that an extension of time is in the public interest and that a 14-day extension will provide adequate time for development of reply comments. The Commission grants a 14-day extension of the reply comment deadline.

### Ordering Clauses

Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and § § 0.141, 0.361, and 1.46 of the Commission's rules, 47 CFR 0.141, 0.361, 1.46, that the Motion for Extension of Time to File Reply Comments filed by the National Association of State Utility Consumer Advocates *is granted* to the extent indicated herein and *is otherwise denied,* and the deadline for filing reply comments in response to document FCC 11–106 *is extended* to December 5, 2011.

Federal Communications Commission.

**William Freedman,**

*Deputy Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2011–30783 Filed 11–29–11; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R1–ES–2011–0096; 4500030114]**

**RIN 1018–AX38**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southern Selkirk Mountains Population of Woodland Caribou (Rangifer tarandus caribou)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 375,562 acres (151,985 hectares) are being proposed for designation as critical habitat. The proposed critical habitat is located in Boundary and Bonner counties in Idaho, and Pend Oreille County in Washington.

**DATES:** We will accept comments received on or before January 30, 2012. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 17, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R1–ES–2011–0096, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Submit a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R1–ES–2011–0096; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **PUBLIC COMMENTS** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Brian T. Kelly, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone (208) 378–5243; facsimile (208) 378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the southern Selkirk Mountains population of woodland caribou from human activity, the degree of which can be expected to increase due to the designation, such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of the southern Selkirk Mountains woodland caribou habitat in the United States;

(b) What areas occupied at the time of listing contain the physical and biological features essential to the conservation of the species should be included in the designation and why; and

(c) Special management considerations or protections that the features essential to the conservation of southern Selkirk Mountains woodland caribou identified in this proposal may require, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(5) Information on the projected and reasonably likely impacts of climate change on southern Selkirk Mountains woodland caribou and the proposed critical habitat.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act and why.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we

withhold personal information, such as your name, street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## Background

In this proposed rule for designation of critical habitat, we intend to discuss only those topics directly relevant to the designation of critical habitat for this species. For more detailed information on the biology of and threats to the southern Selkirk Mountains population of woodland caribou, please refer to the final listing rule published in the **Federal Register** on February 26, 1984 (49 FR 7390), and the Southern Selkirk Mountain Caribou 5-Year Review completed by the Service on December 2, 2008 (USFWS 2008a). Detailed information on the southern Selkirk Mountains population of woodland caribou directly relevant to designation of critical habitat is discussed under the *Primary Constituent Elements* section below.

### *Species Information*

Woodland caribou are a subspecies of caribou with a historically wide distribution across Canada. In British Columbia, Canada (B.C.) there are three recognized ecotypes of woodland caribou: Mountain (alpine; arboreal lichen winter feeding group), northern (lives in central and northern B.C.), and boreal (restricted to the lowland plains of northeastern B.C.). The mountain ecotype of woodland caribou is the ecotype found in the United States (U.S.). Each ecotype is generally differentiated by the type of habitat occupied, movement patterns, and feeding behavior. Ecotypes are described as classes of populations adapted to different landscapes or environments as expressed by their movements and feeding behavior (COSEWIC 2002, p. 13).

The mountain ecotype of woodland caribou, to which the endangered southern Selkirk Mountains population belongs, occurs in high elevations (generally above 4,000 feet (ft) (1,220 meters (m)), steep terrain of the mountainous southeastern and east-central portions of B.C., and the Selkirk Mountains of northern Idaho and northeastern Washington (USFWS 1994, p. 6; USFWS 2008a, p. 2). They primarily occupy old-growth western red cedar (*Thuja plicata*)/hemlock (*Tsuga heterophylla*) and Engelmann spruce (*Picea engelmannii* or *P. glauca* x *engelmannii*)/subalpine fir (*Abies lasiocarpa*) forests that typically have high snow levels. Unlike other caribou, mountain caribou do not aggregate into large herds (USFWS 1994, p. 11). They have been characterized as ''shy'' forest dwellers, coming together only in small groups that do not migrate over great distances. The largest groups are encountered during the rut and late winter, whereas spring and summer groups are generally small (MCTAC 2002, p. 4). This is likely a predator-avoidance tactic (Paquet 1997, p. 9; Seip *et al.* 1994, p. 77). In contrast to the seasonal, long-distance migrations undertaken by some caribou subspecies, mountain caribou make strong seasonal elevational movements in response to seasonal habitat factors, such as snow level, food availability, and predator avoidance.

The density of caribou populations in B.C. appears to be related to their ability to become spatially separated from predators during the summer months, when the abundance of wolves is largely determined by the availability of other prey species. Consequently, caribou that migrate to alpine habitats during the summer reduce their exposure to predators (Bergerund *et al.,* 1984 and Seip, 1992 *in* Seip *et al.* 1994, p. 77). Prior to the increase in moose abundance in B.C. during the 1900's, it is likely that higher densities of caribou were able to coexist with wolves. However, when moose numbers increased, caribou that lived in close proximity to moose habitat were eliminated or greatly reduced, and the caribou remaining today represent animals that were more effective at spacing away from moose and wolves in summer. It appears the effectiveness of predator avoidance strategies is the dominant factor that determines the natural population density of caribou populations in B.C. (Seip *et al.* 1994, p. 78).

### *Geographic Range*

Currently, the entire global population of the southern Selkirk Mountains population of woodland caribou occurs within B.C., Idaho, and Washington, where they are considered to be at risk of extirpation (USFWS 2008a, p. 10). The southern Selkirk Mountains woodland caribou population is now the southernmost extant population of mountain caribou and the last remaining mountain caribou population in the U.S. (IDFG CWCS Appendix F 2005, p. 373; USFWS 2008a, p. 12). In Idaho, caribou have historically been reported from the 1880s as far south as the St. Joe River and at Elk City near the Clearwater River (Evans 1960, pp. 59–64), and also in the city of St. Maries as recently as 1959 (Evans 1960, p. 93). The current range extends approximately 484 miles (mi) (779 kilometer (km)) in a northwest to southeast direction from the north end of the Hart Ranges in B.C. to the south end of the Selkirk Mountains in Idaho and Washington (see Figure 1).

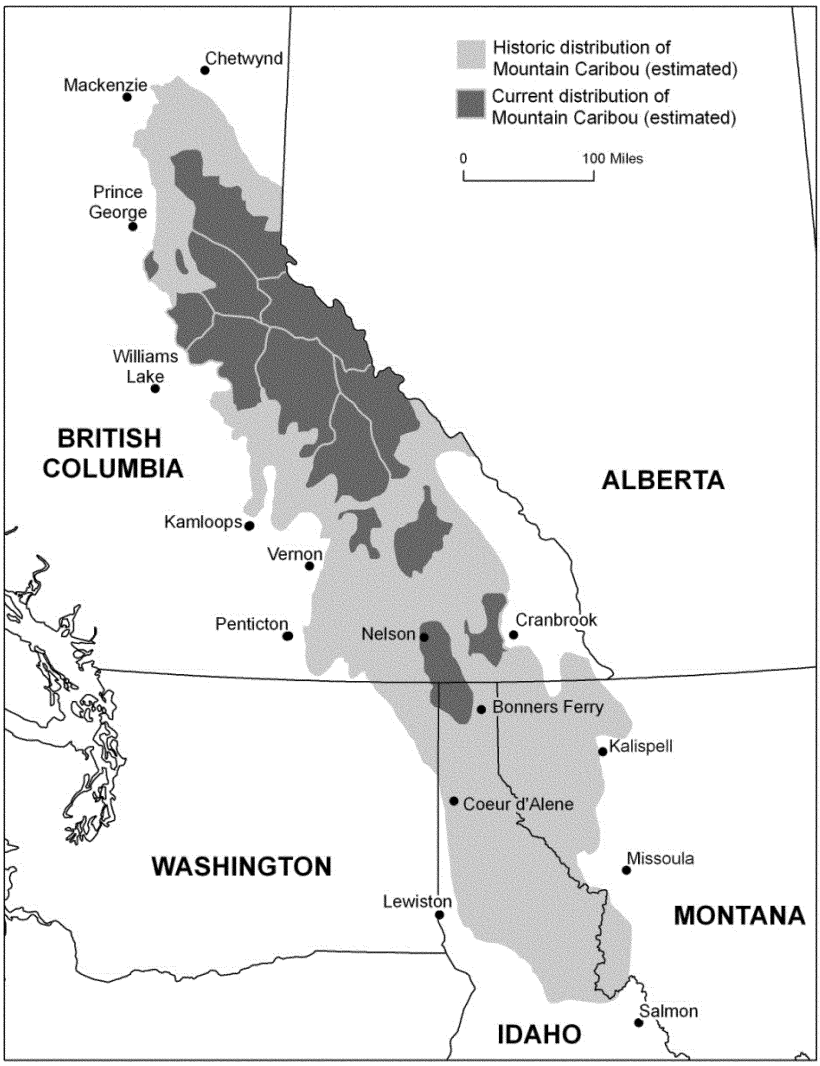


**Figure 1. Historical and current distribution of mountain caribou**

The southern Selkirk Mountains woodland caribou population is separated by 30–60 mi (48–96 km) from the next closest local populations to the north and east in B.C. (USFWS 2008a, p. 12). Although caribou numbers in the southern Selkirk Mountains population have fluctuated over the last few decades, augmentation efforts between 1987 and 1990, and 1996 and 1998, from northern caribou herds in B.C. has allowed this herd to have a modest increase (average of 7 percent) in population over the last 5 to 10 years (USFWS 2008a, pp. 15–16). Annual surveys are conducted by Idaho Fish and Game (IDFG), with both fixed-wing aircraft and a helicopter, using standard survey protocols developed for caribou (Wakkinen *et al.* 2009, pp. 3, 5–6). In June 2009, IDFG estimated this population to be approximately 46 animals; 3 of which were located within the U.S. portion of the range (Wakkinen *et al.* 2009, pp. 6–7). This represents an increase from the 30 individuals estimated at the time of listing (49 FR 7390–7394). Preliminary estimates reported from surveys conducted in late winter 2011 indicate the population to be approximately 36 animals; however, IDFG reports low confidence in that estimate due to poor weather conditions that limited aerial surveys (Wakkinen 2011, pers. comm.).

*Ecology and Habitat*

Southern Selkirk Mountains caribou are closely tied to old-growth coniferous forests of the Interior Wet-belt ecosystem of B.C. and the United States. Their survival depends on the ability to spread out over large areas of suitable habitat where it is difficult for predators to find them (Stevenson *et al.,* 2001, p. 1). Mountain caribou habitat is defined as old-growth forests (generally more than 100–150 years old), which support abundant arboreal lichens (the key winter food source of mountain caribou) (Stevenson *et al.* 2001, p. 1; USFWS 2008a, p. 20).

All caribou are principally grazers, and exhibit selective foraging behaviors for grasses, flowering plants, horsetails, willow and dwarf birch leaves and tips, sedges, and lichens in spring and summer (Paquet 1997, pp. 13, 16). For southern Selkirk Mountains caribou, the fall and early winter diet consists largely of dried grasses, sedges, willow and dwarf birch tips, and arboreal lichens (Paquet 1997, p. 13). When the snow deepens, their diet consists almost exclusively of arboreal lichens, which are usually the only food available

(Paquet 1997, p. 13; MCTAC 2002, p. 11).

Southern Selkirk Mountains caribou habitat is typically represented by a combination of two vegetation zones: The cedar/hemlock zone at lower elevations and the subalpine fir/Engelmann spruce zone at higher elevations. Caribou also require transition areas and corridors between these two vegetation zones. In general, mountain caribou seasonal habitats consist of early winter, late winter, spring, calving, summer, and fall habitats, which are primarily within the above vegetation zones (Servheen and Lyon 1989, p. 235; USFS 2004, p. 18; USFWS 2008a, p. 20). Early-winter and late-winter habitats are usually considered to be the most important habitats to caribou, and represent the most limiting type of habitat on the landscape within the recovery area (USFS 2004, p. 19). These seasonal habitats are described under the *Physical and Biological Features* section below.

*Previous Federal Actions*

In 1980, the Service received petitions to list the South Selkirk Mountains population of woodland caribou as endangered under the Endangered Species Act from the Idaho Department of Fish and Game (IDFG) and Dean Carrier, a U.S. Forest Service (USFS) staff biologist and former chairman of the International Mountain Caribou Technical Committee (IMCTC). At that time, the population was believed to consist of 13 to 20 animals (48 FR 1722–1726). Following a review of the petition and other data readily available, the southern Selkirk Mountains woodland caribou population in northeastern Washington, northern Idaho, and southeastern B.C. was listed as endangered under the Act's emergency procedures on January 14, 1983 (48 FR 1722–1726). A second emergency rule was published on October 25, 1983 (48 FR 49245–49249), and a final rule listing the southern Selkirk Mountains woodland caribou population as endangered was published on February 29, 1984 (49 FR 7390–7394). The designation of critical habitat was determined to be not prudent at that time, since increased poaching could result from the publication of maps showing areas used by the species. A Management Plan/Recovery Plan for Selkirk Caribou was approved by the Service in 1985 (USFWS 1985), and revised in 1994 (USFWS 1994).

Notices of 90-day findings on two petitions to delist the southern Selkirk Mountains population of woodland caribou were published in the **Federal Register** on November 29, 1993 (58 FR 62623), and November 1, 2000 (65 FR 65287). Both petitions were submitted by Mr. Peter B. Wilson, representing the Greater Bonners Ferry Chamber of Commerce, Bonners Ferry, Idaho. Our response to both petitions stated that the petitions did not present substantial scientific or commercial information indicating that delisting of the woodland caribou may be warranted.

On August 17, 2005, a complaint was filed in Federal district court challenging two biological opinions issued by the Service, and USFS management actions within southern Selkirk Mountains caribou habitat and the recovery area. The plaintiffs included Defenders of Wildlife, Conservation Northwest, the Lands Council, Selkirk Conservation Alliance, Idaho Conservation League, and Center for Biological Diversity. The lawsuit challenged, in part, nonjeopardy biological opinions on the USFS Land and Resource Management Plans for the Idaho Panhandle (IPNF) and Coleville (CNF) National Forests, and the USFS' failure to comply with the incidental take statements in the biological opinions.

In December 2005, the Court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005–2006. In November 2006, the Court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the southern Selkirk Mountains caribou recovery area. On February 14, 2007, the Court ordered a modification of the current injunction to add a protected caribou travel corridor connecting habitat in the U.S. portion of the southern Selkirk Mountains with habitat in B.C. This injunction is currently in effect, pending the completion of section 7 consultation on the IPNF's proposed winter travel plan.

On April 11, 2006, a notice of initiation of 5-year reviews for 70 species in Idaho, Oregon, Washington and Hawaii, and Guam was published in the **Federal Register** (69 FR 18345–8348), including the southern Selkirk Mountains population of woodland caribou. The Southern Selkirk Mountains Caribou Population 5-Year Review was completed December 5, 2008 (USFWS, 2008a).

On December 6, 2002, the Defenders of Wildlife, Lands Council, Selkirk Conservation Alliance, and Center for Biological Diversity (plaintiffs) petitioned the Service to designate critical habitat for the endangered southern Selkirk Mountains population of woodland caribou. On February 10, 2003, we acknowledged receipt of the plaintiff's petition, and stated we were unable to address the petition at that time due to budgetary constraints. On January 15, 2009, a complaint for declaratory and injunctive relief (*Defenders of Wildlife et al.,* v. *Salazar,* CV–09–15–EFS) was filed in Federal District Court, alleging that the Service's failure to make a decision more than 6 years after the petition was submitted violated the Administrative Procedure Act (5 U.S.C. 551–559, 701–706). In a stipulated settlement agreement, we agreed to make a critical habitat prudency determination, and if determined to be prudent, to submit a proposed critical habitat rule to the **Federal Register** on or before November 20, 2011, and a final critical habitat rule by November 20, 2012.

**Prudency Determination**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The final rule listing the southern Selkirk Mountains population of woodland caribou as an endangered species (49 FR 7390; February 29, 1984) states that designation of critical habitat would not be prudent, because critical habitat designation would require publication and extensive publicity of the precise areas occupied by the herd and the kind of habitat utilized. As a result, there would be a serious risk of facilitating poaching, which was identified as an important cause of the decline of the herd. A designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)(i) and (ii)). As we agreed in the settlement agreement, we have re-evaluated our previous ''not prudent'' finding regarding critical habitat designation for the southern Selkirk Mountains woodland caribou population and the information supporting our previous findings. We have also evaluated information and analysis that has become available to us subsequent to publication of the February 29, 1984, final rule. We have reviewed the best available information and now determine the designation of critical

habitat for the southern Selkirk Mountains population of woodland caribou would not be expected to increase the degree of threat by poaching, since increased education and awareness have made illegal poaching less of a threat than at the time of listing. Accordingly, we no longer find designation of critical habitat to be ''not prudent'' under our regulations, and have determined that the designation is prudent.

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We reviewed the available information pertaining to the biological needs of this species and habitat characteristics where the species occurs. This and other information represent the best scientific data available, and the available information is sufficient for us to identify areas to propose as critical habitat. Therefore, we conclude that the designation of critical habitat is determinable for the southern Selkirk Mountains woodland caribou population.

**Recovery Plan**

The recovery strategy identified in the Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994), is to maintain the existing two herds in the Selkirk ecosystem and establish a third herd in Washington State, and secure and manage at least 443,000 acres (ac) (179,000 hectares (ha)) of suitable and potential habitat in the Selkirks to support a self-sustaining population. Approximately 47 percent of the suitable and potential habitat identified in the recovery plan occurs within B.C., and 53 percent is within the U.S. (USFWS 1994, p. 4). Population modeling would be used to determine the projected size of a recovered population, and, pending environmental analysis, the existing herds would be augmented with mountain caribou from B.C. translocated to the western portion of the Selkirk Mountains in Washington (USFWS 1994, pp. 24–25). The recovery plan acknowledged some uncertainty about recovery objectives, and identified the need for monitoring to demonstrate the efficacy, or lack thereof, of the recovery plan. The intent was for the recovery plan to evolve into a biologically sound document using adaptive management, to help identify the specific objectives needed to ensure population viability and sustainability (USFWS 1994, p. 27).

The specific recovery tasks related to habitat (USFWS 1994, pp. 30–35) included:

- Conducting inventories;
- Determining habitat capability;
- Reducing the impacts of fire;
- Reducing impacts of insects and disease;
- Reducing impacts of timber management;
- Reducing or eliminating impacts of recreational activities;
- Establishing the recovery zone boundary; and
- Securing habitat.

Information needed to verify recovery objectives (USFWS 1994, pp. 36–42) included:

- Researching habitat needs;
- Determining caribou habitat relations;
- Evaluating timber management practices related to caribou habitat;
- Evaluating the effects of roads and motorized vehicles on caribou and their habitats;
- Developing, implementing, and validating the cumulative effects model;
- Conducting population research;
- Determining recovery goals and objectives;
- Determining the amount of habitat needed for a recovered population; and
- Establishing caribou in the western portion of the Selkirks in Washington.

The specific details of these objectives are available in the recovery plan, which has been provided as supplementary information to this proposed rule at *http://www.regulations.gov.*

**5-Year Review**

A 5-year review of a listed species is required by section 4(c)(2) of the Act, and considers all new available information concerning the population status of the species and the threats that affect it. This process can serve as an integral component of tracking recovery implementation, updating scientific understanding, and evaluating the status of the species. The Service conducts these periodic reviews to ensure the listing classification of a species as threatened or endangered is accurate. The 5-year status review considers the best scientific and commercial information that has become available since the original listing determination or last review, such as: species biology, habitat conditions, conservation measures, threat status and trends, and any other new information. The Service publishes a notice in the **Federal Register** announcing the initiation of these reviews, and provides the public an opportunity to submit relevant information regarding the species and its threats.

The 2008 Southern Selkirk Mountains Population of Woodland Caribou 5-Year Review acknowledged that the recovery criteria in the recovery plan (USFWS 1994) do not reflect the best available and most up to date information on the biology of the species and its habitat (USFWS 2008, p. 15). Since 1994, a great deal of information has been collected regarding caribou and their habitat, the effects of threats such as habitat fragmentation, predation and human access, and various options and approaches for recovery efforts. As is discussed in more detail in the Geographic Range section above, the southern Selkirk Mountains caribou population has been augmented twice over the last two decades. Between 1987 and 1990, the population was augmented with 60 animals from source herds in B.C., which were placed in the Idaho portion of the Selkirk ecosystem, establishing a second herd within the recovery area (USFWS 2008, p. 15). Over the last decade, the number of caribou in Idaho has dwindled, and the bulk of the population primarily occupy habitat in the B.C. portion of the recovery area, although there is continued movement back and forth across the B.C. and U.S. border. Between 1996 and 1998, the southern Selkirk Mountains population was augmented with 43 animals; some were placed in Washington and some were placed just north of the border in B.C. Unfortunately, the augmentation effort coincided with a high mountain lion population in the Selkirk ecosystem, and a number of the transplanted caribou were thought to have been lost to predation, although definitive data on many mortalities was lacking. Although neither the 1996 nor 1998 augmentations resulted in a long-term improvement in caribou distribution throughout the recovery area, the effort succeeded in maintaining and enhancing the number of caribou in the population as a whole, which was estimated at 46 animals in 2008 (USFWS 2008, pp. 15–16).

The current recovery plan establishes the actions and conservation objectives needed to recover the southern Selkirk Mountains population of the woodland caribou. The proposed critical habitat designation will support those objectives by identifying the specific geographic areas in the southern Selkirk

Mountains in Washington, and areas in Idaho, that (1) Were occupied at the time of listing (*i.e.,* within the area of normal utilization described in the final listing rule (49 FR 7390; February 29, 1984)); (2) provide the physical or biological features essential to the conservation of the species; and (3) may require special management considerations or protection. The recovery plan also states that for recovery, woodland caribou in the Selkirks must be distributed over a wider area than at present (USFWS 1994, p. 36). Optimally, this would include habitat in both B.C. and the U.S. We are not proposing to designate unoccupied critical habitat since we are unable to identify any specific areas in the U.S. that are outside the geographical area occupied by the southern Selkirk Mountains caribou at the time of listing that are essential to the conservation of the species.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the 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 the 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 an endangered or threatened species to the point at which the measures provided pursuant to 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 be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, 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 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.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) Which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, 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). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that when combined compose the features essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, 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. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific 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 the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. 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 (*e.g.,* see *Climate Change* discussion below). 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 of 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 ensure 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. 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.

*Climate Change*

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). In the Pacific Northwest, regionally averaged temperatures have risen 0.8 degrees Celsius (C) (1.5 degrees Fahrenheit (F)) over the last century (as much as 2 degrees C (4 degrees F) in some areas), and are projected to increase by another 1.5 to 5.5 degrees C (3 to 10 degrees F) over the next 100 years (Mote *et al.* 2003, p. 54; Karl *et al.* 2009, p. 135). In addition, climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

We anticipate that these changes could directly impact southern Selkirk Mountains caribou by modifying the factors that affect the abundance, distribution, and quality of caribou habitat, the ability of caribou to move between seasonal habitats, and their ability to avoid predation. Climate change may also have impacts on caribou by affecting external factors such as increased disease and insect outbreaks, increased fire occurrence, and changes in snow depth. The impacts from these effects could lead to increased habitat fragmentation and changes in forest composition, changes in forage ability and abundance, and changes in predation, which are each important to caribou survival. Because of the close ties between caribou movement and seasonal snow conditions, seasonal shifts in snow conditions will likely be significant to the caribou (Utzig 2005, pp. 4, 8).

Review of climate change modeling presented in Utzig (2005, p. 5) demonstrated projected shifts in habitats within the present range of mountain caribou in Canada. Projections for 2055 indicate a significant decrease in alpine habitats, which is loosely correlated with the distribution of the arboreal lichens on which mountain caribou depend. The projected biogeoclimatic zone distributions indicate a significant increase in the distribution of western red cedar (*Thuja plicata*) in the mid-term with a shift up in elevation and northward in the longer term. Subalpine fir (*Abies lasiocarpa*) distribution tends to shift up in elevation, with long-term decreasing presence in the south and on the drier plateau portions of the present range. However, both tree species maintain significant presence in the area presently occupied by mountain caribou, and their increased distributions to the north may indicate the potential for range expansion for caribou in those northern areas (Utzig 2005, p. 5). The predictions for 2085 indicate an increase in drier vegetation types at lower elevations, potentially causing an increase in other ungulate species such as deer, moose, and elk. This may result in increased predator numbers in response to increased prey availability, and increased predation on caribou (Utzig 2005, p. 4). However, further data would be necessary to confirm this hypothesis, and if confirmed, specific management and mitigation measures would need to be developed. Utzig (2005, p. 10) also identifies several uncertainties in the paper's conclusion (*e.g.,* it is impossible to reliably predict specific ecosystem changes and to reliably predict potential impacts), and acknowledges that caribou managed to survive in the last glacial period as well as intervening climate change over the last 10,000 years.

The movement of mountain caribou is closely tied to changes in snow depth and consolidation in the snow pack, allowing access to arboreal lichens in winter. In general, climate change projections suggest reduced snowpacks and shorter winters, particularly at lower elevations (Utzig 2005, p. 7). Snowpack depth is significant in determining the height at which arboreal lichens occur on trees, and the height at which caribou are able to access lichens in the winter. These arboreal lichens are also dependent upon factors influenced by climate, including humidity and stand density (Utzig 2005, p. 7).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects, nor are we currently aware of any climate change information specific to the habitat of the southern Selkirk Mountains caribou that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat designation for this species to address the effects of climate change. We are, however, soliciting comments on this challenging management issue; all comments related to climate change will be fully considered in our final determination.

*Physical or Biological Features*

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species, 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, or 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 the southern Selkirk Mountains caribou from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on February 26, 1984 (49 FR 7390), the 1994 Revised Recovery Plan for the Selkirk Mountains Woodland Caribou, and the Southern Selkirk Mountains Caribou Population 5-Year Review completed by the Service on December 2, 2008 (USFWS 2008a). We have determined that the following

physical or biological features are essential for the southern Selkirk Mountains caribou population.

Space for Individual and Population Growth and for Normal Behavior

The southern Selkirk Mountains caribou population requires large contiguous areas of high-elevation forest summer and winter habitat, with little or no vehicle access and disturbance, so they can spread out at low densities (*i.e.,* 30–50 caribou/250,000 ac (100,000 ha)) and avoid predators (Seip and Cichowski 1996, p. 79; Stevenson *et al.* 2001, p. 1). Mountain caribou strongly prefer old-growth forests to young forests in all seasons (Stevenson *et al.* 2001, p. 1).

The primary long-term threat to the southern Selkirk Mountains caribou is the ongoing loss and fragmentation of contiguous old-growth forests and forest habitats due to a combination of timber harvest, wildfires, and road development. The effects associated with habitat loss and fragmentation are: (1) Reduction of the amount of space available for caribou, limiting the ecological carrying capacity; (2) reduction of the arboreal lichen supply, affecting the caribou's key winter food source; (3) potential impacts to caribou movement patterns; (4) potential effects to the caribou's use of remaining fragmented habitat because suitable habitat parcels will be smaller and discontinuous; and (5) increased susceptibility of caribou to predation as available habitat is compressed and fragmented (Stevenson *et al.* 2001, p. 10; MCTAC 2002, pp. 20–22; Cichowski *et al.* 2004, pp. 10, 19–20; Apps and McLellan 2006, pp. 92–93; Wittmer *et al.* 2007, pp. 576–577).

Forest management practices have been a concern for caribou habitat management for more than 25 years (Stevenson *et al.* 2001, p. 1; MCTAC 2002, p. 17). In the last decade, timber harvest has moved into high-elevation mature and old-growth forest habitat types due to more roads and more powerful machinery capable of traversing difficult terrains (Stevenson *et al.* 2001, p. 10). The habitat requirements of mountain caribou are incompatible with most currently used forest management practices (Stevenson *et al.* 2001, p. 1). Timber harvesting can reduce and fragment areas creating a patchwork of different age classes of forest stands, all linked with a network of roads. This patchwork may contain enough lichens to support a caribou herd, but will not allow the herd to effectively avoid predators in the southern Selkirk ecosystem (Stevenson *et al.* 2001; p. 1). A patchwork of habitat within forests draws other ungulates such as moose (*Alces alces*), elk (*Cervus elaphus*), and deer (*Odocoileus* spp.) into close proximity with caribou, and consequently brings in predators such as mountain lions (*Felis concolor*), wolves (*Canis lupus*), coyotes (*Canis latrans*), wolverines (*Gulo gulo luscus*), black bears (*Ursus americanus*), and grizzly bears (*Ursus arctos*) (Seip and Cichowski 1996, p. 79; Wittmer *et al.* 2005; pp. 414–417)

The southern Selkirk Mountains caribou use habitat as an important means of limiting the effect of predation by spreading out over large areas at high elevations that other ungulate species avoid (Seip and Cichowski 1996, p. 79; MCTAC 2002, pp. 20–21; Kinley and Woods 2006, all). By dispersing over large areas, caribou become unprofitable prey (*i.e.,* it is not worth a predator's energy investment to seek out prey when there are so few animals in a large area, which is often in deep snow). The amount of habitat required by a caribou population to make them an unpredictable prey to predators may be significantly more than the habitat needed to obtain sufficient winter forage of lichens (Stevenson *et al.* 2001, p. 15). To adequately provide for their habitat needs, large contiguous areas of mature to old-growth western hemlock/western red cedar forests and subalpine fir and Engelmann spruce forests, and the connecting habitat in-between, are required. In order for the southern Selkirk Mountains caribou population to be able to use these areas, the habitats need to be connected, particularly during winter when the energy costs of moving through deep snow can be high (Stevenson *et al.* 2001, p. 15).

Therefore, based on the information above, we identify suitable, large contiguous areas of habitat that allows caribou to spread out at low densities, avoid predators, and obtain sufficient winter forage of lichens, as a physical or biological feature (PBF) for the southern Selkirk Mountains caribou.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Arboreal hair lichens comprise a critical winter food source, and the southern Selkirk Mountains caribou diet is almost entirely lichens from November to May (Servheen and Lyon 1989, p. 235; Stevenson *et al.* 2001, p. 1; USFS 2004, p. 18), since they represent the only food source available (Paquet 1997, p. 13). Lichens are pulled from the branches of conifers, picked from the surface of the snow after being blown out of trees by wind, or are grazed from wind-thrown branches and trees. The two kinds of lichens commonly eaten by the south Selkirk caribou are *Bryoria* spp. and *Alectoria sarmentosa;* both are most commonly found in high-elevation climax forests on old trees (Paquet 1997, p. 14). These lichens are extremely slow-growing, and are typically abundant only in mature or old-growth forests (125 years or older) (Paquet 1997, p. 2). Relative humidity, wetting and drying cycles, and amount of light are ultimately the controlling factors of lichen growth.

During the spring and summer, the southern Selkirk Mountains caribou move to lower elevations to forage on grasses, flowering plants, horsetails, willow and dwarf birch leaves and tips, sedges, and lichens in subalpine meadows (Paquet 1997, p. 13, 16), and on huckleberry leaves (USFS 2004, p. 18). The fall and early winter diet consists largely of dried grasses, sedges, willow and dwarf birch tips, and arboreal lichens.

Therefore, based on the information above, we identify arboreal hair lichens, *Bryoria* spp. and *Alectoria sarmentosa,* which occur on mature to old-growth trees, or are available having been blown out of trees, to be an essential winter season PBF for this species. These lichens also represent a PBF for female caribou that move into higher elevations during the June–July calving season (see discussion below).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

In spring (May to July) the southern Selkirk Mountains caribou move to areas with green vegetation, which become the primary food source. These areas may overlap with early and late winter ranges at mid to lower elevations (Servheen and Lyon 1989, p. 235; MCTAC 2002, p. 11), and vegetation in these areas allow caribou to recover from the effects of winter (USFWS 1994, p. 7). Pregnant females will move to these spring habitats for forage, but during the calving season in early June to July, the need to avoid predators influences habitat selection. Areas selected for calving are typically at high-elevation, old-growth forest ridgetops that can be food limited, but are more likely to be predator free (USFWS 1994, p. 8; MCTAC 2002, p. 11). Arboreal lichen becomes the primary food source for pregnant females and females with calves, since green forage is unavailable in these secluded and high-elevation habitats.

Therefore, based on the information above, we identify large contiguous areas of high-elevation, old-growth forest ridgetops, which are likely to be predator limited, and have sufficient

forage of lichens to support a pregnant cow, or cow-calf pair, to be a PBF for this species.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

In general, seasonal habitats of the southern Selkirk Mountains caribou consist of early winter, late winter, spring, calving, summer, and fall habitats primarily within two vegetation zones: Western hemlock/western red cedar and subalpine fir/Engelmann spruce forests (USFS 2004, p. 18; USFWS 2008a, p. 20). Caribou typically make the longest landscape movements during the early winter period, which may range from several miles (kilometers) to about 30 mi (48 km) (USFS 2004, p. 22). Early winter is a period of rapid snow accumulation and generally extends from November to mid/late January. During this time, the southern Selkirk Mountains caribou generally inhabit mature to old-growth western hemlock/western red cedar forests, the lower limits of the subalpine fir and Engelmann spruce forests, and the ecotone (a zone of transition between two different ecosystems) between these two forest types (USFWS 2008a, p. 20). These habitats generally occur between 4,000 and 6,200 ft (about 1,220–1,900 m) in elevation, and have a more closed-overstory canopy (70 percent or more) to intercept snow (USFS 2004, p. 18, USFWS 2008a, p. 20).

Caribou seek out these more closed timber stands where they feed on a combination of lichen on wind-thrown trees, and lichens that have fallen from standing trees (litterfall) (MCTAC 2002, p. 10). If available, shrubs and other forbs that remain accessible in snow wells under large trees are also consumed. A conifer canopy that intercepts snow and allows access to feeding sites is important (MCTAC 2002, p. 10) until the snow pack consolidates and the caribou can move to higher elevations (USFS 2004, p. 18). However, these elevational shifts can be quite variable within and between years, depending on snow levels (Apps *et al.* 2001, p. 67; Kinley *et al.* 2007; p. 94). All mountain caribou experience the poorest mobility and food availability of any season during early winter because of the typically deep, soft snow (MCTAC 2002, p. 10).

Late winter generally starts around mid-January and extends to approximately April. During this time, the snowpack is deep (up to 16 ft (5 m) on ridge tops) and firm enough to support the animal's weight, which allows easier movement. These upper slopes and ridge tops are generally higher than 6,000 ft (1,830 m) in elevation, support mature to old stands of subalpine fir and Engelmann spruce with relatively open canopies (approximately 10 to 50 percent canopy cover), and have high levels of arboreal lichen (USFWS 1994, p. 6; MCTAC 2002, p. 10; USFS 2004, p. 18; Kinley and Apps, 2007, p. 15; USFWS 2008a, p. 20).

Spring is usually from May to July, when caribou move to areas that have green vegetation to recover from the effects of winter (Servheen and Lyon 1989, p. 235; USFWS 1994, p. 7). July to mid-October is considered to be the summer habitat season for caribou. Southern Selkirk Mountains caribou spend the summer in higher elevational alpine and subalpine areas with high forage availability (USFWS 1994, p. 8). Early summer in open-canopied stands provide forbs and huckleberry (*Vaccinium* spp.) leaves. Summer range includes Engelmann spruce/subalpine fir forests and western hemlock/western red cedar forests (Stevenson *et al.* 2001, p. 1; Kinley and Apps 2007, p. 15). In the Selkirk Mountains, the shallow slopes used in late summer are characteristically high-elevation benches, secondary stream bottoms and riparian areas, and seeps where forage is lush and abundant (Servheen and Lyon 1989, p. 236).

Fall habitat (generally October into November) use by southern Selkirk Mountains caribou is driven primarily by the availability of forage vegetation as vascular plants disappear. Caribou may gradually move to western hemlock dominated forests. It is during this time of year when southern Selkirk Mountains caribou are making the transition from green forage to arboreal lichens (Servheen and Lyon, 1989, p. 236). As winter nears, the annual cycle of habitat use by the southern Selkirk Mountains caribou population repeats itself.

Increasing levels of winter recreational activities (*e.g.,* snowmobiling) within the southern Selkirk Mountains caribou recovery area, which includes the Colville National Forests (CNF) in Washington and Idaho Panhandle National Forests (IPNF) in Idaho, is an emerging threat to the southern Selkirk Mountains caribou. The numbers and distribution of recreational snowmobilers has increased over the last l0–15 years, due in part to improved snowmobile technology and the increasing popularity of the sport. Snowmobiling activities have the potential to displace caribou from suitable habitat, resulting in additional energy expenditure by caribou when they vacate an area to avoid disturbance (Tyler 1991, p. 191). This results in an effective loss of habitat availability temporarily, and potentially for the long term if caribou abandon areas characterized by chronic disturbance.

Therefore, based on the information above, we identify large contiguous areas of old-growth or mature forests, at high-elevation (4,000 ft (about 1,220 m) or greater) and transitional areas that connect habitats essential to meet the life history requirements of the southern Selkirk Mountains population of woodland caribou, and have little to no disturbance from vehicles or other forest activities, as physical or biological features for southern Selkirk Mountains caribou.

Primary Constituent Elements for the Southern Selkirk Mountains Caribou

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the southern Selkirk Mountains caribou population in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the specific compositional elements of physical and biological features that 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 mountain caribou's vital life-history functions, we determine that the primary constituent elements specific to the southern Selkirk Mountains caribou population are:

i. Mature to old-growth western hemlock (*Tsuga heterophylla*)/western red cedar (*Thuja plicata*) climax forest, and subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest over 4,000 ft (1,220 m) in elevation; these habitats typically have 70 percent or greater canopy closure.

ii. Ridge tops with deep (up to 16 ft (5 m)) snowpack that are generally 6,000 ft (1,830 m) in elevation or higher, in mature to old stands of subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest, with relatively open (approximately 50 percent) canopy.

iii. Arboreal hair lichen growth in high enough amounts to support southern Selkirk Mountains caribou herds.

iv. High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, and seeps, and subalpine meadows with succulent forbs and grasses, flowering plants,

horsetails, willow, huckleberry, dwarf birch, sedges and lichens. Southern Selkirk Mountains caribou, including pregnant females, use these areas for feeding during the spring and summer seasons.

v. Transition zones that connect the habitats described above and that facilitate seasonal caribou movements between habitat types.

The physical or biological features for the southern Selkirk Mountains caribou are, therefore, the arrangement of the above habitat types and their components and transition zones on the landscape in a manner that supports seasonal movement, feeding, breeding, and sheltering needs. Each of the seasonal use areas creates space on the landscape that allows caribou to spread out and avoid predators. These areas also have little or no disturbance from forest practices, roads, or recreational activities.

The final listing rule states that the southern Selkirk Mountains population of woodland caribou is the only caribou population that is still known to regularly occupy the conterminous U.S., and is found in northern Idaho and northeastern Washington. This population also occurs in southern B.C. (49 FR 7390; February 29, 1984). The final rule describes the ''area of normal utilization'' in the U.S. (starting from the B.C. border), as: (1) Southward along Kootenay Lake and the Kootenay River to the town of Bonners Ferry, Idaho; (2) southward along U.S. Highway 95 to the Pend Oreille River; (3) westward and northward along the Pend Oreille River; and (4) across the Idaho-Washington State line to the Washington–B.C. border (49 FR 7390; February 29, 1984). With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the primary constituent elements sufficient to support the life-history functions of the species. All areas proposed for designation as critical habitat were occupied at the time of listing and contain those physical or biological features essential to the conservation of the species, which may require special management considerations or protections.

*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 features that are essential to the conservation of the species and which may require special management considerations or protection.

A comprehensive discussion of the threats affecting the species is included in the Southern Selkirk Mountains Caribou Population 5–Year Review (USFWS 2008a), the Idaho Comprehensive Wildlife Conservation Strategy (2005), and the Revised Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994). The features essential to the conservation of this species, described above, may require special management considerations or protections to reduce the following threats: Habitat fragmentation of contiguous old-growth forests due to forest management practices and activities, wildfire, disturbances such as roads and recreation, and altered predator/prey dynamics.

Special management considerations or protection are required within critical habitat areas to address these threats, which are occurring within each of the subunits proposed for designation. Management activities that could ameliorate these threats include (but are not limited to) conservation measures and actions to minimize the effects of forest management practices on these features, actions to minimize the potential for wildfire and the implementation of rapid response measures when wildfire occurs, road and recreational area closures as appropriate to avoid or minimize the potential for disturbance-related impacts, and reducing opportunities for predator-caribou interactions.

*Existing Conservation Measures*

Land and resource management plans (LRMPs) for the IPNF and CNF have been revised to incorporate management objectives and standards to address the above threats, as a result of section 7 consultation between the USFWS and USFS (USFWS 2001a, b). Standards for caribou habitat management have been incorporated into the IPNF's 1987 and CNF's 1988 LRMP, respectively, to avoid the likelihood of jeopardizing the continued existence of the species, contribute to caribou conservation, and ensure consideration of the biological needs of the species during forest management planning and implementation actions (USFS 1987, pp. II–6, II–27, Appendix N; USFS 1988, pp. 4–10 to 4–17, 4–38, 4–42, 4–73 to 4–76, Appendix I).

These efforts contribute to the protection of the essential physical or biological features by: (1) Retaining old-growth cedar/hemlock stands; (2) analyzing timber management actions on a site-specific basis to consider potential impacts to caribou habitat; (3) avoiding road construction through old-growth forest stands unless no other reasonable access is available; (4) placing emphasis on road closures and habitat mitigation based on caribou needs and requirements; (5) containing and controlling wildfires within southern Selkirk Mountains caribou management areas to prevent loss of coniferous species in all size classes; and (6) managing winter recreation in the CNF in Washington, with specific attention to snowmobile use within the Sullivan Lake Ranger District.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider 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. The areas we are proposing to designate as critical habitat generally follow the recovery areas identified in the recovery plan (USFWS 1994), which are all within the geographical area occupied at the time of listing. Therefore, we are not currently proposing to designate any areas outside the geographical area occupied at the time of listing, because we believe occupied areas are sufficient for the conservation of the species. The occupied areas identified at the time of listing in 1984 contain sufficient physical or biological features to support the life-history functions essential for the conservation of the species.

We reviewed available information and supporting data that pertains to the habitat requirements of the southern Selkirk Mountains caribou. These sources of information included, but were not limited to, the final listing noticed published in the **Federal Register** on February 29, 1984 (49 FR 7390–7394), the 1985 Management/Recovery Plan for Selkirk Caribou (USFWS 1985) and appendices, the Revised Recovery Plan for the Selkirk Mountains Woodland Caribou (USFWS 1994), and the Southern Selkirk Mountains Caribou Population 5–Year Review (USFWS 2008a). Additional Service documents used include the Biological Opinion and Conference Opinion for the Modified Idaho Roadless Rule for USDA Forest Service Regions 1 and 4 (USFWS 2008b), and

Biological Opinions for the continued implementation of both the CNF and IPNF LRMPs (USFWS 2001a, b). Other information included the Idaho Comprehensive Wildlife Conservation Strategy (2005), research published in peer-reviewed articles, academic theses, agency reports, habitat modeling assessments, telemetry data, and mapping information from U.S. and Canadian sources. We also used regional Geographic Information System (GIS) data (such as species occurrence data, land use, elevation, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

We used the following criteria to select areas occupied by southern Selkirk Mountains caribou at the time of listing for inclusion in critical habitat:

(a) The geographical area occupied by the southern Selkirk Mountains caribou at the time of listing (1984) as identified in the final listing rule (49 FR 7390–7394).

(b) Areas representative of the distribution of the southern Selkirk Mountains caribou seasonal habitat needs throughout the geographical area occupied at the time of listing, with the goal of maintaining the species' range of habitat and genetic variability.

(c) Areas that provide the essential physical or biological features necessary to support the species' life-history requirements under varying environmental conditions.

(d) Areas that provide connectivity between mountain caribou habitat to provide for seasonal movement and genetic variability.

Our first step in delineating proposed critical habitat was to identify areas that provide for the conservation of the southern Selkirk Mountains caribou within the geographic region described as the approximate area of normal utilization in the listing rule (49 FR 7390–7394; February 29, 1984). This includes portions of the CNF in Washington, and the IPNF in Idaho, and some Priest Lake Endowment Lands managed by the state of Idaho's Department of Lands (IDL).

Critical habitat boundaries were initially identified above 4,000 ft (about 1,220 m) in elevation, which corresponds to the elevation above which the woodland caribou are generally known to occur within the southern Selkirk Mountains ecosystem in Idaho and Washington (Layser 1974, p. 25–26; USFWS 1994, p. 6; USFWS 2008a, p. 2). Using a Geographical Information System (GIS), we mapped the area described as occupied in the 1984 final listing (49 FR 7390–7394), and delineated areas at 4,000 ft (1,220 m) and above using a 32.8 ft (10 m) digital elevation model. We overlayed seasonal telemetry radiolocations of caribou collected in the southern Selkirk Mountain ecosystems (B.C., Idaho, and Washington), from 1987 through 2004 by the IDFG, Washington Department of Fish and Wildlife, and the Fish and Wildlife Compensation Program (Columbia Basin) in B.C. To further refine proposed critical habitat boundaries, we overlaid the currently defined Recovery Area boundaries, caribou movement corridors mapped by the IPNF (USFS 2004, pp. 22–23), and results of the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem.

After delineating areas above 4,000 ft (1,220 m) utilizing the above methods, we filtered the results to remove isolated patches and some larger areas along the southern boundary in Washington and Idaho because they either lacked PCEs, were adjacent to Schweitzer ski resort (which has a large footprint on the landscape and fragments/isolates areas above 4,000 ft (about 1,220 m) in Idaho), or had relatively low historical utilization based on telemetry data. We included certain areas below 4,000 ft (about 1,220 m) in elevation where seasonal connectivity between habitats was required. These include areas within the IPNF north of Upper Priest Lake north to the Canadian border, along the east and west banks of the Priest River.

When determining proposed critical habitat boundaries, 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 the southern Selkirk Mountains caribou. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, 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 would affect the PBFs in the adjacent critical habitat.

One unit, which contains two subunits, is being proposed for designation based on sufficient elements of the essential physical or biological features being present to support the southern Selkirk Mountains caribou population life-history processes.

**Proposed Critical Habitat Designation**

We are proposing one unit containing two subunits as critical habitat for the southern Selkirk Mountains caribou population. The critical habitat area described below constitutes our best assessment of areas that meet the definition of critical habitat for the southern Selkirk Mountains caribou population. Within the Selkirk Mountains Critical Habitat Unit, we have identified two subunits: (1) Bonner and Boundary Counties, Idaho; and (2) Pend Oreille County, Washington.

The approximate size and ownership of each proposed critical habitat subunit is identified in table 1. Each subunit was occupied at the time of listing in 1984.

TABLE 1. Proposed critical habitat unit and subunits for the southern Selkirk Mountains population of woodland caribou. [Area estimates reflect all land within critical habitat unit boundaries, values are rounded to the nearest whole numbers.]

SELKIRK MOUNTAINS CRITICAL HABITAT UNIT

[Southern Selkirk Mountains Caribou (*Rangifer tarandus caribou*)]

| Critical habitat subunit | Land ownership by type | Size of unit in acres (hectares) |
|---|---|---|
| 1. Bonner and Boundary Counties, Idaho | Federal | 222,971 ac (90,233 ha). |
| | State | 65,218 ac (26,393 ha). |
| | Private | 15,379 ac (6,223 ha). |
| | Subunit Total | 303,568 ac (122,849 ha). |
| 2. Pend Oreille County, Washington | Federal | 71,976 ac (29,128 ha). |
| | State | 0. |

SELKIRK MOUNTAINS CRITICAL HABITAT UNIT—Continued

[Southern Selkirk Mountains Caribou (*Rangifer tarandus caribou*)]

| Critical habitat subunit | Land ownership by type | Size of unit in acres (hectares) |
|---|---|---|
| | Private | 0. |
| | Subunit total | 71,976 ac (29,128 ha). |
| Ownership Totals | Federal | 294,947 ac (119,361 ha). |
| | State | 65,236 ac (26,400 ha). |
| | Private | 15,379 ac (6,224 ha). |
| Unit Total | | 375,562 ac (151,985 ha). |

**Note:** Totals may not sum due to rounding.

The following section presents a brief description of the Selkirk Mountains Critical Habitat Unit, land ownership use within the Unit, and why this Unit meets the definition of critical habitat for the southern Selkirk Mountains caribou. Since this information is also relevant to each of the two subunits, the subunits are not individually described. The overall unit and subunit boundaries are depicted on the maps included in this proposed rule.

*Selkirk Mountain Critical Habitat Unit*

The Selkirk Mountains Critical Habitat Unit consists of 375,562 ac (151,985 ha) and is divided into two subunits: Subunit 1 in Bonner and Boundary Counties, Idaho; and subunit 2 in Pend Oreille County, Washington. The Selkirk Mountains Critical Habitat Unit consists of land higher than 4,000 ft (1,220 m) in elevation, and is generally bounded by State Highway 31 and 20 to the west and south in Washington, U.S. Highway 2 to the south in Idaho, U.S. Highway 2/95 to the east in Idaho, and the U.S./Canadian border to the north. Land ownership within the Unit consists of 294,947 ac (119,361 ha) of Federal land (primarily USFS), 65,236 ac (26,400 ha) of State of Idaho land, and 15,379 ac (6,224 ha) of private land. The Federal land is administered by both the Colville and Idaho Panhandle National Forests, with a small segment of land managed by the Bureau of Land Management. The Selkirk Mountains Critical Habitat Unit was occupied at the time of listing (49 FR 7390–7394; February 29, 1984), and contains all of the physical or biological features essential to the conservation of the southern Selkirk Mountains caribou population.

The primary land uses within the Selkirk Mountains Critical Habitat Unit include Federal, State, and private forest management activities and recreational activities throughout the year, including, but not limited to, snowmobiling, off-highway vehicle (OHV) use, backcountry skiing, and hunting. Special management considerations or protections needed within the Unit would need to address habitat fragmentation of contiguous old-growth forests due to forest practices and activities, wildfire, disturbances such as roads and recreation, and altered predator/prey dynamics.

**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 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 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. Since the southern Selkirk Mountains caribou is listed as endangered, Federal agencies already consult with the Service in areas currently occupied by caribou, or if the species may be indirectly or directly affected by the action, to ensure that their actions do not jeopardize the continued existence of the species.

Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our 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, 442 (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 continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. 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 may affect, or 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. 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 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 sometimes may 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 the critical habitat for the southern Selkirk Mountains caribou. 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.

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.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the southern Selkirk Mountains population of woodland caribou. These activities include, but are not limited to:

(1) Actions that would reduce or remove mature old-growth vegetation (greater than 100–125 years old) within the cedar hemlock zone at lower elevations (below 4,000 ft (1,220 m)) and within subalpine fir/Engelmann spruce zone at higher elevations stands (at or greater than 4,000 ft (1,220 m)), including the ecotone between these two forest habitats. Such activities could include, but are not limited to, forest stand thinning, timber harvest, and fuels treatment of forest stands. These activities could significantly reduce the abundance of arboreal lichen habitat, such that the landscape's ability to produce adequate densities of arboreal lichen to support persistent mountain caribou populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of old-growth coniferous forest on a scale proportionate to the large landscape used by mountain caribou. Such activities could include, but are not limited to, recreational area developments, certain types of mining activities, and associated road building. Such activities could eliminate and fragment mountain caribou and arboreal lichen habitat.

(3) Actions that would increase traffic volume and speed on roads within mountain caribou critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development, or development of a new tourist destination. These activities could reduce connectivity within the old-growth coniferous forest landscape for mountain caribou.

(4) Actions that would increase recreation in mountain caribou recovery areas. Such activities could include, but are not limited to, recreational developments that facilitate winter access into mountain caribou habitat units, or management activities that increase recreational activities within mountain caribou habitat throughout the year, such as snowmobiling, OHV use, and backcountry skiing. These activities have the potential to displace caribou from suitable habitat or increase their susceptibility to predation. Displacement of caribou may result in additional energy expenditure by caribou when they vacate an area to avoid disturbance, and an effective loss of habitat availability temporarily and potentially in the long-term, where caribou abandon areas affected by chronic disturbance.

Mountain caribou strongly prefer old-growth forests to young forests in all seasons. In designated critical habitat, management actions that alter vegetation structure or condition in young forests over limited areas may not represent an adverse effect to caribou critical habitat. However, an adverse effect could result if these types of management activities reduce and fragment areas in a manner that creates a patchwork of different age classes or prevents young forests from achieving old-growth habitat characteristics. For example, a commercial thinning or fuels reduction project in a young forest may not require formal consultation, whereas a commercial thinning or fuels reduction project conducted within an old-growth forest may be an adverse effect to mountain caribou critical habitat and would require formal consultation. Federal agencies should examine the scale of their activities to determine whether direct or indirect alteration of habitat would occur to an extent that the value of critical habitat for the conservation of the mountain caribou would be appreciably diminished.

**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 resource 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 (DOD), 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 DOD lands with a completed INRMP within the proposed critical habitat designation.

## 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, are 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 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 the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

### 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 are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. The proposed critical habitat areas include Federal, State, and private lands, some of which are used for timber harvest and motorized winter recreation (*e.g.,* snowmobiling, cross-country skiing). Other land uses that may be affected will be identified as we develop the draft economic analysis for the proposed designation.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Idaho Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

### 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 proposal, we have determined that the lands within the proposed designation of critical habitat for the southern Selkirk Mountains population of woodland caribou are not owned or managed by the DOD, and, therefore, we anticipate no impact to national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

### Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for southern Selkirk Mountains caribou, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

## Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

## Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

## 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 proposed rule under Executive Order 12866 (Regulatory Planning and Review). 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 of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a 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.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. The proposed critical habitat areas include Federal, State, and private lands, some of which are used for timber harvest and motorized winter recreation (*e.g.,* snowmobiling, cross-country skiing). Other land uses that may be affected will be identified as we develop the draft economic analysis for the proposed designation.

This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Since there are no energy facilities within the footprint of the proposed critical habitat boundaries, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), 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 would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat designation are predominantly owned by the State of Idaho, the U.S. Forest Service, and the Bureau of Land Management. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have

significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. 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. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this proposed 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 proposed critical habitat designation with appropriate State resource agencies in Washington and Idaho. The designation of critical habitat in areas currently occupied by the southern Selkirk Mountains caribou may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist 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 E.O. 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 proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the southern Selkirk Mountains caribou population.

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

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to 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 position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).]

*Clarity of the Rule*

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

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

*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 recognized Federal 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 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 have determined that there are no tribal lands that were occupied by woodland caribou at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the species at the time of listing that are essential for the conservation of the southern Selkirk mountain caribou population. Therefore, we are not proposing to designate critical habitat for the southern Selkirk Mountains caribou on tribal lands.

**References Cited**

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish

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

## Author(s)

The primary authors of this package are staff members of the Idaho Fish and Wildlife Office.

## List of Subjects in 50 CFR Part 17

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

## Proposed Regulation Promulgation

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

## PART 17—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 ''Caribou, woodland'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Caribou, woodland ... | *Rangifer tarandus caribou.* | Canada, U.S. (AK, ID, ME, MI, MN, MT, NH, VT, WA, WI). | Canada (south-eastern British Columbia bounded by the Canada-U.S. border, Columbia River, Kootenay River, Kootenay Lake, and Kootenai River, U.S. (ID, WA). | E | 1984, 128E, 136, 143 | 17.95(a) | NA |
| * | * | * | * | * | * | | * |

3. In § 17.95, amend paragraph (a) by adding an entry for ''Woodland caribou, (*Rangifer tarandus caribou*), Southern Selkirk Mountains Population'' 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.**

* * * * *

(a) Mammals.

* * * * *

Woodland Caribou (*Rangifer tarandus caribou)* Southern Selkirk Mountains Population

(1) Critical habitat units are depicted for Bonner and Boundary Counties, Idaho, and Pend Oreille County, Washington, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the southern Selkirk Mountains population of woodland caribou consist of components:

i. Mature to old growth western hemlock (*Tsuga heterophylla*)/western red cedar (*Thuja plicata*) climax forest, and subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest over 4,000 ft (1,220 m) in elevation; these habitats typically have 70 percent or greater canopy closure.

ii. Ridge tops with deep (up to 16 ft (5 m)) snowpack that are generally 6,000 ft (1,830 m) in elevation or higher, in mature to old stands of subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest, with relatively open (approximately 50 percent) canopy.

iii. Arboreal hair lichen growth in high enough amounts to support southern Selkirk Mountains woodland caribou herds.

iv. High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, and seeps, and subalpine meadows with succulent forbs and grasses, flowering plants, horsetails, willow, huckleberry, dwarf birch, sedges, and lichens.

v. Transition zones that connect the habitats described above and that facilitate seasonal caribou movements between habitat types.

(3) Critical habitat does not include manmade structures (such as buildings, fire lookout stations, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created using digital elevation models, caribou radiotelemetry points, and caribou habitat suitability models, and were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Index map follows:

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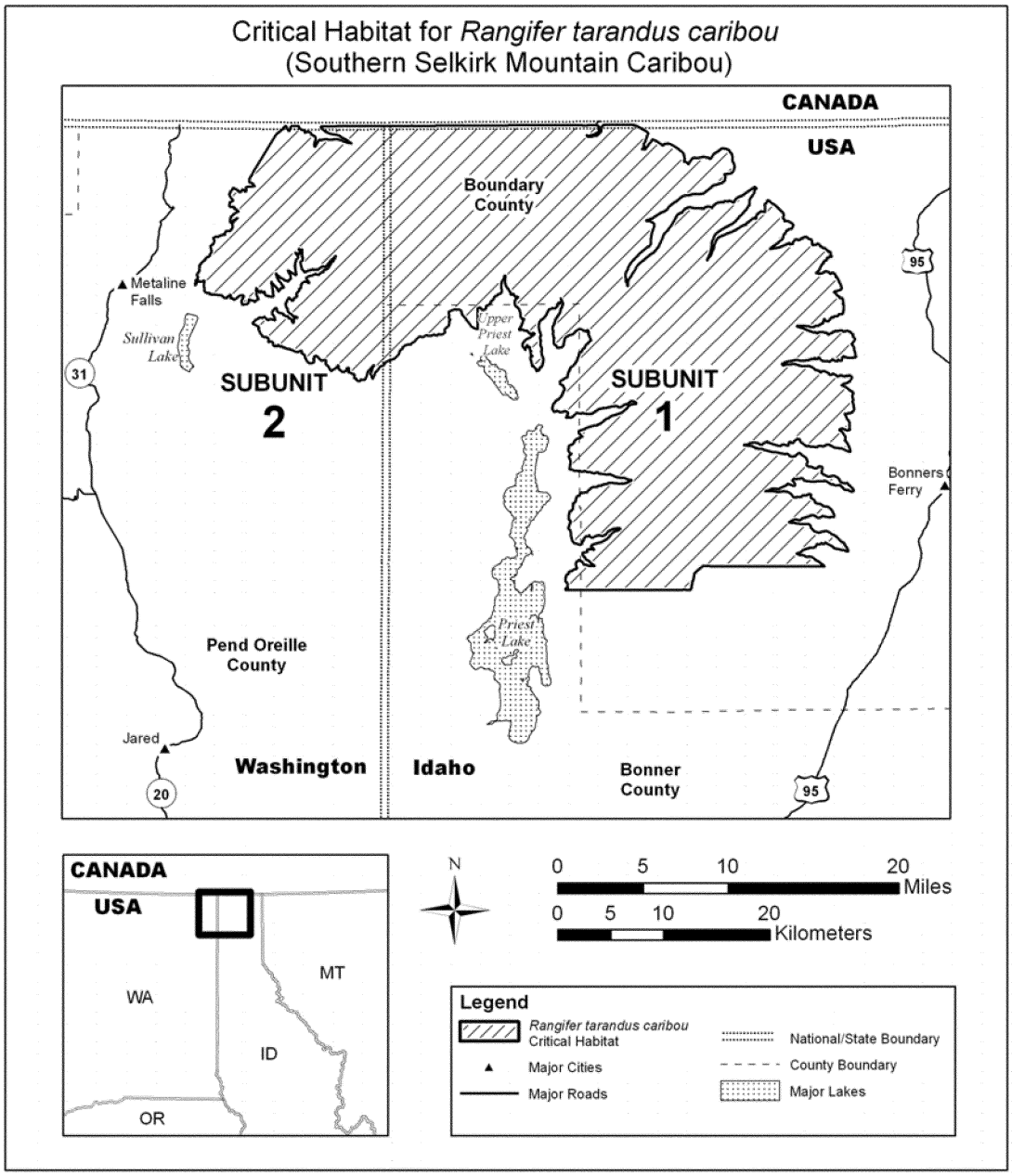
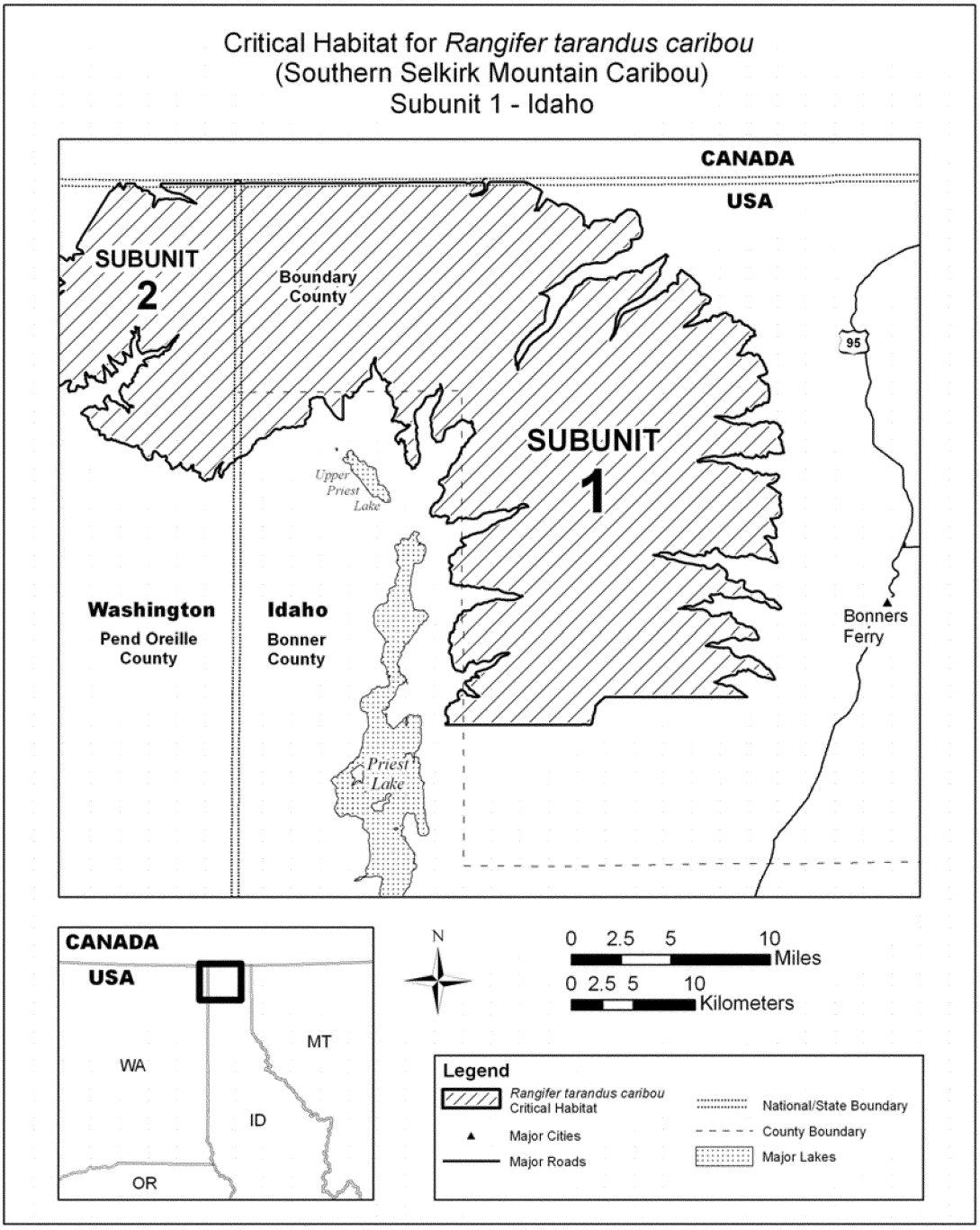
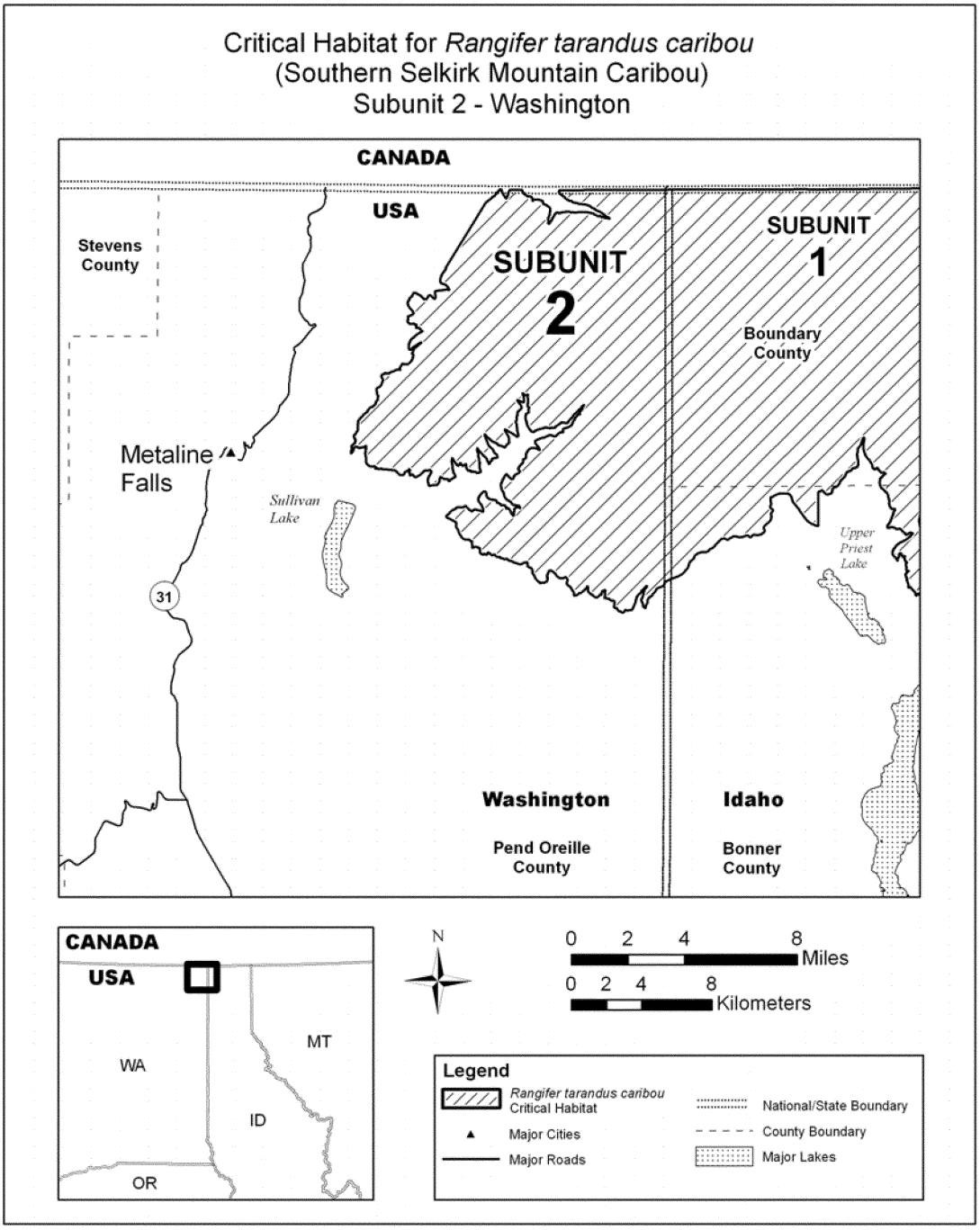



(6) Subunit 1: Bonner and Boundary Counties, Idaho. Map of Subunit 1, Bonner and Boundary Counties, Idaho, follows:




(8) Subunit: Pend Oreille County, Washington. Map of Subunit 2, Pend Oreille County, Washington, follows:


Critical Habitat for Rangifer tarandus caribou
(Southern Selkirk Mountain Caribou)
Subunit 2 - Washington
CANADA
USA
Stevens County
SUBUNIT 2
SUBUNIT 1
Boundary County
Metaline Falls
Sullivan Lake
Upper Priest Lake
31
Washington
Pend Oreille County
Idaho
Bonner County
CANADA
USA
WA
MT
ID
OR
N
0 2 4 8 Miles
0 2 4 8 Kilometers
Legend
Rangifer tarandus caribou Critical Habitat
Major Cities
Major Roads
National/State Boundary
County Boundary
Major Lakes

* * * * *

Dated: November 16, 2011.

**Rachel Jacobson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–30451 Filed 11–29–11; 8:45 am]

**BILLING CODE 4310–55–C**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 111102663–1682–01]**

**RIN 0648–BB60**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Reef Fish Fishery of the Gulf of Mexico; Control Date

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

**ACTION:** Advanced notice of proposed rulemaking; request for comments.

**SUMMARY:** This notice announces that the Gulf of Mexico Fishery Management Council (Council) is considering creating additional restrictions limiting participation in the Red Snapper Individual Fishing Quota (IFQ) Program. If such management measures are implemented, the Council is considering January 1, 2012, as a possible control date. Anyone entering the program after the control date will not be assured of future access should a management regime that limits participation in the program be prepared and implemented. NMFS invites comments on the establishment of this control date.

**DATES:** Comments must be submitted by December 30, 2011.

**ADDRESSES:** You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0273'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0273'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0273'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, *telephone:* (727) 824–5305, or *email: Susan.Gerhart@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Beginning January 1, 2012, all U.S. citizens or permanent resident aliens are eligible to receive transfers of Red Snapper IFQ shares or allocation. A Gulf of Mexico (Gulf) commercial reef fish permit will still be required to harvest, land, and sell red snapper. This notice is to inform current and potential participants of the Gulf Red Snapper IFQ Program that possession of IFQ shares or allocation after this date may not ensure participation under future management of the program. The Council is considering a provision to require shareholders to ''use'', as defined by the provision, all or some portion of their allocation, or be subject to losing their shares. Other options include re-establishing a requirement to possess a Gulf commercial reef fish permit to receive shares or allocation under the program. If the Council prepares an amendment to the Fishery Management Plan (FMP) for Reef Fish Resources in the Gulf to restrict participation in the Gulf Red Snapper IFQ Program in relation to this control date, an analysis of the specific biological, economic, and social effects of the action will be prepared at that time. Those analyses would be contained in that subsequent amendment to the FMP and would be made available to the public at that time.

Publication of the control dates in the **Federal Register** informs participants of the Council's considerations, and gives notice to anyone entering the fishery after the control date they would not be assured of future access should a management regime be implemented using the control date as a means to restrict participation. Implementation of any such program would require preparation of an amendment to the respective FMP and publication of a notice of availability and proposed rule in the **Federal Register** with pertinent public comment periods.

Since the first control date notice of November 1, 1989, 54 FR 46755 (November 7, 1989), the Council has established a total of five control dates for various aspects of the Gulf of Mexico reef fish fishery. As stated in the accompanying notices, they were intended to provide additional notice to the public that the Council was considering certain future management actions potentially restricting public access to fishery resources. The most recent control date was December 31, 2008, 74 FR 11517 (March 19, 2008), which related to potential future actions to address overcapacity in the commercial sector of the reef fish fishery. The current notice does not supersede any of the prior notices, and is intended only to provide additional public notice of potential future action being considered relative to the red snapper IFQ program.

The establishment of a control date does not commit the Council or NMFS to any particular management regime. The Council may or may not make use of this control date as part of the requirements for participation in the IFQ Program. Fishermen are not guaranteed future participation in the program, regardless of their entry date. The Council may take action that would affect participants who were in the program prior to the control date or the Council may choose to take no further action to control entry or access to the IFQ program.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Gulf reef fish fishery.

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

Dated: November 25, 2011.

**Patricia A. Montanio,**

*Acting Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 2011–30854 Filed 11–29–11; 8:45 am]

**BILLING CODE 3510–22–P**