parcels based on current housing prices. Therefore, the potential impact of critical habitat designation on these parcels is discussed qualitatively in Chapter 3 of the FEA.

Comment 24: One tribal commenter stated the economic analysis should consider the unique circumstances regarding the loss of value of tribal lands, which go beyond simple losses in land value. Indian allotments represent economic and cultural patrimony for the allottee.

Our Response: Additional discussion of these unique circumstances has been added to Chapter 3 of the FEA.

Comment 25: One tribal member commented they intend to sell their 4-ac (1.6-ha) property to help support their children, who are not members of the Tribe and, therefore, cannot inherit tribal property or receive financial support from the Tribe.

Our Response: Based on information in the comment letter and our independent mapping effort, the commenter's parcel appears to be part of the Tribe's allotted trust lands south of Acanto Drive. According to the Indian Canyons Master Plan, the parcel is targeted for residential development at a maximum density of 2 units per ac (0.4 ha). Potential impacts to this parcel are discussed in conjunction with other tribal lands located in this area in Chapter 3 of the FEA.

Comment 26: One apparent (based on land property information) tribal commenter asserted their parcel is currently approved for three residences and the total value of the parcel is $3 million. They stated designating the property as critical habitat would render it undevelopable, resulting in a ''taking'' of the property.

Our Response: Based on information provided in the comment letter, this parcel appears to be part of the Tribe's allotted trust lands located south of Acanto Drive. Depending on its exact location, the parcel lies in an area zoned for either two units per ac (0.4 ha) or one unit per 40 ac (16 ha) consistent with the Indian Canyons Master Plan. The commenter provides no detail on the approval of the 25-ac (10-ha) property for three residences (presumably by the tribal planning authorities) or whether development of the site is imminent. Land for the 56-ac (23-ha) Eagle Canyon (Alturas) development project located approximately 1 mi (1.6 km) northwest of the site will be developed at a significantly higher density of four units per ac (0.4 ha) and sold for approximately $6.6 million in 2007 (based on information obtained from the Riverside County Assessor). Thus, the subject parcel, which is less than half the size, will be developed at a significantly lower density, is farther from the City of Palm Springs, and is likely to have a present value that is less than the $3 million value provided in the comment letter. Potential impacts to this parcel are discussed in conjunction with other tribal lands located in this area in Chapter 3 of the FEA.

Regarding the commenter's statement that designating the property as critical habitat would result in a ''taking'' of the property, we have determined that the designation of critical habitat for Casey's June beetle does not pose significant takings implications for lands within or affected by the designation (see

Takings—*Executive Order 12630,* below).

Comment 27: The Tribe stated that in the course of its ongoing section 10(a)(1)(B) habitat conservation plan (HCP) permit consultation process with the Service, the Service indicated if Casey's June beetle is not covered by the draft HCP, it will ''exclude'' 2,160 ac (874 ha) from HCP coverage. The Tribe noted this ''exclusion'' area is greater than the area containing recent and historic Casey's June beetle observation records and expressed concern that it includes areas never before identified as potential habitat for this species. The Tribe contended this HCP ''exclusion'' area is equivalent to expansion of critical habitat to almost four times the proposed area and requests the costs of this larger area be included in the economic analysis.

Our Response: The Tribe notified us in a letter dated October 6, 2010, that they suspended their pursuit of a section 10(a) permit for their draft HCP (ACBCI 2010a, p. 1). The Tribe is continuing to implement the draft HCP and will continue to protect and manage natural resources within its jurisdiction (ACBCI 2010b, p. ES–1). This final rule reflects the best available information we have at this time regarding the areas that meet the definition of critical habitat. It is possible that, as we learn more about the species, new areas may be identified as potential habitat for the species. Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Regarding Tribe's request that these areas be included in the economic analysis, any additional costs related to any areas outside the designation would result from the listing of the species, not critical habitat designation. The focus of an economic analysis is the incremental cost of critical habitat designation. Thus, the geographic scope of the analysis is limited to the areas designated as critical habitat. Furthermore, section 4(b)(1) of the Act specifically prohibits the consideration of economic impacts in decisions concerning the listing of a species. Therefore, impacts associated with species listing to areas outside of proposed critical habitat are not included in an economic analysis.

Public Comments on the Economic Analysis

Comment 28: One commenter stated the discount rate applied should be reevaluated given current economic conditions.

Our Response: The U.S. Office of Management and Budget (OMB) requires Federal agencies to report results using discount rates of 3 and 7 percent (see OMB, Circular A–4, 2003). Furthermore, most of the costs presented in the DEA are based on current land values derived from assessor's data and adjusted to current dollars using retrospective price indexes. Thus, these values are not influenced by the discount rate assumption.

Comment 29: One commenter stated the DEA did not clearly define how it estimates potential costs associated with time delays, regulatory uncertainty, and stigma.

Our Response: Chapter 2 of the DEA and subsequent FEA defines these categories of cost for the purposes of the analysis. Data are not readily available to quantify potential impacts from regulatory uncertainty and stigma; thus they are only discussed qualitatively. For residential and commercial development projects that may proceed with modification, the value of potential time delays resulting from the need for additional section 7 or CEQA review should be less than the value of the property; otherwise the project would likely be cancelled. Given the uncertainty regarding viable reasonable and prudent alternatives, the DEA (and FEA) estimated an upper-bound impact equivalent to the total value of the parcels. We discuss potential delay costs to flood damage reduction projects qualitatively in Chapter 4 of the FEA because the data required to quantify impacts are unavailable.

Comment 30: One commenter stated the DEA failed to acknowledge the impact to species or the costs to conservation efforts that will accrue due to any exclusions or failure to include additional habitat required for species recovery.

Our Response: The commenter implied exclusion of lands from critical habitat and failure to include additional lands (outside of those proposed) would result in increased species'' recovery costs. Data and models required to understand changes in recovery probability are not readily available. Thus, such costs to the species of excluding areas cannot be quantified at this time. The DEA evaluated regulatory alternatives proposed by the Service, effectively the designation of all or some combination of the proposed lands. Evaluation of costs or benefits of designating lands outside the proposal are beyond the scope of the economic analysis. Additionally, we do not believe that our exclusion of 11 ac (4 ha) tribal trust reservation lands (see Tribal Reservation Lands under Exclusions) is likely to result in increased costs associated with species conservation.

Regarding possible failure to include additional habitat required for recovery, the lands that we determined meet the definition of critical habitat are what we consider essential for conservation of the species. Therefore, we do not believe conservation costs would accrue due to exclusion of lands from or non-inclusion of lands in critical habitat designation.

Comment 31: One commenter stated the Service's economic analysis framework ignores indirect and cumulative effects of critical habitat designation. They asserted measurement of these types of impacts is required under the National Environmental Policy Act (NEPA).

Our Response: Executive Order 12866, Regulatory Planning and Review, and OMB's Circular A–4, which provides direction to Federal agencies on the implementation of Executive Order 12866, represent the framework used to estimate the costs and benefits of regulations promulgated by all Federal agencies. They do not require the estimation of indirect or cumulative impacts. Furthermore, section 4(b)(2) of the Act is silent on the definition of ''economic impacts'' to be considered prior to the designation of critical habitat. Thus, the Service relies on the well-established and universally followed principals laid out in OMB's Circular A–4.

Comment 32: One commenter pointed out the DEA noted, ''the City of Palm Springs has not mandated changes in a project's design as a result of critical habitat designation for other species.'' They asserted this statement is inaccurate, and stated that nearly 15 years ago the City of Palm Springs worked with the Service to revise plans for the Mountain Falls, Palm Hills, and Shadowrock projects to support restoration of the Peninsular bighorn sheep.

Our Response: Language has been added to the FEA to clarify that the City of Palm Springs has not mandated changes in a project's design to address listed species conservation without input from the Service and the California Department of Fish and Game to facilitate these changes. With regards to changes proposed by the wildlife agencies to protect the Peninsular bighorn sheep, proposed changes were due to the presence of the sheep, not critical habitat. Fifteen years ago, no critical habitat was designated for the Peninsular bighorn sheep.

Comment 33: One commenter argued the economic analysis should rely on the fair market value of affected parcels rather than the assessed or adjusted values.

Our Response: Fair market value is determined through observed sales transactions for parcels of land. Given the small size of the designation and the recent economic downturn, sales of raw land within critical habitat in the last year are rare. Therefore, as described in Chapter 3, the economic analysis relies on assessed values, which are based on the most recent sales transaction for the parcel and adjusted for changes in the value of homes or commercial property in the region since the date of that transaction using retrospective indices. We believe the assessor's values represent the best available data.

Comment 34: One commenter asked how the estimate of $12,703,000 of baseline costs referenced in the document announcing the availability of the DEA was derived (75 FR 16046; March 31, 2010). A second commenter stated that in assessing the costs of designating critical habitat, the Service must look only at the incremental cost and should not consider costs attributable to the listing alone. They commended the Service for clearly separating baseline costs from the incremental costs of the designation.

Our Response: This estimate is the total of the present value impacts, assuming a 7 percent discount rate, presented in Exhibit ES–4 of the DEA. This Exhibit has been updated in the FEA based on new information. We appreciate the second commenter's opinion and agree that our methods were appropriate.

Comment 35: One commenter noted the DEA provides caveats to its cost estimates describing the possibility that impacts may be reduced if reasonable and prudent alternatives to specific projects are possible. The commenter stated the report should instead simply acknowledge that designation results in the complete loss of value of the affected parcels.

Our Response: Given the high degree of uncertainty associated with the potential outcome of specific future section 7 consultations or the CEQA review process, the DEA made the simplifying assumption that affected parcel value could be lost completely. This assumption is intended to bound potential impacts to developable parcels. However, as described in the report, the Service believes that if a project is likely to adversely modify critical habitat it may be possible to maintain the viability of the project through the development of reasonable and prudent alternatives, resulting in impacts that are less than projected.

Comment 36: One landowner stated they intend to build a home and a guest house on their approximately 2.7-ac (1.1 ha) parcel located at 2540 Araby Drive. They stated they believe designation of critical habitat would prevent their development plans from being realized and lower the value of their land.

Our Response: Chapter 3 of the FEA was revised to include this development project. The effect of critical habitat on development plans depends on the presence of a Federal nexus, and in the absence of a nexus, actions taken by the City of Palm Springs in response to the designation. However, see *Comment 11* above for further discussion of this land; we ultimately did not include it in this final critical habitat designation.

Comment 37: One commenter stated they own two lots that they are holding for possible development of a small home for personal use. They are opposed to critical habitat designation if it restricts their ability to develop the lots. If development is precluded, they stated they would like to sell the property to a conservation organization.

Our Response: A discussion of the value of these lots has been added to Chapter 3 of the FEA.

Comment 38: One commenter stated the designation of private homes and other developed areas within Smoke Tree Ranch is unprecedented. They argued the designation of critical habitat would threaten the ''specter of Federal regulatory control over home maintenance, landscaping, and other normal routine activities.'' They expressed concern that despite the Service's textual exclusion of developed areas, this exclusion does not apply to the areas around the homes or future modifications to the existing structure.

Our Response: The activities described above are unlikely to involve a Federal agency; thus section 7 consultation is not anticipated. City of Palm Springs permitting is also unlikely to be required for the routine activities. Future modifications to existing structures could require approval from the City of Palm Springs' planning or building departments. Given the existing conservation easement in place at Smoke Tree Ranch to protect Casey's June beetle, and the deed restrictions associated with individual homes, local authorities are unlikely to require additional protection measures for the beetle. Any additional protection measures would be due to the presence of the listed beetle and therefore will occur regardless of whether critical habitat is designated. The FEA discusses the data needed to quantify these baseline impacts; however, data limitations prevent the quantification of such impacts at this time.

Comment 39: One commenter stated the DEA underestimates potential economic losses at Smoke Tree Ranch for two reasons. First, it omits the value of undeveloped lots. Second, it ignores the potential decreases in property value for developed parcels resulting from the stigma associated with the designation and the inability of these homeowners to make home improvements.

Our Response: The comment is not explicit as to whether the referenced undeveloped lots are lots targeted as homesites that simply have not been developed yet, or are parcels adjacent to homes that comprise part of the home's value but are likely to remain undeveloped to protect the viewshed and natural aesthetics of the community (view lots). Chapter 3 of the FEA has been updated to include the value of currently undeveloped lots that are not part of Smoke Tree Ranch's conservation easement. This value represents an upper-bound estimate of the potential impacts of restricting development because we are unable to distinguish between sites targeted for development and lots likely to remain undeveloped permanently to protect the viewshed. Potential impacts are attributed to the baseline scenario based on the known presence of the beetle.

It is possible the designation of critical habitat may stigmatize existing homes, reducing their value, if potential buyers are concerned they will not be able to modify or improve the existing structures due to the designation. However, given the potential for existing stigma associated with the presence of the beetle and current deed restrictions, it is difficult to measure the potential incremental decrease in value. Therefore, this issue is discussed qualitatively in Chapter 3 of the FEA.

Comment 40: One commenter stated that the Gay and Lesbian Association of Retiring Persons, Inc. (GLARP), a

nonprofit organization, has been in the planning stages of developing senior housing in Palm Springs for the last 10 years. After several unsuccessful attempts involving other parcels, the organization has identified the Rim Rock property as their last remaining option. The owner is prepared to sell to GLARP; however, designation of critical habitat may affect the development potential of the parcel. Therefore, GLARP objects to the designation of this property as Casey's June beetle critical habitat, citing the hardship that will be caused to the senior gays and lesbians, a protected class of California citizens.

Our Response: This additional information regarding the potential use of the Wessman property has been added to Chapter 3 of the FEA. This land is not included in this final critical habitat designation due to lack of PCEs. See response to Comment 17 above for more information.

Comment 41: One commenter stated their property, located at the southwest corner of East Palm Canyon Drive and Matthew Drive (referred to in the DEA as the ''Rainbow Vision'' site), has approval from the City for development of a mixed-use retirement community. The original recipient of the approvals was Rainbow Vision Palm Springs LLC; however, through a series of transactions in 2008, the commenter became the fee owner and acquired all development rights related to the project. The commenter stated the value of the property reported in the DEA is understated, because the property is fully entitled for development.

Our Response: The FEA has been updated to reflect current ownership information, development approvals, and the confirmed presence of the beetle at the property. As described in Chapter 3, the DEA relied on assessor's data to estimate property values. The assessments are based on the market value of the property at the date of its most recent acquisition and adjusted annually thereafter based on the California Consumer Price Index. The commenter's property is comprised of two parcels that were sold in 2008 and 2009. Thus, the market data relied upon by the assessor is current and likely reflects the entitled status of the property (project approval was granted by the Palm Springs City Council on March 19, 2008). The landowner did not provide an alternate estimate of the market value of the property; therefore, we relied on the existing estimate presented in the DEA.

Comment 42: One commenter stated the DEA should consider the cost of maintenance activities beyond sedimentation removal (*e.g.*, grading, erosion repair, vegetation removal) within the Palm Canyon Wash channel and levee system.

Our Response: Chapter 4 of the FEA includes language indicating other maintenance activities may be affected by the critical habitat designation, but detailed information about these activities is not available to calculate cost estimates.

Comment 43: In relation to the flood control projects, one commenter expressed concern the DEA did not provide Federal decision makers a complete and accurate estimate of the incremental costs associated with the proposed critical habitat designation. They argued the DEA did not evaluate scenarios that could occur if flooding and scouring events within the maintained Palm Canyon Wash channel and levee system periodically eliminate suitable habitat for the beetle and preclude beetle occupancy and section 7 consultations are still required due to the critical habitat designation.

Our Response: While it is true that flooding and scouring events within the maintained Palm Canyon Wash channel and levee system could periodically eliminate beetle occupancy, we believe these events would not eliminate suitable habitat nor preclude recolonization during the next active beetle season following a given event. We believe this area, regardless of periodic flooding and scouring events is occupied because within the area: (1) There is consistently high population abundance; (2) there are consistent positive survey findings; and (3) the location of the wash at the center of the species' current range and known population distribution. Therefore, the costs associated with projects within Palm Canyon Wash are appropriately considered baseline costs associated with listing, and not critical habitat designation.

Comment 44: One commenter stated the DEA is based on the inaccurate assumption that all Palm Canyon Wash maintenance activities would always involve a Federal nexus under section 404 of the Clean Water Act. The commenter also pointed out the proposed critical habitat designation has the potential to increase the costs of State and local approvals (such as CEQA) associated with maintenance activities that are similar to potential increased Federal regulatory costs.

Our Response: Chapter 4 of the FEA clarifies that some Palm Canyon Wash maintenance activities may not have a Federal nexus. Although unlikely, where no Federal nexus exists, the City of Palm Springs may request project modifications via its review under CEQA. The CEQA review process may be affected by the critical habitat designation in a manner similar to that for section 7 consultation.

Comment 45: Two commenters stated the DEA did not evaluate the potential increased flood insurance cost, and the costs associated with increased flood risks and damages, if critical habitat designation delayed flood damage reduction activities. They suggested these costs may be reflected as reduced property values.

Our Response: Chapter 4 of the FEA presents the cost of sedimentation removal as the low-end estimate of the lost value that would result if the Riverside County FCWCD is not able to carry out maintenance activities. It is likely the lost value is higher. This value may include increased flood insurance cost and increased flood risks and damages, but data required to quantify these costs are not readily available. Similarly, the FEA states that if the Palm Springs Master Drainage Plan (MDP) Line 41, Stage 3 Flood Control Project cannot move forward then increased risk to health and human safety from floods and increase cost of flood insurance may result. Again, data do not exist to quantify these costs.

Comment 46: One commenter described possible mitigation measures that may be required for Palm Canyon Wash maintenance activities to avoid adverse modification.

Our Response: Chapter 4 focuses specifically on sedimentation removal within Palm Canyon Wash. The FEA assumes that the Riverside County FCWCD will be prevented from carrying out sedimentation removal due to presence of the beetle and presents the cost of sedimentation removal as the low-end estimate of the lost value of this activity. The FEA notes it is possible the Service will find complete avoidance of sedimentation removal is not necessary and may recommend reasonable and prudent alternatives or other conservation measures to avoid adverse modification. Measures requested by the Service may be similar to those outlined in the MDP Line 41, Stage 3 Flood Control Project, including replacement of permanently impacted suitable habitat at a 2:1 ratio with offsite habitat creation or enhancement, or a mitigation fee of $5,730 per ac (0.4 ha). The Riverside County FCWCD suggested the sedimentation removal project could permanently impact 47 ac (19 ha) of habitat, resulting in the need for a 94-ac (38-ha) mitigation area or approximately $269,000 in mitigation fees.

Comment 47: One commenter took issue with the fact that the DEA

assumed all costs associated with the MDP Line 41, Stage 3 Flood Control Project, except for a portion of the administrative costs of consultation related to adding adverse modification to the consultation, are considered baseline.

Our Response: Because a Federal nexus is present and the project location has had positive surveys for the beetle in the past, all costs, except for a portion of the administrative costs of consultation related to adding adverse modification to the consultation, are considered baseline. The FEA notes that the entire project may not fall under the jurisdiction of the U.S. Army Corps of Engineers, but similar impacts would likely be felt as the result of challenges to previously prepared CEQA documents. Based on the best available scientific information, including several recent studies and multiple years of positive surveys, the Service considers all of Palm Canyon Wash to be entirely occupied (see *New Species Information* above), and will continue to view this area as occupied; thus costs are considered baseline (see our responses to *Comments 22* and *46* above).

Comment 48: One commenter stated the potential slowing of development as a result of critical habitat designation and the corresponding reduction in infrastructure needs has an economic benefit of reducing greenhouse gas emission. They argued this benefit should be assessed in the FEA.

Our Response: Whether the proposed designation will have a measurable impact on greenhouse gas emissions is subject to considerable uncertainty. First, many of the development projects discussed are already sited in areas with existing infrastructure; thus new roads and utilities may not be required. Furthermore, certain projects may find alternate locations, redistributing emissions geographically without producing a net reduction. Finally, the Service has stated previously that the underlying causes of climate change are complex global issues that are beyond the scope of the Act (see 74 FR 56070; October 29, 2009). Thus, the potential for such benefits is not discussed in the FEA.

Comment 49: One commenter stated the designation of tribal reservation lands as critical habitat may encourage the Tribe to relocate these projects to other reservation lands where housing and commercial buildings can be constructed more efficiently. They suggested that, alternatively, existing housing in the area could be purchased at a deep discount in the current economic climate. They asserted that in failing to look at these alternatives, estimates in the DEA of foregone economic value are grossly inaccurate.

Our Response: Regardless of whether other options are available to the Tribe, potentially removing the existing development potential associated with designated parcels represents a real loss of resource value that should be quantified in the analysis. Furthermore, the majority of the reservation lands proposed for designation (75 percent) are either allotted trust lands held in trust for the benefit of individual tribal members (or their heirs), or fee-title lands owned by individuals who may or may not be members of the Tribe. Thus, these individuals may not have alternative reservation lands available to them, or their substitution options may be limited and already slated for development (see Chapter 3 of the FEA and *Comment 23* above). In these cases, potential losses estimated in the DEA are unlikely to be offset. Furthermore, these parcels are often seen as an investment to be sold to a developer, rather than as a source of housing for tribal members. To make members whole, the Tribe would need to provide alternative parcels of land of equal value. The development value of the designated parcel is still lost to society, even though the impact has been redistributed from individuals to the tribal entity. Finally, we assume the Tribe is a rational economic actor whose current development plans represent the most efficient allocation of resources. Thus, if alternative sites are developed, these are likely to be second-best options. These alternative parcels may experience an increase in value; however, that increase is not likely to completely compensate for the lost value of the designated parcels. The data required to estimate such net effects are not readily available.

Comment 50: One commenter stated the DEA failed to include consideration of all benefits that would result from critical habitat designation, such as the preservation of open space; protecting and improving water quality by maintaining the alluvial fan in its natural state; preservation of natural habitat for other species, including those displaced by global warming; prevention of development in flood prone areas; and reduction of hazards (*e.g.*, wildfires, erosion) associated with development on the alluvial fan. They asserted the DEA assumed the market accounts for these benefits and suggested these benefits should be assessed and quantified where possible or otherwise included in a detailed qualitative analysis.

Our Response: As described in Chapter 5 of the DEA, the purpose of critical habitat is to support the conservation of Casey's June beetle. The data required to estimate and value in monetary terms incremental changes in the probability of conservation resulting from the designation are not available. Depending on the project modifications ultimately implemented as a result of the regulation, other ancillary benefits that are not the stated objective of critical habitat (such as increasing the value of homes adjacent to preserved habitat or preserving habitat for other non-listed species) may occur. We do not assume that these benefits have been accounted for in development decisions made by the market; rather, these benefits are discussed qualitatively. The FEA (5.1.111) has been revised to include discussion of the new ancillary benefit categories referenced in the comment.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

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

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Casey's June beetle will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, development). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect Casey's June beetle. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the designation of critical habitat for Casey's June beetle. The analysis identifies the estimated incremental impacts associated with the proposed rulemaking, as described in Appendix A of the analysis, and evaluates the potential for economic impacts related to activity categories including residential and commercial development, tribal activities, flood control activities, and recreational activities. The analysis concludes that the incremental impacts resulting from this rulemaking that may be borne by small businesses will be associated only with development. Incremental impacts are either not expected for the other types of activities considered or, if expected, will not be borne by small entities.

As discussed in Appendix A of the final economic analysis, the largest impacts of the proposed rule on small businesses would potentially result indirectly from CEQA compliance associated with the identified development projects. In the 20-year time frame for the analysis, one developer (the analysis identifies two; however, we did not include the lands owned by one of these companies in this final critical habitat designation) may experience significant impacts. The one-time costs resulting from compliance with CEQA, including administrative time spent by the businesses, compensation costs, and the value of time delays, total approximately $400,000 (7 percent discount rate present value impacts). These costs result from complete avoidance of habitat under CEQA that could occur even in the absence of critical habitat designation. The final economic analysis did not specify if this business qualifies as a small business; however, as it is the only business that may be significantly affected, the number of small entities significantly affected is not substantial.

In summary, we considered whether the rule will result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we conclude that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Casey's June beetle will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, and Use—Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The final economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Casey's June beetle conservation activities within the critical habitat designation are not expected. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that

''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act does not apply, nor does critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to project modifications that may need to be made for development and flood control activities; however, these are not expected to affect small governments. Incremental impacts are expected to be borne by the Riverside County FCWCD, which is not considered a small government based on the county's population. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 587 ac (237 ha) of lands in Riverside County, California, as critical habitat for Casey's June beetle in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for Casey's June beetle does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to State and local governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of Casey's June beetle are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of Casey's June beetle.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The rule does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d

1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal reservation lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We identified tribal reservation lands that meet the definition of critical habitat for Casey's June beetle. There has been a substantial amount of government-to-government consultation between the Tribe and Service on developing the draft Tribal HCP and this rulemaking process for Casey's June beetle. Although the Tribe informed us in an October 28, 2008, letter that they removed Casey's June beetle from the list of species addressed in the draft Tribal HCP, they indicated they will ''continue to informally coordinate with the Service regarding this species where it occurs on the Reservation.'' The Tribe stated they are deferring to the Service to allow ''the Service to take the lead in addressing how to effectively conserve and protect this species'' (ACBCI 2008, p. 1). Although the Tribe has suspended their pursuit of a section 10(a) permit (ACBCI 2010a, p. 1), they are continuing to implement the draft HCP and will continue to protect and manage natural resources within its jurisdiction (ACBCI, 2010a, p. 1; ACBCI 2010b, p. ES–1). We will continue to work cooperatively with the Tribe on efforts to conserve Casey's June beetle. We believe the exclusion of tribal trust reservation lands from critical habitat will help preserve and strengthen the partnership we have developed with the Agua Caliente Band of Cahuilla Indians, reinforce those relations we are building with other tribes, and foster future partnerships and development of future management plans with both Agua Caliente Band of Cahuilla Indians and other tribes throughout the United States. At this time the Secretary is exercising his discretion to exclude tribal trust lands (*i.e.*, non-fee, non-allotted lands) from critical habitat (see *Tribal Reservation Lands* discussion under Exclusions, above).

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by adding an entry for ''Beetle, Casey's June'', in alphabetical order under ''INSECTS,'' 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						
*	*	*	*	*	*	*	*
INSECTS							
*	*	*	*	*	*	*	*
Beetle, Casey's June	*Dinacoma caseyi*	U.S.A. (CA)	Entire	E	793	17.95(i)	NA
*	*	*	*	*	*	*	*

■ 3. In § 17.95, amend paragraph (i) by adding an entry for ''Casey's June Beetle (*Dinacoma caseyi*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

Casey's June Beetle (*Dinacoma caseyi*)

(1) The critical habitat unit is depicted for Riverside County in California on the map below.

(2) Within this area, the primary constituent elements of critical habitat for Casey's June beetle are the habitat components that provide:

(i) Soils of the Carsitas (CdC) gravelly sand and Riverwash (RA) series, or inclusions of Carsitas cobbly sand (ChC) series soils, or inclusions of Myoma fine sands (MaB) or Coachella fine sands (CpA) within CdC soils, at or below 620 ft (189 m) in elevation, associated with washes and alluvial fans deposited on 0 to 9 percent slopes to provide space for population growth and reproduction, moisture, and food sources; and

(ii) Predominantly native desert vegetation, to provide shelter from traffic-related mortality and food for the species.

(3) Critical habitat does not include lands covered by manmade structures,

such as buildings, aqueducts, airports, and roads, existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map unit. Data layers defining the map unit were created on a base of USGS 7.5′ quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates zone 11, North American Datum (NAD) 1983 coordinates.

(5) **Note:** Map of critical habitat for Casey's June beetle follows:

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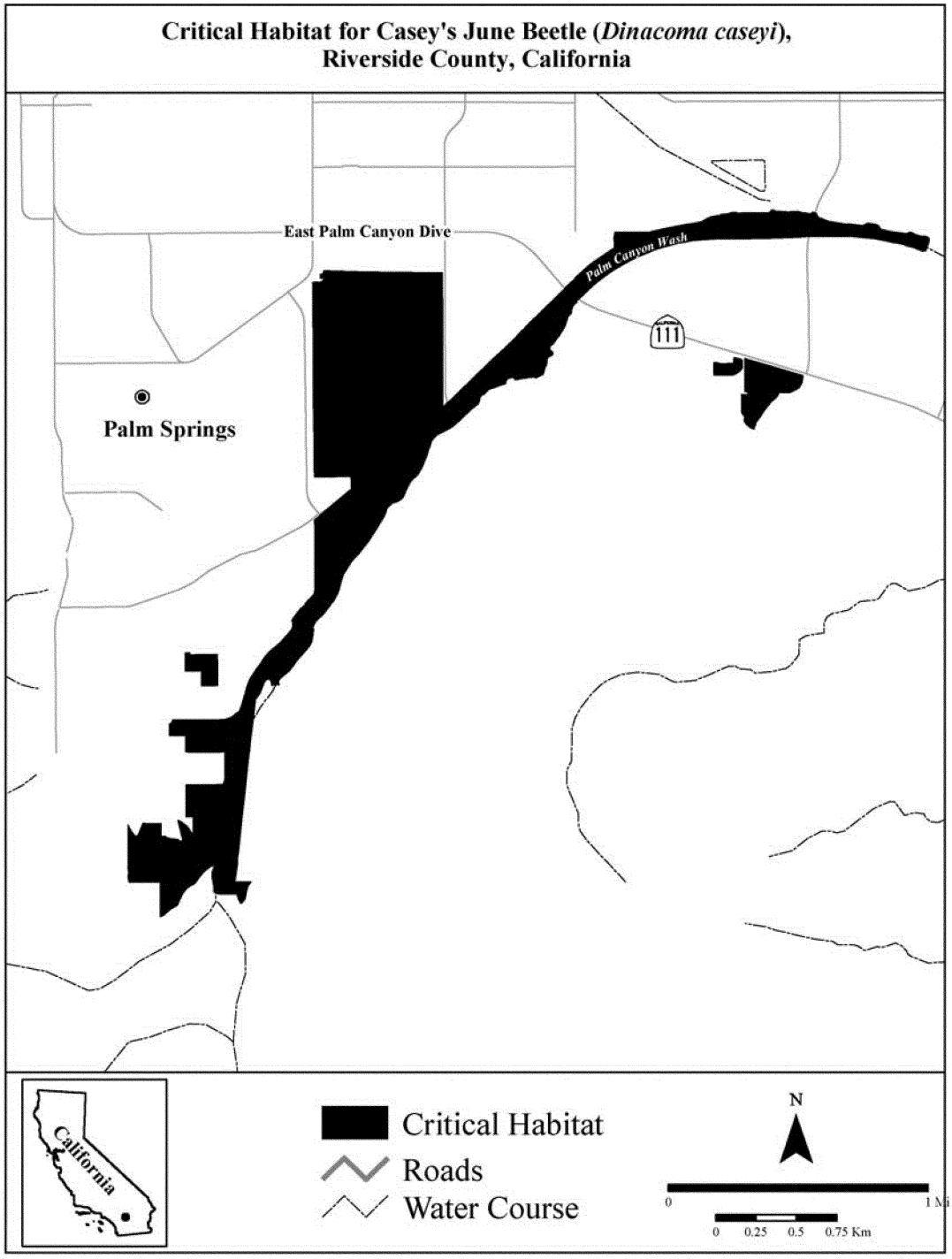

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(6) Palm Springs: Palm Canyon Wash, Riverside County, California. From USGS 1:24,000 quadrangles Palm Springs and Cathedral City, land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): (E, N): 546545, 3740363; 546556, 3740362; 546566, 3740362; 546577, 3740362; 546587, 3740362; 546595, 3740361; 546603, 3740360; 546608, 3740360; 546614, 3740359; 546625, 3740360; 546637, 3740361; 546650, 3740363; 546657, 3740362; 546667, 3740364; 546668, 3740364; 546674, 3740364; 546680, 3740362; 546700, 3740357; 546722, 3740353; 546734, 3740350; 546746, 3740348; 546756, 3740350; 546764, 3740355; 546767, 3740358; 546768, 3740359; 546789, 3740351; 546791, 3740349; 546791, 3740343; 546795, 3740334; 546799, 3740329; 546805, 3740325; 546810, 3740322; 546821, 3740320; 546823, 3740320; 546833, 3740314; 546865, 3740301; 546941, 3740289; 546971, 3740284; 546980, 3740284; 547001, 3740284; 547022, 3740282; 547038, 3740280; 547058, 3740277; 547075, 3740275; 547086, 3740279; 547092, 3740281; 547093, 3740281; 547104, 3740290; 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Dated: September 12, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24047 Filed 9–21–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

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No. 184 September 22, 2011

Part IV

The President

Notice of September 21, 2011—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

Federal Register
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Thursday, September 22, 2011

Presidential Documents

Title 3—

The President

Notice of September 21, 2011

Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism

On September 23, 2001, by Executive Order 13224, the President declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001, in New York and Pennsylvania and against the Pentagon, and the continuing and immediate threat of further attacks against United States nationals or the United States. Because the actions of these persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
September 21, 2011.

[FR Doc. 2011–24631
Filed 9–21–11; 2:15 pm]
Billing code 3195–W1–P

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