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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 235

RIN 1651–AA73

[USCBP–2008–0097; CBP Dec. 11–15]

Establishment of Global Entry Program

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts, with some changes, a notice of proposed rulemaking published in the **Federal Register** on November 19, 2009, which proposed establishing an international trusted traveler program called Global Entry. This voluntary program allows U.S. Customs and Border Protection (CBP) to expedite clearance of pre-approved, low-risk air travelers arriving in the United States. This final rule establishes Global Entry as an ongoing voluntary regulatory program.

DATES: *Effective Date:* March 7, 2012.

FOR FURTHER INFORMATION CONTACT: Larry Panetta, CBP, Office of Field Operations, (202) 344–1253, or Daniel Tanciar, CBP, Office of Field Operations, (202) 344–2818.

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I. Background, Purpose, and Summary of Final Rule

Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 19, 2009, proposing to establish an international trusted traveler program called Global Entry. *See* 74 FR 59932. As described in the NPRM, the Global Entry program is modeled after the Global Entry pilot program, which has operated since June 6, 2008. For more information about the pilot and CBP's other trusted traveler programs, please refer to the Global Entry pilot notice published on April 11, 2008 (73 FR 19861) and the Global Entry NPRM published on November 19, 2009 (74 FR 59932). As explained in the NPRM, CBP published several **Federal Register** notices that established the pilot, expanded the Global Entry pilot to include additional airports, and expanded eligibility for participation to include certain citizens of the Netherlands who otherwise satisfy the requirements for participation in the pilot. *See* 73 FR 19861, 73 FR 30416, 73 FR 47204, 74 FR 18586, and 74 FR 39965. Additional details regarding the growth of the pilot and the proposed rule also may be found on the Web sites *www.globalentry.gov* and *www.cbp.gov.*

This final rule adopts, with some changes, the NPRM published in the **Federal Register** on November 19, 2009, which proposed establishing Global Entry as an ongoing voluntary regulatory program. This final rule addresses all of the public comments received and provides Global Entry participants with all the relevant information. There were several minor changes made to the NPRM (*see* Section III B). The only significant change is that minors under the age limit of 14 are now permitted to apply to the Global Entry program. This change will allow more families to enjoy the benefits of the program and is in direct response to feedback from the public.

A. Expansion of the Global Entry Pilot Eligibility to Mexican Nationals

After publication of the Global Entry NPRM, CBP published an additional **Federal Register** notice on December 29, 2010, to expand eligibility for participation in the Global Entry pilot to include qualified Mexican nationals who have been vetted by both CBP and the Government of Mexico and satisfy the program's eligibility requirements. *See* 75 FR 82200. This expansion implements the Joint Declaration between DHS and the Secretariat of Governance of the United Mexican States, through the National Migration Institute. Since the publication of this **Federal Register** notice, CBP has been accepting applications from Mexican nationals who are interested in participating in the Global Entry pilot program. As of March 25, 2011, CBP has enrolled 396 Mexican nationals into the Global Entry pilot program. As explained in Section III A4, this rule announces that Mexican nationals who meet eligibility requirements can enroll in the Global Entry program. It further specifies that the rule serves notice that upon its implementation, Mexican nationals who are existing participants in the Global Entry pilot will be automatically enrolled in the ongoing Global Entry program.

B. Use of Global Entry Kiosks by Participants of NEXUS and SENTRI

In another **Federal Register** notice published on December 29, 2010 (75 FR 82204), CBP expanded the NEXUS and Secure Electronic Network for Travelers Rapid Inspection (SENTRI) trusted

traveler programs to allow participants of those programs use of the Global Entry kiosks. This rule does not change that. After implementation of this rule, participants in NEXUS and SENTRI will still be allowed to use the Global Entry kiosks.

Below is a table outlining when various provisions of the rule were introduced into the program:

	Date	Action	**Federal Register** cite
Initial Pilot Program	April 11, 2008	Establish the International Registered Traveler pilot at three airports.	73 FR 19861.
	May 27, 2008	Change the name to Global Entry Pilot	73 FR 30416.
	August 13, 2008	Expand pilot to four additional airports	73 FR 47204.
	April 23, 2009	Expand pilot to certain citizens of the Netherlands	74 FR 18586.
	August 10, 2009	Expand pilot to thirteen additional airports	74 FR 39965.
	December 29, 2010	Expand pilot to included qualified Mexican nationals	75 FR 82200.
NPRM	November 19, 2009	Proposal to establish Global Entry as an ongoing program	74 FR 59932.
Final Rule		Establishment of Global Entry.	

II. Analysis of Comments

CBP solicited public comments to the Global Entry NPRM and the individual **Federal Register** notices pertaining to the pilot, including the most recent notices involving the expansion of eligibility to Mexican nationals and allowing SENTRI and NEXUS members to use the Global Entry kiosks. This final rule addresses all comments received in response to the NPRM and the individual **Federal Register** notices.

CBP received four comments in response to the **Federal Register** notice announcing the pilot, one comment in response to the **Federal Register** notice expanding eligibility to Mexican nationals, and ten comments in response to the NPRM. In total, CBP received 15 comments on the NPRM and three notices.

Of the fifteen total comments, ten are favorable, two are neither favorable nor unfavorable, and three were unfavorable. The favorable comments include both positive statements regarding the program and suggestions of various avenues in which CBP might expand Global Entry. For example, two of the favorable comments recommend that Global Entry include a role for the private sector. The two neutral comments include suggestions for expansion of the program but include neither positive nor negative statements regarding the program itself. Only three comments can be categorized as generally unfavorable, in that they focus primarily on possible problems that might arise.

The following section groups the comments, along with CBP's responses, by category.

A. Program Performance and Entry Process

Comment: Several commenters made general comments about how the Global Entry pilot expedites or will expedite the entry process for participating travelers. One commenter stated that Global Entry is one of the most successful service initiatives taken by CBP in recent years and has the potential to significantly improve the entry process for returning citizens and legal residents, improve the productivity of CBP's gateway teams, and ease restrictions on the flow of international travel (through reciprocal arrangements with other countries) upon which our economy depends. Another commenter stated that Global Entry has the potential to facilitate and expedite the arrival of international travelers while enhancing security by allowing CBP to focus its inspection resources on passengers who have not been previously vetted. Another commenter, a frequent user of Global Entry, has found the pilot to be easy to use, reliable, and accessible, and a huge advantage in clearing customs upon re-entry into the United States, especially during times of peak volume.

Only one commenter criticized any aspect of the day-to-day operation of the program. In an otherwise favorable comment, the commenter asserted that its organization has received some feedback from Global Entry pilot enrollees regarding sporadic problems experienced involving confirmation of the individual's identity at Global Entry kiosks and that some CBP officers did not possess the requisite knowledge to assist with the problems.

Response: CBP agrees with and appreciates the favorable comments regarding the current benefits of the Global Entry pilot and the future benefits of the Global Entry program, which include the expedited processing of low- risk international travelers.

The Global Entry pilot is operating successfully. As of June 6, 2011, over 198,000 applications were filed and over 148,000 participants were enrolled. The automated kiosks are working smoothly with no current major technical issues or problems. The kiosks have been used over 1,014,000 times. The increased volume of traffic to the kiosks by proven low-risk travelers allows CBP officers more time and resources to address higher risk security concerns. CBP is approving applications for participation more quickly than was initially expected. The average approval time for each application has been less than one week—better than the initial estimates of ten to fourteen days.

DHS has conducted an analysis of wait times for Global Entry pilot participants based on data for 1,575 flights with at least one Global Entry passenger onboard from November 19, 2008 to January 9, 2009. That analysis indicates that participation in Global Entry may reduce a passenger's wait time by up to seventy percent—or an estimated seven minutes on average. It further demonstrates that participation in Global Entry reduces the variability of wait times. Less than one percent of Global Entry passengers wait longer than twenty minutes while approximately ten percent of all U.S. citizens and U.S. Lawful Permanent Residents (LPR) wait longer than twenty minutes. The analysis shows that Global Entry participation varies by airports, airlines, and the region from which the flight originates.

Regarding the comment concerning sporadic operational problems at kiosks, CBP is continuously sending guidance to its field personnel regarding operational issues. CBP incorporates the comments, complaints, and inquiries regarding the program that it receives from the public into this guidance to improve operations. When a pilot participant is unable to successfully use the kiosk, CBP's backend Information Technology (IT) system automatically generates and sends an email to that participant. The email invites the participant to provide feedback and the details of his or her experience. CBP

reviews this input and, whenever possible, responds to the participant with information about why the difficulty has occurred. CBP then uses this information to make operational improvements.

Regarding the part of one comment about some CBP officers not having the requisite knowledge to provide assistance to Global Entry participants, CBP is committed to the ongoing training and education of its personnel. As the pilot has expanded, CBP officers have become increasingly familiar with the procedures for processing Global Entry participants, which has, based on informal feedback received by CBP, led to improved participant satisfaction.

B. Marketing of Global Entry

Comment: CBP received two comments suggesting that CBP should expand marketing and outreach for the program and include airports, airlines, and other entities in its outreach plans.

Response: CBP agrees that the marketing of Global Entry should be expanded, and CBP has begun that process. CBP has been engaged in public outreach to promote the Global Entry program and has started an extensive marketing campaign to increase Global Entry enrollment. CBP has enlisted the services of a marketing firm to assist in developing a marketing strategy. The firm has created a new Global Entry logo and tag line (''Trusted Traveler Network''). The marketing firm has also redesigned Global Entry brochures and is working with CBP to improve the layout of the program's Web site. CBP will increase public outreach efforts by placing advertisements in prominent and travel-related publications. The advertisements will outline the program's purpose, requirements, and benefits.

During the operation of the pilot, CBP has worked with airlines, airport operators, and other private sector companies and organizations to perform public outreach and will continue to do so. Promotion of Global Entry involves the use of various methods, such as advertisements, informational videos, and brochures, to increase awareness of the program and to encourage people to apply to join the program. One major airline published a Global Entry advertisement in its in-flight magazine. A major airport authority printed its own signs for Global Entry and strategically placed them throughout the airport. In addition, CBP has worked with the private sector by coordinating on-site enrollment events for various companies and trade shows.

C. Expansion of Global Entry

Comment: Many of the commenters would like CBP to expand Global Entry. Several commenters praise CBP's efforts thus far to expand Global Entry participation through arrangements with foreign countries. Two commenters would like CBP to expand the program to more airports. One commenter stated that CBP should expand the program to include ''private aircraft used for recreation purposes'' similar to the current I–68 program for recreational boaters. Another commenter would like CBP to expand the program to include domestic flights. One commenter sets forth many ideas as to how the Global Entry program might be expanded and integrated with other programs, including expansion of eligibility to Mexican nationals. That commenter also welcomed CBP's ongoing efforts to expand Global Entry participation to qualified individuals from foreign countries. One commenter would like CBP to expand the program to include travelers from the United Kingdom. Another commenter would like CBP to expand Global Entry to include children under 14 so that families can take advantage of the program. Finally, the one commenter that responded to the notice announcing the expansion to Mexican nationals states that the expansion would be ''too risky'' and that ''the addition would increase the risk greater than the benefit'' but does not explain what risks are being referenced or offer any basis for the statements.

Response: CBP agrees with the majority of the commenters that the Global Entry pilot should be expanded.

While the Global Entry program will initially be limited to the twenty airports that comprised the Global Entry pilot, CBP intends to expand the Global Entry program to additional airports. When CBP is ready to expand to additional airports and has selected the airport or airports for expansion, this information will be announced to the public by **Federal Register** notice and on the Web site, *www.globalentry.gov*. In addition, once the final rule is published, CBP intends to expand the Global Entry program by adding more kiosks at airports where the Global Entry pilot is currently operational (subject to the availability of funds). This will accommodate new Global Entry participants as enrollment increases.

CBP is also open to the suggestion of making Global Entry available to passengers and crew on private (recreational) aircraft who are Global Entry participants. In fact, CBP has already installed a kiosk at one private aircraft terminal as part of the Global Entry pilot. A kiosk is currently operational at the General Aviation Facility (GAF) at the Ft. Lauderdale Hollywood International Airport. Pilot participants who are passengers or crew on private aircraft at Ft. Lauderdale Hollywood International Airport, and arrive at the GAF private aircraft terminal, can use the Global Entry kiosk operating at that terminal. CBP decided to make Global Entry available to private aircraft at the GAF at the Ft. Lauderdale Hollywood International Airport due to the large number of private aircraft, mostly recreational, that utilize that airport and terminal. The availability of the Global Entry program will continue at the Ft. Lauderdale Hollywood International Airport after the Global Entry pilot becomes an ongoing program under this final rule. As Global Entry progresses, CBP will determine whether it is feasible to expand the program to additional private aircraft locations. It should be noted that private aircraft must comply with all applicable reporting and inspection processes.

Regarding the comments asking CBP to expand Global Entry to persons from other countries, this final rule contains a provision to permit certain nonimmigrant aliens to participate in the program. Under the final rule, the government of a foreign country must enter into and operationalize a joint arrangement with CBP concerning the expedited entry of air travelers in order for travelers from that country to apply for and, if found eligible, participate in Global Entry. The final rule provides that CBP will announce such arrangements by publication in the **Federal Register**. Additionally, under these arrangements, active members of Global Entry may be eligible to apply for membership in the other foreign government's trusted traveler program. Where consistent with U.S. security requirements, CBP has worked, and will continue to work, with interested countries that operate comparable international trusted traveler programs, or have plans to operate such programs, to enter into arrangements for the purposes of expanding eligibility for Global Entry and making U.S. citizens eligible to join those countries' trusted traveler programs.

For example, under the Global Entry pilot, CBP has entered into an arrangement with the Netherlands to allow citizens of the Netherlands who participate in Privium, an expedited travel program operated by the Government of the Netherlands, to participate in the Global Entry pilot.

Several commenters specifically applauded the arrangement with the Netherlands. This arrangement will continue under the Global Entry program. As with all other participants in the Global Entry pilot, currently participating citizens from the Netherlands will be automatically enrolled in Global Entry when Global Entry becomes an ongoing program.

CBP has also allowed Canadian and Mexican members of SENTRI and NEXUS to use Global Entry kiosks at pilot Ports of Entry. CBP will continue to allow SENTRI and NEXUS members to use this service when Global Entry becomes an ongoing program.

Recently, CBP has further expanded eligibility for joining the Global Entry pilot to include qualified Mexican nationals who otherwise satisfy the requirements for participation in the pilot. Mexican nationals may only utilize the Global Entry kiosks upon successful completion of a thorough risk assessment by CBP and the Mexican Government. Currently participating Mexican nationals will be automatically enrolled in Global Entry when Global Entry becomes an ongoing program.

CBP does not agree with the commenter who indicated that the expansion of Global Entry pilot to Mexican nationals is too risky. As noted above, Mexican nationals may only use the Global Entry kiosks upon successful completion of a thorough risk assessment by CBP and the Mexican Government. Moreover, no applicant is accepted for participation in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality (such as smuggling) or if CBP cannot otherwise sufficiently determine that the applicant meets all the program eligibility criteria. CBP vets participants in Global Entry on a recurring basis and can suspend or terminate membership if derogatory information arises about an enrollee that makes him or her no longer eligible. In addition, if circumstances indicate that a country cannot meet its vetting or other obligations under its arrangement with CBP, CBP can modify, suspend, or discontinue the joint arrangement if necessary based on the arrangement's particular terms.

CBP will announce any further expansions of the Global Entry program (including adding airports, extending eligibility to additional populations, or expanding reciprocal eligibility for U.S. citizens to foreign governments' trusted traveler programs), as well as any retractions (*i.e.,* cancellations of such arrangements) by publication of a notice in the **Federal Register**.

CBP does not agree, at this time, with the commenter who suggested that Global Entry should be expanded to include domestic flights. Global Entry is designed to allow expedited screening and processing of pre-approved, low-risk international air travelers into the United States. CBP, in coordination with the Transportation Security Administration (TSA) and other stakeholders, remains open to developing proposals to apply the trusted traveler concept to domestic commercial aviation security.

With regard to the age limit, CBP has reconsidered and agrees that it would be beneficial to expand Global Entry to allow children under the age of 14 to participate, as this would allow more families to enjoy the benefits of the program. Persons under the age of 18 who meet the general eligibility criteria and have the consent of a parent or legal guardian will be eligible to participate in Global Entry. As is the case for all applicants, CBP must be able to conduct the requisite vetting of the applicant, including collection of the required fingerprints needed to conduct the biometric based background checks and participate in an interview at an enrollment center.

D. Costs

Comment: One commenter would like CBP to minimize the costs to airports and airlines.

Response: The infrastructure and daily operation costs of the Global Entry program are the responsibility of CBP. These costs have been, and will continue to be, funded by user fees. There are no direct costs to the airlines or airports. In fact, airport authorities and airlines benefit from their customers enrolled in Global Entry receiving an enhanced travel experience. Airlines also benefit from the expedited processing of their crew members who enroll in the program.

E. Program Integrity

Comment: One commenter states that the Global Entry program may be vulnerable to forged documents, although no arguments are provided to support this comment.

Response: CBP disagrees with this comment. The Global Entry program includes many protections against forgery and fraud. Global Entry applications are submitted online and go directly to a central CBP vetting center. Then, if conditionally approved, the application moves forward to the enrollment center, where CBP addresses, among other things, any unresolved issues or potential derogatory information regarding the applicant. During the enrollment center interview, all of the information provided by an applicant is verified. An applicant's travel documents are physically examined by CBP officers to validate authenticity and identity. CBP can also validate documents against the Department of State and U.S. Citizenship and Immigration Services databases. The interconnectivity and automated nature of these processes result in operational efficiencies and a high-level of security surrounding personal information.

F. Private Sector Involvement

Comment: Two commenters suggested that CBP should ensure that there is adequate private sector involvement in the operation of Global Entry. They maintain that certain functions, such as enrollment, marketing, and customer service could be performed by the private sector.

Response: CBP considers many functions of Global Entry to be governmental due to privacy concerns and issues of national security. For example, as part of the enrollment process, CBP officers must review the citizenship or immigration status of Global Entry applicants to make sure that they are admissible under the complex admissibility requirements under the INA. Global Entry has successfully demonstrated the efficiencies of its current process in the pilot phase. The fact that applicants can deal directly with the government allows CBP to keep the Global Entry fee low.

As noted elsewhere in this document, CBP is currently working with, and will be increasing our collaboration with, several private entities in the marketing of Global Entry, including airlines, hotels, travel and tourism companies, national business travelers groups, major companies, airports, and marketing firms.

G. Global Entry Equipment

Comment: One commenter stated that ''industry standards'' should be utilized when operating a ''self-service terminal environment'' and attached to the comment a document said to describe these standards. The document attached to the comment pertained to Automated Teller Machines. This commenter states that CBP must be able to remotely support the terminals and to know when those terminals are available or are having component problems.

Response: CBP has operating procedures in place that are appropriate to the kiosks used in the Global Entry program. Under these procedures, when a kiosk (or terminal) encounters a

problem or is not operational, the IT system automatically notifies CBP personnel to troubleshoot the problem. These protocols allow CBP to make modifications to individual terminals without disrupting the entire network.

H. Privacy

One commenter addresses several privacy concerns that the commenter perceives to exist in the Global Entry Program and the Global Enrollment System (GES) that supports Global Entry and other CBP trusted traveler programs. We address these comments in turn:

Comment: The commenter states that the Global Entry Program contravenes the intent of the Privacy Act (5 U.S.C. 552a) through CBP's assertion of the exemptions found at sections (j)(2) and (k)(2) of the Privacy Act for information retained in the GES. (Section (j)(2) allows the head of any agency to exempt from certain sections of the Privacy Act any system of records that is maintained by an agency or component with a principal function of law enforcement; section (k)(2) allows an agency head, to a limited extent, to exempt from certain sections of the Privacy Act investigatory material compiled for law enforcement purposes.)

Response: CBP disagrees with this comment. Exempt information in GES is limited to information derived from law enforcement databases or investigative files. The exemption statement for the GES System of Records Notice clearly states that no exemption will be claimed for information obtained from an application or otherwise submitted by an applicant.

The exemptions found at (j)(2) and (k)(2) are asserted to protect information compiled from background checks performed to assist CBP in determining whether to approve a trusted traveler application. The purpose of a decision to approve an applicant for a trusted traveler program, including Global Entry, is to allow for expedited clearance (*i.e.,* to permit pre-approved, low risk travelers to obtain admission to the United States more quickly) in circumstances where the person seeking admission has volunteered and met the program's eligibility requirements. CBP, consistent with its border security and trade facilitation missions, performs a law enforcement background check prior to making a decision to approve or deny a trusted traveler application. These background checks include information obtained from law enforcement databases and investigative files and may contain information relating to criminal or civil violations. Consistent with the Privacy Act, CBP asserts these exemptions on a case- by-case basis where access to a responsive record is sought.

Comment: The commenter states that the Global Entry applicant is afforded only limited Privacy Act protections as the exemptions for GES create the potential for CBP to ''use the information with little accountability.''

Response: CBP disagrees with this comment. Exempt information in GES is limited to information derived from law enforcement databases or investigative files. Each request for access to exempt information will be reviewed on a case-by-case basis. After conferring with the appropriate component or agency, CBP may waive applicable exemptions in circumstances where it would not interfere with or adversely affect the law enforcement purposes of the systems from which the information is either recompiled or contained. Information submitted by or on behalf of the applicant as part of her or his application may be sought pursuant to the Privacy Act or Freedom of Information Act.

Additionally, the applicant may seek redress through the several avenues provided in the Global Entry program including at the enrollment center where that individual's interview was conducted, the DHS Traveler Redress Inquiry Program (DHS TRIP), or the CBP Trusted Traveler Ombudsman to address concerns or agency actions to which they attribute CBP reliance upon information that they believe to be erroneous or to have an inappropriately derogatory affect upon CBP's decision concerning their participation in the program.

Comment: The commenter states that the Global Entry program creates a significant security risk as the applicant's personally identifiable information (PII), including biometric data and employment history, in GES may be disclosed to any government agency beyond the ''routine use'' provisions of the Privacy Act.

Response: CBP disagrees with this comment. CBP abides by the requirements of the Privacy Act in determining whether to share information derived from GES, pursuant to a routine use. CBP takes reasonable measures to ensure that information that is shared consistent with its authority is appropriately protected. Before any information is disclosed, CBP considers whether the disclosure and use of the data are consistent with the purpose for collection and are consistent with the terms of a statutory or published routine use.

Comment: The commenter states that CBP failed to publish a Privacy Impact Assessment (PIA) for Global Entry.

Response: CBP disagrees with this comment. Global Entry, as a trusted traveler program, is included and covered by the PIA for the GES published on April 20, 2006. While the GES PIA refers to Global Entry under its former name (USPASS/International Registered Traveler (IRT)), the particulars of the program, its collection of information, the system in which it maintains that information, and the uses to be made of the information, are described within that document.

Comment: The commenter states that the lessons learned from a previous Government agency-operated registered traveler program weigh against the establishment of the Global Entry program.

Response: CBP disagrees with this comment. The comment refers to a registered traveler concept that the Government originally tested but was later transferred to the private sector. In certain cases, the private entities that captured and maintained biographic and biometric data allegedly failed to secure PII in their own databases that were not connected to, and did not interact with, Government systems. In contrast, the Global Entry program has sufficient systems and safeguards in place to ensure the security and privacy of the individuals' records. CBP and its predecessor agencies, the Immigration and Naturalization Service and the United States Customs Service, have many years experience successfully operating and protecting PII for trusted traveler programs such as NEXUS, SENTRI, and FAST.

III. Conclusion

After consideration of the comments received, and based on the success of the Global Entry pilot, CBP has determined that Global Entry should be established as an ongoing program. The Global Entry program, like the Global Entry pilot, will facilitate the movement of pre-approved, low-risk air travelers arriving in the United States. The Global Entry program will provide an expedited inspection and examination process for pre-approved, low-risk air travelers by allowing them to proceed directly to automated Global Entry kiosks upon their arrival in the United States at Global Entry-equipped Ports of Entry. This ongoing Global Entry program, along with the other trusted traveler programs that CBP operates, is consistent with CBP's strategic goal of facilitating legitimate travel while securing the homeland.

Accordingly, this final rule adopts, with the changes described in Section III B, the ongoing Global Entry program as proposed in the NPRM. Current participants in the Global Entry pilot, including those citizens of the Netherlands and Mexican nationals who participate through joint arrangements with those countries, will be automatically enrolled in the Global Entry program for five years from the date of their initial enrollment in the pilot. Participation in Global Entry will remain voluntary and subject to the enrollee continuing to satisfy the program's entry requirements. The existing Global Entry pilot will continue to operate until the effective date of this final rule.

A. Summary of Requirements Under the Final Rule

1. Participating Airports

CBP anticipates that the Global Entry program eventually will be expanded to operate at most major international airport locations within the United States. The program, however, initially will be limited to the twenty airports that have participated in the Global Entry pilot. The airports chosen for Global Entry are those facilities which typically experience the largest numbers of travelers arriving from outside of the United States.

The Global Entry pilot currently operates at the following twenty airports: John F. Kennedy International Airport, Jamaica, New York (JFK); George Bush Intercontinental Airport, Houston, Texas (IAH); Washington Dulles International Airport, Sterling, Virginia (IAD); Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); Miami International Airport, Miami, Florida (MIA); Newark Liberty International Airport, Newark, New Jersey (EWR); San Francisco International Airport, San Francisco, California (SFO); Orlando International Airport, Orlando, Florida (MCO); Detroit Metropolitan Wayne County Airport, Romulus, Michigan (DTW); Dallas Fort Worth International Airport, Dallas, Texas (DFW); Honolulu International Airport, Honolulu, Hawaii (HNL); Boston—Logan International Airport, Boston, Massachusetts (BOS); Las Vegas—McCarran International Airport, Las Vegas, Nevada (LAS); Sanford—Orlando International Airport, Sanford, Florida (SFB); Seattle—Tacoma International Airport-SEATAC, Seattle, Washington (SEA); Philadelphia International Airport, Philadelphia, Pennsylvania (PHL); San Juan—Luis Munos Marin International Airport, San Juan, Puerto Rico (SJU); and Ft. Lauderdale Hollywood International Airport, Fort Lauderdale, Florida (FLL). A Global Entry kiosk is also available at the private aircraft terminal, General Aviation Facility (GAF), at Fort Lauderdale Hollywood International Airport. This final rule serves notice that, upon the effective date of the Global Entry program, the program will continue to operate at these same 20 airports and at the private aircraft terminal, GAF, at Fort Lauderdale Hollywood International Airport.

CBP will announce expansions to new airports in a **Federal Register** notice and on the Web site *www.globalentry.gov,* just as CBP has announced them for the pilot. An updated list of all the airports at which Global Entry is operational will be available at *www.globalentry.gov.*

2. Global Entry Eligibility for Qualified Citizens of the Netherlands

The United States has entered into an arrangement with the Netherlands concerning Global Entry. Pursuant to this arrangement, qualified citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, may apply for participation in the Global Entry program. Applicants who are citizens of the Netherlands will be required to complete the Global Entry on-line application, pay the non-refundable $100 applicant processing fee, and satisfy all the requirements of the Global Entry program. Based on the terms of the existing arrangement with the Government of the Netherlands, these citizens will be permitted to participate in Global Entry only upon successful completion of a thorough risk assessment by both CBP and the Government of the Netherlands.

CBP is currently accepting applications from eligible citizens of the Netherlands for the Global Entry pilot and will continue to accept such applications as Global Entry becomes an ongoing program. This final rule also serves notice that, upon its implementation, citizens of the Netherlands who are existing participants in the Global Entry pilot will be automatically enrolled in the Global Entry program. The time period of their enrollment will be five years beginning from the date of their enrollment in the pilot.

The Netherlands is also a participant in the Visa Waiver Program (VWP). The VWP enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure purposes for up to 90 days without obtaining a visa. VWP travelers are required to obtain a travel authorization via the Electronic System for Travel Authorization (ESTA) prior to traveling to the United States under the VWP. ESTA is accessible online at *https://esta.cbp.dhs.gov.* The ESTA requirements will continue to be applicable to Global Entry applicants who are VWP travelers. Global Entry applicants from the Netherlands who wish to travel to the United States under the VWP must have an approved ESTA when applying for Global Entry. CBP will explore ways to integrate the ESTA process with the Global Entry application process.

3. U.S. Citizen Eligibility in Privium

Pursuant to the arrangement with the Government of the Netherlands, U.S. citizens who participate in Global Entry will have the option to also apply to join Privium. Privium is an automated border passage system in the Netherlands that provides expedited entry and exit at Amsterdam Airport Schiphol. It uses iris scans to provide quick and secure biometric confirmation of a traveler's identity. Enrollment includes an eligibility assessment by the Dutch border police. Upon a positive determination of eligibility, pictures of each iris are taken and stored on a personalized smart card. Upon entry and exit, Privium members place their Privium smart card into a reader and a passport validity check is performed with the Dutch authorities and valid membership is verified. The individual's iris information is then compared against the iris information stored on the card. This border passage process takes approximately twelve seconds.

Additional fees and information sharing beyond CBP's Global Entry requirements are needed for U.S. citizens who wish to participate in Privium through Global Entry. If approved, U.S. citizens would be able to take advantage of expedited travel into, and out of, the Netherlands at Amsterdam Airport Schiphol. More information about how to apply for Privium membership is available at *www.globalentry.gov.*

4. Global Entry Eligibility for Qualified Mexican Nationals

DHS, through CBP, has issued a Joint Declaration with the Secretariat of Governance of the United Mexican States, through the National Migration Institute, concerning Global Entry. Pursuant to this Joint Declaration, qualified Mexican nationals may apply

to join the Global Entry program. Mexican nationals will be required to complete the on-line application, pay the non-refundable $100 per person applicant processing fee, and satisfy all the requirements of the Global Entry program. Based on the terms of the Joint Declaration, Mexican nationals will be permitted to use the Global Entry kiosks only upon successful completion of a thorough risk assessment by both CBP and the Mexican Government.

CBP is currently accepting applications from eligible Mexican nationals for the Global Entry pilot and will continue to accept such applications as Global Entry becomes an ongoing program. This final rule serves notice that upon its implementation, Mexican nationals who are existing participants in the Global Entry pilot will be automatically enrolled in the ongoing Global Entry program. The time period of their enrollment will be five years, beginning from the date of their enrollment in the pilot.

5. U.S. Citizen Eligibility in Mexico Trusted Traveler Program

DHS, through CBP, has issued a Joint Declaration with the Secretariat of Governance of the United Mexican States, through the National Migration Institute, concerning Global Entry. Pursuant to this Joint Declaration, U.S. citizens who participate in the Global Entry program will have the option to apply for participation in Mexico's trusted traveler program, once such a program is developed.

6. Global Entry Privileges for NEXUS and SENTRI Trusted Traveler Programs

Members in good standing of NEXUS and SENTRI are permitted to use Global Entry kiosks as part of their NEXUS or SENTRI membership. NEXUS is a program jointly administered by the United States and Canada that allows certain pre-approved, low-risk travelers expedited processing for travel between the United States and Canada. The SENTRI trusted traveler program allows certain pre-approved, low-risk travelers expedited entry at specified land border ports along the U.S.-Mexico border.

7. Expansion of Global Entry to Qualified Individuals From Other Countries

Expansion of the Global Entry Program achieved through arrangements with other countries will be announced by publication of a notice in the **Federal Register** and on the Web site *www.globalentry.gov.* If any arrangements with other countries under the pilot are announced in the **Federal Register** before this rule becomes effective, those arrangements will continue after this rule becomes effective. CBP may modify, suspend, or discontinue arrangements made with other countries for participation in Global Entry without prior notice to the public, but will announce such actions, as soon as practicable, by publication of a notice in the **Federal Register** and on the Web site *www.globalentry.gov.*

B. Changes From the NPRM

Based on experiences with the Global Entry pilot and comments from the public, CBP has made the following minor changes from the proposed regulations in order to provide CBP with optimal flexibility in future operations of Global Entry and to allow for the integration of new technologies:

Proposed section 235.7a is designated in the final rule as section 235.12. Proposed section 235.7a (b) (''Definitions'') is removed. We have determined that the definitions are unnecessary as the terms that were defined (nonimmigrant alien, U.S. citizen, U.S. lawful permanent resident, and U.S. national) are understood to have the same meaning that they have throughout Title 8 of the Code of Federal Regulations (8 CFR) and as defined and/or described by statute in 8 U.S.C. 1101. Should any of these definitions be changed by statute or regulation, conforming changes to the Global Entry regulations would not be required. The letter designations of the remaining sections are changed accordingly.

At new section 235.12(b)(1)(ii), regarding eligible individuals from countries that have entered into arrangements with CBP, we have deleted the word ''reciprocal.'' Although individuals belonging to the Global Entry program and a similar program operated by a country with which CBP has entered such an arrangement will receive some ''reciprocal'' benefits from both countries, the memberships will not be completely reciprocal since each country must separately approve applicants. Therefore, an applicant could be accepted into one country's program but not that of the other country participating in the arrangement. The specific arrangements and the terms and conditions of arrangements will vary and will be announced in the **Federal Register**.

At new section 235.12(b)(1)(iii), regarding eligibility criteria, all references to the age limit of 14 are removed. This change will allow more families to enjoy the benefits of the program. Persons under the age of 18 who meet the general eligibility criteria and have the consent of a parent or legal guardian will be eligible to participate in Global Entry.

At new sections 235.12(b)(1) and 235.12(f), regarding program eligibility criteria and the required travel documents for Global Entry participants, we have added the words ''or other appropriate travel document as determined by CBP.'' These two sections designate the types of ''machine-readable'' documents that Global Entry participants will need for participation in Global Entry to enable the participant to use the kiosk. Due to rapidly changing technologies, it is possible that alternative documents would be appropriate for this purpose. This change will allow for such future development.

At new section 235.12(d) regarding program application, we are revising the language to allow for possible new technologies (changes in software). Specifically, we are removing references to the Global On-line Enrollment System (GOES) as the described method of applying for Global Entry. Although CBP currently uses GOES to process Global Entry applications, the removal of the specific reference to GOES would allow for future process or system changes.

At the new section 235.12(d)(3), we added a sentence to clarify that every applicant accepted into Global Entry is accepted for a period of 5 years provided participation is not suspended or terminated by CBP prior to the end of the 5-year period. In order to provide greater flexibility for the public in the renewal process, we have increased the time period in which the public may apply to renew participation from up to 90 days before expiration to up to one year before expiration. In addition, for consistency with other sections, we have changed ''membership period'' to ''participation period''.

At new section 235.12(e), regarding interview and enrollment, we have removed the language indicating that the applicant will schedule his or her interview through their GOES account and will be notified of his or her acceptance or denial also through the GOES account. This will provide CBP with flexibility in developing alternative or different procedures to accomplish these tasks in the future. Presently, applicants will schedule their interviews and receive notification of acceptance or denial through their GOES account. These procedures will continue until such time that CBP develops alternate methods to accomplish these tasks.

IV. Statutory and Regulatory Requirements

A. Section 508 of the Rehabilitation Act of 1973

Section 508 of the Rehabilitation Act of 1973 requires federal departments and agencies to ensure that the information and communication technology (ICT) that they procure, develop, maintain, or use is accessible to participants with disabilities. Participants in Global Entry will use an automated kiosk to expedite their admission to the United States. The Global Entry kiosks have been designed to meet all applicable Section 508, Subpart B Technical Standards: section 1194.25 standards for Self-Contained Closed Products. These specific Section 508 standards apply to self-contained, closed products, such as automated kiosks, and require that the access features of the kiosk be built into the system so users do not have to attach an assistive device. Additional specifications address mechanisms for private listening such as a headset or a standard headphone jack, touchscreens, auditory output, adjustable volume controls and requirements that the location of the kiosk controls is in accessible reach ranges. The Global Entry automated kiosks are Section 508-compliant.[1] Global Entry participants must provide fingerprint biometrics at the time of the personal interview and again at the kiosk at the airport. CBP has also made the kiosks and the Global Entry program accessible to participants with disabilities related to the collection of biometrics. If an applicant is missing a digit(s), the CBP officer will make the proper annotation in the system to allow such an individual to use the Global Entry kiosk.

B. Executive Order 12866 and Executive Order 13563

This rule is not an ''economically significant'' rulemaking action under Executive Order 12866, as supplemented by Executive Order 13563, because it will not result in the expenditure of more than $100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866; therefore, this rule has been reviewed by the Office of Management and Budget.

Global Entry is a voluntary program that speeds the CBP processing time for participating air travelers by more than 70%. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. This evaluation explores the potential costs and benefits of this voluntary trusted traveler program.

CBP estimates that over a 5-year period Global Entry will process approximately 500,000 enrollees, equating to an annual average of 100,000 individuals. Note that this estimate is twice the number of individuals estimated in the NPRM. Since publication of the NPRM, CBP has embarked on a wide outreach campaign to inform the public about the program. The Global Entry program has thus been well advertised and well received by the traveling public, and enrollment numbers have increased far beyond original expectations. To account for this success, CBP now estimates an annual average of 100,000 individuals. CBP will charge a fee of $100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the potential enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an ''opportunity cost of time'' to travel to an enrollment center upon acceptance of the initial application. We assume that 1 hour will be required for this time spent at the enrollment center and travel to and from the Center, though we note that during the pilot, many applicants have coordinated their trip to an enrollment center with their travel at the airport. We have used 1 hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of $44.30 for the opportunity cost for this time, which is taken from the Department of Transportation's *Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis* (September 28, 2011. See Table 4. Available at *http://www.faa.gov/regulations_policies/policy_guidance/benefit_cost,* accessed November 1, 2011). This value is the weighted average for U.S. business and leisure travelers.

Using these values, we estimate that the cost per enrollee is $173.98 ($44.30 per hour × 1.67 hours + $100 enrollment fee). If there are 100,000 enrollees annually, this cost will be $17.4 million per year. Over 5 years, the total costs to enrollees will be approximately $76 million at a 7 percent discount rate ($82 million at a 3 percent discount rate).

As noted previously, Global Entry will allow for expedited processing for those travelers enrolled in the program. Based on an analysis from a year-long study (June 2008 to June 2009), DHS estimates enrollees could save more than 70% in processing time with an average savings of 7.6 minutes per trip (standard deviation of 3.8 minutes). In addition, more than 50 percent of Global Entry passengers were admitted into the United States in one minute or less and 82 percent were admitted into the United States in less than five minutes; (*see* U.S. Department of Homeland Security Customs and Border Protection and U.S. Department of Homeland Security, Office of Policy. March 2010. ''Global Entry Twelve Month Pilot Review: From June 6, 2008 to June 6, 2009.'' Page 4. This document is available for review in the public docket for this rulemaking). Monetizing time savings is difficult; entry processing times vary widely among airports and times of day (note the large standard deviation above), and the number of trips that Global Entry will be used for any given individual is unknown. During some peak periods at some international airports, entry processing times can be an hour or more. Avoiding such lines by using Global Entry kiosks and avoiding all other entry processing would likely represent a clear savings in time for a typical participant.

Because participation in the Global Entry program is voluntary, the perceived benefits of reduced wait time would have to equal or exceed the cost of the program over 5 years. Potential enrollees will determine whether or not it is worthwhile to enroll in the program based on their individual preferences, which will be influenced by the number of trips they make and the typical wait times they experience when entering the United States. The most likely participants in the program are those that plan to make multiple trips over 5 years from participating airports, typically experience long waits at the airports they use, or are averse to the perceived annoyance or inconvenience of standing in line for entry processing. Using the estimates presented above, if the annualized cost of the program is $42 (total cost of $173.98 amortized over 5 years at a 7 percent discount rate) and if the time saved per trip were 7.6 minutes (monetized savings of $5.61 per trip), then an average enrollee would need to make about eight trips annually through participating airports to consider enrollment in the Global Entry program worth the cost and estimated burden.

In addition to travelers who enroll in the program, those travelers not enrolled in Global Entry could experience a small time-savings as well. If Global Entry enrollees are not standing in the regular entry processing lines, non-

[1] Department of Homeland Security, Office of Accessible Systems and Technology conducted two reviews, in 2007 and 2008, demonstrating such compliance. The automated kiosks have not changed since that time.

enrollees could experience reduced wait times.

Faster processing of all travelers leads to fewer missed connections and more satisfied customers. Because of the benefits the program provides, many airports and airlines have expressed to CBP their strong support of Global Entry. Likewise, trade associations have expressed their support of the program, saying that it enhances security while easing the flow of international commerce. Because of the benefits, airlines, airports, and trade associations have voluntarily promoted Global Entry to their customers through email, pamphlets, and web advertisements.

Finally, the costs for CBP to administer this program are not included here because they will be recovered through the $100 enrollment fee. CBP could experience benefits by speeding passenger processing and avoiding time needed to process proven low-risk travelers. The time saved would allow CBP to focus more attention on higher-risk travelers, which would improve security.

C. Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this rule on small entities. Global Entry is voluntary and the fee to enroll in Global Entry is one hundred dollars plus the opportunity cost of the individual applying. CBP believes such an expense would not rise to the level of being a ''significant economic impact,'' particularly as the expense need not be incurred unless the enrollee chooses to incur it. CBP did not receive any comments during the public comment period regarding impacts to small entities. Thus, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Paperwork Reduction Act

Information is being collected from voluntary applicants in order to assess whether the individuals meet the eligibility requirements and are otherwise deemed to be low-risk travelers and therefore may appropriately participate in the voluntary Global Entry program. This information will be collected through GOES. This collection of information is required and authorized by 8 U.S.C. 1365b and 8 CFR part 235 for use in international trusted traveler programs. Additionally, the information being collected is necessary to satisfy the requirements regarding examination of aliens applying for admission to the United States pursuant to 8 U.S.C. 1225(a)(3), 8 U.S.C. 1225(b) and 8 U.S.C. 1182(a)(7), and U.S. Citizens entering the United States pursuant to 8 U.S.C. 1185(b).

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. CBP has submitted a revision to OMB clearance 1651–0121 to reflect the addition of the Global Entry Program in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The burden estimates for collecting and entering information for the GOES on-line application for Global Entry, interview time, and travel time are presented below:

Estimated Number of Respondents: 100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 100,000.

Estimated Time per Response: 1 hour and 40 minutes (1.67 hours).

Estimate Total Annual Burden Hours: 167,000.

The estimated total fee cost to respondents resulting from the $100 enrollment fee for Global Entry is $10 million.

G. Privacy

The on-line application for Global Entry, currently known as GOES, collects information similar to that collected on applications for CBP's other trusted traveler programs (*i.e.,* NEXUS, SENTRI and FAST). The information collected through the on-line application is deposited into the Global Enrollment System (GES), as the system of record for CBP trusted traveler programs. The personal information provided by the applicants, including the fingerprint biometrics taken at the time of the personal interview, may be shared with other government and law enforcement agencies in accordance with applicable laws and regulations. The personal information that is collected through GOES is maintained in a Privacy Act system of records (GES) for which the required notice was last published in the **Federal Register** (71 FR 20708) on April 21, 2006. Additionally, CBP published a PIA for GES on April 20, 2006 that covers this program on the DHS Privacy Office Web site, *www.dhs.gov/privacy.* In addition, a PIA update addressing the on-line functionality of the enrollment process (GOES) was posted to the DHS Privacy Office Web site on November 1, 2006. Applicant biometrics (fingerprints, photographs) are stored in the DHS Automated Biometric Identification System (IDENT). The IDENT Privacy Act System of Records notice was last published on June 5, 2007.

H. Signing Authority

The signing authority for this document falls under 8 U.S.C. 1365b(k) pertaining to the authority of the Secretary of Homeland Security to develop and implement a trusted traveler program to expedite the travel of previously screened and known travelers across the borders of the United States.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Amendments to Regulations

For the reasons set forth in this document, 8 CFR parts 103 and 235 are amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. In § 103.7, paragraph (b)(1)(ii)(M) is added to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(M) Global Entry. For filing an application for Global Entry—$100.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 3. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Pub. L. 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

■ 4. A new § 235.12 is added to read as follows:

§ 235.12 Global Entry program.

(a) *Program description.* The Global Entry program is a voluntary international trusted traveler program consisting of an integrated passenger processing system that expedites the movement of low-risk air travelers into the United States by providing an alternate inspection process for pre-approved, pre-screened travelers. In order to participate, a person must meet the eligibility requirements specified in this section, apply in advance, undergo pre-screening by CBP, and be accepted into the program. The Global Entry program allows participants expedited entry into the United States at selected airports identified by CBP at *www.globalentry.gov.* Participants will be processed through the use of CBP-approved technology that will include the use of biometrics to validate identity and to perform enforcement queries.

(b) *Program eligibility criteria.*

(1) *Eligible individuals.* The following individuals, who hold a valid, machine-readable passport, a valid, machine-readable U.S. Lawful Permanent Resident Card (Form I–551), or other appropriate travel document as determined by CBP, may apply to participate in Global Entry:

(i) U.S. citizens, U.S. nationals, and U.S. lawful permanent residents absent any of the disqualifying factors described in paragraph (b)(2) of this section.

(ii) Certain nonimmigrant aliens from countries that have entered into arrangements with CBP concerning international trusted traveler programs absent any of the disqualifying factors described in paragraph (b)(2) of this section, and subject to the conditions set forth in the particular arrangement. Individuals from a country that has entered into such an arrangement with CBP may be eligible to apply for participation in Global Entry only after CBP announces the arrangement by publication of a notice in the **Federal Register.** The notice will include the country, the scope of eligibility of nonimmigrant aliens from that country (*e.g.,* whether only citizens of the foreign country or citizens and non-citizens are eligible) and other conditions that may apply based on the terms of the arrangement. CBP may change or terminate these arrangements without prior notice to the public, but will announce such actions as soon as practicable on *www.globalentry.gov* and by publication of a notice in the **Federal Register.**

(iii) Persons under the age of 18 who meet the eligibility criteria of paragraph (b)(1)(i) or (ii) of this section must have the consent of a parent or legal guardian to participate in Global Entry and provide proof of such consent in accordance with CBP instructions.

(2) *Disqualifying factors.* An individual is ineligible to participate in Global Entry if CBP, at its sole discretion, determines that the individual presents a potential risk for terrorism, criminality (such as smuggling), or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. Reasons why an applicant may not qualify for participation include:

(i) The applicant provides false or incomplete information on the application;

(ii) The applicant has been arrested for, or convicted of, any criminal offense or has pending criminal charges or outstanding warrants in any country;

(iii) The applicant has been found in violation of any customs, immigration, or agriculture regulations, procedures, or laws in any country;

(iv) The applicant is the subject of an investigation by any federal, state, or local law enforcement agency in any country;

(v) The applicant is inadmissible to the United States under applicable immigration laws or has, at any time, been granted a waiver of inadmissibility or parole;

(vi) The applicant is known or suspected of being or having been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism; or

(vii) The applicant cannot satisfy CBP of his or her low-risk status or meet other program requirements.

(c) *Participating airports.* The Global Entry program allows participants expedited entry into the United States at the locations identified at *www.globalentry.gov.* Expansions of the Global Entry program to new airports will be announced by publication in the **Federal Register** and at *www.globalentry.gov.*

(d) *Program application.*

(1) Each applicant must complete and submit the program application electronically through an approved application process as determined by CBP. The application and application instructions for the Global Entry program are available at *www.globalentry.gov.*

(2) Each applicant must pay a non-refundable fee in the amount set forth at 8 CFR 103.7(b)(1)(ii)(M) for ''Global Entry'' at the time of application. The fee is to be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov or other CBP-approved process.

(3) Every applicant accepted into Global Entry is accepted for a period of 5 years provided participation is not suspended or terminated by CBP prior to the end of the 5-year period. Each applicant may apply to renew participation up to one year prior to the close of the participation period.

(4) Each applicant may check the status of his or her application through his or her account with the application system in use for Global Entry.

(e) *Interview and enrollment.*

(1) After submitting the application, the applicant will be notified by CBP to schedule an in-person interview at a Global Entry enrollment center.

(2) Each applicant must bring to the interview with CBP the original of the identification document specified in his or her application. During the interview, CBP will collect biometric information from the applicant (*e.g.,* a set of ten fingerprints and/or digital photograph)

to conduct background checks or as otherwise required for participation in the program.

(3) CBP may provide for alternative enrollment procedures, as necessary, to facilitate enrollment and ensure an applicant's eligibility for the program.

(f) *Valid machine-readable passport or valid lawful permanent resident card.* Each participant must possess a valid, machine-readable passport, a valid, machine-readable U.S. Lawful Permanent Resident Card (Form I–551), or other appropriate travel document as determined by CBP.

(g) *Arrival procedures.* In order to utilize the Global Entry program upon arrival in the United States, each participant must:

(1) Use the Global Entry kiosk and follow the on-screen instructions;

(2) Declare all articles being brought into the United States pursuant to 19 CFR 148.11. A Global Entry participant will be redirected to the nearest open passport control primary inspection station if the participant declares any of the following:

(i) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(ii) More than $10,000 in currency or other monetary instruments (checks, money orders, *etc.*), or foreign equivalent in any form; or

(iii) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, controlled substances, fireworks, Cuban goods, and plants.

(h) *Application for entry, examination and inspection.* Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the participant on the date that Global Entry is used. Pursuant to the enforcement provisions of 19 CFR Part 162, Global Entry participants may be subject to further CBP examination and inspection at any time during the arrival process.

(i) *Pilot participant enrollment.* Upon implementation of the Global Entry Program, participants in the Global Entry pilot will be automatically enrolled in the Global Entry Program for 5 years from the date of enrollment in the pilot.

(j) *Denial, removal and suspension.*

(1) If an applicant is denied participation in Global Entry, CBP will notify the applicant of the denial, and the reasons for the denial. CBP will also provide instructions regarding how to proceed if the applicant wishes to seek additional information as to the reason for the denial.

(2) A Global Entry participant may be suspended or removed from the program for any of the following reasons:

(i) CBP, at its sole discretion, determines that the participant has engaged in any disqualifying activities under the Global Entry program as outlined in § 235.12(b)(2);

(ii) CBP, at its sole discretion, determines that the participant provided false information in the application and/or during the application process;

(iii) CBP, at its sole discretion, determines that the participant failed to follow the terms, conditions and requirements of the program;

(iv) CBP, at its sole discretion, determines that the participant has been arrested or convicted of a crime or otherwise no longer meets the program eligibility criteria; or

(v) CBP, at its sole discretion, determines that such action is otherwise necessary.

(3) CBP will notify the participant of his or her suspension or removal in writing. Such suspension or removal is effective immediately.

(4) An applicant or participant denied, suspended, or removed does not receive a refund, in whole or in part, of his or her application processing fee.

(k) *Redress.* An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit on the applicant or participant, and are wholly discretionary on the part of CBP. The methods of redress are:

(l) *Enrollment center.* The applicant/participant may contest his or her denial, suspension or removal by writing to the enrollment center where that individual's interview was conducted. The enrollment center addresses are available at *www.globalentry.gov.* The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope ''Redress Request RE: Global Entry.'' The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. If the applicant/participant believes that the denial, suspension or revocation was based upon inaccurate information, the individual should also include any reasonably available supporting documentation with the letter. After review, CBP will inform the individual of its redress decision. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Traveler Redress Inquiry Program (DHS TRIP).* The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at *www.dhs.gov/trip,* or by contacting DHS TRIP by mail at the address on this Web site.

(3) *Ombudsman.* Applicants (including applicants who were not scheduled for an interview at an enrollment center) and participants may contest a denial, suspension or removal by writing to the CBP Trusted Traveler Ombudsman at the address listed on the Web site *www.globalentry.gov.*

Dated: January 31, 2012.

Janet Napolitano,

Secretary.

[FR Doc. 2012–2470 Filed 2–3–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2011–1406; Airspace Docket No. 11–AWA–5

Amendment of Class C Airspace; Springfield, MO; Lincoln, NE; Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action modifies the Springfield, MO; Lincoln, NE; and Grand Rapids, MI, Class C airspace areas by amending the legal descriptions to contain the current airport names and updated airport reference point (ARP) information. This action does not change the boundaries of the controlled airspace areas.

DATES: *Effective Date:* 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. The FAA Central Service Center recently completed its biennial evaluation of existing Class C airspace areas in the Central Service Area and determined three Class C airspace areas required description amendments to match the FAA's aeronautical database. Specifically, this amendment corrects the airport names for Springfield, MO; Lincoln, NE; and Grand Rapids, MI, and makes minor adjustments to the ARP geographic position information for Springfield, MO, and Grand Rapids, MI.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class C airspace at Springfield, MO; Lincoln, NE; and Grand Rapids, MI. The airport formerly known as Springfield-Branson Regional Airport in Springfield, MO, is renamed Springfield-Branson National Airport. The airport formerly known as Lincoln Municipal Airport in Lincoln, NE., is renamed Lincoln Airport. The airport formerly known as Grand Rapids Kent County International Airport in Grand Rapids, MI, is renamed Gerald R. Ford International Airport. Additionally, the ARP geographic position for the Springfield-Branson National Airport is changed from lat. 37°14′40″ N., long. 93°23′13″ W. to lat. 37°14′44″ N., long. 93°23′19″ W., and the ARP geographic position for the Gerald R. Ford International Airport is changed from lat. 42°52′57″ N., long. 85°31′26″ W. to lat. 42°52′51″ N., long. 85°31′22″ W. These minor adjustments to the geographic coordinates reflect the current information in the FAA's aeronautical database.

There are no changes to routing or air traffic control procedures resulting from this action. Accordingly, since this is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area amendment in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the descriptions of the Class C airspace areas established in the vicinity of Springfield, MO, Lincoln, NE, and Grand Rapids, MI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 4000 Class C Airspace.

* * * * *

ACE MO C Springfield-Branson National Airport, MO

Springfield-Branson National Airport, MO
(Lat. 37°14′44″ N., long. 93°23′19″ W.)
Bird Field Airport
(Lat. 37°19′12″ N., long. 93°25′12″ W.)

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of Springfield-Branson National Airport, excluding that airspace within a 1-mile radius of the Bird Field Airport; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of Springfield-Branson National Airport.

* * * * *

ACE NE C Lincoln Airport, NE

Lincoln Airport, NE
(Lat. 40°51′03″ N., long. 96°45′33″ W.)

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Airport; and that airspace extending upward from 2,700 feet MSL to and including 5,200 feet MSL within a 10-mile radius of the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI C Gerald R. Ford International Airport, MI

Gerald R. Ford International Airport, Grand Rapids, MI
(Lat. 42° 52′51″ N., long. 85°31′22″ W.)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Gerald R. Ford International Airport; and that airspace extending upward from 2,000 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on January 26, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–2485 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30824; Amdt. No. 3462]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 6, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on January 20, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 9 FEB 2012

Wilmington, DE, New Castle, VOR RWY 9, Amdt 7
Houston, TX, Ellington Field, TACAN RWY 4, Orig
Houston, TX, Ellington Field, TACAN RWY 35L, Orig

Effective 8 MAR 2012

Wilmington, DE, New Castle, ILS OR LOC RWY 1, Amdt 23A
New Castle, IN, New Castle-Henry Co Muni, Takeoff Minimums and Obstacle DP, Orig
Terre Haute, IN, Sky King, Takeoff Minimums and Obstacle DP, Amdt 3
Lewiston, ME, Auburn/Lewiston Muni, ILS OR LOC RWY 4, Amdt 10C
Brunswick, ME, Brunswick Executive, RNAV (GPS) RWY 1R, Amdt 1
Brunswick, ME, Brunswick Executive, RNAV (GPS) RWY 19L, Amdt 1
Sault Ste Marie, MI, Chippewa County Intl, ILS OR LOC RWY 16, Amdt 8A
Pine River, MN, Pine River Rgnl, Takeoff Minimums and Obstacle DP, Orig
Omaha, NE, Eppley Airfield, ILS OR LOC RWY 36, Orig-A
Wilmington, OH, Clinton Field, VOR–A, Amdt 2, CANCELLED
Erie, PA, Erie Intl/Tom Ridge Field, ILS OR LOC RWY 6, Amdt 16B
Greer, SC, Greenville Spartanburg Intl, ILS OR LOC/DME RWY 4, ILS RWY 4 (SA CAT I), ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 23A
Sioux Falls, SD, Joe Foss Field, ILS OR LOC RWY 21, Amdt 10A
Memphis, TN, General Dewitt Spain, Takeoff Minimums and Obstacle DP, Amdt 4
Racine, WI, John H Batten, ILS OR LOC RWY 4, Amdt 4C
Racine, WI, John H Batten, RNAV (GPS) RWY 22, Orig-A

Effective 5 APR 2012

Jacksonville, FL, Jacksonville Intl, RNAV (GPS) RWY 32, Amdt 2A
Titusville, FL, NASA Shuttle Landing Facility, TACAN RWY 15, Orig, CANCELLED
Titusville, FL, NASA Shuttle Landing Facility, TACAN RWY 33, Orig, CANCELLED
Dublin, GA, W H 'BUD' Barron, ILS OR LOC RWY 2, Amdt 2A
Concordia, KS, Blosser Muni, GPS RWY 17, Orig-B, CANCELLED
Concordia, KS, Blosser Muni, GPS RWY 35, Orig-A, CANCELLED
Concordia, KS, Blosser Muni, RNAV (GPS) RWY 17, Orig
Concordia, KS, Blosser Muni, RNAV (GPS) RWY 35, Orig
Crisfield, MD, Crisfield Muni, RNAV (GPS) RWY 32, Orig, CANCELLED
Crisfield, MD, Crisfield Muni, RNAV (GPS)-B, Orig
Rocky Mount, NC, Rocky Mount-Wilson Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Florence, SC, Florence Rgnl, RNAV (GPS) RWY 9, Orig-B
Greenville, TN, Greenville-Greene Co Muni, LOC RWY 5, Amdt 4, CANCELLED

RESCINDED: On January 9, 2012 (77 FR 1015), the FAA published an Amendment in Docket No. 30819, Amdt No. 3458 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries, effective 9 February 2012, are hereby rescinded in their entirety:

Pender, NE, Pender Muni, RNAV (GPS) RWY 15, Orig
Pender, NE, Pender Muni, RNAV (GPS) RWY 33, Orig
Pender, NE, Pender Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2012–2247 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30825; Amdt. No. 3463]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 6, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on January 20, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * * *

Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
8–Mar–12	AL	Birmingham	Birmingham-Shuttlesworth Intl	1/3755	1/12/12	LOC RWY 18, Amdt 2
8–Mar–12	AL	Birmingham	Birmingham-Shuttlesworth Intl	1/3759	1/12/12	RNAV (GPS) RWY 18, Amdt 1
8–Mar–12	CA	Atwater	Castle	1/4927	1/12/12	RNAV (GPS) RWY 31, Orig-B
8–Mar–12	CA	Atwater	Castle	1/4928	1/12/12	RNAV (GPS) RWY 13, Orig-B
8–Mar–12	NV	Las Vegas	McCarran Intl	1/5302	1/12/12	ILS OR LOC RWY 25L, Amdt 3B
8–Mar–12	NY	Syracuse	Syracuse Hancock Intl	2/1481	1/12/12	RNAV (GPS) RWY 15, Amdt 1

[FR Doc. 2012–2242 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 312, 314, 601, 610, 801, 807, 809, 812, and 814

[Docket No. FDA–2006–N–0364]

Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting as a final rule, without change, the interim final rule that issued regulations permitting FDA Center Directors to grant exceptions or alternatives to certain regulatory labeling requirements applicable to human drugs, biological products, or medical devices that are or will be included in the Strategic National Stockpile (SNS). FDA is taking this action to complete the rulemaking initiated with the interim final rule.

DATES: This rule is effective February 6, 2012.

FOR FURTHER INFORMATION CONTACT:

For information concerning biological products:

Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

For information concerning drug products:

Brad G. Leissa, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, rm. 2170, Silver Spring, MD 20993, (301) 796–1693.

For information concerning medical devices:

Larry Spears, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3412, Silver Spring, MD 20993, (301) 796–5517.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 28, 2007 (72 FR 73589), FDA issued an interim final rule entitled ''Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile'' (hereinafter referred to as the interim final rule).[1] This rule became effective upon the date of publication in the **Federal Register.**

We issued the interim final rule to facilitate the safety, effectiveness, and availability of appropriate medical countermeasures stored in the SNS in the event of a public health emergency. We also recognized that it may be appropriate for certain human drugs, biological products, or medical devices (hereinafter referred to collectively as medical products) that are or will be held in the SNS to be labeled in a manner that would not comply with certain FDA labeling requirements. However, noncompliance with these labeling requirements could render such products misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352). Under this rule, the appropriate FDA Center Director may grant exceptions or alternatives to certain regulatory labeling requirements applicable to medical products that are or will be included in the SNS if he or she determines that compliance with the labeling requirements could adversely affect the safety, effectiveness, or availability of specified lots, batches, or other units of medical products that are or will be included in the SNS. An exception or alternative granted under this rule may include conditions or safeguards deemed appropriate by the FDA Center Director to ensure that the labeling for such products includes information necessary for the safe and effective use of the product given the product's anticipated circumstances of use.

For example, this rule applies to certain medical products that enter the SNS as investigational products in addition to medical products in the SNS that are approved, licensed, or cleared for marketing.[2] Labels on investigational products ordinarily would not contain all elements required on licensed, approved, or cleared product labels. Certain information, such as expiration dates, warnings for users, license numbers of manufacturers and other information, may not be available or finalized for an investigational product, and thus could not be included on a container label if the investigational product was added to the SNS. Prior to the implementation of this rule, when investigational products were ultimately approved for marketing, the products would have been returned to the manufacturer or sent to relabelers for relabeling, a potentially time-consuming, costly, and labor-intensive process. Further, requiring relabeling of such investigational products after approval, licensure or clearance could adversely affect the safety, effectiveness, or availability of the products. This rule allows the appropriate FDA Center Director to grant an exception or alternative to the relevant labeling requirements to enable the immediate use of a product in the event of a public health emergency.

For these reasons, as explained in the interim final rule and the following section of this document, this rule allows FDA Center Directors to grant exceptions or alternatives to certain labeling requirements not explicitly required by statute for medical products that are or will be included in the SNS.

II. Comments on the Interim Final Rule and FDA Responses

We received 7 comments on the proposed rule. These comments were received from hospitals, biologics manufacturers, law firms, other government agencies, and other interested persons. To make it easier to identify comments and our responses, the word ''Comment,'' in parentheses, will appear before the comment's description, and the word ''Response,'' in parentheses, will appear before our response. We have also numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received. Certain comments were grouped together because the subject matter of the comments was similar.

(Comment 1) One comment applauded the efforts put forth by the Agency to provide industry with the opportunity for exceptions or alternatives to FDA labeling requirements for products held by the SNS. The comment also recognized the importance of facilitating rapid access to large quantities of medical products in the event of an act of terrorism or natural disaster. Another comment expressed general agreement with the interim final rule.

(Response) We appreciate these comments in support of the rule. Congress mandated the development of a SNS to provide for the emergency

[1] In the **Federal Register** of November 18, 2008 (73 FR 68332), FDA issued a technical amendment to reincorporate a regulation that was inadvertently revised by the interim final rule.

[2] As noted in the preamble to the interim final rule, medical products stockpiled in the SNS may also include products that will ultimately be used in an emergency under section 564 of the FD&C Act (21 U.S.C. 360bbb–3).

health security of the United States in the event of a bioterrorist attack or other public health emergency (section 319F–2(a) of the Public Health Service Act (the PHS Act) (42 U.S.C. 247d-6(b))). By providing a legal mechanism for addressing certain labeling issues associated with medical products in the SNS without compromising their safety, effectiveness, or availability for use in an emergency, this rule is designed to help enable the rapid deployment of medical countermeasures stored in the SNS in the event of such an emergency.

(Comment 2) A number of comments responded to FDA's solicitation for comments as to whether the scope of the rule should be amended to include medical products in other Federal, State, and local stockpiles. One comment suggested that FDA expand the rule to include medical products stored in hospitals. Another comment suggested that the interim final rule should be extended to medical products stored in the Department of Defense stockpiles. Yet another comment requested that the scope of the rule not be extended to medical products in other Federal, State, or local stockpiles because extending the scope of the rule would most likely result in manufacturers seeing a high influx of requests for exceptions or alternatives to labeling requirements under the rule. Finally, a comment expressed general concern that the interim final rule is flawed and therefore should not be extended to other stockpiles.

(Response) We appreciate the comments received in response to our solicitation. We have considered the issue, including the points raised in these comments, and have decided not to extend the rule to other Federal, State, and local stockpiles. With respect to the comment that the scope of the rule should be extended to medications stored in hospitals, we note that the SNS was created by statute to maintain medical products under centralized control. Centralized control of the stockpile assures that appropriate products are selected for inclusion in the SNS and that they are then stored under appropriate conditions. Centralized control also provides for efficient distribution in the event of a public health emergency.

In response to the comment expressing concern that extending the rule to include additional medical products in other Federal, State, or local stockpiles would cause a high influx of requests for exceptions or alternatives to the labeling requirements specified in the rule, we recognize that extending the rule to other stockpiles may result in a high influx of requests and further note our concern that such requests would relate to products outside the control of SNS oversight. We reiterate that medical products are stockpiled in the SNS under centralized control to provide for efficient distribution in the event of a bioterrorist attack or other public health emergency, and this centralized control helps ensure that adequate procedures are followed for inventory management and accounting, and for the physical security of the stockpile. Accordingly, at this time, we decline to expand the scope of the final rule to apply to medical products in other Federal, State, and local stockpiles. Additionally, we note our disagreement with the comment that the interim final rule is generally flawed. As mandated by Congress, the SNS was created to provide for the emergency health security of the United States in the event of a public health emergency such as a bioterrorist attack. The interim final rule is necessary to give FDA Center Directors the ability to grant exceptions or alternatives to certain regulatory labeling requirements that could adversely affect the safety, effectiveness, or availability of medical products that are or will be included in the SNS in the event of a public health emergency.

(Comment 3) There were two comments regarding those provisions of the interim final rule which allow SNS officials, or any entity that manufactures (including labeling, packing, repackaging, or relabeling), distributes, or stores the medical products to submit a request for an exception or alternative to the labeling requirements specified in the rule. One comment expressed concern that the rule permitted a SNS official to apply for alternative labeling without the consent of the product license holder. The comment acknowledged that there may be situations that could require a SNS official to apply for a labeling change without the license holder's consent, such as if a license holder went out of business, but stated that in all other cases only the product license holder (or, in the case of an investigational product, the anticipated biologics license application (BLA) or new drug application (NDA) holder) should be permitted to request an exception or alternative to the labeling requirements specified in the rule. The comment further suggested that any request by a SNS official for an exception or alternative to the labeling requirements specified in the rule should be accompanied by the written concurrence of the product license holder.

Similarly, another comment requested that the rule be amended to allow only the product license holder or the sponsor of the investigational new drug application (IND) to submit a request for a labeling exception or alternative. The comment further requested that the rule be amended to require SNS officials to first submit a request for an alternative or exception to the labeling requirements specified in the rule to the product license holder or IND sponsor for its concurrence prior to submitting the request to FDA, and that the license holder or IND sponsor be required to concur with the request prior to SNS officials forwarding the request to FDA.

(Response) The interim final rule allows for drug, biologic, and device application holders, or sponsors of INDs or investigational device exemptions (IDEs), to submit requests for labeling exceptions or alternatives. Our experience to date with respect to the interim final rule has been that BLA holders or applicants or sponsors of INDs have submitted all of the requests received for labeling exceptions or alternatives with the concurrence of SNS officials. We continue to anticipate that many, if not all, of the requests submitted under this rule will be submitted by manufacturers with the concurrence of SNS officials prior to or at the time a specified lot, batch, or other unit of the product is procured by the SNS, or when an investigational product held in the SNS has been approved, licensed, or cleared. Nonetheless, we also continue to recognize the need for additional flexibility regarding products stored in the SNS to ensure their availability in the event of a public health emergency. For example, in order to prepare for an emergency, an SNS official or FDA Center Director could determine there is a need for labeling exceptions or alternatives to facilitate the use of a medical countermeasure during an emergency. We note that in this example we anticipate that the exception or alternative required would not result in any actual change to the product labeling, but rather would allow for the use of the product regardless of the current labeling.

Thus, we continue to recognize that it may be necessary to allow government officials, as well as any entity that manufactures (including labeling, packing, repackaging, or relabeling), distributes, or stores the medical product, to request exceptions or alternatives to the labeling requirements specified in this rule to ensure that medical products stored in the SNS are rapidly available for public use.

(Comment 4) A comment suggested that FDA grant or deny a request for an exception or alternative within 30 days from the receipt of any request because such situations may call for rapid turnaround.

(Response) We agree that there may be situations that could call for a rapid turnaround in responding to a request for an exception or alternative. The intent of this rule is to ensure the rapid availability of medical countermeasures in the event of a public health emergency, and FDA will respond to all requests regarding the SNS as rapidly as possible. However, we do not believe that requiring FDA to respond within a set timeframe without accounting for the variability and complexity of each request would necessarily serve the public health.

(Comment 5) One comment asked what documentation would be provided to the Department of Homeland Security's Customs and Border Protection Agency (CBP) to allow importation of medical products that are the subject of grants of exceptions or alternatives to labeling requirements.

(Response) This rule has no effect on the information that must be submitted to CBP for imported medical products. That documentation remains unchanged. FDA and CBP will be able to make appropriate determinations regarding products for which exceptions or alternatives have been granted without additional information at the time of entry.

(Comment 6) A comment stated that while the rule appears to permit only minor and technical labeling changes, it appears to be intended to permit FDA to make additional labeling changes based on information that becomes available to FDA after the initial label approval. The comment argued that a change to previously approved labels based on information not previously available alters the conditions under which a product may be sold and may affect the product's value without appropriate compensation to the manufacturer. Furthermore, the comment expressed a general concern that such actions by the government may violate the Constitution's Due Process and Takings provisions. The comment further argued that even if such actions did not rise to the level of Constitutional violations, they would be disincentives to industry developing products with uses covered by the SNS. Finally, the commenter was concerned that FDA may require a manufacturer of investigational products to add language to the outer package labeling of its product in the SNS after the product is licensed, approved, or cleared.

(Response) The concerns expressed in the comment are unfounded. We do not agree that FDA's grant of an exception or alternative to certain FDA labeling requirements under the rule would adversely affect a product's value. This rule applies to medical products that are or will be held in the SNS only. The purpose of the rule is to provide for exceptions or alternatives to certain regulatory requirements if compliance with the requirements could adversely affect the safety, effectiveness, or availability of these products. Therefore, we would anticipate that this rule could encourage, as opposed to discourage, the procurement of medical products by the SNS.

We reiterate that this rule is narrowly drafted to create necessary exceptions or alternatives to specified labeling requirements to ensure that medical products stored in the SNS are available for public use in the event of an emergency. To date, we have received six requests for exceptions or alternatives to labeling requirements, all of which have been initiated by BLA holders or applicants or sponsors of IND applications, with the concurrence of SNS officials. Our experience to date is that this rule does not create disincentives to participation in the SNS, and we note that the comment did not contain any data or information to substantiate this concern. Furthermore, to the extent that the comment is arguing that this rule violates the Due Process and Takings clauses of the Constitution by affecting a product's value without appropriate compensation to the manufacturer, as discussed previously, we disagree. As we have explained, this rule will not adversely affect the value of a product. We do not believe that this rule in any way violates the Constitution.

(Comment 7) One comment expressed concern that relabeling a product suggests product manipulation. The comment stated that over labeling or relabeling creates the possibility for error, damage to the product and potential confusion by the SNS and, ultimately, for the user for whom the product is intended. Further, any of these possibilities may increase product liability exposure for the manufacturer.

(Response) The concerns expressed in the comment are unfounded. As stated in the preamble to the interim final rule, we recognize that relabeling is a potentially time-consuming, costly, and labor-intensive process that could possibly cause product mishandling, sabotage or diversion, or could cause products to be unavailable for dispensing in the event of an emergency. Accordingly, this rule is specifically designed to allow FDA Center Directors to grant exceptions or alternatives to certain labeling requirements for medical products in the SNS to mitigate the need for relabeling. We also note that since the development of the SNS, manufacturers, in conjunction with FDA, the Centers for Disease Control and Prevention/SNS officials and the Department of Health and Human Services/Biomedical Advanced Research and Development Authority, have developed innovative labeling mechanisms for certain products through which relabeling an investigative product requires minimal manipulation post-licensure (*e.g.,* ''zipper'' labels or ''tear-off'' labels on the actual product container).

Regarding the product liability concern, this rule does not authorize the use of unapproved products, or of approved products for unapproved uses in an emergency. This rule instead permits a Center Director to authorize an exception or alternative from certain labeling requirements. Notably, with regard to other product liability concerns the commenter may have, the Public Readiness and Emergency Preparedness (PREP) Act is intended to address tort liability for manufacturers in such circumstances (42 U.S.C. 247d–6(d)).

(Comment 8) A comment stated that the rule would appear to place burdens on a manufacturer. For example, the comment states that the rule does not exempt a sponsor from the requirement that it include in the company's annual report to FDA changes in labeling even when the government initiated the change without input from the manufacturer. The comment suggests that therefore, the company will need to track the activities of the SNS after the product has been distributed.

(Response) FDA clarifies that under 21 CFR 201.26(e), a sponsor or applicant would only have to report a grant of a request for an exception or alternative of labeling requirements if the sponsor or applicant requested the change. We also note that we expect that in the majority of cases, this exception or alternative would be granted during the product approval process. Accordingly, FDA does not expect this rule to impose burdensome reporting requirements on manufacturers.

III. Legal Authority

In this final rule, FDA is amending regulations pertaining to the content and format of medical product labeling. The provisions of this rule allow FDA to grant exceptions or alternatives to certain of those labeling requirements. The labeling regulations to which

exceptions or alternatives are permitted under this rule were issued by FDA under authority of the FD&C Act and the PHS Act to mandate particular ways that firms must satisfy the broad requirements and prohibitions in those statutes, such as the prohibition on false and misleading drug and device labeling. As described in section II of this document, and in the interim final rule, FDA has determined that circumstances may arise in which compliance with those regulatory mandates could adversely affect the safety, effectiveness, or availability of certain medical products that are or will be included in the SNS. Moreover, due to the unique nature of the SNS, those products could deviate from particular mandates of existing labeling regulations without violating the broad statutory requirements and prohibitions in the FD&C Act and the PHS Act. For those reasons, FDA is exercising its authority to regulate labeling by modifying the existing regulations in a way that allows exceptions or alternatives for medical products that are or will be included in the SNS.

As explained in the interim final rule, FDA has various sources of authority to issue labeling regulations, including, for example, sections 201(n), 502(a), and 701(a) of the FD&C Act (21 U.S.C. 321(n), 352(a), and 371(a)) for drugs (including biological products) and devices, and sections 351(a)(1)(A) and 351(a)(2)(A) of the PHS Act (42 U.S.C. 262(a)(1)(A) and (a)(2)(A)) for biological products. In addition, as more fully discussed in the interim final rule, FDA has concluded that exceptions or alternatives granted under this rule will not render products misbranded due to the additional safeguards and conditions that may be required when an exception or alternative is granted, as well as the unique storage, deployment and distribution considerations essential to the SNS.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The analysis of costs and benefits of available regulatory alternatives contained in the interim final rule (72 FR 73589 at 73596) is adopted without change in this final rule. By now reaffirming that interim final rule, FDA has not imposed any new requirements. Therefore, there are no additional costs and benefits associated with this final rule.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule does not make any changes to the interim final rule or our analysis included therein, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

V. The Paperwork Reduction Act

Sections 201.26(b), 610.68(b), 801.128(b), and 809.11(b) of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507(d) of the Paperwork Reduction Act of 1995. The information collection requirements were approved and assigned OMB control number 0910–0614 (expires August 31, 2014).

VI. Environmental Impact

The Agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

In the **Federal Register** of October 5, 2011 (76 FR 61565), FDA published a notification of preemption review, which was conducted in response to a memorandum from the President that directed Federal Agencies to review recently issued regulations to ensure that any statements concerning preemption can be justified under legal principles governing preemption, including those outlined in Executive Order 13132. In this notification, FDA announced its determination that the preamble to the interim final rule referred to statements concerning preemption that are not justified under legal principles governing preemption. FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132 and has determined that this rule is consistent with the Executive Order. Section 4(a) of this Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' In this rule, FDA is adopting as a final rule regulations permitting FDA Center Directors to grant exceptions or alternatives to certain regulatory labeling requirements applicable to medical products that are or will be included in the SNS. Certain State requirements regarding the format and content of nonprescription drug labeling and/or labeling of approved medical devices may be subject to the express preemption provisions in section 751 of the FD&C Act (21 U.S.C. 379r) (nonprescription drugs) and section 521 of the FD&C Act (21 U.S.C. 360k) (approved medical devices). We also note that even where an express preemption provision is not applicable, implied preemption may arise.

Accordingly, the interim final rule amending 21 CFR parts 201, 312, 314, 601, 610, 801, 807, 809, 812, and 814 which was published at 72 FR 73589 on December 28, 2007, is adopted as a final rule without change.

Dated: February 1, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–2558 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

[Docket No. FDA–2011–N–0003]

New Animal Drugs; Change of Sponsor; Chlortetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an abbreviated new animal drug application (ANADA) for chlortetracycline soluble powder from Teva Animal Health, Inc., to Quo Vademus, LLC.

DATES: This rule is effective February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, (240) 276–8300, email: *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Teva Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–236 for Chlortetracycline HCL Soluble Powder to Quo Vademus, LLC, 277 Faison McGowan Rd., Kenansville, NC 28349. Accordingly, the Agency is amending the regulations in 21 CFR 520.441 to reflect the transfer of ownership.

Quo Vademus, LLC, is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600 is being amended to add entries for this sponsor.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add a new entry for ''Quo Vademus, LLC''; and in the table in paragraph (c)(2), in numerical sequence add a new entry for ''076475'' to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Quo Vademus, LLC, 277 Faison McGowan Rd., Kenansville, NC 28349	076475
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
076475	Quo Vademus, LLC, 277 Faison McGowan Rd., Kenansville, NC 28349
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.441 [Amended]

■ 4. In paragraph (b)(4) of § 520.441, remove ''059130'' and in its place add ''076475''.

Dated: February 1, 2012.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2012–2633 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9572]

RIN 1545–BK53

Dividend Equivalents From Sources Within the United States

Correction

In rule document 2012–01234 beginning on page 3108 of the issue of Monday, January 23, 2012 make the following correction:

On page 3108, in the second column, in the heading, immediately below ''26 CFR Part 1'', ''[TD 9572]'' should appear.

[FR Doc. C1–2012–1234 Filed 2–3–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0346, FRL–9627–8]

Approval and Promulgation of Implementation Plans; New Hampshire: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the New Hampshire State Implementation Plan (SIP), submitted by the New Hampshire Department of Environmental Services (NH DES) to EPA on February 7, 2011. The SIP revision modifies New Hampshire's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to New Hampshire's PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA proposed approval of these regulatory revisions on June 14, 2011, and received no comments. This action affects major stationary sources in New Hampshire that have GHG emissions above the thresholds established in the PSD regulations.

DATES: *Effective Date:* This rule will be effective on March 7, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–

2011–0346. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the New Hampshire SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109—3912. Mr. Dahl's telephone number is (617) 918–1657; email address: *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What is the background for this action?
II. What comments did EPA receive?
III. What is the effect of this action?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background for this action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the New Hampshire SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[1] the ''Johnson Memo Reconsideration,''[2] the ''Light-Duty Vehicle Rule,''[3] and the ''Tailoring Rule.''[4] Taken together and in conjunction with the Clean Air Act (CAA), these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

Recognizing that some states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year of GHG, and do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA published a final rule on December 30, 2010, narrowing its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including New Hampshire (PSD Narrowing Rule).[5] In the PSD Narrowing Rule, EPA withdrew its approval of New Hampshire's SIP, among other SIPs, to the extent that SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule. Subsequently, New Hampshire's approved SIP provided the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and Federally required new and modified sources to receive a PSD permit based on GHG emissions only if they emitted at or above the Tailoring Rule thresholds.

On February 7, 2011, in response to the Tailoring Rule and earlier GHG-related EPA rules, NH DES submitted a revision to EPA for approval into the New Hampshire SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to PSD permitting requirements for GHG emissions. Subsequently, on June 14, 2011 (76 FR 34630), EPA published a proposed approval of this SIP submittal. Specifically, New Hampshire's February 7, 2011 SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's June 14, 2011, **Federal Register** action.

EPA also stated in the proposal that if the Agency did approve New Hampshire's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into New Hampshire's SIP, then Section 52.1522(c) of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of New Hampshire's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. Therefore, EPA is amending section 52.1522 of 40 CFR part 52 by removing the unnecessary regulatory language in subsection (c).

II. What comments did EPA receive?

The public comment period on the proposed approval of New Hampshire's SIP revision ended on July 14, 2011. EPA did not receive any comments on the proposed approval of this SIP revision.

III. What is the effect of this action?

Final approval of New Hampshire's February 2, 2011, SIP revision incorporates changes to the state's rules to establish the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements under the approved New Hampshire SIP. EPA has determined the SIP revision approved by today's action is consistent with EPA's regulations, including the Tailoring Rule. Furthermore, EPA has determined this SIP revision is consistent with section 110 of the CAA. Pursuant to section 110 of the CAA, EPA approves this revision into New Hampshire's SIP.

As a result of today's action approving New Hampshire's incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph 40 CFR 52.1522(c), as included in EPA's PSD Narrowing Rule, is no longer necessary.[6] Thus, today's action also amends 40 CFR 52.1522 to remove this unnecessary regulatory language.

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

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

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

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

[5] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans.'' 75 FR 82536 (December 30, 2010).

[6] 40 CFR 52.1522(c) codifies EPA's limiting its approval of New Hampshire's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds.

IV. What action is EPA taking?

Pursuant to section 110 of the CAA, EPA is approving New Hampshire's February 7, 2011 SIP revision relating to PSD requirements for GHG-emitting sources, except for the revised Env-A 619.03(a), which the state withdrew on May 16, 2011. Our approval includes: A new Env-A 101.35, definition of ''Carbon dioxide equivalent emissions''; a new Env-A 101.96, definition of ''Greenhouse gases''; an amendment to the definition of ''Major source'' in Env-A 101.115; and certain amendments to Env-A 619.03, ''PSD Permit Requirements.''

Specifically, EPA is approving into the SIP Env-A 619.03(b)–(e) as revised. However, in place of the state's revisions to Env-A 619.03(a), the SIP retains the previously-approved provision, which was then numbered as Env-A 623.03(a).[7] New Hampshire's previously-approved PSD regulations became effective under state law on July 23, 2001 and were approved by EPA on October 28, 2002 (67 FR 65710). EPA and New Hampshire agree that relying on previously-approved Env-A 623.03(a) does not affect the manner in which Env-A 619.03(b)–(e) functions. New Hampshire and EPA may take action on the revision to Env-A 619.03(a) in the future.

These revisions establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's June 3, 2010, Tailoring Rule. With this approval, EPA also amends 40 CFR 52.1522 by removing subsection (c).

EPA has made the determination this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit April 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: January 11, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

■ 2. In § 52.1520, the table in paragraph (c) is amended by revising the entries for Env-A 100 and Env-A 600 to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) EPA approved regulations.

[7] Env-A 623 was renumbered to Env-A 619 for reasons unrelated to the Tailoring Rule or this proposed revision.

EPA APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
Env-A 100	Organizational Rules: Definitions.	12/21/2010	2/6/2012 [Insert **Federal Register** page number where the document begins].	Added sections 101.35, Env-A 101.96, and Env-A 101.115.
* *	*	*	*	* *
Env-A 600	Statewide Permit System	12/21/2010	2/6/2012 [Insert **Federal Register** page number where the document begins].	Added section Env-A 619.03(b)–(e).
* *	*	*	*	* *

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

§ 52.1522 [Amended]

■ 3. Section 52.1522 is amended by removing paragraph (c).

[FR Doc. 2012–2598 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0352–201204; FRL–9627–6]

Approval and Promulgation of Implementation Plans; North Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), as demonstrating that the State meets the state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. North Carolina certified that the North Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina (hereafter referred to as ''infrastructure submission''). With the exception of sub-element 110(a)(2)(E)(ii), North Carolina's infrastructure submission, provided to EPA on December 12, 2007, and clarified in a subsequent submission submitted on June 20, 2008, addresses all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

DATES: *Effective Date:* This rule will be effective March 7, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2011–0352. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. This Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. North Carolina provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 12, 2007, and clarified it in a subsequent submission submitted on June 20, 2008. On March 27, 2008, North Carolina was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for elements 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS by March 1, 2008. *See* 73 FR 16205. Infrastructure elements 110(a)(2)(C) and (J) relate to a SIP addressing changes to its part C prevention of significant deterioration (PSD) permit program as required by the 1997 8-Hour Ozone NAAQS Implementation Rule New Source

Review (NSR) Update—Phase 2 Rule (hereafter referred to as the Ozone Implementation NSR Update) recognizing nitrogen oxides (NO_X) a precursor for ozone in 40 CFR 51.166 and 40 CFR 52.21, among other requirements. *See* 70 FR 71612, (November 29, 2005). The June 20, 2008, submission corrected the deficiencies for which the finding of failure to submit was received. On August 10, 2011, EPA finalized approval of North Carolina's June 20, 2008, SIP revision. *See* 76 FR 49313.

EPA has determined that North Carolina's federally-approved SIP includes the provisions necessary from the Ozone Implementation NSR Update, including the addition of NO_X as a precursor to ozone in 40 CFR 51.166 and 40 CFR 52.21 for the 1997 8-hour ozone standard, and thus, has determined that North Carolina has satisfied the requirements for 110(a)(2)(C) and (J). On December 15, 2011, EPA proposed to approve North Carolina's December 12, 2007, infrastructure submission and proposed conditional approval of infrastructure sub-element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS. ≤*See* 76 FR 77952.[1] CAA section 110(a)(2)(E)(ii) pertains to section 128 State Board requirements which requires at subsection (a)(1) that each SIP shall contain requirements that any board or body which approves permits or enforcement orders be subject to the described public interest and income restrictions. It further requires at subsection (a)(2) that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

On January 11, 2012, North Carolina submitted a letter of commitment to EPA to adopt specific enforceable measures related to both 128(a)(1) and 128(a)(2) to address current deficiencies in the North Carolina SIP as outlined in EPA's December 15, 2011, proposed rulemaking. This letter of commitment meets the requirements of section 110(k)(4) of the CAA, 42 U.S.C. 7410(k)(4). Failure to adopt these provisions into the North Carolina SIP within one year (by February 6, 2013) will result in today's conditional approval becoming a disapproval. North Carolina's January 11, 2012, letter can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0352. A summary of the background for today's final action is provided below. See EPA's December 15, 2011, proposed rulemaking at 76 FR 77952 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below[2] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[3]
- 110(a)(2)(D): Interstate transport.[4]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[5]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve North Carolina's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS, with the exception of CAA section 110(a)(2)(E)(ii). EPA is taking final action to conditionally approve sub-element 110(a)(2)(E)(ii). Section 110(a)

[1] In the December 15, 2011, proposed rule, EPA also proposed, in the alternative, to disapprove North Carolina's infrastructure submission with respect to sub-element 110(a)(2)(E)(ii) (regarding State Boards). EPA proposed disapproval in the alternative for this element to account for the possibility that North Carolina could fail to submit a commitment letter sufficient for EPA to take final action on a conditional approval for this sub-element. Because North Carolina did submit an adequate commitment letter, EPA is proceeding with a conditional approval of sub-element 110(a)(2)(E)(ii) and does not plan to take further action on the proposed disapproval discussed in the December 15, 2011, proposed rule. *See* 76 FR 77952, 77958–77959.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how North Carolina's SIP addresses 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by North Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve North Carolina's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56914 (October 5, 2007). In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of NO_X and SO_X in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). This rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[5] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. North Carolina, through DAQ, certified that the North Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina. EPA received no adverse comments on its December 15, 2011, proposed approval of North Carolina's December 12, 2007, infrastructure submission and proposed conditional approval of 110(a)(2)(E)(ii).

North Carolina's infrastructure submission, provided to EPA on December 12, 2007, and clarified on June 20, 2008, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS, with the exception of CAA section 110(a)(2)(E)(ii). EPA has determined that North Carolina's December 12, 2007 submission, as clarified through the State's June 20, 2008 submission, is consistent with section 110 of the CAA, with the exception of CAA section 110(a)(2)(E)(ii).

On January 11, 2012, North Carolina submitted a letter of commitment to EPA to adopt specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2) to address the current deficiencies in the North Carolina SIP related to CAA section 110(a)(2)(E)(ii) as outlined in EPA's December 15, 2011, proposed rulemaking. As a result of North Carolina's January 11, 2012, submission, EPA has determined that conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the North Carolina SIP related to sub-element 110(a)(2)(E)(ii) consistent with the requirements of CAA section 110(k)(4).

EPA is conditionally approving the January 11, 2012, submittal with respect to the CAA requirement of sub-element 110(a)(2)(E)(ii). North Carolina must submit to EPA by February 6, 2013, SIP revisions adopting specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2) as described in the State's letter of commitment described above. If the State fails to actually submit these revisions by February 6, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, North Carolina's infrastructure SIP will be fully approved in its entirety and replace the conditionally approved element in the SIP.

III. Final Action

EPA is taking final action to approve North Carolina's December 12, 2007, submission for the 1997 8-hour ozone NAAQS and conditionally approve North Carolina's January 11, 2012, submission because these submissions are consistent with section 110 of the CAA. NC DENR has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in North Carolina.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

■ 2. Section 52.1770(e), is amended by adding a new entry ''North Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation
* * * *	*	*	*
North Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	12/12/2007	2/6/2012	[Insert citation of publication].

■ 3. Section 52.1773 is added to read as follows:

§ 52.1773 Conditional approval.

Conditional Approval—Submittal from the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality, dated December 12, 2007, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 ozone National Ambient Air Quality Standards. On January 11, 2012, NC DENR supplemented their December 12, 2007, submission with a commitment to address the requirements of CAA section 110(a)(2)(E)(ii) of the CAA which requires state compliance with section 128 of the CAA. EPA is conditionally approving North Carolina's submittal with respect to CAA section 110(a)(2)(E)(ii).

[FR Doc. 2012–2602 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0351–201203; FRL–9627–7]

Approval and Promulgation of Implementation Plans; Georgia; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources, Environmental Protection Division (EPD), as demonstrating that the State meets the state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Georgia certified that the Georgia SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Georgia (hereafter referred to as ''infrastructure submission''). Georgia's infrastructure submission, provided to EPA on December 13, 2007, and clarified in a subsequent submission submitted on September 9, 2008, addresses all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

DATES: *Effective Date:* This rule will be effective March 7, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2011–0351. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. This Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and

modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. Georgia provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 13, 2007, and clarified it in a subsequent submission submitted on September 9, 2008. On March 27, 2008, Georgia was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for element 110(a)(2)(G) for the 1997 8-hour ozone NAAQS by March 1, 2008. See 73 FR 16205. The September 9, 2008, submission clarified that Georgia has the authority to implement emergency powers for the 8-hour ozone standard and that EPA has approved these provisions in the SIP. EPA has determined that Georgia's federally-approved SIP includes provisions which provide the State with the authority to implement emergency powers for the 8-hour ozone standard and thus determined that Georgia has satisfied the requirements for 110(a)(2)(G). On December 5, 2011, EPA proposed to approve Georgia's December 13, 2007, and September 9, 2008, infrastructure submission and supplement for the 1997 8-hour ozone NAAQS. *See* 76 FR 75849. A summary of the background for today's final action is provided below. See EPA's December 5, 2011, proposed rulemaking at 76 FR 75849 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve Georgia's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Georgia, through EPD, certified that the Georgia SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Georgia. Additionally, EPA received no adverse comments on its December 5, 2011, proposed approval of Georgia's December 13, 2007, infrastructure submission.

Georgia's infrastructure submission, provided to EPA on December 13, 2007, and clarified in a subsequent submission submitted on September 9, 2008, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that Georgia's December 13, 2007, and September 9, 2008 submissions are consistent with section 110 of the CAA.

III. Final Action

As already described, EPD has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Georgia. EPA is taking final action to approve Georgia's December 13, 2007, and September 9, 2008, submissions for the 1997 8-hour ozone NAAQS because these submissions are consistent with section 110 of the CAA.

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Georgia's SIP addresses 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Georgia consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Georgia's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 57202 (October 9, 2007). In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of NOx and SOx in the eastern United States. *See* 76 Fed. Reg. 48208 (August 8, 2011) (''the Transport Rule''). This rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's final rulemaking.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 2012 Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

■ 2. Section 52.570(e) is amended by adding and reserving entry 29, and adding a new entry 30, to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) *EPA-Approved Georgia non-regulatory provisions*

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* * *	*	*	* *
30. 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Georgia	10/13/2007	2/6/2012 [Insert citation of publication].

[FR Doc. 2012–2605 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0733; FRL–9501–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 12, 2011 and concern volatile organic compound (VOC) emissions from polyester resin operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on March 7, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0733 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 974–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action
II. Public Comments and EPA Responses
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I. Proposed Action

On September 12, 2011 (76 FR 56132), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4684	Polyester Resin Operations	08/18/11	08/26/11

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

Our proposed approval of Rule 4684 responded to a July 22, 2011 request from the State to parallel process a version of the Rule proposed for local adoption on August 18, 2011. On August 26, 2011, CARB submitted to EPA the version of Rule 4684 that was adopted locally on August 18, 2011. We have reviewed this version, and it is unchanged from the version we proposed for approval on September 12, 2011.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 18, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(405) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(405) New and amended regulations for the following APCDs were submitted on August 26, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4684, ''Polyester Resin Operations,'' amended on August 18, 2011.

* * * * *

[FR Doc. 2012–2599 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–HQ–OAR–2009–0491; FRL–9626–2]

Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone: Effect of Stay of Transport Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent.

SUMMARY: A December 30, 2011 order of the U.S. Court of Appeals for the District of Columbia Circuit stayed the Transport Rule, also known as the Cross State Air Pollution Rule.[1] This document sets out EPA's interpretation of the effect of the Court's stay on the federal implementation plans finalized by EPA on December 15, 2011 (SNFR), which included the conclusion that Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states and required sources in five states to comply with the Transport Rule's ozone season NO_X trading program.[2]

DATES: The effective date of this notice of intent is February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Gabrielle Stevens, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, telephone (202) 343–9252, email at *stevens.gabrielle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 6, 2011, the EPA issued a final rule promulgating the Transport Rule (76 FR 48208, August 8, 2011). The Transport Rule limits the interstate transport of emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) that contribute to harmful levels of fine particulate matter ($PM_{2.5}$) and ozone in downwind states. The rule identified emissions within 27 states in the eastern United States that significantly affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter NAAQS and the 1997 ozone NAAQS. EPA established trading programs to reduce these emissions through Federal Implementation Plans (FIPs) that regulate electric generating units (EGUs) in the 27 states.

As explained in the preambles to the final Transport Rule (76 FR 48208) and the supplemental notice of final rulemaking (SNFR) (76 FR 80761), EPA updated and improved its modeling platforms and inputs in response to public comments received on the proposed Transport Rule and subsequent Notices of Data Availability (NODAs), and performed other updates. Therefore, some of the results of the analysis performed for the final Transport Rule differed from the results of the analysis conducted for the Transport Rule proposal. Under the proposed Transport Rule, EPA's analysis did not identify Wisconsin, Iowa, and Missouri as states that significantly contribute to nonattainment and/or interfere with maintenance of the ozone NAAQS in another state with respect to the 1997 ozone NAAQS. Under the final Transport Rule's analysis, however, the results indicated that emissions from these states do interfere with maintenance of the ozone NAAQS of another state. The results also showed that emissions from Missouri significantly contribute to nonattainment of the ozone NAAQS in another state. The analysis for the final rule also identified two ozone maintenance receptors, located in Allegan County, Michigan and Harford County, Maryland, which were not identified by modeling conducted for the proposed rule. The analysis indicated that five states—Iowa, Kansas, Michigan, Oklahoma, and Wisconsin—interfered with maintenance problems at these receptors. EPA did not include

[1] Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States: Final Rule (76 FR 48208, August 8, 2011). Available on the Web at *http://www.epa.gov/crossstaterule.*

[2] EPA did not finalize a FIP for Kansas with respect to the 1997 ozone NAAQS in the SNFR. EPA had previously approved a section 110(a)(2)(D)(i) SIP submission from the state of Kansas for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS on March 9, 2007 (75 FR 10608), and that SIP submission did not rely on the unlawful CAIR trading programs or on the conclusion that compliance with CAIR was sufficient to satisfy its 110(a)(2)(D)(i)(I) obligations with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. EPA therefore did not have the obligation to promulgate a FIP for Kansas under section 110(c)(1) of the CAA, and instead proposed a SIP Call for Kansas under section 110(k)(5) of the Act (76 FR 763, January 6, 2011). EPA proposed to find Kansas' SIP substantially inadequate to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS based on the proposed conclusion that emissions from Kansas are significantly contributing to nonattainment or interfering with maintenance of the 1997 ozone NAAQS in another state. EPA has not taken final action yet on the proposed SIP Call.

these states in the final Transport Rule with respect to the 1997 ozone season NAAQS or finalize ozone season NO_X budgets for these states, but instead published a supplemental notice of proposed rulemaking (SNPR) (76 FR 40662) to provide the public with an opportunity to comment on the conclusion that these states significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone NAAQS in downwind states. EPA finalized the supplemental notice of proposed rulemaking on December 15, 2011, which was published in the **Federal Register** on December 27, 2011 (SNFR) (76 FR 80761). The SNFR found that emissions of NO_X from sources in Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin either significantly contributed to nonattainment or interfered with maintenance in downwind states. The SNFR also finalized FIPs for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin that required sources within the states to comply with the Transport Rule.[3]

After publication of the final Transport Rule, various parties filed petitions for review of EPA's action in the U.S. Court of Appeals for the District of Columbia Circuit (*EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 and consolidated cases). On December 30, 2011, upon the motions of various petitioners, the Court ordered the Transport Rule stayed pending the completion of its review.

II. This Notice of Intent

The Court did not explicitly address the effect of its order on the SNFR affecting Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin. Because the underlying programs of the Transport Rule have been stayed by the Court, there is no practical way for covered sources under the SNFR to comply with those programs. The SNFR employs the same methodology, modeling, and analysis as the final Transport Rule and extends the programs established in the Transport Rule to additional states. The agency will therefore treat the new rule in the same manner as the underlying Transport Rule, which has been stayed. EPA does not expect covered sources under the SNFR to comply with the provisions of that rule for the duration of the Court's stay.

[3] EPA did not finalize a FIP for Kansas. See supra footnote 2.

Dated: January 26, 2012.

Gina McCarthy,

Assistant Administrator.

[FR Doc. 2012–2328 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

[Docket Number NIOSH–209]

RIN 0920–AA39

Guidelines for Determining Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Revision of Guidelines on Non-Radiogenic Cancers

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: In a notice of proposed rulemaking published in the **Federal Register** on March 21, 2011, the Department of Health and Human Services (HHS) proposed to treat chronic lymphocytic leukemia (CLL) as a radiogenic cancer under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (76 FR 15268). Under this final rule, CLL will be treated as being potentially caused by radiation and hence as potentially compensable under EEOICPA. HHS reverses its decision to exclude CLL from such treatment.

DATES: This final rule is effective March 7, 2012.

FOR FURTHER INFORMATION CONTACT: Stuart Hinnefeld, Director, Division of Compensation Analysis and Support,[1] National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS–C46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by email to *dcas@cdc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
J. Plain Writing Act of 2010

[1] The name of the NIOSH Office of Compensation Analysis and Support (OCAS) was changed to the Division of Compensation Analysis and Support (DCAS) in March 2010.

I. Public Participation and Technical Review by the Advisory Board on Radiation and Worker Health

On March 21, 2011, HHS published a notice of proposed rulemaking (76 FR 15268), proposing to treat CLL as a radiogenic cancer. HHS initially solicited public comments from March 21, 2011, to June 20, 2011. Upon request, HHS extended the comment period to July 20, 2011 (76 FR 36891, June 23, 2011).

HHS received comments from seven stakeholders, including the Advisory Board on Radiation and Worker Health, which was required by EEOICPA to provide a technical review of a proposed amendment to the probability of causation guidelines.[2] All of the comments offered support for the inclusion of CLL under the coverage provided by EEOICPA. Specifically, the Advisory Board concurred with the NIOSH position that ''given that the law requires the use of the upper 99 percent credibility level in making compensation decisions, the inclusion of CLL despite the limited evidence of radiogenicity, is considered appropriate by NIOSH.'' Furthermore, the Advisory Board agreed that the risk model proposed by NIOSH is based on the best available science and methodological approaches to express the dose-response relationship between radiation exposure and CLL. In addition to the technical review submitted by the Advisory Board, three of the seven comments were personal stories submitted by family members of deceased energy employees who developed CLL, and the remaining three comments argued that to be fair to claimants, CLL should be included as a radiogenic cancer under Part B of EEOIPCA. There were no comments opposing this change.

II. Background

A. Introduction

The Energy Employees Occupational Illness Compensation Program Act of

[2] 42 U.S.C. 7384n(c)(2), 7384o(b)(1).

2000 (EEOICPA), 42 U.S.C. 7384–7385, established a compensation program to provide a lump-sum payment of $150,000 and prospective medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy (DOE) and certain of its vendors, contractors, and subcontractors. This legislation also provided for lump-sum payments for certain survivors of these covered employees.

The Department of Labor (DOL) has primary responsibility for administering the compensation program; HHS performs several technical and policymaking roles in support of the DOL program. One of these is to develop guidelines, by regulation, to be used by DOL to assess the likelihood that an employee with cancer developed that cancer as a result of exposure to radiation in performing his or her duty at a DOE facility or an atomic weapons employer facility. The guidelines are published in 42 CFR part 81, and comprise a set of policies and procedures by which DOL determines whether it is ''at least as likely as not'' that the cancer of a nuclear weapons employee was caused by radiation doses the employee incurred while employed at a facility both involved in the production of nuclear weapons and covered under EEOICPA. The guidelines being amended by this final rule designate CLL as non-radiogenic, and hence had required DOL to assign a probability of causation value of ''zero.''

There were two related scientific reasons for designating CLL as non-radiogenic at the time the HHS guidelines were promulgated in 2002. The first was that the epidemiological studies did not demonstrate radiation as the cause of CLL, a conclusion reached by a number of expert scientific committees, as well as by NIOSH.

The second reason was that, even if NIOSH had determined that CLL should be treated as radiogenic, NIOSH scientists judged it would not have been feasible to develop a quantitative risk model, specifying a dose-response relationship between radiation and CLL, given the existing scientific evidence at that time. Hence, it was not feasible to include CLL as a radiogenic cancer under the guidelines.

B. NIOSH Reconsideration of CLL

In the March 21, 2011, notice of proposed rulemaking, NIOSH discussed the results of a panel convened in 2005 to provide judgment on evidence of an association between exposure to ionizing radiation and the risk of developing CLL, and whether CLL should continue to be excluded from eligibility for compensation under EEOICPA (76 FR 15268, 15269–70). NIOSH also discussed four subject matter expert reviews, conducted in 2009, of a draft report of the CLL risk model (76 FR 15268, 15270–71).

NIOSH's recent review found the evidence of radiogenicity offered by epidemiology studies to be non-determinative. NIOSH weighed the non-determinative epidemiologic evidence, along with other factors that included: (1) The mechanistic argument for CLL causation; (2) the similarities between CLL and other compensated cancers; (3) the classification of CLL by the World Health Organization and the National Cancer Institute as a form of non-Hodgkin's lymphoma; and (4) the treatment of CLL as a potentially-compensable radiogenic cancer by the U.S. Department of Veterans Affairs. Upon review of these facts, the Agency no longer believes that it is possible to state that the probability of causation for CLL equals zero. Because NIOSH finds sufficient evidence to include CLL as a compensable cancer under EEOICPA, claimants with CLL will be eligible for dose reconstruction under EEOICPA.

The notice of proposed rulemaking also discussed NIOSH's efforts to develop a quantitative radiation risk model for CLL.

C. Purpose of the Rule

The purpose of this rule is to provide for coverage of CLL under part B of EEOICPA. This revision removes sec. 81.30 from the probability of causation guidelines. CLL is considered radiogenic for the purposes of this compensation program; DOL will no longer be required to assign a probability of causation for CLL of zero, when presented with a claim for dose reconstruction under part B of EEOICPA. In concert with this change, NIOSH adds a CLL risk model to NIOSH–IREP and DOL will refer CLL claims under part B of EEOICPA to NIOSH for dose reconstructions, to be followed by determinations of probability of causation by DOL under these revised guidelines.

III. Summary of Final Rule

This final rule removes 42 CFR 81.30 from part 81, thus rescinding the designation of CLL as a non-radiogenic cancer under this part. The effect of this rescission will be that a qualified claim for CLL under part B of EEOICPA will be referred by DOL to NIOSH for radiation dose reconstruction and, upon completion of the dose reconstruction, DOL will determine the probability of causation and complete the adjudication of the claim on that basis. Presently, such claims are not referred to NIOSH for dose reconstruction, since under the language of sec. 81.30, DOL was required to assign a probability of zero to CLL.

Upon promulgation of this final regulation, DOL will identify open and closed cases (NIOSH estimates the number of closed cases to be about 363) under part B of EEOICPA involving CLL claims and attempt to notify the claimants of the new provision. In addition, NIOSH will assist DOL in identifying active and closed cases involving multiple primary cancers including CLL, to identify those whose outcome might be affected by the new provision. For all cases involving CLL, NIOSH will revise the dose reconstruction to take into account radiation doses relevant to CLL, and DOL will recalculate the probability of causation accordingly.

IV. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under sec. 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The rule is consistent with the requirements of 42 U.S.C. 7384n(c). The rule does not interfere with State, local, or Tribal governments in the exercise of their governmental functions.

The rule is not considered economically significant, as defined in sec. 3(f)(1) of E.O. 12866. CLL is a rare cancer, with a lifetime risk of 0.48 percent; according to data provided by NCI, an estimated 1.1 percent of all cancers will be CLL.[3] This low risk

[3] National Cancer Institute. SEER Cancer Statistics Review 1975–2007; Table 1.14. Lifetime risk (percent) of being diagnosed with cancer by site and race/ethnicity: both sexes, 17 SEER areas, 2005–2007.

among the U.S. population, coupled with the weak evidence for CLL's radiogenicity, indicates DOL is unlikely to receive a substantial volume of claims for CLL, thus limiting the administrative expenses associated with such claims and the potential compensation costs. Since 2001, NIOSH has received approximately 33,000 cases [4] that included all cancers currently covered under EEOICPA; given that an estimated 1.1 percent of all cancers occurring among adults are CLL, NIOSH estimates that approximately 363 of those cases would have sought compensation for CLL. NIOSH also receives an average of 200 new cases per month from DOL, and therefore estimates an expected total of 12,000 cases over the next 5 years; based on the 1.1 percent incidence rate, NIOSH estimates that approximately 132 of those cases will seek compensation for CLL. The Agency expects to review the 363 reopened cases plus 132 new CLL cases in the first 5 years after promulgation of this rule—a total of approximately 99 CLL cases per year for the first 5 years. The estimated cost to NIOSH of conducting dose reconstructions is $12,000 per reconstructed case ($1,188,000 per year); DOL estimates its direct cost per adjudicated case to be about $8,000 ($792,000 per year); and DOE estimates its cost per case to be $198 per each DOL request for employment verification, and $372 for responding to each NIOSH request for exposure data ($56,430 per year). In sum, NIOSH estimates the administrative costs to the three Federal agencies associated with CLL cases to be $2,036,430 per year.

Based on our knowledge of the exposure potential for the claimant population and the probability of causation guidelines discussed above, NIOSH expects that approximately 30 percent of CLL cases—30 cases per year—will result in compensation. Compensated claimants receive $150,000 plus medical expenses, which are estimated to cost about $20,000 per year (costs tend to be higher in the first year of treatment, but benefits are payable only from the date of filing a claim, and most claimants have already begun treatment by that time). The financial award granted to successful claimants comes directly from the U.S. Treasury's Energy Employees Occupational Illness Compensation Fund (42 U.S.C. 7384f); NIOSH estimates that annual compensation will amount to $5,100,000. In total, this rule is estimated to cost the Federal government (the three Federal agencies plus the U.S. Treasury) $7,136,430 per year, or just over 7 percent of the established $100 million annual threshold for economic significance.[5]

There are no feasible alternatives to this regulatory action. OMB has reviewed this probability of causation rule for consistency with the President's priorities and the principles set forth in E.O. 12866 and E.O. 13563.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The rule affects only DOL, DOE, HHS, and certain individuals covered by EEOICPA. Therefore, a regulatory flexibility analysis as provided for under RFA is not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on and to obtain OMB approval of any regulation that requires 10 or more people to report information to the agency or to keep certain records. This rule does not contain any information collection requirements. It provides guidelines only to DOL for adjudicating compensation claims and thus requires no reporting or record keeping. Information required by DOL to apply these guidelines is being provided by HHS and by individual claimants to DOL under DOL regulations at 20 CFR part 30. Thus, HHS has determined that the PRA does not apply to this rule.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report the promulgation of this rule to Congress prior to its effective date. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or Tribal governments in the aggregate, or by the private sector, adjusted annually for inflation. For 2010, the inflation adjusted threshold is $135 million.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. Probability of causation may be an element in reviews of DOL adverse decisions in the United States District Courts pursuant to the Administrative Procedure Act. However, DOL has attempted to minimize that burden by providing claimants an opportunity to seek administrative review of adverse decisions, including those involving probability of causation. HHS has provided a clear legal standard for DOL to apply regarding probability of causation. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

[4] This figure represents the number of individual cases requiring dose reconstruction that have been forwarded to NIOSH by DOL.

[5] NIOSH further estimates the upper bounds of potential costs associated with CLL compensation. To address any potential uncertainty in the incidence estimate, multiplying by a factor of 2 will increase the CLL incidence rate from 1.1 percent to 2.2 percent. Doing so will result in a total of 990 cases, or 98 CLL cases per year for the first 5 years. Reconstructing 198 cases per year will likely cost NIOSH $2,376,000 per year, DOL $1,584,000 per year, and DOE $112,860 per year for an estimated total cost to the 3 Federal agencies of $4,072,860. With an incidence rate of 2.2 percent, NIOSH predicts that 30 percent, or 60 cases, will be compensated. Given an award of $150,000 per case plus medical expenses, NIOSH estimates that the rule will result in compensation of $10,200,000. In total, NIOSH estimates that this rulemaking will cost the Federal government no more than $14,272,860 annually.

H. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the final rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 42 CFR Part 81

Cancer, Government employees, Occupational safety and health, Nuclear materials, Radiation protection, Radioactive materials, Workers' compensation.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 81 as follows:

PART 81—GUIDELINES FOR DETERMINING THE PROBABILITY OF CAUSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

Subpart E—Guidelines To Estimate Probability of Causation

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7384n; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321.

§ 81.30 [Removed]

■ 2. Remove § 81.30.

Dated: October 21, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–2527 Filed 2–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF AGRICULTURE

48 CFR Part 422

RIN 0599–AA19

Office of Procurement and Property Management; Agriculture Acquisition Regulation, Labor Law Violations; Withdrawal

AGENCY: Office of Procurement and Property Management, Departmental Management, Department of Agriculture.

ACTION: Direct Final rule; withdrawal.

SUMMARY: Due to the receipt of an adverse comment, the Office of Procurement and Property Management (OPPM) of the Department of Agriculture (USDA) is withdrawing the December 1, 2011, (76 FR 74722) direct final rule adding a new clause to the Agriculture Acquisition Regulation at subpart 422.70 entitled ''Labor Law Violations'' that would have a contractor certify upon accepting a contract that it is in compliance with all applicable labor laws and that, to the best of its knowledge, its subcontractors of any tier, and suppliers, are also in compliance with all applicable labor laws. The Department stated that in the event of an adverse comment being received by January 30, 2012, the direct final rule would be withdrawn in part or in whole. On January 27, 2012, USDA received a comment. USDA interprets this comment as adverse and, therefore, USDA is withdrawing the direct final rule.

DATES: As of February 6, 2012, the direct final rule published on December 1, 2011, at 76 FR 74722, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Donna Calacone, Office of Procurement and Property Management, at (202) 205–4036 or by mail at OPPM, Mail Stop 9306, U.S. Department of Agriculture, 300 Seventh Street SW., Washington, DC 20024–9306. Please cite ''48 CFR 422 Direct Final Rule'' in all correspondence.

SUPPLEMENTARY INFORMATION: USDA is withdrawing its direct final rule published on December 1, 2011 (76 FR 74722), entitled ''Agriculture Acquisition Regulation, Labor Law Violations,'' as USDA received an adverse comment. This document officially withdraws the direct final rule.

List of Subjects in 48 CFR Part 422

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

Signed in Washington, DC, on February 1, 2012.

Jodey Barnes-Edwards,

Acting Director, Office of Procurement and Property Management.

[FR Doc. 2012–2638 Filed 2–1–12; 4:15 pm]

BILLING CODE 3410–98–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

[Docket No. FWS–R9–NWRS–2011–0108; FVRS84510900000U2–12X–FF09R50000]

RIN 1018–AU89

Change of Addresses for Regional Offices, Addition of One New Address, and Correction of Names of House and Senate Committees We Must Notify

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Final rule; technical amendment.

SUMMARY: We, the U.S. Fish and Wildlife Service (we, or the Service), are revising our rights-of-way (ROW) general regulations, to update or add addresses of several Service Regional Offices, and to correct the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way.

DATES: This rule is effective on February 6, 2012.

ADDRESSES: Chief, Division of Realty, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 622, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janet Bruner, (703) 358–2287.

SUPPLEMENTARY INFORMATION: We are revising our ROW general regulations at 50 CFR part 29, which prescribe the procedures for filing applications for ROWs over and across Service-administered lands and the terms and conditions under which we grant these ROWs, to update or add addresses of several Service Regional Offices and to correct the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely updating the addresses for four of the Service's Regional Offices, adding an address for one of the Service's Regional Offices, and correcting the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

In accordance with 5 U.S.C. 553(d), the Service finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule simply updates, corrects, and adds addresses for the Service's Regional Offices, and corrects the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way. For this reason, the Service finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Determination To Issue Final Rule Effective in Less Than 30 Days

We have determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking because the changes being made relate solely to matters of agency organization. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely updating the addresses for four of the Service's Regional Offices, adding an address for one of the Service's Regional Offices, and correcting the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Review Under Procedural Statutes and Executive Orders

We have reviewed this rule under the following statutes and executive orders governing rulemaking procedures: the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.;* the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.;* the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.;* the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.;* the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.;* Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13045 (Economic Significance); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). This rule does not trigger any of the procedural requirements of those statutes and executive orders, since this rule merely updates and adds addresses for Fish and Wildlife Service offices, and corrects the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting a right-of-way.

Other Statutory and Executive Order Reviews

This rule is not subject to Executive Order 12045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 271 *et seq.*) do not apply. This rule also does not require special consideration of issues related to environmental justice as required by Executive Order 12898.

Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1966, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the Service has made such a good cause finding, including the reasons therefore, and established an effective date immediately upon publication in the **Federal Register**. The Service will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These updates and the addition to 50 CFR part 29 do not constitute a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 50 CFR Part 29

Public lands—mineral resources, Public lands—rights-of-way, Wildlife refuges.

Regulation Promulgation

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 29—LAND USE MANAGEMENT

■ 1. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

■ 2. Amend § 29.21–2 by:

■ a. Revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(3) through (c)(5); and

■ b. Adding a new paragraph (c)(8), to read as follows:

§ 29.21–2 Application procedures.

* * * * *

(c) *Regional Directors' addresses.* (1) For the States of Hawaii, Idaho, Oregon, and Washington; the Territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the Freely Associated States of the Federated States of Micronesia; and

the Republics of the Marshall Islands and Palau: Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232.

* * * * *

(3) For the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin: Regional Director, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, Minnesota 55437–1458.

(4) For the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; the Commonwealth of Puerto Rico; and the U.S. Virgin Islands: Regional Director, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345.

(5) For the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia: Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035.

* * * * *

(8) For the States of California and Nevada: Regional Director, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, California 95825.

■ 3. Amend § 29.21–9 by revising paragraph (m) to read as follows:

§ 29.21–9 Rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

* * * * *

(m) *Congressional notification.* The Secretary shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for pipeline 24 inches or more in diameter, and no right-of-way for such a pipeline shall be granted until 60 days (not including days on which the House or Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

Dated: January 24, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–2541 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 77, No. 24
Monday, February 6, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–11–0063; NOP–11–11PR]

RIN 0581–AD18

National Organic Program; Proposed Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to address a recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010. Consistent with the recommendation from the NOSB, this proposed rule would revise the annotation for one substance on the National List, methionine, to reduce the maximum levels currently allowed in organic poultry production after October 1, 2012. This proposed rule would permit the use of synthetic methionine at the following maximum levels per ton of feed after October 1, 2012: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds. This action also proposes to correct the Chemical Abstract Service (CAS) numbers for the currently allowable forms of synthetic methionine and seeks comments on these changes.

DATES: Comments must be received by April 6, 2012.

ADDRESSES: Interested persons may submit written comments on this proposed rule using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–11–0063; NOP–11–11PR, and/or Regulatory Information Number (RIN) 0581–AD18 for this rulemaking. You should clearly indicate whether you support the action being proposed for the substance in this proposed rule. You should clearly indicate the reason(s) for your position. You should also supply information on alternative management practices, where applicable, that support alternatives to the proposed action. You should also offer any recommended language change(s) that would be appropriate to your position. Please include relevant information and data to support your position (*e.g.* scientific, environmental, manufacturing, industry, impact information, *etc.*). Only relevant material supporting your position should be submitted. All comments received will be posted without change to *http://www.regulations.gov.*

Document: For access to the document to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (7 CFR part 205), the National List regulations §§ 205.600 through 205.607. The National List identifies synthetic substances that may be used in organic production and nonsynthetic (natural) substances that may not be used. The National List also identifies nonagricultural nonsynthetic, nonagricultural synthetic, and nonorganic agricultural substances that may be used in organic production and handling. The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), and the National Organic Program (NOP) regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural or nonsynthetic nonagricultural substance used in organic handling appear on the National List.

Under the authority of the OFPA, as amended (7 U.S.C. 6501–6522), the National List can be amended by the Secretary based on recommendations developed by the National Organic Standards Board (NOSB). Since established, the NOP has published multiple amendments to the National List: October 31, 2003 (68 FR 61987); November 3, 2003 (68 FR 62215); October 21, 2005 (70 FR 61217); June 7, 2006 (71 FR 32803); September 11, 2006 (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007 (72 FR 58469); December 10, 2007 (72 FR 69569); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); July 6, 2010 (75 FR 38693); August 24, 2010 (75 FR 51919); December 13, 2010 (75 FR 77521) and March 14, 2011 (76 FR 13501). Additionally, a proposed amendment to the National List was published on May 5, 2011 (76 FR 25612).

This proposed rule would amend the National List to reflect a recommendation submitted to the Secretary by the NOSB on April 29, 2010. Based upon their evaluation of a petition submitted by industry participants and a third party technical review, the NOSB recommended that the Secretary amend § 205.603 of the National List to change the annotation for one substance, methionine, for use in organic poultry production. The NOSB reviewed the use of synthetic methionine in organic poultry production using the evaluation criteria specified in the OFPA (7 U.S.C. 6517–

6518). The NOP is also proposing to correct the CAS numbers in the current listing for synthetic methionine and seeks public comment on these changes.

II. Overview of Amendment

The following provides an overview of the proposed amendment to the designated section of the National List regulations:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would amend paragraph § 205.603(d)(1) by removing the expiration date ''October 1, 2012'' and revising the maximum levels of synthetic methionine per ton of feed allowed for organic poultry.

Methionine is classified as an essential amino acid because it cannot be biologically produced by poultry and is necessary to maintain viability. Methionine is required for proper cell development and feathering in poultry. Natural feed sources with a high percentage of methionine include blood meal, fish meal, crab meal, corn gluten meal, alfalfa meal, and sunflower seed meal. Synthetic methionine is also used in poultry feed. This substance is a colorless or white crystalline powder that is soluble in water. It is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

The NOSB initiated a review of this substance in 1999, as a result of a petition requesting to add synthetic methionine to the National List for poultry. In 2001, the NOSB evaluated a technical advisory panel analysis of methionine against the criteria provided in the OFPA (7 U.S.C. 6517–6518), and determined that the use of synthetic methionine feed supplementation is compatible with a system of organic poultry production. Consistent with the NOSB's recommendation, the Secretary amended § 205.603 of the National List on October 31, 2003, to allow methionine as a synthetic substance for use in organic poultry production until October 21, 2005 (68 FR 61987). Based upon subsequent NOSB recommendations in March 2005 and May 2008, the Secretary amended the listing for methionine to continue the use through October 21, 2008 (70 FR 61217), and again through October 1, 2010 (73 FR 54057). The 2005 and 2008 NOSB recommendations to continue the allowance for methionine were informed by updates on the development of allowable natural alternatives, none of which had attained commercial viability. While expressing a strong preference for supplementation with allowable natural sources of methionine, the NOSB concluded that terminating the allowance for synthetic methionine would disrupt the well-established organic poultry market, and cause substantial economic harm to organic poultry producers. The NOSB and stakeholders agreed that the organic feed sector would continue to research and develop sufficient supplies of allowable organic and natural sources. A complete account of the past NOSB recommendations and rulemaking pertaining to methionine is available in the interim rule that was published in the **Federal Register** on August 24, 2010 (75 FR 51919).

On July 31, 2009, the Methionine Task Force (MTF), which is comprised of organic poultry producers, submitted a new petition requesting to extend the allowance for synthetic methionine for five years until October 2014.[1] In addition, the MTF proposed that the total amount of synthetic methionine in the diet remain below the following levels, calculated as the average pounds per ton of 100% synthetic methionine over the life of the bird: laying chickens—4 pounds; broiler chickens—5 pounds; and, turkey and all other poultry—6 pounds. In consideration of the July 2009 petition and public comments, the NOSB issued two recommendations on April 29, 2010. These recommendations acknowledged a need for the continued allowance of synthetic methionine, and conveyed the intent to decrease the amount of synthetic methionine allowed in organic poultry production and encourage development of natural alternatives. One recommendation proposed to allow synthetic methionine in organic poultry production until October 1, 2012, at the following maximum levels per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; and turkey and all other poultry—6 pounds. The NOP codified this recommendation through a National List amendment published in the **Federal Register** on August 24, 2010 (75 FR 51919), and reaffirmed on March 14, 2011 (76 FR 13501).

The second NOSB recommendation from April 2010, which is the subject of this rulemaking, proposed reduced maximum levels of synthetic methionine after October 1, 2015. The NOSB recommended that the annotation for synthetic methionine be revised to read: For use only in organic poultry after October 1, 2012, at the following maximum levels per ton: laying and broiler chickens—2 pounds per ton; turkeys and all other poultry—3 pounds per ton. The listing would be subject to review within five years in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C 6517(e)). In effect, amending the methionine listing in 2012 would trigger a sunset review of synthetic methionine by the NOSB by 2017.

At its April 2010 business meeting, the NOSB considered public comments from organic poultry producers, certifying agents, consumer organizations, and trade associations regarding the step-down recommendation. In public comment, the NOSB was challenged on the scientific basis for the step-down levels. The MTF maintained that the recommended step-down would be disproportionately greater for broiler chickens (5 pounds to 2 pounds/ton of feed) as compared to layers (4 pounds to 2 pounds/per ton of feed), and was not substantiated. The MTF further noted that pullets have the highest methionine demands due to their growth rate and advised an allowance of 3 pounds methionine per ton of feed for birds up to 27 weeks of age for basic health requirements. According to the MTF, a bird is fully feathered and reaches the adult weight at 27 weeks and has higher methionine demands during this period. That proposal would permit broilers to receive an average of 3 pounds/ton of feed throughout the entire lifespan, as they are generally slaughtered before 27 weeks of age.

In the discussion at the April 2010 meeting, the NOSB maintained that the proposed step-down levels were developed in consultation with animal welfare experts and nutritionists and would be sufficient for poultry maintenance requirements, but would not provide growth enhancement. The NOSB explained that the step-down levels were also based on information from feed mills, specifically, the amount of methionine added to mixes for various poultry, i.e., starters, pullets, layers, broilers, turkeys, etc. The NOSB noted that none of the feed mixes in its research contained methionine at levels exceeding the average levels recommended by the MTF, and that some feed mixes contained significantly less methionine. The maximum methionine levels in the MTF petition were provided as average quantities in feed over the life of the bird. The NOSB objected to the MTF proposal on the basis that it would allow feed with higher levels of methionine to be fed to poultry for certain intervals. Furthermore, the NOSB stated that it did not favor imposing a requirement on

[1] The petition is available from the NOP Web site in the Petitioned Substances Database *http://www.ams.usda.gov/NOP.*

certifying agents to calculate average methionine content of feed.

The NOSB conveyed the expectation that reduced maximum levels would serve as an incentive to further progress in the development of allowable natural alternatives to synthetic methionine. The availability of natural sources of methionine significantly contributed to the NOSB's rationale for extending the use of methionine beyond 2012. The NOSB acknowledged that options for natural sources of methionine are constrained by the NOP prohibition on the feeding of mammalian or poultry slaughter by-products to poultry. Consequently, organic and allowable natural sources of methionine in organic commercial poultry feed need to be derived from plants, insects, or other allowable sources. During the April 2010 meeting, the NOSB heard public comment about research in the development of natural sources of methionine, including high methionine corn, microbial-produced methionine, insect meal, and alfalfa nutrient concentrate. However, the comments conveyed that none of these sources are commercially available.

In its deliberations, the NOSB also explored an association between management practices and dependence on synthetic methionine. Some public comments asserted that the allowance for methionine fosters management practices that curtail proper outdoor access for poultry, where naturally occurring sources of methionine, such as insects, are available. The NOSB acknowledged that certain production practices contribute to the need for synthetic methionine, but stated that birds would not obtain sufficient methionine from outdoor access or pasturing to alleviate a need for methionine supplementation. The NOSB also considered that the breed of bird can affect methionine needs. The NOSB acknowledged that the breeds used in organic production are generally the same as those in nonorganic production, and that greater breed variety in organic poultry production could reduce the need for synthetic methionine. Ultimately, the NOSB was not persuaded that changes in management practices could eliminate the need for synthetic methionine by 2012.

In summary, the NOSB conveyed that the step-down recommendation balanced various interests: (i) Providing for the basic maintenance requirements of organic poultry; (ii) satisfying consumer preference to reduce the use of synthetic methionine; and (iii) motivating the organic poultry industry to continue the pursuit of commercially sufficient sources of allowable natural sources of methionine.

The Secretary has reviewed and proposes to accept the NOSB's recommendation. Consistent with the NOSB's recommendation, this proposed rule would amend § 205.603(d)(1) of the National List by revising the listing for synthetic methionine to extend its use beyond October 1, 2012, at the following maximum levels per ton of feed: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds.

The NOP recognizes that the MTF submitted a new petition for revised maximum allowable levels of synthetic methionine on April 8, 2011. The NOP anticipates that the NOSB will consider this petition at a future meeting. In the meantime, the NOP believes it is necessary to move forward issuing this proposed rule to address the April 2010 NOSB recommendation. This is necessary to prevent any gap in the allowance of synthetic methionine in the diets of organic poultry due to the current expiration date of October 1, 2012.

This proposed rule also seeks comment on a correction of the Chemical Abstract Service (CAS) numbers for the forms of synthetic methionine reviewed and allowed by the NOSB. CAS numbers are numeric identifiers which are used to uniquely identify substances. The current listing and CAS numbers for methionine are as follows: DL—Methionine, DL—Methionine hydroxy analog, and DL—Methionine hydroxy analog calcium (CAS #59–51–8; 63–68–3; 348–67–4). The letters D— and L— refer to specific isomers of the substance, and DL— refers to a mixture of both D and L (racemic mixture). The CAS number for DL—Methionine is #59–51–8, as is indicated as such in the current regulations. The NOP understands that the other CAS numbers included in the current listing do not refer to DL—Methionine hydroxy analog and DL—methionine hydroxy analog calcium, respectively. Instead, these CAS numbers refer to D—Methionine (CAS #63–68–3) and L—Methionine (CAS #348–67–4). DL—Methionine hydroxy analog is a synthetic methionine product containing a minimum of 88% (racemic) 2-hydroxy-4-(methylthio)butanoic acid. DL—methionine hydroxy analog calcium is a synthetic methionine product that contains a minimum of 97% (racemic) 2-hydroxy-4-methyl(thio)butanoic acid calcium salt. While DL—Methionine hydroxy analog and DL—Methionine hydroxy analog calcium are forms of synthetic methionine that were reviewed and approved by the NOSB, the CAS numbers for those forms were not appropriately specified in the regulation. This proposed rule would amend the specified CAS numbers to include CAS #583–91–5 for DL—Methionine hydroxy analog, and CAS #s 4857–44–7 and 922–50–9 for DL—Methionine hydroxy analog calcium.

The NOP is proposing to delete the CAS numbers for D—Methionine (CAS #63–68–3) and L—Methionine (CAS #348–67–4), since only the racemic mixture of DL—Methionine (CAS #59–51–8) is used in commercial poultry feed. An overview of the changes is provided in Table 1.

TABLE 1—OVERVIEW OF PROPOSED CORRECTIONS TO CAS NUMBERS FOR ALLOWED FORMS OF METHIONINE

CAS #	Substance name	Is substance name included in current regulations?	Is CAS # included in current regulations?	Are CAS # and substance name included in proposed rule?
59–51–8	DL—Methionine	yes	yes	yes.
348–67–4	D—Methionine	no	yes	no.
63–68–3	L—Methionine	no	yes	no.
583–91–5	DL—Methionine-hydroxy analog	yes	no	yes.
4857–44–7 and 922–50–9	DL—Methionine-hydroxy analog calcium	yes	no	yes.

III. Related Documents

Since September 2001, four notices have been published announcing meetings of the NOSB and its planned deliberations on recommendations involving the use of methionine in organic poultry production. The four notices were published in the **Federal Register** as follows: September 21, 2001 (66 FR 48654), February 11, 2005 (70 FR 7224), April 4, 2008 (73 FR 18491), and March 17, 2010 (75 FR 12723).

Methionine was first proposed for addition to the National List in the **Federal Register** on April 16, 2003 (68 FR 18556). Methionine was added to the National List by final rule in the **Federal Register** on October 31, 2003 (68 FR 61987). A proposal to amend the annotation for methionine was published in the **Federal Register** on July 29, 2005 (70 FR 43786), and the annotation was amended by final rule in the **Federal Register** on October 21, 2005 (70 FR 61217). A proposal to amend the annotation once again was published in the **Federal Register** on July 14, 2008 (73 FR 40197), and the annotation was amended by final rule on September 18, 2008 (73 FR 54057). The current annotation for methionine was codified through publication of an interim rule with request for comments in the **Federal Register** on August 24, 2010 (75 FR 51919), and reaffirmed by a final rule published on March 14, 2011 (76 FR 13501).

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary, and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (January 18, 2007, 72 FR 2167) can be accessed through the NOP Web site at *http://www.ams.usda.gov/NOPFilingaPetition.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule (68 FR 61987), dated October 31, 2003, adding methionine to the National List, was reviewed under this Executive Order, and no additional information related to Executive Order 12988 has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) be consistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–695), the Poultry Products Inspection Act (21 U.S.C. 451–472), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–397), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–1364).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such persons or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The current approval for the use of synthetic methionine in organic poultry production will expire October 1, 2012. The effect of this proposed rule is to allow the continued use of synthetic methionine beyond October 1, 2012. AMS concludes that this action would have minimal economic impact on small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small

agricultural producers are defined as those having annual receipts of less than $750,000.

Based on USDA data from the Economic Research Service (ERS), the U.S. organic sector included nearly 13,000 certified organic crop and livestock operations at the end of 2008. These operations contained more than 4.8 million certified acres consisting of 2,665,382 acres of cropland and 2,160,577 acres of pasture and rangeland. The total acreage under organic management represents a twelve percent increase from 2007. Organic poultry production has steadily contributed to the overall growth in the organic food market. ERS estimated that there were 5,538,011 laying chickens and 9,015,984 broiler chickens raised under organic management in 2008. ERS estimated the number of certified organic turkeys raised in the United States in 2008 at 398,531.[2] Based on the USDA data reported by the National Agricultural Statistical Service (NASS), the US market value for organic eggs, and laying and broiler chickens was calculated at $352,831,850 in 2008.[3] In addition to being sold as whole products, organic eggs and poultry by-products are used in the production of organic processed products including soups, broths, prepared meals, ice cream, and egg nog. U.S. sales of organic food and beverages have grown from $1 billion in 1990 to $26.7 billion in 2010. Sales in 2010 represented 7.7 percent growth over 2009 sales.[4]

The USDA accredits 93 certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

E. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

F. General Notice of Public Rulemaking

This proposed rule reflects a recommendation submitted to the Secretary by the National Organic Standards Board (NOSB) in April 2010 to modify the annotation for extending the use of synthetic methionine in organic poultry production beyond October 1, 2012. This proposed rule would also correct the CAS numbers for synthetic methionine. A 60-day period for interested persons to comment on this rule is provided and deemed appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section § 205.603(d)(1) is amended by revising paragraph (d)(1) to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(d) * * *

(1) DL—Methionine, DL—Methionine—hydroxy analog, and DL—Methionine—hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production after October 2, 1012, at the following maximum levels of synthetic methionine per ton of feed: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds.

* * * * *

Dated: January 31, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–2628 Filed 2–3–12; 8:45 am]

BILLING CODE 3410–02–P

[2] U.S. Department of Agriculture, Economic Research Service. 2009. *Data Sets: U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. http://www.ers.usda.gov/Data/Organic/.*

[3] U.S. Department of Agriculture, National Agricultural Statistics Service. 2010. *The 2007 Census of Agriculture, Organic Production Survey (2008): Volume 3, Special Studies, Part 2, AC–07–SS–2, Tables 10 & 11, pp 69–91. http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Organics/ORGANICS.pdf.*

[4] Organic Trade Association. 2011. *Organic Industry Survey. www.ota.com.*

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AG39

Surety Bond Guarantee Program—Quick Bond Guarantee Application and Agreement

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a streamlined application process in the Prior Approval Program of the Surety Bond Guarantee (SBG) Program for contract amounts not exceeding $250,000 and would make other minor administrative changes to the SBG Program regulations to, among other things, clarify the procedures for submitting the application forms and paying of fees, and delete an obsolete reference to a form.

DATES: Comments must be received on or before April 6, 2012.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG39 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov*, please submit the information to Ms. Barbara Brannan, Management Analyst, Office of Surety Guarantees, 409 Third Street SW., Washington, DC 20416 or send an email to *Barbara.brannan@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Brannan, Office of Surety Guarantees, (202) 205–6545, email: *Barbara.brannan@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Through the Surety Bond Guarantee (SBG) Program, SBA guarantees bid, payment, and performance bonds for contracts up to $2 million for small and emerging contractors who cannot obtain bonds through regular commercial

surety channels. SBA's guarantee provides the incentive needed for sureties to bond these contractors, giving them greater access to contracting opportunities. The SBG Program consists of the Prior Approval Program and the Preferred Surety Bond (PSB) Program. In the Prior Approval Program, sureties must apply to SBA for each bond guarantee and must receive SBA approval before issuing bonds. Sureties in the PSB Program can issue SBA guaranteed bonds without SBA's prior approval.

This rule proposes to implement a streamlined application process for use in the Prior Approval Program for contract amounts not exceeding $250,000. For these smaller contracts, SBA proposes to create a new form, the Quick Bond Guarantee Application and Agreement, SBA Form 990A, which will consolidate two of the forms currently used in the SBG Program—SBA Form 990, Surety Bond Agreement and the SBA Form 994, Application for Surety Bond Guarantee Assistance. The proposed SBA Form 990A complements the existing industry practice of offering a streamlined bond application for smaller contract amounts. In addition, SBA will not require the Principal to complete and submit two other forms for these smaller contract amounts, including SBA Form 994F, Schedule of Work in Process, and SBA Form 413, Personal Financial Statement. Instead, to mitigate any risk associated with these smaller contract amounts, the new SBA Form 990A will require the Principal to provide a list of the largest three contracts completed in the last 5 years.

The streamlined application process will also help to address sureties' concerns about the amount of paperwork necessary to obtain bond guarantees in the SBG Program. In FY 2010, SBA guaranteed 2,206 Bid Bonds and 729 Final Bonds in the Prior Approval Program for contracts of $250,000 or less. The proposed changes would reduce the paperwork burden in applying for surety bond guarantee assistance for contracts of this size. By offering this streamlined application process for lower contract amounts, SBA also hopes to increase activity by participating sureties and to encourage more sureties to begin using the program. As a result, bonding opportunities would be available to more small businesses. This streamlined process will be monitored closely to mitigate any increased risk exposure, including through the use of periodic on-site audits of participating surety companies. SBA will pay particular attention to guaranteed bonds for contracts that are within the dollar limits at the time of application, but that increase to over $250,000 after the guaranteed bond is issued. The proposed rule also sets forth the circumstances under which the new SBA Form 990A may not be utilized.

In addition, the proposed rule would make other minor changes to the existing SBG Program rules, including clarifying that SBA Form 990 or SBA Form 990A must be submitted to and approved by SBA prior to the Surety's execution of the bond (except for surety bonding lines) and, with respect to the rules regarding surety bonding lines, removing the reference to SBA Form 994C as this form is no longer used.

II. Section-by-Section Analysis

Section 115.10. SBA is proposing to amend the definition of the term, ''Prior Approval Agreement'', to add the ''Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' to the agreements into which a Prior Approval Surety can enter with SBA.

Section 115.30(d)(1). SBA is proposing to clarify in paragraph (d)(1) that, where the Surety Bond Guarantee Agreement (SBA Form 990) is used, it must be approved before the Prior Approval Surety executes a Bid or a Final Bond, except in the case of a bonding line under § 115.33(d). Until SBA has an opportunity to review and approve or decline an application, the Surety may not execute the bond. SBA is also proposing to amend this paragraph to clarify that the applicable guarantee fees must be paid in accordance with 13 CFR 115.32, and not as set forth in the current section 115.30(d), which gives the Principal up to 45 days (15 days in the case of a bonding line) after bond execution to pay its fee. Under section 115.32(b), the Principal's fee must be remitted by the Surety with the Prior Approval Agreement.

Section 115.30(d)(2). SBA is proposing to add this new provision to implement a streamlined application process for bond guarantees for contracts that do not exceed $250,000. SBA is proposing that applicants use a new form, the ''Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' in place of SBA Form 990 and SBA Form 994. This new provision would also require that the Quick Bond Guarantee Application and Agreement (SBA Form 990A) be submitted to and approved by SBA before the Surety executes the Bid or Final Bond. Until SBA has an opportunity to review and approve or decline an application, the Surety may not execute the bond. The new provision also would require that the guarantee fees be paid in accordance with 13 CFR 115.32. This provision also sets forth the circumstances under which this streamlined application process may not be used.

Section 115.32(b). SBA is proposing to amend this provision to add the requirement that the Principal's fee be remitted to SBA with the new SBA Form 990A, just as it is required to be submitted with SBA Form 990.

Section 115.32(c). SBA is proposing to amend this paragraph to clarify that the requirements regarding the guarantee fee paid by the Surety applies to the new SBA Form 990A, just as it applies to the SBA Form 990.

Section 115.32(d)(1). SBA is proposing to delete the words ''Supplemental Form 990'' from this paragraph to make it clear that this provision applies to bond guarantees approved under the new SBA Form 990A in addition to SBA Form 990. SBA is also proposing to add a sentence to provide that, in notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form that it used in applying for the original bond guarantee.

Section 115.33(d). SBA is proposing to eliminate references to the Surety Bond Guarantee Review Update (SBA Form 994C) throughout this provision because the form is no longer used.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule does not constitute a significant regulatory action under the meaning of Executive Order 12866. This proposed rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132,

Federalism, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

In accordance with Executive Order 13563, SBA discussed implementing a streamlined application process with several surety industry associations and surety company representatives and they responded very favorably.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35. As described above, SBA proposes to implement a new application process for surety bonds for contracts that are equal to or less than $250,000. The public is invited to comment on the proposed new form that will be used to collect application information and to submit any comments by the deadline stated in the **DATES** section of this rule to: SBA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, 725 17th Street NW., Washington, DC 20503.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. SBA will submit the proposed form and other documents required under the Paperwork Reduction Act to OMB for review and approval.

A description of this information collection, the respondents, and the estimate of the annual hour burden resulting from this new process is provided below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the responses.

Title: Quick Bond Surety Guarantee Application and Agreement (SBA Form 990A).

Description: The Quick Bond Surety Guarantee Application and Agreement is a combination application and bond guarantee agreement that would be used in the Prior Approval Program for contract amounts that do not exceed $250,000. It is a streamlined alternative to the existing surety bond application and agreement, the SBA Forms 990 and 994 (OMB Control Number 3245–0007). The information would be used to evaluate whether the applicant small business meets the program eligibility criteria and the likelihood that it will successfully complete performance on the contract.

OMB Control Number: New Collection.

Description of and Estimated Number of Respondents. This proposed new collection would be submitted by small businesses seeking to obtain a bond in order to bid or perform on a contract, and by surety companies and their agents or representatives. Based on the current volume of bonds for contracts up to $250,000, SBA estimates that approximately 500 small businesses and 13 Prior Approval Sureties would submit this streamlined application and agreement form.

Estimated Response Time: It is estimated that each applicant would require approximately 5 minutes to complete the proposed new form.

Estimated Number of Responses: 4,450. This number is based on SBA's projection of program activity during Fiscal Year 2012.

Total Estimated Annual Hour Burden: 369 hours.

Estimated Annual Cost Burden: $18,941.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are 13 Sureties that currently participate in the SBA Prior Approval program, and no part of this proposed rule would impose any significant additional cost or burden on them.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR Part 115 as follows:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div K, Sec. 203; Pub. L. 110–246, Sec. 12079, 122 Stat. 1651; and Pub. L. 111–5, 123 Stat. 115.

§ 115.10 [Amended]

2. In § 115.10 amend the definition of ''Prior Approval Agreement'' by adding ''or Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' after ''(SBA Form 990)''.

3. Amend § 115.30 as follows:

a. Revise paragraph (d) to read as set forth below; and

b. Add a new paragraph (e) to read as set forth below.

§ 115.30 Submission of Surety's guarantee application.

* * * * *

(d) *Prior Approval Agreement.* To apply for a bond guarantee, a Prior Approval Surety must submit one of the following forms:

(1) *Surety Bond Guarantee Agreement (SBA Form 990).* A Prior Approval Surety may complete and submit a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety's Execution of the bond, except in the case of a surety bonding line approved by SBA under § 115.33(d). The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(2) *Quick Bond Guarantee Application and Agreement (SBA Form 990A).*

(i) *General procedures.* Except as provided in (d)(2)(ii) of this section, a Prior Approval Surety may complete and submit the Quick Bond Guarantee Application and Agreement (SBA Form 990A) to SBA for each Bid Bond or Final Bond, and this Form must be approved by SBA prior to the Surety's Execution of the bond. SBA Form 990A is a streamlined application form that may be used only for contract amounts that do not exceed $250,000 at the time of application. The guarantee fees owed

in connection with Final Bonds must be paid in accordance with § 115.32.

(ii) *Exclusions.* SBA Form 990A may not be used under the following circumstances:

(A) The Principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency;

(B) Work on the Contract commenced before a bond is Executed;

(C) The time for completion of the Contract or the warranty/maintenance period exceeds 12 months;

(D) The Contract includes a provision for liquidated damages that exceed $250 per day;

(E) The Contract involves asbestos abatement, hazardous waste removal, demolition, or timber sales; or

(F) The bond would be issued under a surety bonding line approved under § 115.33.

4. Amend § 115.32 as follows:

a. Revise the fourth sentence of paragraph (b) to read as set forth below;

b. Revise the second sentence of paragraph (c) to read as set forth below; and

c. In the second sentence of paragraph (d)(1), remove the words ''(Supplemental Form 990)'', and add the following sentence at the end: ''In notifying SBA of any increase or decrease in the Contract or bond amount, the Surety must use the same form (SBA Form 990 or SBA Form 990A) that it used in applying for the original bond guarantee.''

§ 115.32 Fees and Premiums.

* * * * *

(b) * * * The Principal's fee is rounded to the nearest dollar and is to be remitted to SBA by the Surety together with the form submitted under either § 115.30(d)(1) or (2). * * *

(c) * * * Subject to § 115.18(a)(4), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) within 60 calendar days after SBA's approval of the Prior Approval Agreement. * * *

* * * * *

5. Amend § 115.33 by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 115.33 Surety bonding line.

* * * * *

(d)(1) *Submission of forms to SBA—Bid Bonds.* Within 15 business days after the Execution of any Bid Bonds under a bonding line, the Surety must submit a ''Surety Bond Guarantee Underwriting Review'' (SBA Form 994B) to SBA for approval. If the Surety fails to submit the form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Submission of forms to SBA—Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a Surety Bond Guarantee Underwriting Review (SBA Form 994B) and a Surety Bond Guarantee Agreement (SBA Form 990) to SBA for approval. If the Surety fails to submit these forms within the time period or the guarantee fees are not paid in accordance with § 115.32, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

* * * * *

Dated: January 30, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–2519 Filed 2–3–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0039; Directorate Identifier 2011–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by reports of cracks underneath the passenger door in a butt-joint on the forward fuselage of an F.28 Mark 0100 airplane. This proposed AD would require repetitive low frequency eddy current inspections of the forward fuselage butt-joints for cracks, and if necessary, a temporary repair followed by a permanent repair. We are proposing this AD to detect and correct cracks on the butt-joint on the forward fuselage, which could result in explosive decompression and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 22, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0039; Directorate Identifier 2011–NM–144–AD'' at the beginning of

your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0115, dated June 17, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A report has been received of a crack, detected in a butt-joint on the forward fuselage of an F28 Mark 0100 aeroplane, underneath the passenger door.
>
> Investigations revealed that, depending on the configuration of the aeroplane, one or two butt-joints in the forward fuselage can be affected.
>
> This condition, if not detected and corrected, could lead to explosive decompression and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires repetitive [low frequency eddy current] inspections of the forward fuselage butt joints for cracks and, when a crack is detected, accomplishment of a temporary repair. This [EASA] AD also requires reporting any cracks found to Fokker Services to enable the development of a modification and the determination of an interval for a repetitive inspection task, to be incorporated in the ALI [airworthiness limitations instructions] section of the MRB [maintenance review board] document. This [EASA] AD is considered to be an interim measure and further AD action is likely.

Required actions include a permanent repair of the forward fuselage butt-joints. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–53–115, dated June 16, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

Paragraph (2) of EASA AD 2011–0115, dated June 17, 2011, explains that an optional alternative method for the inspection required by paragraph (g) of this proposed AD may be used. This AD does not include that optional alternative method, as the service information in this AD does not provide enough detail regarding this method.

EASA AD 2011–0115, dated June 17, 2011, does not include a permanent repair. This proposed AD does require a permanent repair.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,020, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 40 work-hours and require parts costing $0, for a cost of $3,400 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2012–0039; Directorate Identifier 2011–NM–144–AD.

(a) Comments Due Date

We must receive comments by March 22, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, as identified in Fokker Service Bulletin SBF100–53–115, dated June 16, 2011.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks underneath the passenger door in a butt-joint on the forward fuselage of an F.28 Mark 0100 airplane. We are issuing this AD to detect and correct cracks on the butt-joint on the forward fuselage, which could result in explosive decompression and consequent loss of control of the airplane.

(f) Compliance

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

(g) Inspection

Before the accumulation of 20,000 total flight cycles, or within 180 flight cycles after the effective date of this AD, whichever occurs later, do a low frequency eddy current inspection of the forward fuselage butt-joints for cracks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–115, dated June 16, 2011. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles. Doing the temporary repair in paragraph (h) of this AD is terminating action for the repetitive inspections required by this paragraph. The temporary repair can also be accomplished if no cracking is found.

(h) Temporary Repair

If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, do a temporary repair, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–115, dated June 16, 2011. Doing the temporary repair is terminating action for the repetitive inspections required by paragraph (g) of this AD.

(i) Permanent Repair

Within 10,000 flight cycles after installing the temporary repair as required by paragraph (h) of this AD, install a permanent repair using a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA.

(j) Reporting

Submit a report of the findings (both positive and negative), to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, using the reports form of Fokker Service Bulletin SBF100–53–115, dated June 16, 2011, of the inspection required by paragraph (g) of this AD, at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0115, dated June 17, 2011; and Fokker Service Bulletin SBF100–53–115, dated June 16, 2011; for related information.

Issued in Renton, Washington, on January 12, 2012.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–2618 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0041; Directorate Identifier 2011–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes. This proposed AD was prompted by analysis that in a specific failure case of the upper primary attachment of the trimmable horizontal stabilizer actuator (THSA); the THSA upper secondary attachment would engage because it could only withstand the loads for a limited period of time. This proposed AD would require installation of three secondary retention plates for the gimbal bearings on the THSA upper primary attachment. We are proposing this AD to prevent failure of the secondary load path, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by March 22, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0041; Directorate Identifier 2011–NM–167–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0112, dated June 15, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A specific failure case of the THSA [trimmable horizontal stabilizer actuator] upper primary attachment, which may result in a loading of the upper secondary attachment, has been identified by analysis.
>
> Primary load path failure can be caused by bearing migration from the upper attachment gimbal by failure or loss of a retention bolt.
>
> In case of failure of the THSA upper primary attachment, the THSA upper secondary attachment would engage. Because the upper attachment secondary load path can only withstand the loads for a limited period of time, the condition where it would be engaged could lead, if not detected and corrected, to the failure of the secondary load path, which would likely result in loss of control of the aeroplane.
>
> For the reasons explained above, this [EASA] AD requires installation of three secondary retention plates for the gimbal bearings on the THSA upper primary attachment.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–27–0204, dated March 11, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 15 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $6,541 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $100,665, or $6,711 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0041; Directorate Identifier 2011–NM–167–AD.

(a) Comments Due Date

We must receive comments by March 22, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

(e) Reason

This AD was prompted by analysis that in a specific failure case of the upper primary attachment of the trimmable horizontal stabilizer actuator (THSA); the THSA upper secondary attachment would engage because it could only withstand the loads for a limited period of time. We are issuing this AD to prevent failure of the secondary load path, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Actions

Within 30 months after the effective date of this AD, install 3 retention plates for the gimbal bearings on the THSA upper primary attachment, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0204, dated March 11, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0112, dated June 15, 2011; and Airbus Mandatory Service Bulletin A300–27–0204, dated March 11, 2011; for related information.

Issued in Renton, Washington, on January 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–2622 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012 0040; Directorate Identifier 2011–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; all Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This proposed AD was prompted by reports of an inoperative fire shut-off valve (FSOV) as a result of damage due to over-length of the bonding lead. This proposed AD would require a one-time detailed inspection for length of the FSOV bonding leads and for contact or chafing of the wires, and corrective actions, if necessary. We are proposing this AD to detect and correct contact or chafing of wires and bonding leads which, if not detected could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire.

DATES: We must receive comments on this proposed AD by March 22, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0040; Directorate Identifier 2011–NM–121–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2011–0084, dated May 24, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a scheduled maintenance check, one operator reported inoperative FSOV [fire shut-off valve]. Investigations showed damage at wire located between engine 2 Hydraulic FSOV and wing rear spar, in the zones 575/675, and at bonding lead, located between wing Rib 7A and Rib 8 below Hydraulic Pressure Lines.

Similar inspections on different aeroplanes have shown that one of the causes of damage, is the contact between bonding lead and the harness, due to over length of the bonding lead.

As the affected wire is not powered during normal operation, no defect had been detected. The defect was detected when a test was performed on the FSOV during maintenance check by the operator.

This condition, in the scope of published FAA SFAR88 and JAA Internal Policy INT/POL/25/12, is considered to be a potential source of sparks in the wing trailing edge area and if not detected, could lead to an uncontrolled engine fire.

For the reasons stated above, this [EASA] AD requires a one-time [detailed] inspection of the wires [for contact or chafing] located between LH/RH engines Hydraulic FSOV and wing rear spar in the zones 575/675, and the bonding lead [for length] that is located between Rib 7A and Rib 8 below Hydraulic Pressure Lines, and corrective actions [repair wires or replace bonding leads] depending on findings.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–24–0106 (for Model A300 series airplanes); and A300–24–6108 (for Model A300–600 series airplanes); both including Appendices 01 and 02, both dated July 9, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 125 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $85,000, or $680 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $50, for a cost of $135 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0040; Directorate Identifier 2011–NM–121–AD.

(a) Comments Due Date

We must receive comments by March 22, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to airplanes specified in paragraphs (c)(1), (c)(2) and (c)(3) of this AD; certificated in any category; all certificated models; all serial numbers.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622 airplanes.

(3) Airbus Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of an inoperative fire shut-off valve (FSOV) as a result of damage due to over-length of the bonding lead. We are issuing this AD to detect and correct contact or chafing of wires and bonding leads which, if not detected, could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire.

(f) Compliance

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

(g) Inspection of the FSOV Bonding Leads

Within 4,500 flight hours or 30 months after the effective date of this AD, whichever occurs first: Do a one-time detailed inspection for length of the FSOV bonding leads, and for contact or chafing of the wires located on left hand (LH) side and right-hand (RH) side of the wing rear spar, in accordance with Accomplishment Instructions of the Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(h) Corrective Action for FSOV Bonding Leads

If, during the inspection required by paragraph (g) of this AD, the length of the bonding lead(s) is more than 80 mm (3.15 inches), before further flight, replace the bonding lead(s) with a new bonding lead having a length equal to 80 mm (3.15 inches), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(i) Repair of the Wires of the LH and RH Sides

If, during the inspection required by paragraph (g) of this AD, contact(s) or chafing(s) of the wires is found, repair the wires in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(j) Parts Installation

As of the effective date of this AD, no person may install any bonding lead longer than 80 mm (3.15 inches), located between LH/RH engine hydraulic FSOV and wing rear spar in the zones 575/675 on any airplane.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0084, dated May 24, 2011; and the service information identified in paragraphs (l)(1), and (l)(2) of this AD; for related information.

(1) Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010.

(2) Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010.

Issued in Renton, Washington, on January 12, 2012.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–2625 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0042; Directorate Identifier 2011–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. The existing AD currently requires a one-time inspection of the main landing gear (MLG) shock strut assemblies for part and serial numbers; for certain MLG shock strut assemblies, a one-time inspection of the torque link apex joint, and corrective actions if necessary; and, for certain MLG shock strut assemblies, replacement or rework of the apex nut. Since we issued that AD, we have determined that part and serial numbers for MLG shock strut assemblies for Model CL–600–2D15 and CL–600–2D24 airplanes were inadvertently omitted from certain requirements of the existing AD. This proposed AD would continue to require the actions in the existing AD, and would add the previously omitted part and serial numbers. We are proposing this AD to detect and correct improper assembly and damage of the MLG torque link apex joint, which could cause heavy vibration during landing, consequent damage to MLG components, and subsequent collapse of the MLG.

DATES: We must receive comments on this proposed AD by March 22, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Cote-Vertu Road West, Dorval, Quebec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Stephen Kowalski, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; phone: (516) 228–7327; fax: (516) 794–5531; email: *Stephen.Kowalski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0042; Directorate Identifier 2011–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 23, 2011, we issued AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011). That AD required actions intended to address an unsafe condition on Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes.

Since we issued AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011), we have determined that part and serial numbers for main landing gear (MLG) shock strut assemblies for Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes were inadvertently omitted from paragraphs (g) and (h) of that AD. As a result, operators could be inspecting for part and serial numbers which they do not have, and would, therefore, not be required to accomplish the actions intended to correct the identified unsafe condition on those airplanes. Therefore, we have removed airplanes identified in paragraph (c)(2) of this AD from the requirements of paragraphs (g), (h), and (i) of this AD. We have added new requirements for those airplanes to inspect for the appropriate part numbers and serial numbers, and to do all applicable inspections and corrective actions.

AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011), referred to Transport Canada Civil Aviation (TCCA) (the aviation authority for Canada) Airworthiness Directive CF–2009–20, dated May 1, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.
>
> Investigation has determined that incorrect stack-up tolerances of the apex joint or improper installation of the locking plate and apex nut could result in torque link apex pin disengagement. This [TCCA] directive mandates [a one-time detailed] inspection of the torque link apex joint [for correct installation and damage, and corrective actions if necessary] and replacement of the torque link apex nut.

The corrective actions include re-installing parts that are not correctly installed and replacing damaged parts. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

The MCAI specifies to inspect only airplanes having certain serial numbers that are part of the MCAI applicability. Because the affected part could be rotated onto any of the airplanes listed in the applicability, this proposed AD would continue to require that the inspection be done on all airplanes. We have coordinated this with the TCCA.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 361 products of U.S. registry.

The actions required by AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011), and retained in this proposed AD that about 5 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $153,425, or $425 per product.

We estimate that it would take about 5 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $153,425, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16654 (76 FR 20498, April 13, 2011) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0042; Directorate Identifier 2011–NM–154–AD.

(a) Comments Due Date

We must receive comments by March 22, 2012.

(b) Affected ADs

This AD supersedes AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011).

(c) Applicability

This AD applies to the Bombardier airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, serial numbers (S/Ns) 10003 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by reports of loose or detached main landing gear (MLG) torque link apex pin locking plate and the locking plate retainer bolt in the torque link apex joint. We are issuing this AD to detect and correct improper assembly and damage of the MLG torque link apex joint, which could cause heavy vibration during landing, consequent damage to MLG components, and subsequent collapse of the MLG.

(f) Compliance

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

Restatement of Requirements of AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011)

(g) Inspection for Part Number (P/N) and Serial Number (S/N) for Model CL–600–2C10 Airplanes

For airplanes identified in paragraph (c)(1) of this AD: Within 900 flight hours after May 18, 2011 (the effective date of AD 2011–08–04, Amendment 39–16654 (76 FR 20498, April 13, 2011)), inspect the main landing gear (MLG) shock strut assemblies to determine whether an MLG shock strut assembly having P/Ns 49000–11 through 49000–22 inclusive and a S/N 0001 through 0284 inclusive is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part and serial numbers of the MLG shock strut assembly can be conclusively determined from that review.

(h) Inspection of the Torque Link Apex Joint for Model CL–600–2C10 Airplanes

For any MLG shock strut assembly having P/Ns 49000–11 through 49000–22 inclusive and a S/N 0001 through 0284 inclusive found installed during the inspection or records check required by paragraph (g) of this AD: Within 900 flight hours after May 18, 2011, perform a one-time detailed inspection and all applicable corrective actions on the torque link apex joint, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008, except as provided by paragraph (o) of this AD. Do all applicable corrective actions before further flight.

(i) Replacement or Rework of the Apex Nut for Model CL–600–2C10 Airplanes

For any MLG shock strut assembly identified during the inspection or records check required by paragraph (g) of this AD: Within 4,500 flight hours after May 18, 2011, replace or rework the apex nut, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008.

(j) Parts Installation

For all airplanes: As of May 18, 2011, no person may install, on any airplane, a replacement MLG shock strut assembly identified in paragraph (j)(1) or (j)(2) of this AD, unless it has been reworked in accordance with paragraph B. of Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008.

(1) Part numbers 49000–11 through 49000–22 inclusive, and with a serial number in the range of S/Ns 0001 through 0284 inclusive (the serial number can start with ''MA,'' ''MAL,'' or ''MA–'').

(2) Part numbers 49050–5 through 49050–10 inclusive, and with a serial number in the range of S/Ns 1001 through 1114 inclusive (the serial number can start with ''MA,'' ''MAL,'' or ''MA–'').

New Requirements of This AD

(k) Inspection for Part Number and Serial Number for Model CL–600–2D15 and CL–600–2D24 Airplanes

For airplanes identified in paragraph (c)(2) of this AD: Within 900 flight hours after the effective date of this AD, inspect the MLG shock strut assemblies to determine whether an MLG shock strut assembly having P/Ns 49050–5 through 49050–10 inclusive and a S/N 0001 through 1114 inclusive is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part and serial numbers of the MLG shock strut assembly can be conclusively determined from that review.

(l) Inspection of the Torque Link Apex Joint for Model CL–600–2D15 and CL–600–2D24 Airplanes

For any MLG shock strut assembly having P/Ns 49050–5 through 49050–10 inclusive and a S/N 0001 through 1114 inclusive found installed during the inspection or records check required by paragraph (k) of this AD: Within 900 flight hours after the effective date of this AD, perform a one-time detailed inspection and all applicable corrective actions on the torque link apex joint, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008, except as provided by paragraph (o) of this AD. Do all applicable corrective actions before further flight.

(m) Replacement or Rework of the Apex Nut for Model CL–600–2D15 and CL–600–2D24 Airplanes

For any MLG shock strut assembly identified during the inspection or records check required by paragraph (k) of this AD: Within 900 flight hours after the effective date of this AD, replace or rework the apex nut, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008.

(n) Credit for Actions Accomplished in Accordance With Previous Service Information

Inspections, corrective actions, replacements, and rework accomplished before the effective date of this AD, in accordance with Bombardier Service Bulletin 670BA–32–019, dated March 16, 2006, are considered acceptable for compliance with the corresponding actions specified in this AD.

(o) Inspections Not Required Under Certain Conditions

The inspections specified in paragraph (h) or (l) of this AD are not required if the actions specified in paragraph (i) or (m) of this AD, as applicable, have already been accomplished; or if Bombardier Repair Engineering Order 670–32–11–0022, dated October 22, 2005, or Goodrich Service Concession Request SCR 0056–05, dated October 22, 2005; has been incorporated.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(q) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(r) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2009–20, dated May 1, 2009; and Bombardier Service Bulletin 670BA–32–019, Revision A, dated September 18, 2008; for related information.

Issued in Renton, Washington, on January 24, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–2619 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2011–1407; Airspace Docket No. 11–AGL–25

RIN 2120–AA66

Proposed Modification of Area Navigation (RNAV) Route Q–62; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify area navigation (RNAV) route Q–62 by extending it further west and incorporating two additional navigation fixes. The route extension is proposed to link two RNAV Standard Terminal Arrival Routes (STARs) serving the Chicago O'Hare International Airport, IL, terminal area with the high altitude route. The FAA is taking this action to increase National Airspace System (NAS) efficiency and enhance flight safety as aircraft transition from the en route airway structure to the terminal area airspace phase of flight.

DATES: Comments must be received on or before March 22, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–1407 and Airspace Docket No. 11–AGL–25 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1407 and Airspace Docket No. 11–AGL–25) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1407 and Airspace Docket No. 11–AGL–25.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by extending high altitude RNAV route Q–62 to the west to include the WATSN and DAIFE fixes. The proposed change would facilitate linking the WATSN and HALIE RNAV STARs serving Chicago O'Hare International Airport, IL, with the high altitude route and establish a seamless transition for westbound air traffic from the New York metropolitan area into the Chicago O'Hare International Airport, IL, terminal area. This proposed route extension would also reduce ATC system complexity, air traffic controller and pilot workload, and voice communication requirements, as well as

reduce aircraft fuel consumption and expand the use of RNAV within the NAS.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as required to preserve the safe and efficient flow of air traffic.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q–62 WATSN, IN to SARAA, PA [Amended]

WATSN, IN	FIX	(Lat. 41°17′00″ N., long. 86°02′07″ W.)
DAIFE, IN	WP	(Lat. 41°16′08″ N., long. 85°51′19″ W.)
NOLNN, OH	WP	(Lat. 41°14′04″ N., long. 84°38′12″ W.)
WEEVR, OH	WP	(Lat. 41°13′21″ N., long. 84°13′04″ W.)
PSKUR, OH	WP	(Lat. 41°09′16″ N., long. 82°42′57″ W.)
FAALS, OH	WP	(Lat. 41°02′51″ N., long. 80°52′40″ W.)
ALEEE, OH	WP	(Lat. 41°00′28″ N., long. 80°31′54″ W.)
QUARM, PA	WP	(Lat. 40°49′45″ N., long. 79°04′39″ W.)
BURNI, PA	FIX	(Lat. 40°39′25″ N., long. 77°48′14″ W.)
MCMAN, PA	FIX	(Lat. 40°38′16″ N., long. 77°34′14″ W.)
VALLO, PA	FIX	(Lat. 40°37′37″ N., long. 77°26′18″ W.)
Ravine, PA (RAV)	VORTAC	(Lat. 40°33′12″ N., long. 76°35′58″ W.)
SUZIE, PA	FIX	(Lat. 40°27′12″ N., long. 75°58′22″ W.)
SARAA, PA	FIX	(Lat. 40°26′22″ N., long. 75°53′16″ W.)

Issued in Washington, DC, on January 30, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–2483 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2006–0179]

RIN 0960–AG21

New Medical Criteria for Evaluating Language and Speech Disorders

AGENCY: Social Security Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: We are considering whether to propose new rules for evaluating language and speech disorders. The new rules would apply to disability claims involving language and speech disorders in adults and children under titles II and XVI of the Social Security Act (Act). Specifically, we are considering whether to add a new body system in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (listings) for these disorders. We are requesting your comments about whether we should establish these new rules, as well as suggestions about what the proposed rules should include. If we decide to propose specific listings, we will publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register.**

DATES: To be sure that we consider your comments, we must receive them by no later than April 6, 2012.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2006–0179 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the

Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2006–0179. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–(800) 772–1213, or TTY 1–(800) 325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What is the purpose of this advance notice of proposed rulemaking (ANPRM)?

We are considering whether to add to our listings a new body system for evaluating language and speech disorders. The new listings would apply to claims involving language and speech disorders in adults and children under titles II and XVI of the Act. This notice gives you an opportunity to send us comments about whether we should establish these new rules and, if so, suggestions about what the proposed rules should include.

Why are we considering new listings for language and speech disorders?

Our current listings provide criteria for evaluating language and speech disorders in several body systems, including Special Senses and Speech, Neurological, and Mental Disorders. Some of these listings describe language or speech disorders that result from or occur with specific disorders, such as cerebral palsy (listing 11.07C). Other listings describe language or speech disorders in terms of the resulting limitations in functioning, such as loss of speech with the inability to produce by any means speech that can be heard, understood, or sustained (listing 2.09). We are considering whether it would be better to establish a new body system that would:

- Use consistent terminology for describing language or speech disorders;
- Describe listing-level impairments for people who have very serious language or speech problems; and
- Provide clear and comprehensive criteria for evaluating all language and speech problems in adults and children, regardless of their cause.

Who should send us comments and suggestions?

We invite comments and suggestions from anyone who has an interest in how we evaluate claims for benefits in our disability programs that are filed by people who have language and speech disorders. We are interested in comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations that represent people who have language or speech disorders, State agencies that make disability determinations for us, experts in the evaluation of language or speech disorders, and researchers.

What should you comment about?

We are interested in knowing whether you think it is a good idea to establish a new body system in our listings for language and speech disorders and, if so, what the new listings should say. For example, do you have any ideas about how we should:

- Describe listing-level severity for particular kinds of language and speech disorders in both adults and children?
- Consider language and speech disorders when they result from neurological disorders?
- Consider language and speech disorders when they have no identifiable cause?
- Consider language and speech problems in young children when they have delayed or disordered language and speech development?
- Consider communication demands in a school setting when we evaluate language and speech disorders in children?
- Consider communication demands in a work setting when we evaluate language and speech disorders in adults?

We are also interested in knowing what guidelines for documenting and evaluating language and speech disorders you believe we should include in the introductory section for the new body system.

Will we respond to your comments?

We will not respond directly to the comments you send in response to this ANPRM. When we decide whether to propose new rules for evaluating language and speech disorders, we will consider:

- All comments and suggestions we receive in response to this notice;
- The comments and suggestions that we received in response to the ANPRM that we published on April 13, 2005 (70 FR 19351); [1]
- Information we received at a Policy Conference on Language and Speech Disorders in the Disability Program, held September 26–27, 2005; [2]
- Information about advances in medical knowledge, treatment, and methods of evaluating impairments that affect language or speech; and
- Our disability program experience.

If we propose new rules, we will publish an NPRM in the **Federal Register** and you will have a chance to comment on the proposed rules.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2012–2498 Filed 2–3–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 447 and 479

[Docket No. ATF 43P; AG Order No. 3320–2012]

RIN 1140–AA42

Importation of Arms, Ammunition and Implements of War and Machine Guns, Destructive Devices, and Certain Other Firearms; Extending the Term of Import Permits (2010R–26P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of proposed rulemaking.

[1] The comments we received in response to this ANPRM are available at: *http://www.regulations.gov,* under Docket SSA–2006–0179.

[2] The full transcripts for the Policy Conference are available at: *http://www.regulations.gov,* under Document IDs SSA–2006–0179–0002 and SSA–2006–0179–0003.

SUMMARY: The Department of Justice is proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to extend the term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years. The additional time will allow importers sufficient time to complete the importation of the authorized commodity. In addition, it will eliminate the need for the importer to submit a new import application, ATF Form 6, where the importation was not completed within the 1-year period. Extending the term of import permits will result in a substantial cost and time savings for both the industry and ATF. This proposed change would be consistent with Executive Order 13563 of January 18, 2011, which directs agencies to review existing significant rules to make regulatory programs more effective or less burdensome in achieving regulatory objectives.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before May 7, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: Send comments to any of the following addresses—

- Deborah G. Szczenski, Industry Operations Specialist, Mailstop 6N–602, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; ATTN: ATF 43P. Written comments must appear in minimum 12-point size of type (.17 inches), include the commenter's mailing address, be signed, and may be of any length.
- (202) 648–9741 (facsimile).
- *http://www.regulations.gov.* Federal eRulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this proposed rule at the *http://www.regulations.gov* site.

See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Deborah G. Szczenski, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7087.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of section 38 of the Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, that relate to the importation of defense articles and defense services, and also for enforcing the provisions of the National Firearms Act (NFA), 26 U.S.C. Chapter 53. The Attorney General is also responsible for enforcing the provisions of the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, relating to commerce in firearms and ammunition. He has delegated all of those responsibilities to the Director of ATF (''Director''), subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130.

A. Importation of Arms, Ammunition, and Implements of War (27 CFR Part 447)

Regulations that implement the provisions of the AECA that are concerned with the importation of arms, ammunition, and implements of war are set forth in 27 CFR part 447. The regulation at 27 CFR 447.41(a) generally provides that articles on the U.S. Munitions Import List may not be imported into the United States except pursuant to a permit. Section 447.42(a) states that persons required to obtain a permit must file with ATF an ATF Form 6—Part I (5330.3A), Application and Permit for Importation of Firearms, Ammunition, and Implements of War (''ATF Form 6''). The application must be signed and dated and must contain the information requested on the form, including:

1. The name, address, telephone number, license and registration number, if any (including expiration date), of the importer;
2. The country from which the defense article is to be imported;
3. The name and address of the foreign seller and foreign shipper;
4. A description of the defense article to be imported, including—

a. The name and address of the manufacturer;

b. The type (*e.g.,* rifle, shotgun, pistol, revolver, aircraft, vessel, and in the case of ammunition only, ball, wadcutter, shot, etc.);

c. The caliber, gauge, or size;

d. The model;

e. The length of barrel, if any (in inches);

f. The overall length, if a firearm (in inches);

g. The serial number, if known;

h. Whether the defense article is new or used;

i. The quantity;

j. The unit cost of the firearm, firearm barrel, ammunition, or other defense article to be imported;

k. The category of U.S. Munitions Import List under which the article is regulated;

5. The specific purpose of importation, including final recipient information if different from the importer; and
6. Certification of origin.

Section 447.43(a) provides that import permits are valid for 1 year from their issuance date unless a different period of validity is stated thereon. Furthermore, under § 447.43(b), if shipment cannot be completed during the period of validity of the permit, another application must be submitted for a permit to cover the unshipped balance.

B. Importation of Machine Guns, Destructive Devices, and Certain Other Firearms Under the NFA (27 CFR Part 479)

Regulations that implement the provisions of the NFA are set forth in 27 CFR part 479, which contains the procedural and substantive requirements relative to the importation, manufacture, making, exportation, transfer, taxing, identification and registration of, and the dealing in, machine guns, destructive devices, and certain other firearms. With respect to NFA firearms, the regulation at 27 CFR 479.111(a) provides that no firearm may be imported or brought into the United States or any territory under its control or jurisdiction unless the person importing or bringing in the firearm establishes to the satisfaction of the Director that the firearm to be imported or brought in is being imported or brought in for certain specified purposes, e.g., scientific or research purposes. This paragraph further provides that any person desiring to import or bring a firearm into the United States must file with the Director an application on ATF Form 6. As specified, the approval of an application to import a firearm shall be automatically terminated at the expiration of 1 year from the date of approval unless, upon request, it is further extended by the Director.

Section 479.113 provides that the Director shall permit the conditional importation of any NFA firearm for the purpose of examining and testing to determine whether the importation of such firearm will be authorized. As specified, an application on ATF Form 6 shall be filed with the Director. The Director may impose conditions upon any importation, and the person importing the firearm must agree to

either export or destroy the weapon if a final determination is made that it may not be imported.

C. Importation of Firearms and Ammunition (27 CFR Part 478)

Regulations in Subpart G of part 478 provide the procedural and substantive requirements of the GCA relative to the importation of firearms and ammunition. Section 478.112 states that no firearm, firearm barrel, or ammunition shall be imported or brought into the United States by a licensed importer unless the Director has authorized the importation of the firearm, firearm barrel, or ammunition. This section further provides that the licensed importer must file with the Director an application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel, or ammunition into the United States. If the Director approves the application, such approved application will serve as the permit to import the firearm, firearm barrel, or ammunition described on the permit, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the licensed importer under the approved application (permit) during the period specified on the permit.

Similar procedures are set forth in section 478.113 with respect to the importation of a firearm, firearm barrel, or ammunition into the United States by a licensee other than a licensed importer.

Requirements for the conditional importation of firearms, firearm barrels, and ammunition for the purpose of examination and testing to determine whether the Director will authorize their importation are set forth in § 478.116. This section provides that an application on ATF Form 6 for such conditional importation must be filed with the Director. If approved, the Director may impose conditions on the importation, and the person importing the firearm, firearm barrel, or ammunition must agree to either export or destroy the imported item if it is determined that the item may not be imported.

II. FAIR Trade Group Petition

ATF received a petition, dated August 10, 2010, filed on behalf of the FireArms Import-Export Roundtable (FAIR) Trade Group. As stated in the petition, FAIR is an organization that represents importers and exporters of firearms, ammunition, firearms parts, and accessories. The petitioner requested an amendment of the regulations to change the ATF Form 6 period of validity from 1 year to 2 years. According to the petitioner, this amendment would be beneficial to both the industry and to ATF, without having any impact on public safety or compliance with the law. As stated in the petition:

> [E]xtending the period a license [permit] is valid could reduce the workload for [ATF] examiners by lowering the number of renewals submitted to ATF and reduce the uncertainty importers face when dealing with long-lead time deals. [Many licensed and/or registered importers import the same defense articles year after year. ATF processes these ''renewal'' permits.]
>
> Renewals are a relatively common procedure—whether for items stored in a CBD [*sic*] or for transactions that take longer than a year to complete—that the industry must undertake at this time. Renewals of existing permits are perfunctory processes that consume the valuable resources of both the industry and the ATF. The time necessary to log, process and approve these permits does not appear to provide any additive compliance or enforcement value to the importation process.

The petitioner contends that extending the term of an import permit from 1 year to 2 years will not significantly impact compliance with the law and that ''ATF would clearly retain all authorities to revoke permits should such action be necessary based on changes to the law, interpretations of the law, or changes to the regulations governing imports.''

Of the approximately 11,000 ATF Form 6 import applications ATF processes each year, 9,000 are submitted by an ATF licensed or registered importer. Subsequent information provided by the petitioner indicates that the renewal rate on import permits for industry members is approximately 50 percent. If the term of an import permit is changed from 1 year to 2 years, ATF estimates the number of import permit applications submitted by licensed or registered importers would be reduced to 4,500 each year. This would result in significant economic savings for both the industry and ATF. As indicated, there is a substantial amount of information requested on the import permit application. ATF estimates that it takes a compliance officer employed by a federally licensed or registered importer approximately 30 minutes to complete an ATF Form 6 permit application. According to the Occupational Employment Statistics (May 2009), published by the Bureau of Labor Statistics, U.S. Department of Labor, the average hourly wage of a compliance officer is $26.50. Reducing the number of permits submitted by the industry by half (4,500) would result in an annual savings of approximately $59,625.

Increasing the term of an import permit to 2 years would also result in an economic benefit for ATF. ATF employs data entry contractors who spend an average of 2 hours completing quality review and data entry functions for each import application. The average salary of a contractor is $14 per hour. ATF examiners typically spend 4 hours processing an ATF Form 6 application. The average hourly rate for an examiner is $24.74. If the number of applications was reduced to 4,500 each year, the annual savings to ATF would be approximately $571,320.

III. Proposed Rule—Extending the Term of Import Permits From 1 Year to 2 Years

The Department has determined that an amendment of the regulations to extend the term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years is warranted. The additional time will allow importers sufficient time to complete the importation of the authorized commodity, and will eliminate the need for the importers to submit a new import application when the importation is not completed within the 1-year period. Accordingly, in order to reduce the paperwork burden on the industry and to increase the efficiency of ATF in processing requests for importation, the Department is proposing to amend the regulations in parts 447 and 479 to increase the term of import permits from 1 year to 2 years.

The regulations in part 478 do not specify the period of validity for import permits as 1 year, and therefore, the Department is not proposing to amend the regulations in part 478. The regulations in part 478 provide that importation may continue to be made by the applicant during the period specified on the approved application (permit). As stated on the ATF Form 6, the permit is valid for 12 months from the Director's approval date on the permit. If this proposed rule is adopted, the ATF Form 6 will be revised to reflect the amended period of validity for importation as 2 years from the Director's approval date on the permit.

The term of validity for import permits filed by members of the United States military returning to the United States from abroad with firearms and for non-immigrant aliens temporarily importing firearms into the United States for lawful hunting and sporting purposes is unaffected by this proposed rule and will remain at 1 year.

IV. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Orders 12866 and 13563

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b) General Principles of Regulation and section 6 Retrospective Analysis of Existing Rules. The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this proposed rule has been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

This proposed rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Accordingly, this proposed rule is not an ''economically significant'' rulemaking as defined by Executive Order 12866.

Executive Order 13563 section 6, Retrospective Analysis of Existing Rules, directs agencies to develop a plan to review existing significant rules that may be ''outmoded, ineffective, insufficient, or excessively burdensome,'' and to make appropriate changes where warranted. The Department selected and reviewed this rule under the criteria set forth in its Plan for Retrospective Analysis of Existing Rules. During this review, ATF calculated that it processes approximately 11,000 import applications each year. Approximately 82 percent of those applications (9,000) are submitted by federally licensed or registered importers. ATF estimates that it takes a compliance officer employed by a federally licensed or registered importer approximately 30 minutes to complete an ATF Form 6 permit application. According to the Occupational Employment Statistics (May 2009), published by the Bureau of Labor Statistics, U.S. Department of Labor, the average hourly wage of a compliance officer is $26.50. If the term of an import permit was extended to 2 years, ATF estimates that the number of ATF Form 6 permit applications submitted by licensed or registered importers would be reduced to 4,500 each year. Reducing the number of permits submitted by the industry by half (4,500) would result in an annual savings of approximately $59,625.

Increasing the term of an import permit to 2 years would also result in an economic benefit for ATF. ATF employs data entry contractors who spend an average of 2 hours completing quality review and data entry functions for each import application. The average salary of a contractor is $14 per hour. ATF examiners typically spend 4 hours processing an ATF Form 6 application. The average hourly rate for an examiner is $24.74. If the number of applications was reduced to 4,500 each year, the annual savings to ATF would be approximately $571,320. The Department invites comments on whether this proposed revision will reduce the administrative burdens on the industry and ATF as anticipated, thereby making this rule less burdensome in achieving its regulatory objectives, consistent with Executive Order 13563.

B. Executive Order 13132

This proposed regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this proposed regulation will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this proposed rule and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The Department believes that this proposed rule will have a positive economic impact on both the industry and ATF. The number of permits and the time required for industry to file those permits and for ATF to process them will be significantly reduced.

An industry compliance officer spends approximately 30 minutes completing an ATF Form 6. According to the Occupational Employment Statistics (May 2009), published by the Bureau of Labor Statistics, United States Department of Labor, the average hourly wage of a compliance officer is $26.50. Reducing the number of permits submitted by the industry by half (4,500) would result in an annual savings of approximately $59,625.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. ATF Form 6 currently states that a permit is valid for 12 months from the Director's date of approval, which is specified on the permit. If this proposed rule is adopted, the ATF Form 6 will be revised under currently approved OMB control number 1140–0005 to reflect the 2 year (24 months) amended period of validity for import permits.

Public Participation

A. Comments Sought

ATF is requesting comments on the proposed rule from all interested persons. All comments must reference this document docket number (ATF 43P), be legible, and include your name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or in paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is confidential under law (*e.g.,* trade secrets, processes, *etc.*). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked ''confidential'' at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12-point size of type (.17 inches), include the commenter's mailing address, be signed, and may be of any length.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

(1) Be legible and appear in minimum 12-point size of type (.17 inches);

(2) Be on 8½″ × 11″ paper;

(3) Contain a legible, written signature; and

(4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the Federal eRulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this proposed rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–8740.

Drafting Information

The author of this document is Deborah G. Szczenski; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects

27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR parts 447 and 479 are proposed to be amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

1. The authority citation for 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

§ 447.43 [Amended]

2. Section 447.43 is amended by removing the phrase ''one year'' in paragraph (a) and adding in its place the phrase ''two years''.

PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

3. The authority citation for 27 CFR part 479 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 479.111 [Amended]

4. Section 479.111 is amended by removing the phrase ''one year'' in the eighth sentence in paragraph (a)(3) and adding in its place the phrase ''two years''.

Dated: January 30, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–2472 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

[SATS NO. TN–001–FOR; OSM 2011–0010]

Tennessee Abandoned Mine Land Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on program amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Tennessee Abandoned Mine Land (AML) Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Tennessee has submitted the amendment to reflect statutory, regulatory, policy, procedural, and organizational changes that have occurred since 1984, when the State's AML program was affected by the withdrawal of the State's regulatory program.

This document gives the times and locations that the Tennessee AML reclamation plan is available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time March 7, 2012. If requested, we will hold a public hearing on March 2, 2012. We will accept requests to speak until 4 p.m., local time on February 21, 2012.

ADDRESSES: You may submit comments, identified by ''TN–001–FOR; Docket ID: OSM–2011–0010'' by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2011–0010. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier:

Mr. Earl D. Bandy Jr., Field Office Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 701 Locust Street, Second Floor, Knoxville, TN 37902.

Mr. Tim Eagle, Manager, Land Reclamation Section, Knoxville Field Office, Department of Environment and Conservation, 2711 Middlebrook Pike, Knoxville, TN 37921.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *www.regulations.gov,* information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Knoxville Field Office.

Mr. Earl D. Bandy Jr., Field Office Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 701 Locust Street, Second Floor, Knoxville, TN 37902. Telephone: (865) 545–4103, Email: *ebandy@osmre.gov.*

Mr. Tim Eagle, Manager, Land Reclamation Section, Department of Environment and Conservation, Knoxville Field Office, 3711 Middlebrook Pike, Knoxville, TN 37921. Telephone: (865) 594–6035, Email: *tim.eagle@state.tn.us.*

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy Jr., Telephone: (865) 545–4103. Email: *ebandy@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Tennessee Program
II. Description of the Request
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Tennessee Program

Regulatory Program (Title V): Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Tennessee program on August 10, 1982. *See* 47 FR 34753.

Withdrawal of Tennessee's Regulatory Program: Because of the State's failure to effectively implement, administer, maintain, or enforce its program, the Director of OSM on April 8, 1983, notified the Governor of the problems and sought corrective measures pursuant to 30 CFR part 733. OSM subsequently concluded that the State failed to adequately indicate its intent and capability to implement, maintain, and enforce its regulatory program and, on April 18, 1984, OSM substituted direct Federal enforcement of the inspection and enforcement portions of the TN regulatory program pursuant to 30 CFR 733.12. *See* 49 FR 15496.

On May 16, 1984, the State repealed most of the Tennessee Coal Surface Mining Law of 1980 effective October 1, 1984, and OSM withdrew approval of the Tennessee performance regulatory program in full, effective October 1, 1984. *See* 49 FR 38874.

Abandoned Mine Lands Program (Title IV): Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or Federal law. Title IV provides that a state with an approved surface mining regulatory program may have an AML program approved which gives it the responsibility and primary authority to implement the plan. On August 10, 1982, Tennessee's reclamation plan was approved. *See* 47 FR 34757.

Suspension of Tennessee's AML Program: Because Tennessee's regulatory program was withdrawn, Tennessee's AML program was also affected. Section 405(c) of the Act provides that the Secretary shall not approve, fund, or continue to fund a state AML program unless that state has an approved state regulatory program pursuant to Section 503 of the Act. Regulations implementing this provision were formerly found at 30 CFR 884.11, State Eligibility.

The requirements of 30 CFR 884.16, Suspension of Plan, provide that upon withdrawal of regulatory program approval, the Director must suspend the AML Plan. Formal suspension of a state's Reclamation plan results in the following consequences: (1) The state is no longer eligible to receive the 50% allocation of the AML funds collected within the state; (2) funds which have been allocated to the state but have remained unexpended for three years may be withdrawn by the Director and used in any eligible area in the country, and (3) OSM will conduct only limited reclamation efforts in the state addressing only the highest priority

problems which threaten the public health and safety. On October 5, 1984, OSM assumed responsibility and authority for carrying out the provisions of Title IV within the state of Tennessee. *See* 49 FR 15505.

Since that time, Tennessee no longer received an annual distribution of Federal funds for the purposes of carrying out an AML program (including administrative costs). Emergency and non-emergency projects in Tennessee were addressed by OSM, with OSM utilizing Federal contracts or cooperative agreements between OSM and Tennessee to procure construction services.

Tennessee as a Minimum Program State: As a result of the AML Reauthorization Bill of 2006 (2006 SMCRA Amendment), the Congress authorized Tennessee to have an AML program and considered it a minimum funded program state, without a permanent regulatory program. The Bill provided that beginning in FY2008, Tennessee would be able to expend funds for reclamation of inventoried projects in accordance with the priorities of Section 403(a)(1) and (2). Since Tennessee is now authorized as a ''minimum program state,'' it is also eligible to receive funding to assume primary responsibility for administering the emergency program within the state.

Updated Federal regulations: As stated above, at the time of Tennessee's regulatory program withdrawal, the Federal regulations at 30 CFR 884.16 precluded a regulatory authority from receiving Federal funding for an AML program if its regulatory program was withdrawn. However, the 2006 SMCRA Amendment granted exceptions from that rule. The Federal regulations at 30 CFR 884.11 were amended on November 14, 2008, and now provide that the states of Tennessee and Missouri are exempt from the requirement for an approved state regulatory program by Section 402(g)(8)(B) of SMCRA and are eligible to have an AML reclamation plan and funding. *See* 73 FR 67642.

II. Description of the Request

By letter dated April 6, 2011, (Administrative Record Number TN–1671), Tennessee sent us a request to approve its Tennessee Reclamation Plan amendment. Currently, 30 CFR 942.20, Approval of Tennessee reclamation plan for lands and waters affected by past coal mining, refers to the Tennessee Reclamation Plan as submitted on March 24, 1982, as being the currently approved plan of record. This amendment seeks to address Federal and state changes that occurred since 1984, when the State's regulatory program was withdrawn.

This amendment request formalizes discussions that took place between OSM and the State since the 2006 SMCRA Amendment. In a letter dated August 6, 2007 (Administrative Record No. TN–1670), OSM noted that an AML plan revision was necessary to update the reclamation plan of record to include any Federal and state changes that had occurred since 1984 as further described below:

Federal Statutory Changes: There were three statutory changes and one Presidential order that occurred since TN forfeited primacy in 1984 that had an impact on the effectiveness of the current AML plan of record: (1) The Abandoned Mine Reclamation Act of 1990: This bill revised the AML program to address interim program sites, insolvent sureties, AMD and mined land set-aside funds, fund objectives and priorities, and other issues; (2) Energy Policy Act of 1992: This bill revised the AML program in areas of coal remining, and abandoned coal refuse sites, as well as cooperative agreements for coal formation fire control projects; and (3) AML Reauthorization Bill of 2006: This bill extended the AML fee collection authority from 2007 to 2021 and revised the AML program in the areas of appropriation of funds, allocation formulas, fund objectives and priorities, AMD set aside accounts, water supply projects, state share payments, remining incentives, and minimum program funding to include the State of Tennessee.

Federal Regulatory Changes: Changes made to the Federal regulatory provisions, as a result of the aforementioned statutory changes, affecting Tennessee's current Reclamation Plan of record are as follows: 30 CFR part 872, Moneys Available to Eligible States and Indian tribes; Part 874, General Reclamation Requirements; Part 876, Acid Mine Drainage Treatment and Abatement Program; Part 879, Management and Disposition of Lands and Water; Part 882, Reclamation on Private Land; Part 884, State Reclamation Plans; and Part 886, Reclamation Grants for Uncertified States and Indian Tribes. These regulation changes involved changes to the definitions of eligible lands and water, interim program eligibility requirements, reclamation objectives and priority designations, reclamation contractor responsibilities, state reclamation grant reporting, grant requirements, water supply projects, AMD set-aside accounts, and government-financed construction projects. *See* 73 FR 67638.

Presidential Order—Grants management: Other Federal changes affecting Tennessee's current Reclamation Plan of record include changes to grant laws, policies, and procedures that have occurred since 1984. Currently, Federal grant funds (including AML grant funds) are governed by the guidelines issued by the President's Office of Management and Budget (OMB). On March 12, 1987, the President directed all affected agencies to issue a common grants management rule to adopt Government-wide terms and conditions for financial assistance to state and local governments (referred to as the Grants Management Common Rule). The OMB Circular A–102 was revised in 1988 to provide additional guidance to Federal agencies. The Department of the Interior issued its common rule on March 11, 1988, at 43 CFR part 12.

The Grants Management Common Rule allows states to use their own procedures to manage their financial management, equipment, and procurement systems. OMB Circular A–102 was revised on October 14, 1994, to include updated direction on: (1) Implementation of the metric system; (2) review of infrastructure investment; (3) implementation of the Resource Conservation and Recovery Act; and (4) public announcement of the amount of Federal funds used in certain contract awards. As a result of the Presidential Order, the grants management guidelines were codified at 43 CFR part 12 and extensive revisions were made to OSM's Federal Assistance Manual (FAM). In addition to the changes resulting from the Common Rule, OSM had simplified the AML grant process in 1993 and these changes were also incorporated into the FAM.

State Statutes and Regulations: The current Tennessee AML Reclamation Plan on record references Tennessee statute (Tennessee Coal Surface Mining Law of 1980) and regulations (Chapter 0400–1–24 of the Rules of the Tennessee Department of Conservation, Division of Surface Mining). Any changes to state statutes and regulations regarding the AML program should be reviewed to assure that they are not inconsistent with Federal statutes and regulations.

State Policies, Procedures, and Administrative and Organization: Federal regulations at 30 CFR 884.13 outline the content of the AML reclamation plans. This includes state agency designations and legal opinions; description of the policies and procedures to be followed by the designated agency in conducting the

reclamation program; and a description of the administrative and management structure to be used in conducting the reclamation program. These designations, opinions, policies, procedures (including coordination procedures), and organizational entities should be updated as necessary.

Content of the Revised Tennessee Reclamation Plan: Tennessee has submitted an updated reclamation plan in an effort to address the concerns noted above. The revised plan includes the following sections: Governor's Letter of Designation; Legal Opinions; Purpose of the State Reclamation Program; Ranking and Selection; Coordination with Other Programs; Land Acquisition, Management and Disposal; Reclamation on Private Land; Rights of Entry; Public Participation Policies; Organization; Staffing Policies; Purchasing and Procurement; Accounting System; Description of Problems Occurring on Lands and Waters; Reclamation Proposals; Economic Base; Aesthetic, Historical or Cultural, and Recreation Values; and Endangered and Threatened Plant, Fish, Wildlife and Habitat. The revised plan replaces the old plan and is revised in parts; redesignated in parts; removed in parts and added in parts. Due to the extensive overhaul and a total rewrite of the plan, a section by section description of changes was not included.

Below includes some of the changes made on behalf of Tennessee to address OSM recommendations noted above:

The plan was revised to indicate that the division of Water Pollution Control, Land Reclamation Section is now responsible for ensuring AML reclamation, managing major functions, collecting data entered into AML inventory system pursuant to OSM directives, developing policies and procedures, and requesting legal assistance from General Counsel who determines eligibility. A revised organizational chart was also included.

With regard to AML problem eligibility, Tennessee has added that AML problems include landslide hazards, highwalls, flooding, erosion, sedimentation, acid drainage, coal seam/refuse fires, subsidence, water loss, dangerous impoundments, abandoned structures/equipment, open mine portals, and open mine shafts and refuse areas and revised priority designations. A statement was also made that written approval will be obtained from OSM before commencement of AML project construction.

With regard to reclamation on private land and rights of entry, the plan was revised to include the state's acquisition, management, and disposal of land disturbed by past mining; address appraisals on private land; revise written consents regarding entry to private lands; and add a procedure for when written consents cannot reasonably be obtained or the owner is unknown and/or cannot be located.

References to OMB Circular A–102 were removed and a statement that purchasing and procurement systems used for all contracts conform to the requirements of the Grants Management Common Rule was added. In addition, statements regarding the procurement approval process, competition, small business utilization, advertising, bidder eligibility, and independent audits are also included.

With regard to public participation, the plan was revised to provide that the State will use OSM's public participation process; public notices will be placed in local newspapers; and public participation policies are provided during the construction of the annual work plan.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.14 and 884.15, we are seeking your comments on whether the submission satisfies the applicable plan approval criteria of 30 CFR 884.13.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time February 21, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a state submits a plan amendment to OSM for review, our regulations at 30 CFR 884.14 and 884.15 require us to hold a public hearing on a plan amendment if it changes the objectives, scope or major policies followed, or make a finding that the State provided adequate notice and opportunity for public comment.

Tennessee is a Federal program and this amendment seeks to reinstate Tennessee's AML plan therefore we are publishing a **Federal Register** notice indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 942

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2012–2651 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2011–0563]

RIN 1625–AA01

Special Anchorage Areas; Port of New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to (1) establish two special anchorage areas along the Hudson River adjacent to Manhattan at the 79th Street Boat Basin; (2) establish two special anchorage areas on Sandy Hook Bay at Atlantic Highlands, NJ; (3) disestablish the western special anchorage area in Sheepshead Bay, NY; and (4) disestablish the Captain of the Port New York Commercial Mooring Buoy permit regulations and table displaying the mooring anchor, chain, and pendant requirements. This proposed action is necessary to facilitate safe navigation in these areas and provide safe and secure anchorages for vessels not more than 65 feet in length. This action is intended to increase the safety of life and property in New York City and Atlantic Highlands, NJ, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must be received by the Coast Guard on or before April 6, 2012. Requests for public meetings must be received by the Coast Guard on or before February 27, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0563 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt, Waterways Management Division at Coast Guard First District, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0563), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0563'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0563'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

The proposed rule is intended to reduce the risk of vessel collisions by establishing two special anchorage areas in the Hudson River near the 79th Street Boat Basin, Manhattan, NY; establishing two special anchorage areas in Sandy Hook Bay at Atlantic Highlands, NJ; requiring all vessels and anchors to remain entirely within the northern and southern special anchorage areas in Sheepshead Bay, NY; and reducing the illegal mooring of vessels and dinghies to New York City property by disestablishing the western special anchorage area at Sheepshead Bay, NY. The proposed rule is also intended to reduce the confusion among professional and recreational mariners by disestablishing the Captain of the Port New York Commercial Mooring Buoy permit regulations and Table § 110.155(l)(7) displaying the mooring anchor, chain, and pendant requirements. These regulations are in conflict with current U.S. Army Corps of Engineers Federal regulations as well as New Jersey and New York local and State laws and regulations.

Discussion of Proposed Rule

The Coast Guard proposes to establish two new special anchorage areas on the Hudson River at the request of New York City Parks and Recreation Department (NYC PARKS).

NYC PARKS requested these particular areas be designated as special anchorage areas as they have been historically used as mooring fields by recreational vessels, are no longer within the boundaries of Anchorage Ground 19 East or 19 West decreasing the knowledge of their presence to other mariners transiting the area, and are within waters under the jurisdiction of New York City.

The proposed rule would establish a special anchorage area to the north and south of the 79th Street Boat Basin along the Manhattan shoreline of the Hudson River, maintaining anchorage for approximately 126 vessels in two currently designated mooring fields. The first of these areas is approximately 530 yards by 170 yards, encompasses 18.40 square acres, and is about 160 yards south of the 79th Street Boat Basin. The second of these areas is approximately 2,630 yards by 160 yards, encompasses 89.90 square acres, and is north and adjacent to the 79th Street Boat Basin.

The Coast Guard proposes to establish two new special anchorage areas on Sandy Hook Bay within the boundary of the Atlantic Highlands Municipal Harbor. The Borough of Atlantic Highlands requested these particular areas be designated as special anchorage areas because they have been historically used as mooring fields by recreational vessels, are within waters under the jurisdiction of the Borough of Atlantic Highlands, and would allow tenants to leave their anchor lights off during hours of darkness. The majority of their tenants do not stay on their vessels at night. Leaving their lights on overnight could result in dead batteries and inoperable bilge pumps, which could in turn result in vessels taking on water and sinking, disrupting other tenants in the area.

The proposed rule would establish two special anchorage areas inside the charted breakwater at Atlantic Highlands, NJ, on Sandy Hook Bay, maintaining anchorage for approximately 195 vessels in two currently designated mooring fields. The first area is approximately 1,060 yards by 250 yards, encompasses about 51.7 square acres, and is about 100 yards north of the Atlantic Highlands Municipal Harbor. The second area is approximately 465 yards by 215 yards, encompasses about 19.7 square acres, and is east of and adjacent to the Atlantic Highlands Municipal Harbor.

The proposed rule would establish a new requirement that all vessels and anchors remain within the northern and southern special anchorage areas in Sheepshead Bay, NY at all times. During times of high winds, vessels moored near the edge of these special anchorage areas were observed swinging out into Sheepshead Bay, interfering with the transit of chartered fishing boats to and from their NYC-managed piers to the west. Since moored vessels in a special anchorage area are exempt from the Inland Rules of the Road [Rule 30 and Rule 35 (33 CFR 83)], vessels swinging outside the special anchorage area boundaries create a high risk of collision with larger charter fishing vessels and event vessels that transit past these special anchorage areas, especially at night and during times of inclement weather. Also, when larger charter fishing vessels and event vessels maneuver to avoid colliding with recreation vessels that swing outside the special anchorage area, it creates a hazardous, close-quarters situation with two categories of vessels:

(1) Other larger charter fishing vessels and event vessels operating between these two special anchorage areas, and

(2) Recreational vessels swinging outside of the opposite special anchorage area.

The Coast Guard also proposes to disestablish the western special anchorage area in Sheepshead Bay, NY at the request of NYC Parks. NYC Parks reports that vessels are using this special anchorage area to circumvent the guest mooring options maintained by the Sheepshead Bay boating clubs under the authority of NYC Parks. NYC Parks reports that these vessel owners secure their dinghies to the surrounding sea walls, commercial piers, or pedestrian foot bridge while the owners go ashore. This is prohibited by New York City laws and regulations and the dinghies have been confiscated by NYC Parks. This area is approximately 375 yards by 80 yards that encompasses about 6.27 square acres and is near the western end of Sheepshead Bay.

This rule would disestablish the Captain of the Port New York Commercial Mooring Buoy permit regulations at 33 CFR 110.155(l)(8), along with Table § 110.155(l)(7) displaying the mooring anchor, chain, and pendant requirements. The commercial mooring buoy permits are now issued by the United States Army Corps of Engineers (USACE) under the authority of 33 CFR 322 and 33 CFR 330. The co-location of many commercial Anchorage Grounds and recreational special anchorage areas in many locations has caused confusion with many mariners regarding the issuance of these permits. As special anchorage areas are located along the shoreline they fall within the jurisdiction of the States of New Jersey and New York. Both New Jersey and New York have State Coastal Zone Management or State Navigation regulations with jurisdiction over the placement and permitting of recreational mooring buoys. Removing these mooring buoy permit regulations would reduce confusion among

professional and recreational mariners, and remove Federal regulations that conflict with USACE regulations as well as New Jersey and New York State laws and regulations.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, New York District, located at 26 Federal Plaza, New York, NY 10278. For permitting information, mariners should contact the NYC Parks Brooklyn Permit Office at (718) 965–8975. For guest moorings and access to/from the eastern special anchorage areas mariners may contact the following boating clubs: Miramar Yacht Club (718) 769–3548; Port Sheepshead (917) 731–8607; or Sheepshead Yacht Club (718) 891–0991.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as the special anchorage areas on the Hudson River and Sandy Hook Bay have historically been used as mooring fields by NYC Parks and the town of Atlantic Highlands, NJ.

The regulation requiring all vessels anchoring in Sheepshead Bay, NY to remain entirely within the northern and southern special anchorage areas at all times has the potential to reduce the number of vessels that are able to anchor within the special anchorage areas. However, this is necessary to maintain an open area for larger charter fishing vessels and event vessels transiting to and from NYC Parks maintained fishing piers to the west.

Disestablishing the western special anchorage area in Sheepshead Bay, NY would reduce the area available for mooring recreational vessels; however, NYC Parks requested this action in order to reduce the illegal mooring of vessels and dinghies to NYC property while the vessel owners/operators are ashore. These vessels would still be able to anchor on transient vessel moorings in the northern and southern special anchorage areas in Sheepshead Bay, NY.

We expect minimal additional cost impacts on the tug and barge operators because this rule would disestablish USCG permitting regulations that are currently under the jurisdiction of the District Engineer, U.S. Army Corps of Engineers.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational and small fishing vessels intending to anchor in the Hudson River, Sandy Hook Bay, NJ, and Sheepshead Bay, NY. The proposed rule would not have a significant economic impact on a substantial number of small entities for the same reasons outlined above in the ''Executive Order 12866 and Executive Order 13563'' section.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1 (888) REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. We believe the proposed rule would be categorically excluded, under figure 2–1, paragraph (34)(f) of the Instruction because it involves the establishment, and disestablishment, of special anchorage areas and anchorage ground regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary environmental analysis checklist is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.60 to read as follows:

§ 110.60 Captain of the Port, New York.

* * * * *

(c) * * *

(12) 79th Street Boat Basin South. All waters of the Hudson River enclosed by a line beginning at the northwest corner of the 70th Street pier at approximate position 40°46′47.10″ N, 073°59′29.13″ W; thence to 40°47′02.60″ N, 073°59′17.88″ W; thence to 40°46′59.73″ N, 073°59′13.01″ W; thence along the shoreline and pier to the point of beginning.

(13) 79th Street Boat Basin North. All waters of the Hudson River enclosed by a line beginning on the shoreline near West 110th Street at approximate position 40°48′21.06″ N, 073°58′15.72″ W; thence to 40°48′21.06″ N, 073°58′24.00″ W; thence to 40°47′14.70″ N, 073°59′09.00″ W; thence to 40°47′11.84″ N, 073°59′08.90″ W; thence along the breakwater and shoreline to the point of beginning.

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (c)(12) and (c)(13) of this section will be under the supervision, and at the discretion, of the local Harbor Master appointed by the City of New York. Mariners may contact the boat basin on VHF CH 9 or at (212) 496–2105 for mooring and anchoring availability. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage.

(ii) [Reserved.]

(d) * * *

(6) [Reserved.]

* * * * *

(8) * * *

(i) The anchoring of vessels and use of the moorings in anchorage areas described in paragraphs (d)(7) and (d)(8) of this section will be under the supervision, and at the discretion, of the local Harbor Master appointed by the City of New York. All moorings or anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage. For permitting information mariners should contact the NYC Parks Brooklyn Permit Office at (718) 965–8975. For guest moorings and access to and from the anchorage areas described in paragraphs (d)(7) and (d)(8) mariners may contact the following boating clubs: Miramar Yacht Club (718) 769–3548; Port Sheepshead (917) 731–8607; or Sheepshead Yacht Club (718) 891–0991.

(ii) [Reserved].

* * * * *

(11) Atlantic Highlands North. All of the waters of Sandy Hook Bay enclosed by a line beginning on the breakwater at approximate position 40°25′08.56″ N, 074°01′19.66″ W; thence to 40°25′01.59″ N, 074°01′22.70″ W; thence to 40°25′06.97″ N, 074°01′59.80″ W; thence to 40°25′11.93″ N, 074°02′01.54″ W thence along the breakwater to the point of origin.

(12) Atlantic Highlands South. All of the waters of Sandy Hook Bay enclosed by a line beginning on the shoreline at approximate position 40°24′53.97″ N, 074°01′32.49″ W; thence to 40°24′59.86″ N, 074°01′31.07″ W; thence to 40°25′02.20″ N, 074°01′48.60″ W; thence to 40°24′57.42″ N, 074°01′50.53″ W; thence along the shoreline to the point of origin.

(i) Mariners using the anchorage areas described in paragraphs (d)(11) and (d)(12) must contact the local harbormaster, to ensure compliance with any additional applicable state and local laws.

(ii) [Reserved]

(e) Datum. All positions are NAD 1983.

3. Revise § 110.155 to read as follows:

§ 110.155 Port of New York.

* * * * *

(l) * * *

(8) Operations near commercial mooring buoys permitted by the District Engineer, U.S. Army Corps of Engineers.

(i) No vessel shall continuously occupy a mooring when a vessel in regular traffic requires the berth or when navigation would be menaced or inconvenienced thereby.

(ii) No vessel shall moor or anchor in any anchorage in such a manner as to interfere with the use of a duly authorized mooring buoy. Nor shall any vessel moored to a buoy authorized by the District Engineer, U.S. Army Corps of Engineers be moored such that any portion of that vessel comes within 50 feet of a marked or dredged channel.

(iii) No vessel shall be operated within the limits of an anchorage at speed exceeding 6 knots when in the vicinity of a moored vessel.

(iv) In an emergency the Captain of the Port may shift the position of any unattended vessel moored in or near any anchorage.

* * * * *

Dated: January 23, 2012.

D.A. Neptun,

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

[FR Doc. 2012–2550 Filed 2–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1126]

RIN 1625–AA87

Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Coast Guard is proposing to establish security zones around designated participating vessels that are not protected by the Naval Vessel Protection Zone in Seattle's Seafair Fleet Week, while those vessels are in the Sector Puget Sound Captain of the Port (COTP) Zone. A designated participating vessel is a vessel that is named by the Coast Guard each year prior to the event in a **Federal Register** notice, as well as the Local Notice to Mariners. These security zones are necessary to help ensure the security of the vessels from sabotage or other subversive acts during Seattle's Seafair Fleet Week Parade of Ships and while moored in the Port of Seattle. The Coast Guard will ensure the security of these vessels by prohibiting any person or vessel from entering or remaining in the security zones unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 7, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1126 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ensign Anthony P. LaBoy, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217–6323, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1126), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1126'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1126'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

Seattle's Seafair Fleet Week is an annual event which brings a variety of military vessels to Seattle. During the event, the visiting military vessels are at risk because of their military function, and because they will be transiting in the Parade of Ships in close proximity to spectators, highly populated areas, and other unscreened vessels. Thousands of visitors are given tours on board these vessels throughout the week while they are moored in downtown areas of Seattle. This increases the necessity to ensure the security of each vessel. This rule is necessary to ensure the security of visiting foreign and domestic military vessels not covered under the Naval Vessel Protection Zone (NVPZ). The size of these security zones is necessary to ensure the security of the visiting vessels and is intended to mirror the NVPZ as defined in 33 CFR 165.2015. This is because it is important for the on-scene patrol to have a consistent zone size for all participating ships in order to maintain control and minimize confusion. The security zones will help prevent any acts which would harm the vessels and their crew and endanger vessels, property, and persons along the parade route.

Discussion of Proposed Rule

The security zones that would be established by this proposed rule would prohibit any person or vessel from entering or remaining within 500 yards of each designated participating vessel during Seattle's Seafair Fleet Week while in the Sector Puget Sound COTP zone. The Coast Guard will publish an annual notice in the **Federal Register** naming the designated participating vessels at least 3 days before that year's event and will also provide this information in the Local Notice to Mariners. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zone, as long as those vessels within the outer 400 yards of the security zone operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under Executive Order 13563, Improving Regulation and Regulatory Review. The Office of Management and Budget has not reviewed it under either Order.

The Coast Guard bases this finding on the fact that the security zones will be in place for a limited period of time and vessel traffic will be able to transit around the security zones. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound or a Designated Representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters covered by the security zones for approximately 1 week each year when the zones for that year's fleet week are identified and subject to enforcement. The rule will not have a significant economic impact on a substantial number of small entities because the security zones will be in place for a limited period of time and maritime traffic will still be able to transit around the security zones. Maritime traffic may also request permission to transit though the zones from the COTP, Puget Sound or a Designated Representative.

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

Assistance for Small Entities

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

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of security zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § *165.1333* to read as follows:

§ 165.1333 Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA.

(a) *Location.* The following areas are security zones: all navigable waters within 500 yards of each designated participating vessel while each such vessel is in the Sector Puget Sound Captain of the Port (COTP) zone, as defined in 33 CFR 3.65–10, during a time specified in paragraph (e) of this section. The Coast Guard will publish a notice in the **Federal Register** each year at least 3 days before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that year. The Coast Guard will also provide this information in the Local Notice to Mariners.

(b) *Definitions.* For purposes of this section—

Designated participating vessel means a military vessel participating in the Seattle Seafair Fleet Week that has been designated by the Sector Seattle COTP in accordance with this section.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to implement or enforce this section.

Seattle Seafair Fleet Week means an annual event involving a parade of U.S. Navy, U.S. Coast Guard, and Canadian military ships in Seattle's Elliott Bay waterfront and tours of those ships while docked at Port of Seattle facilities.

(c) *Regulations.* Under 33 CFR Part 165, Subpart D, no person or vessel may enter or remain in the security zones described in paragraph (a) of this section without the permission of the COTP or a designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones.

(d) *Authorization.* All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or a Designated Representative by contacting the on-scene Coast Guard patrol craft on VHF 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene Coast Guard patrol craft

until they are outside of the security zones.

(e) *Annual enforcement period.* The security zones described in paragraph (a) of this section will be enforced during Seattle Seafair Fleet Week each year for a period of up to one week. The Seattle Seafair Fleet Week will occur sometime between July 25 and August 14. The annual **Federal Register** notice identifying the designated participating vessels will also identify the specific dates of the event for that year.

Dated: January 17, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–2388 Filed 2–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

48 CFR Part 422

RIN 0599–AA19

Office of Procurement and Property Management; Agriculture Acquisition Regulation, Labor Law Violations; Withdrawal

AGENCY: Office of Procurement and Property Management, Departmental Management, Department of Agriculture.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) is withdrawing the December 1, 2011 (76 FR 74755) proposed rule adding a new clause to the Agriculture Acquisition Regulation at subpart 422.70 entitled ''Labor Law Violations'' that would have a contractor certify upon accepting a contract that it is in compliance with all applicable labor laws and that, to the best of its knowledge, its subcontractors of any tier, and suppliers, are also in compliance with all applicable labor laws.

DATES: As of February 6, 2012, the proposed rule published on December 1, 2011, at 76 FR 74755, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Donna Calacone, Office of Procurement and Property Management, at (202) 205–4036 or by mail at OPPM, MAIL STOP 9306, U.S. Department of Agriculture, 300 Seventh St. SW., Washington, DC 20250–9306. Please cite ''48 CFR 422 Proposed Rule'' in all correspondence.

SUPPLEMENTARY INFORMATION: USDA is withdrawing its proposed rule published on December 1, 2011 (76 FR 74755), entitled ''Office of Procurement and Property Management, Agriculture Acquisition Regulation, Labor Law Violations.''

List of Subjects in 48 CFR Part 422

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

Signed in Washington, DC, on February 1, 2012.

Jodey Barnes-Edwards,

Deputy Director, Office of Procurement and Property Management.

[FR Doc. 2012–2639 Filed 2–1–12; 4:15 pm]

BILLING CODE 3410–98–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2010–0009]

RIN 2132–AB02

Major Capital Investment Projects (NPRM); Public Meetings

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Proposed rule, Notice of Public Meeting.

SUMMARY: This document announces the dates, times, and locations of three public meetings and a webinar regarding the Notice of Proposed Rulemaking (NPRM) recently issued by the Federal Transit Administration (FTA) for its discretionary Major Capital Investments program (''New Starts'' and ''Small Starts''). During these sessions, FTA staff will provide information on the NPRM and answer questions from interested persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting and webinar dates.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, (202) 366–5159; for questions of a legal nature, Christopher Van Wyk, Office of Chief Counsel, (202) 366–1733. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for the meeting locations.

SUPPLEMENTARY INFORMATION: On January 25, 2012, FTA issued an NPRM (77 FR 3848) that proposes a new regulatory framework for evaluation and rating of New Starts and Small Starts projects seeking Federal financial assistance. This NPRM would amend the regulations for Major Capital Investment Projects at 49 CFR 611. The docket for comments on the NPRM is open through March 26, 2012. The meetings and webinar listed below will provide a forum for FTA staff to make oral presentations on the NPRM and for participants to ask questions. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the January 25, 2012, NPRM.

I. Meetings

Information on the public outreach session meeting dates and addresses follows:

1. Wednesday, February 15, 2012: Cityplace Conference Center, 10 a.m. to 2 p.m. Central, 2711 North Haskell Avenue, Dallas Texas 75204.
2. Thursday, February 16, 2012: San Diego County Administration Building, 10 a.m. to 2 p.m. Pacific, 1600 Pacific Highway, San Diego, California 92101.
3. Thursday, February 23, 2012: MARTA Headquarters Atrium, 10 a.m. to 2 p.m. Eastern, 2424 Piedmont Road NE., Atlanta, Georgia 30324.

II. Webinar

FTA will host a webinar on Tuesday, February 28, 2012. Additional information on the time the webinar will be held and instructions for obtaining access to the webinar will be posted on FTA's Web site at *http://www.dot.fta.gov*.

III. Format of the Meetings and Webinar

FTA staff will make presentations on the NPRM, and participants in the public meetings and webinar will have an opportunity to pose questions to the FTA staff. Neither the three meetings nor the webinar will be a forum for submitting comments on the NPRM. It is the responsibility of individuals who wish for their comments to become part of the official public record to submit their comments directly to the official docket for the rulemaking. Instructions for doing so can be found in the January 25, 2012 NPRM.

III. Registration

Registration is not required in order to attend one of the public meetings or participate in the webinar. To ensure adequate space and handouts, however, persons who intend to participate in the public meetings are encouraged to register for the outreach sessions on FTA's web site at *http://www.dot.fta.gov*.

IV. Special Accommodations

All locations are ADA-accessible. Individuals attending a meeting who are hearing or visually impaired and have special requirements or require special assistance may contact Elizabeth Day at (202) 366–5159 or *Elizabeth.Day@dot.gov*.

Issued in Washington, DC, on this 31st day of January 2012.

Peter Rogoff,

Federal Transit Administrator.

[FR Doc. 2012–2565 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120118050–2049–01]

RIN 0648–BB49

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry and State Exemption Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations that implement section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The amendments would eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and clarify and update various provisions of the rule.

DATES: Comments must be received by April 6, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2007–0815, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2007–0815 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Ned Cyr, Director, Office of Science and Technology, NMFS, 1315 East West Highway, Silver Spring, MD 20910, Attn: Gordon Colvin.
- *Fax:* (301) 713–1875; *Attn:* Gordon Colvin.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NMFS Office of Science and Technology at the address above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: (301) 427–8118; fax: 301–713–1875; or email: *gordon.colvin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/index.html.* Background information and documents are available at the NMFS Office of Science and Technology Web site at *http://www.countmyfish.noaa.gov/index.html.*

Background

The proposed action is to amend regulations at 50 CFR 600.1400 that implement the National Saltwater Angler Registry and State Exemption Program (NSAR). The rule established the requirements and procedures for anglers, spear fishers and for-hire fishing vessels to register with NMFS unless exempt from the registration requirement. The NSAR regulations also established the requirements and procedures whereby states may be designated as Exempted States. The anglers and for-hire fishing vessels licensed or registered by Exempted States, and those anglers and vessels that are not required to be licensed or registered under the laws of such states, are not required to register with NMFS.

Based on its experience with administering NSAR and input from states, NMFS has determined that minor revisions to the final rule are needed to clarify and update certain provisions in order to address the following objectives: (1) Eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; (2) allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; (3) allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and (4) clarify and update various provisions of the rule.

A summary of the proposed changes and supporting statements follows:

Objective 1: Amend § 600.1405(b)(8) to provide that holders of Main Hawaiian Islands (MHI) Non-commercial Bottomfish Permits do not need to register under NSAR. The NMFS permit database already includes holders of MHI non-commercial bottomfish permits. This permit data can be added to the registry database without requiring the bottomfish permit holders to also register under NSAR. This would eliminate duplicative registration and fee payment by the approximately 50 holders of MHI Non-commercial bottom fish permits.

Objective 2: Amend § 600.1416(b)(1) to allow a state to be eligible for Exempted State designation even if its licensing program excludes anglers under age 17. During development of the original rule for NSAR, NMFS determined that it is not necessary to require that minors be included in the lists of persons that must be registered. This is because surveys that sample from angler registry lists will contact the households of registrants and can request information regarding the fishing activity of minors residing in the same households. All states have exceptions to state license or registration requirements for minors,

and the final rule provides that these exceptions do not disqualify the states from being designated as Exempted States due to the exclusion of minors. At the time the final rule was adopted, NMFS thought that specifying that an Exempted State may have a state license/registry exception for minors under age 16 would cover all of the states' exceptions. However, one state, Texas, excludes anglers under 17 years of age from its state licensing requirement. For the same reason that NMFS previously determined that state exceptions for minors under age 16 should not disqualify states from Exempted State designation, NMFS is proposing a state license exception for anglers under age 17 in the exceptions that are acceptable for Exempted State designation.

In addition, the proposed rule would allow a state to be eligible for Exempted State designation even if it allows new anglers to fish for a day (a ''free fishing day'') without a license. Many states engage in fishing promotion programs that are intended to recruit new anglers and license buyers. Exclusion from the registry of the limited number of participants that fish only that one time and do not continue to fish or purchase a license is not likely to adversely affect the quality and usefulness of the registry database.

Objective 3: Amend § 600.1417(b) to separate the U.S. Virgin Islands (USVI) and Puerto Rico into separate regions for purposes of submission of regional surveys of recreational fishing catch. Section 600.1417 states that, to be designated as an Exempted State, a state may submit to NMFS a proposal describing the state's participation in a qualifying regional survey. The regulations currently provide that Puerto Rico and USVI are one region. The fisheries in USVI and Puerto Rico are different and utilize separate stocks. Due to the differences in the fisheries, and in differing cultural and logistical considerations in carrying out surveys, it may be appropriate to utilize survey designs in USVI that are different from the design in use at present in Puerto Rico. Separating Puerto Rico and USVI into two separate regions will facilitate development and implementation of regional surveys in the USVI and Puerto Rico that qualify for exempted state designation under § 600.1417.

Objective 4: Clarify and update various sections of 50 CFR 600. The amendments proposed under this objective are as follows:

- *Section 600.1400:* For ease of making changes to the Definitions section in the future, we proposed to delete the paragraph labels (a) through (j), but retain all of the current definitions. The following definitions will be retained with no change: ''Anadromous species''; ''Angler''; ''Authorized officer''; ''Continental shelf fishery resources''; ''Exempted state''; ''For-hire fishing vessel''; ''Indigenous people''; ''Spearfishing''; ''State''; ''Tidal waters''.
- *Section 600.1400:* Add a definition of ''combination license''. Exempted States submit to NMFS lists of persons who hold any type of state license or registration that permits fishing in tidal waters, including combination licenses that allow the holders to engage in more than one type of fishing or hunting activity, as specified in the individual combination license. Section 600.1416(d)(3) requires Exempted States to identify tidal waters anglers within lists of persons who hold combination licenses. States issue multiple types of hunting and fishing license combination packages that could be construed to fall within this section's combination license umbrella provision. Many holders of combination licenses may never intend to fish in tidal waters, but purchase such a license that includes saltwater fishing in order to take advantage of combination license pricing discounts that include other activities they do intend to pursue. Lists of license holders that include many persons who do not intend to fish in tidal waters are not efficient for use in survey sampling. However, certain types of combination license holder lists can be effectively used for survey purposes if they are comprised predominantly of persons who fish in tidal waters. This definition identifies the kinds of combination license holder lists for which it is necessary to identify the tidal waters anglers in order to assure efficient survey use, as required in § 600.1416(d). For combination license packages that include primarily anglers who intend to fish in tidal waters, the entire list of license holders can be used for survey purposes.
- *Section 600.1400:* Add a definition of ''commercial fishing'' that is consistent with the definition in § 3 of the Magnuson-Stevens Act. This will support the amendment to § 600.1405(b)(7) as described below.
- *Section 600.1405(b)(4):* Correct the citation for the Pacific HMS permit, holders of which are not required to register their for-hire vessels with NMFS under NSAR.
- *Section 600.1405(b)(7):* Clarify that the exception to the NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing. Some for-hire fishing vessels hold state-issued licenses that authorize commercial fishing and/or that are titled as commercial fishing licenses or permits. The amendment would ensure that such vessels would not be treated as a commercial fishing vessel under this paragraph while conducting for-hire recreational fishing. For-hire fishing vessels engaged in for-hire fishing trips are excepted from the NSAR registration requirement by § 600.1405(b)(4), and (b)(6).
- *Section 600.1416(a):* Clarify the existing requirement that lists of licensed anglers/registrants submitted by Exempted States need to be updated at least annually.
- *Section 600.1416(a):* Clarify the requirement that lists of for-hire vessels submitted by Exempted States include vessel names and identifying numbers and vessel owners'/operators' names, addresses and, to the extent available, telephone numbers and dates of birth. This will clarify that states must submit only name and vessel identification number for for-hire vessels. Address, telephone number and date of birth are required for vessel owners/operators, not for vessels.
- *Section 600.1416(c):* Revise the omission of ''registration'' for consistency with the other references to ''license or registration'' throughout the rule.
- *Section 600.1416(c):* Specify that a state may not be designated as an Exempted State if it has any exceptions to state license/registration requirements other than those listed in § 600.1416(b), unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort. The current regulations include a list of unacceptable exceptions, but NMFS cannot predict future exceptions that may be included in State license/registration programs. The proposed rule reinforces the purpose of the NSAR and will clarify that adopting any such exception will render the state ineligible for exempted state designation unless the state can demonstrate that it meets the test provided in § 600.1416(c).
- *Section 600.1416(d):* Provide an extra year for states that need to enact legislation to remain qualified for Exempted State designation. States have indicated that state legislative cycles are such that there is often a long lead time between the identification of the need for legislation and its introduction and passage by a state legislature. This section allows for an extra year for the state resource agency to develop and enact of necessary legislation.

• *Section 600.1416(d)(1):* Clarify that states must update registration data for excluded anglers over the age of 59 annually. As with the information for licensed/registered anglers and holders of lifetime licenses, this information must be updated annually to be current and useful for survey sampling purposes.

• *Section 600.1416(d)(1):* Allow states that do not require persons who were born before June 1, 1940, to be licensed or registered to qualify for Exempted State designations if the state can demonstrate that the number of anglers so excluded is so small that exclusion of this group from a sample will not bias survey results. Some states exclude anglers whose dates of birth are prior to a specified date that assure that the group of excluded anglers is greater than 71 years of age. The size of this age group of anglers is small and will become smaller each year, and a state may be able to demonstrate that exclusion of the group from a sample frame will not bias sample data derived from use of the sample frame.

• *Section 600.1417(b)(3):* Include mail and Internet surveys in the surveys for which registries may be used as sample lists. Mail and Internet surveys are likely to be used in addition to or instead of telephone surveys in the future.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The small entities potentially affected by the proposed rule are fishing vessels that carry passengers for a fee to conduct recreational fishing. The proposed amendments to the rule will not affect the requirements for for-hire fishing vessels to register with NMFS under the NSAR. The proposed amendments will not directly result in any increase in the number of vessels that will be required to register or in the time and cost of registration for those vessels that are currently required to register. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This rule modifies a collection-of-information subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0578. Approval for the modification will be requested from OMB. Public reporting burden for angler registration is estimated to average three minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing this burden to NMFS (see **ADDRESSES**) and by email to *ORIA_Submission@omb.epp.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: February 1, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. *et seq.*

2. Section 600.1400 is revised to read as follows:

§ 600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

Anadromous species means the following:

American shad: *Alosa sapidissima*
Blueback herring: *Alosa aestivalus*
Alewife: *Alosa pseudoharengus*
Hickory shad: *Alosa mediocris*
Alabama shad: *Alosa alabamae*
Striped bass: *Morone saxatilis*
Rainbow smelt: *Osmerus mordax*
Atlantic salmon: *Salmo salar*
Chinook, or king, salmon: *Oncorhynchus tshawytscha*
Coho, or silver, salmon: *Oncorhynchus kisutch*
Pink salmon: *Oncorhynchus gorbuscha*
Sockeye salmon: *Oncorhynchus nerka*
Chum salmon: *Oncorhynchus keta*
Steelhead: *Oncorhynchus mykiss*
Coastal cutthroat trout: *Oncorhynchus clarki clarki*
Eulachon or candlefish: *Thaleichthys pacificus*
Dolly varden: *Salvelinus malma*
Sheefish or inconnu: *Stenodus leucichthys*
Atlantic sturgeon: *Acipenser oxyrhynchus oxyrhynchus*
Shortnose sturgeon: *Acipenser brevirostrum*
Gulf sturgeon: *Acipenser oxyrhynchus desotoi*
White sturgeon: *Acipenser transmontanus*
Green sturgeon: *Acipenser medirostris*

Angler means a person who is angling (see 50 CFR 600.10) in tidal waters.

Authorized officer has the same meaning as in 50 CFR 600.10.

Combination license means either:

(1) A single state fishing license that permits fishing in fresh waters and tidal waters at one price; or

(2) A single state license that permits a group of fishing and hunting activities, including fishing in tidal waters, at a price that is less than the sum of the cost of the individual licenses.

Commercial fishing has the same meaning as in 16 U.S.C. 1802.

Continental shelf fishery resources has the same meaning as in 16 U.S.C. 1802.

Exempted state means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

For-hire fishing vessel means a vessel on which passengers are carried to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.

Indigenous people means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or persons who reside in the western Pacific who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

Spearfishing means fishing for, attempting to fish for, catching or attempting to catch fish in tidal waters by any person with a spear or a powerhead (see 50 CFR 600.10).

State has the same meaning as in 16 U.S.C. 1802.

Tidal waters means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

* * * * *

3. In § 600.1405, revise paragraphs (b)(4), (b)(7) and (b)(8) to read as follows:

§ 600.1405 Angler registration.

(b) * * *

(4) Holds a permit issued by NMFS for for-hire fishing under §§ 622.4(a)(1), 635.4(b), 648.4(a), or 660.707(a)(1);

* * * * *

(7) Holds a commercial fishing license or permit issued by NMFS or a state and is lawfully engaged in commercial fishing or in possession of fish taken under the terms and conditions of such license or permit;

(8) Holds an HMS Angling permit under § 635.4(c) or a MHI Non-commercial Bottomfish permit under § 665.203(a)(2);

* * * * *

4. In § 600.1416:

a. Revise paragraphs (a), (b)(1), (c), introductory text (d) and (d)(1); and

b. Add paragraph (b)(7) to read as follows:

§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.

(a) A state must annually update and submit to NMFS, in a format consistent with NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth, of all persons and for-hire vessel operators, and the name and state registration number or U.S. Coast Guard documentation number of for-hire vessels that are licensed to fish, or are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species. The Memorandum of Agreement developed in accordance with § 600.1415(b)(2) will specify the timetable for a state to compile and submit complete information telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

* * * * *

(b) * * *

(1) Under 17 years of age;

* * * * *

(7) Fishing on days designated as ''free fishing days'' by states. ''*Free fishing days*'' means fishing promotion programs by which states allow new anglers to fish for a specified day without a license.

* * * * *

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its licensing or registration program excludes anglers in any category other than those listed in paragraph (b) of this section.

(d) *Required enhancements to exempted state license-holder data.* An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement. States that provide NMFS with notice that they are required to enact legislation to comply with this requirement must submit the data within three years of the effective date of the Memorandum of Agreement:

(1) Name, address and telephone number, updated annually, of excluded anglers over age 59, unless the state can demonstrate that the number of anglers excluded from the license or registration requirement based on having a date of birth before June 1, 1940 is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample;

* * * * *

5. In § 600.1417, revise paragraphs (b)(1)(iii) through (viii), and (b)(3), to read as follows:

§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

(b) * * *

(1) * * *

(iii) Puerto Rico;

(iv) U.S. Virgin Islands;

(v) California, Oregon and Washington;

(vi) Alaska;

(vii) Hawaii; or

(viii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

* * * * *

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, mail or Internet if such regional survey includes a telephone survey component; and

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[FR Doc. 2012–2653 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 24

Monday, February 6, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of Committees of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of six public meetings of the Committee on Administrative and Management, the Committee on Adjudication, and the Committee on Regulation of the Assembly of the Administrative Conference of the United States. At these meetings, the committees will consider draft reports and recommendations on several projects. Complete details regarding the committee meetings, the contours of the projects, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to each committee can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''Research,'' then on ''Committee Meetings.''

Comments may be submitted by email to *Comments@acus.gov,* with the name of the appropriate committee in the subject line, or by postal mail to the appropriate committee at the address given below.

DATES: Committee on Adjudication: Monday, March 12, 2012 from 9:30 a.m. to 12:30 p.m. and Monday, April 16, 2012 from 9:30 a.m. to 12:30 p.m. Committee on Administration and Management: Wednesday, February 29, 2012 from 1:30 p.m. to 4:30 p.m. and Wednesday, March 28, 2012 from 1:30 p.m. to 4:30 p.m. Committee on Regulation: Wednesday, March 7, 2012 from 1 p.m. to 4 p.m. and Wednesday, April 18, 2012 from 1 p.m. to 4 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer for the individual committee (see listings below), Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Adjudication

The Committee on Adjudication will meet to discuss further a draft report on the Immigration Adjudication Project. The report, prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (Brookings Institution), presents the findings of a study of potential improvements to the procedures for immigration adjudication. At its meetings, the Committee on Adjudication will also consider further a draft recommendation based on the consultants' report. Funmi E. Olorunnipa is the Designated Federal Officer for this committee. More information can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Adjudication.''

Committee on Administration and Management

The Committee on Administration and Management will meet to discuss a draft report on the Paperwork Reduction Act Project. The report, prepared by Professor Stuart Shapiro (Rutgers University), presents the findings of a study on the issue of the Paperwork Reduction Act and proposed improvements to its implementation. At its meetings, the Committee on Administration and Management will also consider a draft recommendation based on the consultant's report. Emily Schleicher Bremer is the Designated Federal Officer for this committee. More information can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Administration and Management.''

Committee on Regulation

The Committee on Regulation will meet to discuss a draft report concerning the Science in the Administrative Process project. The report, prepared by Professor Wendy Wagner (University of Texas Law School), presents the findings of a study on the use of science by administrative agencies and offers recommendations for agencies to improve their use of science. The committee may also consider a draft recommendation on improving agencies' use of science. Reeve T. Bull is the Designated Federal Officer for this committee. More information can be found in the ''About'' section of the Conference's Web site, htpp://www.acus.gov. Click on ''About,'' then on ''The Committees,'' then on ''Committee on Regulation,'' and finally on ''Science Project Page.''

Dated: February 1, 2012.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2012–2567 Filed 2–3–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals: 2012 Hazardous Fuels Woody Biomass Utilization Grant Program

AGENCY: Forest Service.

ACTION: Request for proposals.

SUMMARY: The Department of Agriculture (USDA), Forest Service, State and Private Forestry (S&PF), Technology Marketing Unit, located at the Forest Products Laboratory, request proposals for wood energy projects that require engineering services. These projects will use woody biomass, such as material removed from forest restoration activities, wildfire hazardous fuel treatments, insect and disease mitigation, forest management due to catastrophic weather events, and/or thinning overstocked stands. The woody biomass shall be used in a bioenergy facility that uses commercially proven technologies to produce thermal, electrical or liquid/gaseous bioenergy. The funds from the Hazardous Fuels Woody Biomass Utilization Grant Program (WBU) must be used to further the planning of such facilities by funding the engineering services necessary for final design and cost analysis. Examples of projects might

include engineering design of a (1) woody biomass boiler for steam at a sawmill, hospital or school, (2) non-pressurized hot water system for various applications, and (3) biomass power generation facility. To join in support of the public interest and general welfare, to protect communities and critical infrastructure, the applicants applying to this program seek assistance to complete the necessary design work required to secure public and/or private funding for construction for developing local enterprises to better utilize woody biomass. In particular, USDA Rural Development has established grants and loan programs that might help fund construction of such facilities. The lack of engineering design often limits the ability of an applicant or business to receive Federal, State or private funding.

DATES: Thursday, March 1, 2012, Application Deadline.

ADDRESSES: All applications must be sent to the respective Forest Service Regional Office listed below for initial review. These offices will be the point of contact for final awards.

Forest Service Region 1
(MT, ND, Northern ID & Northwestern SD), Att: Angela Farr, USDA Forest Service, Northern Region (R1), Federal Building, 200 East Broadway, Missoula, MT 59807, *afarr@fs.fed.us*, (406) 329–3521.

Forest Service Region 2
(CO, KS, NE, SD, & WY), Att: Susan Ford, USDA Forest Service, Rocky Mountain Region (R2), 740 Simms St, Golden, CO 80401–4702, *sbford@fs.fed.us*, (303) 275–5742.

Forest Service Region 3
(AZ & NM), Att: Jerry Payne, USDA Forest Service, Southwestern Region (R3), 333 Broadway Blvd, SE, Albuquerque, NM 87102, *jpayne01@fs.fed.us*, (505) 842–3391.

Forest Service Region 4
(Southern ID, NV, UT, & Western WY), Att: Scott Bell, USDA Forest Service, Intermountain Region (R4), Federal Building, 324 25th St, Ogden, UT 84401, *sbell@fs.fed.us*, (801) 625–5259.

Forest Service Region 5
(CA, HI, Guam and Trust Territories of the Pacific Islands), Att: Larry Swan, USDA Forest Service, Pacific Southwest Region (R5), 1323 Club Drive, Vallejo, CA 95492–1110, *lswan01@fs.fed.us*, (707) 562–8917.

Forest Service Region 6
(OR & WA), Att: Ron Saranich, USDA Forest Service, Pacific Northwest Region (R6), 333 SW 1st Ave, Portland, OR 97204, *rsaranich@fs.fed.us*, (503) 808–2346.

Forest Service Region 8
(AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, Virgin Islands & Puerto Rico), Att: Dan Len, USDA Forest Service, Southern Region (R8), 1720 Peachtree Rd NW., Atlanta, GA 30309, *dlen@fs.fed.us*, (404) 347–4034.

Forest Service Region 9
(CT, DL, IL, IN, IA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WV, WI), Att: Lew McCreery, Northeastern Area—S&PF, 180 Canfield St, Morgantown, WV 26505, *lmccreery@fs.fed.us*, (304) 285–1538.

Forest Service Region 10
(Alaska), Att: Daniel Parrent, USDA Forest Service, Alaska Region (R10), 3301 C Street, Suite 202, Anchorage, AK 99503–3956, *djparrent@fs.fed.us*, (907) 743–9467.

Region 10 address after February 15, 2012:
Forest Service Region 10 (Alaska), Att: Daniel Parrent, USDA Forest Service, Alaska Region (R10), 161 East 1st Avenue, Door 8, Anchorage, AK 99501, *djparrent@fs.fed.us*, (907) 743–9467.

Detailed information regarding what to include in the application, definitions of terms, eligibility, and necessary prerequisites for consideration are available at *http://www.fpl.fs.fed.us/tmu,* and at *www.grants.gov.* Paper copies of the information are also available by contacting the Forest Service, S&PF Technology Marketing Unit, One Gifford Pinchot Dr., Madison, Wisconsin 53726–2398, (608) 231–9504.

FOR FURTHER INFORMATION CONTACT: For questions regarding the grant application or administrative regulations, contact your appropriate Forest Service Regional Biomass Coordinator as listed in the addresses above or contact Susan LeVan-Green, Program Manager of the Technology Marketing Unit, Madison, WI (608) 231–9504, *slevan@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–(800) 877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: To address the goals of Public Law 110–234, *Food, Conservation, and Energy Act of 2008, Rural Revitalization Technologies (7 U.S.C. 6601),* and the anticipated *Department of the Interior, Environment, and Related Agencies Appropriation Act, 2012 or equivalent,* the Agency is requesting proposals to address the nationwide challenge of using low-value woody biomass material to create renewable energy and protect communities and critical infrastructure from wildfires.

Goals of the grant program are to:

- Promote projects that target and help remove economic and market barriers to using woody biomass for renewable energy.
- Assist projects that produce renewable energy from woody biomass while protecting the public interest.
- Reduce the public's cost for forest restoration by increasing the value of biomass and other forest products generated from hazardous fuels reduction and forest health activities on forested lands.
- Create incentives and/or encourage business investment that uses woody biomass from our nation's forestlands for renewable energy projects.

Grant requirements

1. Eligibility Information

a. Eligible Applicants. Eligible applicants are businesses, companies, corporations, state, local and tribal governments, school districts, communities, non-profit organizations, or special purpose districts (*e.g.,* public utilities districts, fire districts, conservation districts, or ports). Only one application per business or organization shall be accepted.

b. Cost Sharing (Matching Requirement). Applicants shall demonstrate at least a 20% match of the *total project cost* or 25% of the federal portion. This match shall be from non-federal sources, which can include cash or in-kind contributions.

c. DUNS Number. All applicants shall include a Dun and Bradstreet, Data Universal Numbering System (DUNS) number in their application. For this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for and receive a WBU grant. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line (1–(866) 705–5711) or register on-line at *http://fedgov.dnb.com/webform.*

d. Central Contractor Registration (CCR). The applicant acknowledges the requirement that prospective awardees shall be registered in the CCR database prior to award, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at *www.ccr.gov.* For assistance, contact the CCR Assistance Center (1–(866) 606–8220).

2. Award Information

Total funding anticipated for awards is about $3.0 million for the 2012 WBU

program. Individual grants cannot exceed $250,000. The Federal government's obligation under this program is contingent upon the availability of 2012 appropriated funds. No legal liability on the part of the Government shall be incurred until appropriated funds are available and committed in writing by the grant officer for this program to the applicant. Grants can be for two years from the date of award. Written annual financial performance reports and semi-annual project performance reports are required, and shall be submitted to the appropriate grant officer. A grant awarded under this program will generate an IRS Form 1099 Miscellaneous Income that will be filed with the Internal Revenue Service (IRS) and provided to the awardee. However, the USDA expresses no opinion on the taxability, if any, of the grant funds awarded. Awardees are expected to follow all Occupational Safety and Health Administration (OSHA) requirements regarding safe working practices and all applicable Federal, State, and local regulations pertinent to the proposed project.

3. Application Prerequisites

This grant program requires that projects have had considerable advance work completed prior to submitting a grant application. Only applications that have already completed and submitted (a) a Comprehensive Feasibility Assessment of the project by qualified and credible parties, (b) a Woody Biomass Resource Supply Assessment and, (c) past three years of Federal income tax returns shall be considered. In addition, applicants should have a Dun and Bradstreet rating that falls within the following categories:

(1) Financial stress rating should be 1, 2 or 3, (1 being the best and 5 being the worst);

(2) Credit score should be 1, 2, or 3, (1 being the best and 5 being the worst); and

(3) Paydex score should be between 60 and 100, (0 being the lowest and 100 the highest).

The two assessments and three years of tax returns shall be included with the submission. The Dun and Bradstreet ratings will be obtained by the Technology Marketing Unit for the review process. The three Dun and Bradstreet reports provide evidence of the financial capability of the applicant. Applicants will not be charged for the Dun and Bradstreet reports. All financial information is kept confidential.

a. The Comprehensive Feasibility Assessment shall address, at minimum, the following items:

- Economic feasibility analysis of site, labor force wages and availability, utilities, access and transportation systems, raw material feedstock needs, and overall economic impact, including job creation and retention, displayed by employment associated with operating the facility itself and supplying the facility (jobs created and jobs retained on a full-time equivalent basis). Also required in the economic analysis is a market feasibility study, including analysis of the market(s) for the power, heat, fuel, or other energy product produced, market area, marketing plans for projected output, if needed, extent of competition for the particular target market(s), extent of competition for supply and delivered costs and general characterization of supply availability (more detailed information is provided in the Woody Biomass Resource Supply Assessment section).
- Technical feasibility analysis shall include an assessment of the recommended renewable energy technology, what other technologies were considered, why the recommended renewable energy technology was chosen, assessment of site suitability given the recommended renewable energy technology, actions and costs necessary to mitigate environmental impacts sufficient to meet regulatory requirements, developmental costs, capital investment costs, operational costs, projected income, estimated accuracy of these costs and income projections, realistic sensitivity analysis with clear and explicit assumptions, and identification of project constraints or limitations.
- Financial feasibility analysis shall include projected income and cash flow for at least 36 months, description of cost accounting system, availability of short-term credit for operational phase, and *pro forma* financial statements with clear and explicit assumptions.
- List of personnel and teams undertaking project development, implementation and operations, including a clear description of how continuity between project phases will be maintained. Describe the qualification of each team member including education and management experience with the same or similar projects, and how recently this experience occurred.

b. The Woody Biomass Resource Supply Assessment shall provide a description of the available woody biomass resource supply. At a minimum, the assessment should address the following items:

- Feedstock location and procurement area relative to the project site;
- Types of biomass fuel available and realistic pricing information based on fuel specifications required by the technology chosen, including explicit break-out of forest-sourced, agricultural-sourced and urban-sourced biomass;
- Volume potentially available by ownership, fuel type and source of biomass supply, considering recovery rates and other factors, such as Federal, State, and local policy and management practices;
- Volume realistically and economically available by ownership, fuel type and source of biomass supply, considering recovery rates and other factors, such as Federal, State, and local policy and management practices;
- Detailed risk assessment of future biomass fuel supply including, but not limited to, impacts of potential Federal, State, and local policy changes, availability of additional fuel types, increased competition for biomass resource supply and changes in transportation costs;
- Summary of total fuel realistically and economically available versus projected annual fuel use (i.e. a ratio usually exceeding 2.0: 1); and
- Minimum five-year biomass fuel pricing forecast for material or blend of material meeting fuel specifications delivered to project site (required for financial *pro forma*).

c. Federal income tax returns: All applicants shall submit the last three years of federal income tax returns. Credit reports from Dun and Bradstreet, along with the federal income tax returns, are used to assess the financial capability of applicants.

4. Application Evaluation

Applications are evaluated against criteria discussed in Section 5. All applications shall be screened to ensure compliance with the administrative requirements as set forth in this Request for Proposals (RFP). Applications not following the instructions for submission shall be disqualified without consideration. Instructions can be found at *www.fpl.fs.fed.us/tmu* under 2012 Woody Biomass Utilization Grant Program.

The appropriate Forest Service region shall provide a preliminary screen based on grant administrative requirements and regional priorities of environmental, social and economic impacts. Each region may submit up to seven proposals for the nationwide competition. The nationwide competition will consist of a technical and financial review of the proposed

project by Federal experts from different federal agencies, experienced in energy systems, financing projects, and/or forestry. Panel reviewers will independently evaluate each proposed project for technical and financial merit and assign a score using the criteria listed in Section 5. Technical and financial merits, along with the regional priorities, will be submitted to the Forest Service national leadership, who will make the final decision of the selected projects based on technical and financial merit and regional/national priorities.

5. Evaluation Criteria and Point System

If a reviewer determines that a proposal meets basic requirements for a criterion, half the number of points will be awarded. More points can be earned if the reviewer determines that a proposal exceeds the basic criteria and fewer if a proposal falls short of the basic criterion. A maximum of 200 total points can be earned by a proposal.

Criteria

a. Required Comprehensive Feasibility Assessment is thorough and complete, conducted by a qualified and experienced professional team; and project is economically viable using relevant and accepted financial metrics. Total Points 30.

b. Required Woody Biomass Resource Supply Assessment conforms to professional standards for size and complexity of proposed facility, is suitable for appropriate lender or public financing review; and projected biomass quantity and sourcing arrangements from forested land management activities are clearly identified on an annual basis. Total Points 30.

c. Number of projected jobs created and/or retained (direct or indirect) when project goes in service is reasonable and substantiated. Total Points 15.

d. Amount and type of fossil fuel offset in therms/year once project is operational provides impact in geographic area appropriate for size of projected facility and is reasonable and substantiated (**Note:** 1 therm = 100,000 BTUs). Total Points 15.

e. Documentation of partnerships and qualifications necessary for the development and operation of the proposed facility, including roles and directly relevant qualifications of Development, Engineering, Management, Construction and Operations Teams or similar, are adequate and appropriate for project. Total Points 30.

f. Proposed engineering design components reflect accepted professional standards for type and complexity of proposed facility and are complete. Total Points 20.

g. Financial plan and sources of funding are described in detail for all phases of the project, including, but not limited to, development, construction and operations. Total Points 30.

h. Detailed description of federal, state and local environmental, health and safety regulatory and permitting requirements, and realistic projected timeline for completion are provided. Total Points 30.

6. Application Information

a. Application Submission. Applications shall be time stamped by the USPS or other commercial delivery company by midnight Thursday, March 1, 2012. NO EXCEPTIONS. If submitted through grants.gov, the date submitted shall be by midnight, Thursday, March 1, 2012. One paper copy and an electronic version shall be submitted to the Regional Biomass Coordinator of your Forest Service region, as listed previously in the **ADDRESSES** section even if submitted through grants.gov. Your Forest Service region is generally determined by the state in which the bioenergy facility is located. However, in a few instances, two Forest Service regions may exist in one state. Forest Service regions can be located at *http://www.fs.fed.us/maps/products/guide-national-forests09.pdf.* The electronic version submitted to the Forest Service Regional Biomass Coordinator should be a single pdf file on a USB flash drive or compact disc (CD). No emails shall be accepted. Applications may also be submitted electronically through *www.grants.gov.*

b. Application Format and Content. Each submittal shall be in PDF format. The application template form FPL–1500–4 is in Word format. After completing the template, the document should be saved as a PDF format either using Adobe Acrobat or Word software. The template form FPL–1500–4 along with directions for completing can be found at the *www.fpl.fs.fed.us/tmu.* Paper copy shall be single sided on 8.5- by 11-inch plain white paper only (no colored paper, over-sized paper, or special covers). Do not staple. All forms and application template can be found at *www.fpl.fs.fed.us/tmu* 2012 Hazardous Fuels Woody Biomass Utilization Grant Program.

Outline of form FPL–1500–4 and mandatory appendices

(1) Project Summary Sheet.

(2) Title Page.

(3) Project Narrative.

The project narrative shall provide a clear description of the work to be performed, impact on removing woody biomass and creating renewal energy (e.g. tons of biomass removed that would have otherwise been burned, cost savings to landowners, source of biomass removed from forested areas, broken-out by ownership), and how jobs will be created and/or retained, and sustained. Application narrative should address the 15 discussion areas listed on the form FPL–1500–4.

(4) Budget Summary Justification in Support of SF 424A.

(5) Qualifications and Summary Portfolio of Engineering Services.

For the engineering systems, the project usually consists of a system designer, project manager, equipment supplier, project engineer, construction contractor or system installer and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar bioenergy systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. A list of the same or similar projects designed, installed and currently operating with references shall be provided along with appropriate contacts.

(6) Community Benefit Statement

Provide a one page narrative on social, environmental, and economic impact and importance of project to community. Include substantiated facts and benefits, such as local employment rate, per capita income and fossil fuel impacts with and without the project. Include letters of support from community leaders demonstrating on-going community collaboration, where appropriate, in the appendix. Forest Service regions shall use this information to help evaluate regional impacts, particularly impact of job creation and retention as appropriate at the geographic scale for the region and how this grant award provides for the overall general welfare of the region.

(7) Appendices

The following information shall be included in appendices and included in the single PDF file:

a. Comprehensive Feasibility Assessment.

b. Woody Biomass Resource Supply Assessment.

c. Quotes for Professional Engineering Services considered (minimum of two quotes): Rationale for selection of engineering firm, if already selected.

d. Letters of Support from Partners, Individuals, or Organizations: Letters of support shall be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters shall include partner commitments of cash or in-kind services from all those listed in the SF424 and SF 424A. Each letter of support is limited to one page in length.

e. Federal Funds: List all other Federal funds received for this project within the last three years. List agency, program name, and dollar amount.

f. Miscellaneous, such as schematics.

g. Last three years of federal income tax returns.

h. Administrative Forms: SF 424, SF424A, SF 424B and AD 1047, 1048, 1049 and certificate regarding lobbying activities are standard forms that shall be included in the application. These forms can be accessed at *http://www.fpl.fs.fed.us/tmu* under 2012 Woody Biomass Grant Program.

Dated: December 30, 2011.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2012–2545 Filed 2–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection.

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection for Field Crops Production. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by April 6, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0002, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: *Title:* Field Crops Production.

OMB Control Number: 0535–0002.

Expiration Date of Approval: June 30, 2012.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Field Crops Production Program consists of probability field crops surveys and supplemental panel surveys. The panel surveys capture unique crop characteristics such as the concentration of crops in localized geographical areas. These surveys are extremely valuable for commodities where acreage and yield are published at the county level.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this information collection is based on a group of similar surveys with expected response times of 5–30 minutes and frequency of 1–40 times per year. Estimated number of responses per respondent is 1.38.

Respondents: Farms.

Estimated Total Number of Respondents: 525,000.

Estimated Total Annual Burden on Respondents: 150,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at *ombofficer@nass.usda.gov* or at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 17, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–2627 Filed 2–3–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2012; Maximum Portion of Guarantee Authority Available for Fiscal Year 2012; Annual Renewal Fee for Fiscal Year 2012

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107(b), the Agency has the authority to charge an annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-fourth of 1 percent for the

B&I Guaranteed Loan Program. This rate will apply to all loans obligated in Fiscal Year 2012 that are made under the B&I program. As established in 7 CFR 4279.107, the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

The Agency has been authorized by the 2012 Appropriations Bill to charge a maximum of 3 percent for its guarantee fee for Fiscal Year 2012. As such, the guarantee fee for Fiscal Year 2012 will be 3 percent.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a reduced guarantee fee or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing a reduced guarantee fee or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects that the Agency has found particularly meritorious. For reduced guarantee fees, the borrower's business must support value-added agriculture and result in farmers benefiting financially or must be a high impact business investment as defined in 7 CFR 4279.155(b)(5) and be located in rural communities that remain persistently poor, that experience long-term population decline and job deterioration, that are experiencing trauma as a result of natural disaster, or that are experiencing fundamental structural changes in its economic base. For guaranteed loans exceeding 80 percent, such projects must be a high-priority project in accordance with 7 CFR 4279.155 (and meet the other requirements of 7 CFR 4279.119(b)).

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a reduced guarantee fee, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits.

DATES: *Effective Date:* February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, USDA, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue SW., Washington, DC 20250–3224, telephone (202) 720–6802, email *brenda.griffin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

Dated: January 27, 2012.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2012–2559 Filed 2–3–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for Loan Guarantees Under the Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year 2012

AGENCY: Rural Housing Service, USDA.

ACTION: NOFA.

SUMMARY: This is a request for proposals for guaranteed loans under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 for Fiscal Year (FY) 2012. The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55) (November 18, 2011) (2012 Appropriations Act) provides FY 2012 funding for the section 538 program at $130,000,000. The commitment of program dollars will be made first to approved and complete applications from prior years notices, then to applicants of selected responses in the order they are ranked under this notice that have fulfilled the necessary requirements for obligation.

Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

Eligible lenders are invited to submit responses for new construction and acquisition with rehabilitation of affordable rural rental housing. The Agency will review responses submitted by eligible lenders, on the lender's letterhead, and signed by both the prospective borrower and lender. Although a complete application is not required in response to this Notice, eligible lenders may submit a complete application concurrently with the response. Submitting a complete application will not have any effect on the respondent's NOFA response score.

DATES: Eligible responses to this notice will be accepted until December 31, 2012, 12 p.m. Eastern Time. Selected responses that develop into complete applications and meet all Federal eligibility requirements will receive conditional commitments until all funds are expended. Selected responses to this notice that are deemed eligible for further processing after September 30, 2012, will be funded to the extent an appropriation act provides funding for GRRHP for FY 2013 and will be subject to any additional limitations that may be in the FY 2013 NOFA.

Eligible lenders mailing a response or application must provide sufficient time to permit delivery to the appropriate *submission address* below on or before the closing deadline date and time. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Submission Address: Eligible lenders will send responses to the Multi-family Housing Program Director of the State Office where the project will be located.

USDA Rural Development State Offices, their addresses, and telephone numbers, follow: [this information may also be found at *http://www.rurdev.usda.gov/recd_map.html*]

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7740, TDD (907) 761–8905.

Arizona State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8755, TDD (602) 280–8706.

Arkansas State Office, 700 W. Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3279.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5800, TDD (530) 792–5848.

Colorado State Office, Denver Federal Center, Building 56, Room 2300, PO Box 25426, Denver, CO 80255–0426, (720) 544–2903, TDD (720) 544–2976.

Connecticut, Served by Massachusetts State Office. Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580, TDD (302) 857–3585.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400, TDD (352) 338–3499.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue—Stop 307, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western

Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, TDD (808) 933–8321.
Idaho State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644.
Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6200, TDD (217) 403–6240.
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1966, (317) 290–3100 (ext. 4), TDD (317) 290–3343.
Iowa State Office, 210 Walnut Street, Room 873, Des Moines, IA 50273, (515) 284–4663, TDD (515) 284–4858.
Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767.
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300, TDD (859) 224–7422.
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921, TDD (318) 473–7655.
Maine State Office, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9100 (ext. 4), TDD (207) 942–7331.
Maryland, Served by Delaware State Office.
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–4590.
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190, TDD (800) 649–3777.
Minnesota State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–7830.
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4318, TDD (601) 965–5850.
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480.
Montana State Office, 2229 Boot Hill Court, Bozeman, MT 59715, (406) 585–2540, TDD (406) 585–2562.
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551, TDD (402) 437–5093.
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 100), TDD (775) 885–0633.
New Hampshire State Office, 10 Ferry Street, Concord, NH 03301–5004, Suite 218, (603) 223–6046, TDD (802) 828–6365.
New Jersey State Office, 8000 Midlantic Drive, 5th Floor North Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700, TDD (856) 787–7784.
New Mexico State Office, 6200 Jefferson Street NE., Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, TDD 711 (state relay system).
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2061, TDD (701) 530–2090.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2400, TDD (800) 877–8339.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007.
Oregon State Office, 1201 NE Lloyd Boulevard, Suite 801, Portland, OR 97232–1274, (503) 414–3300, TDD (503) 414–3387.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261.
Puerto Rico State Office, 654 Munoz Rivera Avenue, Suite 601, San Juan, PR 00918, (787) 766–5095, TDD (787) 766–5332.
Rhode Island, Served by Massachusetts State Office.
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147.
Tennessee State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203, (615) 783–1300, TDD (615) 783–1397.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4438, Salt Lake City, UT 84138, (801) 524–4320, TDD (801) 524–3309.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080, TDD (802) 223–6365.
Virgin Islands, Served by Florida State Office.
Virginia State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229, (804) 287–1500, TDD (804) 287–1753.
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7740, TDD (360) 704–7772.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4881, TDD (304) 284–4836.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614.
Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233–6700, TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: Monica Cole, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1263–S, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781. Email: *monica.cole@wdc.usda.gov.* Telephone: (202) 720–1251. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Overview

Federal Agency: Rural Housing Service.

Solicitation Opportunity Title: Guaranteed Multi-Family Housing Loans.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance: 10.438.

Dates: Response Deadline: December 31, 2012, 12:00 p.m. Eastern Time.

Funding Opportunity Description

The GRRHP is authorized by section 538 of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2) and operates under 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at: *http://www.rurdev.usda.gov/Handbooks.html.* The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Agency, private lenders, and public agencies.

Eligibility of Prior Year Selected NOFA Responses: Prior fiscal year response selections that did not develop into complete applications within the time constraints stipulated by the corresponding State Office have been cancelled. Applicants have been notified of the cancellation by the State Office. A new response for the project may be submitted subject to the conditions of this Notice. Prior years Notice responses that were selected by the Agency, with a complete application submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the Agency), will be eligible for FY 2012 program dollars without having to complete a FY 2012 response. A complete application includes all Federal environmental documents required by 7 CFR part 1940, subpart G, and a Form RD 3565–1 ''Application for Loan and Guarantee.'' Any approved applications originating from FY 2011 and previous fiscal years' (''outstanding prior years approved applications'') that are obligated in FY 2012, however, are subject to ''PROGRAM FEES FOR FY 2012'' in this Notice. Outstanding prior

years approved applications will be obligated to the extent of available funding in order of priority score with the highest scores obligated first. The scores the applications received under the NOFA the year the application was submitted will be used for the ranking. In the case of tied scores, the project with the greatest leveraging (lowest loan to cost ratio) will receive selection priority. Once the outstanding prior years approved applications have been funded, the Agency will select FY 2012 responses for further processing in rank order as determined by the scoring criteria set forth in this Notice to the extent that funds remain available.

Qualifying Properties: Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252.

Also eligible is the revitalization, repair and transfer (as stipulated in 7 CFR § 3560.406) of existing direct section 515 housing (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as listed in 7 CFR 3565.205), and properties involved in the Agency's Multi-Family Preservation and Revitalization (MPR) program. Equity payment, as stipulated 7 CFR 3560.406, in the transfer of existing direct section 515 housing, is an eligible use of guaranteed loan proceeds; however, the amount of funding available for transfers of existing section 515 properties involving equity payments will be limited to 25 percent of the FY 2012 funding level through August 31, 2012. Once the Agency has committed 25 percent of the total funding available for transfers of existing section 515 properties with equity payments, no further funding will be available for transfers of existing section 515 properties with equity payments until after August 31, 2012, if funding is available.

If there is funding available after August 31, 2012, funding requests for transfers of existing 515 properties involving equity payments will be selected for obligation according to the selection criteria stipulated in the ''OBLIGATION OF PROGRAM FUNDS'' section of this Notice. Funding requests for transfers of existing 515 properties involving equity payments will be kept in a separate queue. The 25 percent limit is solely for equity payments and does not affect 515 properties' use of 538 loan guarantees exclusively for rehabilitation and repairs. In order to be considered, the transfer of direct section 515 housing and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

Eligible Financing Sources: Any form of Federal, state, and conventional sources of financing can be used in conjunction with the loan guarantee, including Home Investment Partnerships Program (HOME) grant funds, tax exempt bonds, and low income housing tax credits.

Types of Guarantees: The Agency offers three types of guarantees which are set forth at 7 CFR 3565.52(c). The Agency's liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. Penalties incurred as a result of default are not covered by any of the program's guarantees. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

Energy Conservation: All new multi-family housing projects financed in whole or in part by the USDA, are encouraged to engage in sustainable building development that emphasizes energy-efficiency and conservation. In order to assist in the achievement of this goal, any GRRHP project that participates in one or all of the programs included in priority 7 under the ''Scoring of Priority Criteria for Selection of Projects'' section of this notice, may receive a maximum of 25 additional points added to their project score. Participation in these nationwide initiatives is voluntary, but strongly encouraged.

Interest Credit: The 2012 Appropriations Act did not fund interest credit.

Program Fees for FY 2012: The 2012 Appropriations Act provides: ''That to support the loan program level for section 538 guaranteed loans made available under this heading the Secretary may charge or adjust any fees to cover the projected cost of such loan guarantees pursuant to the provisions of the Credit Reform Act of 1990 (2 U.S.C. 661 *et seq*), and the interest on such loans may not be subsidized.''

The following fees have been determined necessary to cover the projected cost of such loan guarantees for FY 2012. These fees may be adjusted in future years to cover the projected costs of loan guarantees in those future years or additional fees may be charged. These fees are also applicable to all outstanding prior years responses funded with FY 2012 funds. The fees are as follows:

1. *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to one percent (1%) of the guarantee principal amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

2. *Annual guarantee fee.* An annual guarantee fee of 50 basis points (one-half percent) of the outstanding principal amount of the loan as of December 31 will be charged each year or portion of a year that the guarantee is outstanding.

3. As permitted under 7 CFR 3565.302(b)(5) there is a non-refundable service fee of $1,500 for the review and approval of a lender's first request to extend the term of a guarantee commitment beyond its original expiration (the request must be received by the Agency prior to the commitment's expiration). For any subsequent extension request, the fee will be $2,500.

4. As permitted under 7 CFR 3565.302(b)(5) there is a non-refundable service fee of $3,500 for the review and approval of a lender's first request to reopen an application when a commitment has expired. For any subsequent extension request to reopen an application after the commitment has expired, the fee will be $3,500.

5. As permitted under 7 CFR 3565.302(b)(4) there is a non-refundable service fee of $1,500 in connection with a lender's request to approve the transfer of property or a change in composition of the ownership entity.

6. There is no lender application fee for lender approval.

7. There is no surcharge for the guarantee of construction advances.

Eligibility Information

Eligible Lenders: An eligible lender for the section 538 GRRHP as required by 7 CFR 3565.102 must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the state or states where it conducts business. Lender eligibility requirements are contained in 7 CFR 3565.102. Please review that section for a complete list of all of the criteria. The Agency will only accept responses from GRRHP eligible or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

GRRHP Lender Approval Application: Lenders whose responses are selected will be notified by the USDA Rural Development to submit a request for GRRHP lender approval within 30 days of notification. Lenders who request GRRHP approval must meet the standards in the 7 CFR part 3565 and provide the documentation set forth in

GRRHP Origination and Servicing Handbook (HB–1–3565) found at *http://www.rurdev.usda.gov/Handbooks.html#hbw6* (and available in any local RD office).

Lenders that have received GRRHP lender approval that remain in good standing do not need to reapply for GRRHP lender approval. A lender making a construction loan must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of 7 CFR part 3565, subpart C.

Submission of Documentation for GRRHP Lender Approval: All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Director, Multi-Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Room 1263–S, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781. Lender applications must be identified as ''Lender Application—Section 538 Guaranteed Rural Rental Housing Program'' on the envelope.

Discussion of NOFA Response Requirements

Content of NOFA Responses: All responses require lender information and project specific data as set out in this Notice. Incomplete responses will not be considered for funding. Lenders will be notified of incomplete responses no later than 30 calendar days from the date of receipt of the NOFA response by the Agency. Complete responses are to include a signed cover letter from the lender on the lender's letterhead to the office address identified in this Notice for the scoring and ranking of a proposed GRRHP project. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding. The Agency will determine the highest ranked responses based on priority criteria and a threshold score.

(1) Lender Certification

The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(2) Project Specific Data

The lender must submit the project specific data below on the lender's letterhead, signed by both the lender and the prospective borrower:

Data element	Information that must be included
Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID #.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone # for lender contact.
Fax #	Insert lender's fax #.
Email Address	Insert lender contact email address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Equal Opportunity Survey	Optional Completion.
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID #.
Borrower DUNS#	Insert DUNS number.
Borrower Address, including County	Insert borrower's address and county.
Borrower Phone #, fax number and email address	Insert borrower's phone #, fax number and email address.
Principal or Key Member for the Borrower	Insert name and title. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.

Data element	Information that must be included
Borrower Information and Statement of Housing Development Experience	Attach relevant information.
New Construction, Acquisition With Rehabilitation	State whether the project is new construction or acquisition with rehabilitation.
Revitalization, Repair, and Transfer (as stipulated in 7 CFR § 3560.406) of Existing Direct Section 515 Housing or MPR	Yes or No (Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR § 3565.205).
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the # of units in the project.
Ratio of 3–5 bedroom units to total units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by # of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Borrower's Proposed Equity	Insert amount and source.
Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award/evidence of award with your response. If not, when do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits? Letters of application and commitment letters should be included, if available.

Data element	Information that must be included
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source, type, rates and terms of loans or grant funds.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Colonia, Tribal Lands, or State's Consolidated Plan or State Needs Assessment	Colonia, on an Indian Reservation, or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.
Is the Property Located in a Federally Declared Disaster Area	If yes, please provide documentation (i.e., Presidential Declaration document).
Population	Provide the population of the county, city, or town where the project is or will be located.
What type of guarantee is being requested, Permanent only (Option 1), Construction and Permanent (Option 2) or Continuous (Option 3)?	Enter the type of guarantee.
Loan Term	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.
Participation in Energy Efficient Programs	Initial checklist indicating prerequisites to register for participation in a particular energy efficient program. All checklists must be accompanied by a signed affidavit by the project architect stating that the goals are achievable. If property management is certified for green property management, the certification must be provided.

(3) The Proposed Borrower

(a) Lender certification that the borrower or principals of the owner are not barred from participating in Federal housing programs and are not delinquent on any Federal debt.

(b) Borrower's unaudited or audited financial statements.

(c) Statement of borrower's housing development experience.

(4) Lender Eligibility and Approval Status

Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application for approved lender status can be submitted with the response but must be submitted to the National Office within 30 calendar days of the lender's receipt of the ''Notice to Proceed with Application Processing'' letter.

(5) Competitive Criteria

Information that shows how the proposal is responsive to the selection criteria specified in this notice.

Response Review Information

Scoring of Priority Criteria for Selection of Projects: All 2012 responses will be scored based on the criteria set forth below to establish their priority for further processing. Per 7 CFR 3565.5(b), priority will be given to projects: In smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, or having the highest ratio of 3–5 bedroom units to total units. In addition, as permitted in 7 CFR 3565.5(b), in order to meet important program goals, priority points will be given for projects that include low income housing tax credit (LIHTC) funding, Section 515 projects with no equity payments and projects that are participating in specified energy efficient programs.

The seven priority scoring criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations will receive the highest points.

Population size	Points
0–5,000	30
5,001–10,000 people	15
10,001–15,000 people	10
15,001–20,000 people	5

Priority 2—The neediest communities as determined by the median income from the most recent census data published by the United States

Department of Housing and Urban Development (HUD), will receive points. The Agency will allocate points to projects located in communities having the lowest median income. Points for median income will be awarded as follows:

Median income (dollars)	Points
Less than $45,000	20
$45,000–less than $55,000	15
$55,000–less than $65,000	10
$65,000–less than $75,000	5
$75,000 or more	0

Priority 3—Projects that demonstrate partnering and leveraging in order to develop the maximum number of units and promote partnerships with state and local communities will also receive points. Points will be awarded as follows:

Loan to total development cost ratio (percentage %)	Points
Less than 25	60
Less than 50 to 25	30
Less than 70 to 50	10
70 or more	0

Priority 4—Responses that include equity from low income housing tax credits will receive an additional 50 points.

Priority 5—The USDA Rural Development will award points to projects with the highest ratio of 3–5 bedroom units to total units as follows:

Ratio of 3–5 bedroom units to total units	Points
More than 50%	10
21%–50%	5
Less than 21%–more than 0%	1

Priority 6—Responses for the revitalization, repair, and transfer (as stipulated in 7 CFR 3560.406) of existing direct section 515 housing and properties involved in the Agency's MPR program (transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds listed in 7 CFR § 3565.205) will receive an additional 10 points. If the transfer of existing section 515 properties includes equity payments, 0 points will be awarded.

Priority 7—Energy-Efficiency

(A) Projects that are energy-efficient and registered for participation in the following programs will receive points as indicated up to a maximum of 25 points. Each program has an initial checklist indicating prerequisites for participation. Each applicant must provide a checklist establishing that the prerequisites for each program's participation will be met. Additional points will be awarded for checklists that achieve higher levels of energy efficiency certification as set forth below. All checklists must be accompanied by a signed affidavit by the project architect stating that the goals are achievable. Points will be awarded for the listed programs as follows:

- *Energy Star for Homes*—5 points;
- *Green Communities* by the Enterprise Community Partners (*http://www.enterprisefoundation.org*)—10 points;
- *LEED for Homes* program by the U.S. Green Building Council (USGBC) (*http://www.usgbc.org*)—Certified (10 points), Silver (12 points), Gold (15 points), or Platinum (25 points);
- *National Association of Home Builders (NAHB) ICC 700–2008—National Green Building Standard*™ (*http://www.nahb.org*)

Bronze (10 points), Silver (12 points), Gold (15 points), or Emerald (25 points); or

- A state or local green building program—20 points

(B) Projects that will be managed by a property management company that are certified green property management companies will receive 5 points.

Applicants must provide proof of certification. Certification may be achieved through one of the following programs:

- National Apartment Association, Credential for Green Property Management (CGPM); *www.naahq.org/EDUCATION/DESIGNATION PROGRAMS/OTHER/Pages/default.asp;*
- National Affordable Housing Management Association (NAHMA), Credential for Green Property Management (CGPM); *www.nahma.org/content/greencred.html;* or
- U.S. Green Building Council (USGBC), Green Building Certification Institute (GBCI) LEED AP (any discipline) or LEED Green Associate; *www.gbci.org.*

Notifications: Responses will be reviewed for completeness and eligibility. The USDA Rural Development will notify those lenders whose responses are selected via a Notice to Proceed with Application Processing letter. The USDA Rural Development will request lenders without GRRHP lender approval to apply for GRRHP lender approval within 30 days upon receipt of notification of selection.

Lenders will also be invited to submit a complete application to the USDA Rural Development State Office where the project is located.

Submission of GRRHP Applications: Notification letters will instruct lenders to contact the USDA Rural Development State Office immediately following notification of selection to schedule required agency reviews.

USDA Rural Development State Office staff will work with lenders in the development of an application package. The deadline for the submission of a complete application is 90 calendar days from the date of notification of response selection. If the application is not received by the appropriate State Office within 90 calendar days from the date of notification, the selection is subject to cancellation, thereby allowing another response that is ready to proceed with processing to be selected. The Agency may extend this 90 day deadline for receipt of an application at its own discretion.

Award Administration Information

Obligation of Program Funds: The Agency will only obligate funds to projects that meet the requirements for obligation under 7 CFR 3565 and this Notice, including having undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA) and completed Form RD 3565–1 for the selected project.

The Agency will prioritize the obligation requests using the highest score and the procedures outlined as follows. The Agency will select the responses that meet eligibility criteria and invite lenders to submit complete applications to the Agency. Once a complete application is received and approved, the State Office will submit a request to obligate funds to the National Office. In the event of a tie, priority will be given to the request for the project that: has the highest percentage of leveraging (lowest Loan to Cost) and in the event there is still a tie;—is in the smaller rural community.

Conditional Commitment: Once the required documents for obligation are received and all NEPA and regulatory requirements have been met, the USDA Rural Development State Office will issue a conditional commitment, which stipulates the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

Issuance of Guarantee: The USDA Rural Development Office will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the

completion of any conditional requirements.

Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: January 27, 2012.

Tammye H. Treviño,

Administrator, Rural Housing Service.

cc:

MFH–GLD—Cole
MFH–GLD–Alonso
MFH–GLD–Steininger

[FR Doc. 2012–2539 Filed 2–3–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order covering certain tin mill products from Japan. The period of review is August 1, 2010, through July 31, 2011. Based on the withdrawal of request from U.S. Steel Corporation (U.S. Steel), we are now rescinding this administrative review.

DATES: *Effective Date:* February 6, 2012.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019 respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department published a notice announcing an opportunity for interested parties to request an administrative review of the antidumping duty order on certain tin mill products from Japan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 45773 (August 1, 2011). On August 31, 2011, U.S. Steel filed a request that the Department initiate an administrative review of the antidumping duty order on certain tin mill products from Japan with respect to JFE Steel Corporation, Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation, and Toyo Kohan Co., Ltd. Based on U.S. Steel's request, on October 3, 2011, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain tin mill products from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011).

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.'' On December 8, 2011, U.S. Steel withdrew its request for a review of the order with respect to JFE Steel Corporation, Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation, and Toyo Kohan Co., Ltd.

Because of the withdrawal of the request for review and because we received no other requests for review, we are rescinding the administrative review of the order with respect to JFE Steel Corporation, Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Corporation, and Toyo Kohan Co., Ltd. (*i.e.,* all companies). This rescission is in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For these five companies, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notifications

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

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

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 30, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2621 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent

scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 27, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–061. Applicant: Max Planck Florida Institute, 5353 Parkside Dr., MC19–RE Jupiter, FL 33458. Instrument: Electron Microscope. Manufacturer: FEI Co., Czech Republic. Intended Use: The instrument will be used to construct a digital anatomical atlas of the brain, involving refining the provisional localization of different calcium channel subunits from fluorescence microscopy initially by super resolution STED and then by immunogold freeze-fracture replica labeling. The objectives of the research also include understanding visual perception and the organization of the visual cortex, synapse physiology and mechanisms of synaptic signaling and computation, the molecular mechanism of synaptic function, the cellular organization of cortical circuit function, and the digital anatomy of the brain. Observations made by light microscopy may be required to be corroborated by electron microscopy in order to be accepted for publication. A unique feature of this instrument is the multi-specimen holder that can be tilted more than 45 degrees, which is necessary to observe irregular surfaces of specimens three dimensionally. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: October 19, 2011.

Docket Number: 11–070. Applicant: University of Utah, 201 Presidents Circle, Room 201, Salt Lake City, UT 84112. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study semiconductor materials and devices, nanophotonic devices, photovoltaic materials, as well as geologic and biological materials. The objectives of the experiments include high contrast, low voltage imaging of beam-sensitive materials at magnifications greater than 100,000X. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 28, 2011.

Docket Number: 11–071. Applicant: Texas Tech University, 100 Engineering Center, 9th and Canton, Lubbock, TX 79409–3103. Instrument: Electron Microscope. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument will be used to correlate the structural properties with observed physical properties such as magnetic and electronic properties of a variety of materials, from inorganic to organic, which exhibit features which can only be observed with this type of microscope. The research will involve temperature dependence imaging and energy dispersive x-ray analysis. The data collected will be applied to energy storage and conversion, environmental remediation and catalysis. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 9, 2011.

Docket Number: 11–073. Applicant: Ball State University, 2000 W University Ave., Muncie, Indiana 47306. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to study the developing nervous system, chemical stressors in freshwater ecosystems, organ development, cells that line blood vessel walls, luminescent thin films, carbon nanotube synthesis, and air purification materials. Tissues that will be examined will include brain, heart, lung, muscle, and cultured cells. Material samples include thin film, nanoparticles and nanotubes. The main objective of the research is to obtain images that the existing technology cannot currently resolve, including resolution at the nanometer level and below. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 6, 2012.

Docket Number: 11–075. Applicant: Cleveland State University, 2121 Euclid Ave., Cleveland, OH 44115–2214. Instrument: Electron Microscope. Manufacturer: FEI Co., Czech Republic. Intended Use: The instrument will be used to study superstructures formed by semiconductor and metal nanoparticles. The experiments will include fabrication of self-assembled structures using a hybrid nanofabrication approach, obtaining high resolution imaging of the structures, and optical characterization using high resolution spectroscopy. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 5, 2012.

Docket Number: 12–003. Applicant: University of California, Irvine, 4100 Calit2 building, Irvine, CA 92697. Instrument: Electron Microscope. Manufacturer: FEI Co., Czech Republic. Intended Use: The instrument will be used to perform experiments involving imaging and elemental composition determination of semiconductors, metals, ceramics, polymers, etc. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 23, 2012.

Dated: January 31, 2012.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2012–2623 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 27, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–072. *Applicant:* University of California, Davis, NEAT ORU, One Shields Ave. Davis, CA 95616. *Instrument:* Alexsys 1000 Calorimeter. *Manufacturer:* Setaram Instrumentation, France. *Intended Use:* The instrument will be used to determine enthalpies of formation, phase transition, order-disorder, and other chemical reactions among oxides, silicates, nitrides, and other compounds of rare earths, actinides, and other metals. Research will focus on uranium,

thorium, cerium, zirconium, and rare earth-based materials, and the properties of these materials in extreme environments. This instrument is unique in that it combines the sensitivity, long life, and reproducibility of thermopile sensors with a large internal working volume capable of containing the molten oxide solvents used for calorimetry and operating in the range 700–1000 degrees Celsius where such solvents are molten. Conventional differential scanning calorimeters, made by other companies, are completely different in design and do not feature the large sample volume surrounded by a sensitive detector that is essential for solution calorimetry. Justification for Duty-Free Entry: There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* December 9, 2011.

Docket Number: 12–001. *Applicant:* The Regents of the University of California, Lawrence Berkeley National Laboratory, 1 Cyclotron Rd M/S 71R0259 Berkeley, CA 94720. *Instrument:* Berkeley Lab Laser Accelerator ''BELLA'' 1.3 petawatt laser system. *Manufacturer:* Thales Optronique S.A., France. *Intended Use:* The instrument will be used to study the phenomena of Laser Plasma Acceleration (LPA) at elevated peak power intensities and pulse repetition rates, achievable only with the BELLA laser system. Requirements of this system include that it is characterized by a short pulse, high intensity, Ti:sapphire laser able to demonstrate a 10 GeV laser-plasma accelerator module with a pulse energy of 40 Joules on target and a pulse duration of <40 femtoseconds at optimum compression with a repetition rate of 1HZ +/−5%. Justification for Duty-Free Entry: There are no instruments of the same general category being manufactured in the United States. *Application accepted by Commissioner of Customs:* January 6, 2012.

Dated: January 31, 2012.

Gregory Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2012–2650 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination and Notice of Amended Final Determination and Antidumping Duty Order Pursuant to Court Decision

SUMMARY: On January 27, 2012, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') final results of redetermination pursuant to the CIT's remand order in *Zhejiang DunAn Hetian Metal Co., Ltd.* v. *United States,* Court No. 09–00217, Slip Op. 11–120 (CIT Sept. 28, 2011) (''*Remand*'').[1]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination and is amending the final determination of the less-than-fair-value investigation of frontseating service valves (''FSVs'') from the People's Republic of China (''PRC'') with respect to the margin assigned to Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn'') covering the period of investigation (''POI'') July 1, 2007, through December 31, 2007, and the antidumping order.[2]

DATES: *Effective Date:* February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Eve Wang, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6231.

SUPPLEMENTARY INFORMATION: In the *Final Determination,* the Department applied partial adverse facts available (''AFA'') to DunAn because we found at verification that DunAn misreported the sales quantities of certain models of the merchandise under investigation sold in December 2007. As partial AFA, the Department applied the petition rate of 55.62 percent to all of the reported December 2007 sales of these certain models. On September 28, 2011, the Court of International Trade remanded the *Final Determination* to the Department, following a prior proceeding in which the Court of Appeals for the Federal Circuit (''CAFC'') held that the Department is only permitted to apply partial AFA to information which was missing from the record, namely, the quantity of certain models of FSVs sold in December 2007.[3]

The Court also granted the Department's request for a voluntary remand to recalculate the surrogate labor rate for DunAn in accordance with the CAFC's holding in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) (''*Dorbest*'').[4] In *Dorbest,* the CAFC held that the Department's ''regression-based method for calculating wage rates as stipulated by 19 CFR 351.408(c)(3) uses data not permitted by the statutory requirements laid out in section 773 of the Tariff Act of 1930, as amended (the ''Act'').''[5] Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically comparable to the non-market economy (''NME'') country at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department's regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department's labor regulation (19 CFR 351.408(c)(3)). On June 21, 2011, the Department revised its labor calculation methodology for valuing an NME respondent's cost of labor in NME antidumping proceedings.[6] In *Labor Methodologies,* the Department found that the best methodology for valuing the NME respondent's cost of labor is to use the industry-specific labor rate from the surrogate country. Additionally, the

[1] *See* Final Results Of Redetermination Pursuant To Court Remand, Court No. 09–00217, dated January 4, 2012, available at: *http://www.ia.ita.doc.gov/remands/index.html* (''FSV Redetermination'').

[2] *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum (''*Final Determination*'') and *Antidumping Duty Order: Frontseating Service Valves from the People's Republic of China,* 74 FR 19196 (April 28, 2009), as corrected, *Notice of Correction to Antidumping Duty Order: Frontseating Service Valves From the People's Republic of China,* 74 FR 26204 (June 1, 2009) (''*Order*'').

[3] *See Zhejiang Dunan Hetian Metal Co., Ltd.* v. *United States,* 652 F.3d 1333, 1348 (Fed. Cir. 2010).

[4] *See id.* at 1349.

[5] *See Dorbest,* 604 F.3d at 1372.

[6] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

Department found that the best data source for calculating the industry-specific labor rate for the surrogate country is the data reported under ''Chapter 6A: Labor Cost in Manufacturing'' from the ILO Yearbook of Labor Statistics.[7]

On January 5, 2012, the Department issued the FSV Redetermination. Pursuant to *Remand,* we applied partial AFA to DunAn's misreported sales quantity using adverse inferences solely with respect to quantity. Specifically, we assigned to the total quantity of misreported sales to the higher CONNUM-specific margin of the two CONNUMs in question. Additionally, pursuant to *Dorbest* and *Labor Methodologies,* we revised the wage rate calculation methodology to comply with the CAFC's interpretation of section 773 of the Act. The Department's redetermination resulted in changing DunAn's margin from 12.95 percent to 11.83 percent. On January 27, 2012, the Court of International Trade affirmed the FSV Redetermination.[8]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's January 27, 2012 judgment sustaining the Department's remand redetermination with respect to DunAn constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination and Order

Because there is now a final court decision, we are amending the *Final Determination* and *Order* to reflect the results of the litigation. The revised weighted-average dumping margin is as follows:

Exporter/producer combination	Percent margin
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd	11.83

DunAn participated in the first administrative review of the antidumping duty order on FSV's, and received a cash deposit rate, so the rate listed above will not be applied as a cash deposit rate for DunAn.[9] This notice is issued and published in accordance with sections 516A(c)(1), 735(d) and 777(i)(1) of the Act.

Dated: February 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2737 Filed 2–3–12; 8:45 am]

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[7] *See id.,* at 39063.

[8] *Zhejiang DunAn Hetian Metal Co., Ltd.* v. *United States,* Ct. No. 09–00217, Slip Op. 12–13 (Jan. 27. 2012).

[9] *See Frontseating Service Valves from the People's Republic of China: Final Results of the 2008–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 76 FR 70706 (November 15, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

Energy Efficiency Trade Mission to Russia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce (DOC) International Trade Administration (ITA), U.S. Commercial Service (CS) and Department of Energy (DOE) are organizing an Energy Efficiency Trade Mission to Moscow and St. Petersburg on June 4–7, 2012, to be led by a senior-level U.S. government official. Participating entities will have the option of additional meetings with business prospects in cities nearby Moscow and St. Petersburg.

Russia, with a population of over 140 million and a seriously inefficient energy infrastructure, is a promising market for the sale of U.S. energy efficiency products and services. Russia presents lucrative opportunities for U.S. energy efficiency companies due to a critical need for significant investments in the sector. The trade mission will target a broad range of technologies to improve energy efficiency including electricity transmission infrastructure, smart grids, energy storage, road construction materials and green building. Companies which provide environmental goods and services (especially for water treatment and water efficiency) that reduce the environmental impact of industrial processes and energy generation are encouraged to apply for this mission.

This mission will contribute to the efforts of Business Development and Economic Relations and Energy Working Groups of the U.S.-Russia Bilateral Presidential Commission (*https://www.usrbc.org/goverment/presidential_commission/*).

This mission will help participating firms gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Russia. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meeting with national and regional government officials; and networking events. Participants in this official U.S. industry delegation will enhance their ability to secure useful meetings in Russia.

Commercial Setting

Russia, one of the world's fastest growing developing economies, presents promising opportunities for U.S. companies that offer products and services in the clean technologies industries. New legislation and national goals addressing energy inefficiency and climate change, and the need to improve environmental services to the general public are creating a demand for energy efficient products and services.

Energy Efficiency

Russia's President Dmitry Medvedev identified energy efficiency as a top priority for modernizing the Russian economy and affirmed that energy efficiency and conservation are among the five strategic priorities for Russia's technological development.

Russia is aiming to reduce GDP energy intensity 40% by 2020 from its 2007 level. GDP energy intensity is currently 2.5–3.5 times higher than countries in Europe. Russia currently ranks among the top 25 energy intensive countries in seven major areas of economic activity: Agriculture, hunting and forestry, construction, manufacturing, transport, storage and services. Russia is seeking to diversify and grow its energy sources for these sectors.

New energy efficiency legislation in Russia passed in 2009, which established standards for the regulation of energy consumption to increase efficiency and encourage energy savings. For example, the law introduced restrictions on the sale of incandescent light bulbs, set requirements for providing energy efficiency information on product labels, and also set guidelines on mandatory commercial inventories of

energy resources, energy efficiency of new buildings, and reductions in spending on energy resources. The law also introduced mandatory energy evaluations for the most energy-intensive entities and set out guidelines for transition to long-term tariff regulation and the establishment of a common inter-ministerial energy efficiency information and analysis system.

Also in 2009, the Russian Government implemented a new climate change policy. With the primary goal of lowering greenhouse gas emissions, the policy acknowledged the mitigation of climate change as one of the major long-term elements of security of the Russian Federation and placed global climate change, both in its national and international dimensions, among the Russian Federation's policy priorities. In accordance with this policy, all regional and municipal programs must increase the use of energy efficient technologies and secondary energy sources and/or renewable energy sources with specific energy saving targets to be met within the next 15 years.

Smart Grids: Russia is demonstrating its interest in implementing smart grid technology through cooperation with the United States under the auspices of the U.S.-Russia Bilateral Presidential Commission's Energy Working Group. This cooperation aims to help Russian utilities reduce harmful emissions by enhancing their ability to help consumers use energy more efficiently; integrate and deliver renewable energy; and more efficiently generate, transmit, and deliver electricity to consumers.

In 2010, the Energy Working Group, including the U.S. Agency for International Development and the U.S. Department of Energy and their Russian counterparts, developed a two-year work plan during a visit by Russian industry, technical and government officials to Texas and Washington, DC. The work plan encompasses utility partnership exchanges, business roundtables, and a joint assessment of regulatory and other barriers to the introduction of smart grid technologies and systems. From these exchanges, it became clear that U.S. companies are enthusiastic about exploring opportunities in Russia as this large system modernizes its transmission and distribution infrastructure.

In addition to work on capacity building and policy development that is already underway in Russia, a number of recent agreements and investments reflect the emerging opportunities in the electricity infrastructure sector. In the run-up to the 2014 Sochi Games and beyond, Russia will look to invest in technologies, equipment, and services that will ensure needed improvements to the efficiency, reliability, and reach of its transmission and distribution system.

In May 2011, San Diego Gas & Electric Company, the city of San Diego, Belgorodenergo, (the Belgorod region energy company) and the Belgorod Regional Administration signed a Memorandum of Understanding to cooperate on the deployment of smart grid technologies. Also in 2011, U.S. Secretary of Energy Dr. Steven Chu and Russian Minister of Energy Sergie Shamtko agreed to expand the program.

The Interregional Grid Distribution Company (MRSK), a major Russian electricity distributor, is running and developing a smart grid as a pilot project. This project in the city of Belgorod in Belgorod Oblast near the Ukranian border, builds on MRSK's project of the past few years of improving city street lighting controls, automating distribution networks, and installing neuron automated electricity metering systems. The project began with two districts of Belgorod and will expand to the entire city in three to five years, and eventually smart grid elements will be installed throughout the Oblast. Representatives from Moscow's Information Technologies Company note that Belgorod now has 35,000 smart meters and an installed system integrator.

The major Russian transmission grid operator, Federal Grid Company of Unified Energy System, (FSK) has developed a five-year plan, the first three years of which will be dedicated to developing a smart grid systems model, along with a regulatory framework, and new equipment and training. In the second phase of the plan, FSK will develop several pilot projects.

Green Building: Green building is a nascent sector in the Russian economy, though interest in these technologies is rising as domestic consumer energy prices rise and people and organizations become more conscious of spending and the positive effects of a healthier environment. Green industry experts believe that 2010 marked a significant increase in green building activity in Russia. Following approval of the energy efficiency legislation, the Russian green building community has been playing an increasingly active role in promoting awareness of green building concepts in the traditional construction sector, and supporting expansion of green standards.

There is great potential to improve efficiency in Russia's residential, commercial and public buildings. Energy used in buildings is directly responsible for ⅓ of energy end-use in Russia. New thermal insulation standards have been put into place to meet thermal performance and heat efficiency requirements. Opportunities exist in the rehabilitation of existing buildings for products in heat and water saving technologies including wall insulation, efficient faucets and windows, window heat reflecting films, door weather stripping, insulation for pipes, radiator heat mirrors and lighting systems in public buildings. Green building construction and practices are becoming more popular in the planning, design and construction of infrastructure, road building and other construction and building projects.

Some of the perceived drivers of sustainable property development in Russia include: the increasing perception by investors that green certification (BREEAM, LEED or DGNB) represents lower investment risk in these buildings; demand from international corporations for green offices due to international policies and standards; increasing government-led initiatives towards sustainability—energy efficiency and innovation; the attractive prospect of higher rental and sales levels in green certified buildings due to a growing demand, following increased awareness of green building concepts and anticipated increases in energy prices.

Road Infrastructure: Due to the rapid increase in the number of private vehicles in Russia, road transportation is a growing energy consumer. Products needed include road surfaces that lower CO2 emissions, mass transit systems traffic management and sustainable asphalt paving.

Mission Goals

The goal of the Energy Efficiency Trade Mission to Russia is to promote the export of U.S. goods and services of the energy efficiency sector by: (1) Introducing U.S. participants to industry representatives and potential clients and partners; and (2) introducing U.S. participants to Russian government officials in Russia to learn about policy initiatives that will impact the implementation of energy generation, energy conservation and environmental projects.

Mission Scenario

In Moscow, the U.S. mission participants will receive an Embassy briefing, meet with Government of Russia officials and take part in one-on-one business appointments with private-sector organizations. In addition,

they will enjoy a networking event with industry leaders and multipliers. In St. Petersburg, all of the delegates will attend a networking reception and have customized one-on-one business appointments. CS staff will support U.S. participants before and after the mission.

PROPOSED TIME TABLE

Monday, June 4, *Day 1*	Moscow. Welcome briefing by the U.S. Embassy. One-on-one business appointments. Ministry meetings. Networking reception.
Tuesday, June 5, *Day 2*	Moscow. One-on-one business appointments.
Wednesday, June 6, *Day 3*	Depart for St. Petersburg. Welcome briefing by the U.S. Embassy. One-on-one business appointments. Networking reception.
Thursday, June 7, *Day 4*	St. Petersburg. One-on-one business appointments.
Friday, June 8, *Day 5*	Potential Non-U.S. Commercial Service Program.

Participation Requirements

All entities interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A target of 15 applicants will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Russia as well as U.S. companies seeking to enter to the Russian market for the first time may apply.

Fees and Expenses: After an applicant has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The participation fee will be $3,200 for large firms and $2,650 for a small or medium-sized enterprise (SME) or small organization, which will cover one representative.* [1] The fee for an additional representative (SME or large) is $500.

Expenses for travel, lodging, meals and incidentals will be the responsibility of each mission participant, except for transportation from Moscow to St. Petersburg, which will be included in the mission fee. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms. It is our understanding that the Department of Energy may have funds available to offset a portion of these personal expenses for the trade mission. The Department of Commerce will not be administering this potential offset, but will forward the contact information on it to mission participants.

Conditions for Participation: An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the applicant's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

- Suitability of the applicant's products or services to the market.
- Applicant's potential for business in Russia and in the region, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Diversity of entities participating in the mission with respect to company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process. The sender will be notified of these exclusions.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions/eg_main_023185.asp*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 30, 2012. The U.S. Department of Commerce will review applications from the applicant pool on a first come first-served basis beginning March 30, 2012. Applications received after March 30, 2012 will be considered only if space and scheduling constraints permit.

Contacts

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[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

(495) 728–5398.
Anna.Avetisyan@trade.gov.

Elnora Moye,
Trade Program Assistant.

[FR Doc. 2012–2546 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) has received a timely request for a new shipper review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC). The Department determines that the request is sufficient to meet the statutory and regulatory requirements for initiation. The period of review for the new shipper review is June 1, 2011, through February 29, 2012.

DATES: *Effective Date:* January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on chlorinated isos from the PRC was published on June 24, 2005. *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005). On December 30, 2011, the Department received a timely request for a new shipper review from Puyang Cleanway Chemicals Ltd. (Puyang Cleanway) in accordance with 19 CFR 351.214(c) and 19 CFR 351.214(d).

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2), in its request for a new shipper review, Puyang Cleanway certified that: (1) It did not export chlorinated isos to the United States during the period of investigation (POI); (2) since the initiation of the investigation, it has never been affiliated with any company that exported subject merchandise to the United States during the POI, including any exporter or producer not individually examined during the investigation; and (3) its export activities are not controlled by the central government of the PRC. In accordance with 19 CFR 351.214(b)(2)(iv), Puyang Cleanway submitted documentation establishing the following: (1) The date on which it first shipped chlorinated isos for export to the United States and the date on which chlorinated isos was first entered, or withdrawn from warehouse, for consumption; (2) the volume of the first shipment; (3) the date of the first sale to an unaffiliated customer in the United States; and (4) the volume of subsequent shipments of chlorinated isos.

Period of Review

Usually, in accordance with 19 CFR 351.214(g)(1)(i)(B), the period of review (POR) for new shipper reviews initiated in the month immediately following the semi-annual anniversary month will be the six-month period immediately preceding the semiannual anniversary month (in this instance, June 1, 2011, through November 30, 2011). Puyang Cleanway's first sale of subject merchandise was sold two months before, and entered one month before, the POR specified by the Department's regulations for a semi-annual new shipper review. Puyang Cleanway's request for a new shipper review was within one year of this first sale, making its request timely under 19 CFR 351.214(c). Its second sale, which took place during the POR, had not yet entered as of the issuance of this notice. The Department has in the past extended a POR forward to capture entries for sales made during the POR that had not yet entered during the POR specified by the Department's regulations.[1] Therefore, consistent with 19 CFR.214(f)(2)(ii), the Department is extending the POR for the new shipper review forward by the time necessary for Puyang Cleanway to enter the second sale, but not past February 29, 2012. If the second sale has not yet entered by February 29, 2012, the Department intends to rescind this new shipper review.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(b), we find that the request submitted by Puyang Cleanway meets the threshold requirements for initiation of a new shipper review for shipments of chlorinated isos from the PRC. *See* Memorandum to the File through Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Initiation of Antidumping New Shipper Review: Chlorinated Isocyanurates from the People's Republic of China (A–570–898),'' dated concurrently with this notice.

The Department will conduct the review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i). It is the Department's practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Puyang Cleanway, which will include a separate rate section. The review will proceed if the response provides sufficient indication that Puyang Cleanway is not subject to either *de jure* or *de facto* government control with respect to the export of chlorinated isos. We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Puyang Cleanway in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e).

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 31, 2012.

Christian Marsh,
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2648 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review,* 76 FR 6399 (February 4, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application for Commercial Fisheries Authorization Under the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 6, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Lawson, (301) 713–2322 or *Patricia.Lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The Marine Mammal Protection Act requires any commercial fisher operating in Category I and II fisheries to register for a certificate of authorization that will allow the fisher to take marine mammals incidental to commercial fishing operations. Category I and II fisheries are those identified by NOAA as having either frequent or occasional takings of marine mammals.

Some states have integrated the National Marine Fisheries Service (NMFS) registration process into the existing state fishery registration process and fishers in those fisheries do not need to file a separate federal registration. If applicable, vessel owners will be notified of this simplified registration process when they apply for their state or Federal permit or license.

II. Method of Collection

Most fishers have their information imported directly into the Marine Mammal Authorization Program (MMAP) from their state. Otherwise they can fill out the forms on NMFS' Web page or mail in application for exemption made available to them in the NMFS regions.

III. Data

OMB Control Number: 0648–0293.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 800.

Estimated Time per Response: 15 minutes; 9 minutes for a renewal.

Estimated Total Annual Burden Hours: 180.

Estimated Total Annual Cost to the Public: $20,336.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 1, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–2629 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA980

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in February 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, February 23, 2012, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 433–5649.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Council's Habitat Committee to recommend management measures for further development and analysis in Omnibus Essential Fish Habitat Amendment 2. Two types of measures will be considered at the meeting: (1) options to minimize the adverse effects of fishing on Essential Fish Habitat and (2) alternatives to protect deep-sea corals from the impacts of fishing.

Note that this meeting was originally planned for January 25, 2012 as the second day of a 2-day meeting, but was cancelled due to scheduling conflicts. However, the management measures listed above were discussed by the Habitat Committee and its Advisory Panel during day one of that meeting, which was held as planned on January 24. The outcomes of those discussions will be considered at this meeting, along with any additional analyses and recommendations prepared by the Habitat Plan Development Team.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–2551 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XA981

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a meeting.

DATES: The OEAP meeting will be held on February 28, 2012, from 10 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hilton Hotel in 105 De Diego Avenue, Santurce, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The OEAP will meet to discuss the items contained in the following agenda:

—Call to Order
—Welcome—Miguel Rolón
—Goals and Objectives of the CFMC Outreach and Education Advisory Panel (OEAP)
—What the CFMC Expects of the OEAP
—Strategic Plan for O&E
—APPs for Smart Phones
—Web page Redesign
—Bulletin/Newsletter
—Social Network Pages
—Streaming of Council Meetings
—Other Business

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–2552 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA979

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 109th Scientific and Statistical Committee (SSC) and its 153rd Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also convene community meetings on the islands of Tinian and Rota, in the Commonwealth of the Northern Mariana Islands (CNMI), and at Merizo, Guam, as well as hold meetings of the Guam Regional Ecosystem Advisory Committee (REAC), the CNMI REAC, the Mariana Archipelago and Pacific Pelagic Fisheries Ecosystem Plans (FEPs) Advisory Panel (AP) and the Council's Executive and Budget Standing Committee.

DATES: The meetings will be held between February 21, 2012 and March 9, 2012. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held in Honolulu, HI; Tinian, CNMI; Merizo, Guam; Rota, CNMI; Tumon Bay, Guam; and Saipan Beach, Garapan, CNMI. See **SUPPLEMENTARY INFORMATION** for specific meeting locations.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The 109th SSC meeting will be held on February 21–23, 2012, between 8:30 a.m. and 5 p.m.; the Tinian and Merizo Community Meetings will be held on February 28, 2012, between 5 p.m. and 8 p.m.; the Rota Community Meeting on February 29, 2012, between 5 p.m. and 8 p.m.; the Guam REAC on February 29, 2012, between 9 a.m. and 4 p.m.; the CNMI REAC on March 2, 2012, between 9 a.m. and 4 p.m.; the Mariana Archipelago and Pacific Pelagic FEPs AP on March 3, 2012, between 8:30 a.m. and 5 p.m.; the Council's Executive and Budget Standing Committee on March 4, 2012, between 2 p.m. and 4 p.m. The 153rd Council Meeting will be held between 8:30 a.m. and 5 p.m. on March 5, 2012, and between 9 a.m. and 5 p.m. on March 6, 2012, in Saipan, and between 8:30 a.m. and 5 p.m. on March 8, 2012, and between 9 a.m. and 5 p.m. on March 9, 2012, in Guam. In addition, the Council will host Fishers Forums on Saipan on March 5, 2012 between 6 p.m. and 9 p.m. and on Guam on March 8, 2012, between 6 p.m. and 9 p.m.

The 109th SSC will be held at the Council's Office in Honolulu; the Tinian Community Meeting will be held at The Fleming Hotel, Tinian; the Merizo Community Meeting will be held at the Merizo Community Center; the Rota Community Meeting will be held at the Mayor's Office at the Antonio C. Atalig Memorial Building; the Guam REAC will be held at the Guam Hilton Hotel, Tumon Bay, Guam; the CNMI REAC, the Mariana Archipelago and Pacific Pelagic FEPs AP, the Council's Executive and Budget Standing Committee, the 153rd Council Meeting on March 5 and 6 and Fishers Forum on March 5 will be held at the Fiesta Hotel, Garapan, Saipan; the Council Meeting on March 8 and 9 and the Fishers Forum on March 8 will be held at the Guam Hilton Hotel.

Meeting Locations:

- Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.
- Fleming Hotel, Tinian, CNMI 96952; telephone: (670) 433–3232.
- Merizo Community Center, Merizo, Guam 96915; telephone: (671) 828–2941.
- Office of the Mayor, Antonio C. Atalig Memorial Building, Tatachog Road, Rota, CNMI 96951; telephone: (670) 532–9451.
- Guam Hilton Hotel, 202 Hilton Road, Tumon Bay, Guam 96913; telephone: (671) 646–1835.
- Fiesta Hotel, Saipan Beach, Garapan, CNMI 96950; telephone: (670) 234–6412.

In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 109th SSC Meeting

8:30 a.m.–5 p.m., Tuesday, February 21, 2012

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 108th SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Insular Fisheries
   A. Action Item
1. Draft Fishing Regulations for the Rose Atoll, Marianas Trench, and Pacific Remote Islands Marine National Monuments
2. SSC Working Group on Customary Exchange Report
   B. Update of Territory Bottomfish Stock Assessments
   C. Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) for Territory Management Unit Species (MUS)
   D. Western Pacific Stock Assessment Review (WPSAR) of EFH/HAPC for Territory MUS
   E. Discussion on Hawaii Cetacean Genetics
   F. Public Comment
   G. SSC Discussion and Recommendations
6. Pelagic Fisheries
   A. Action Items
1. Amendment Options for American Samoa Shallow-Set Swordfish Fishery
   B. Economic Impact for Hawaii-Based Longline Fisheries in Establishing Size Categories for Striped and Blue Marlin
   C. Longline Sea Turtle Hard Caps
   D. Stock Status of Western and Central Pacific Ocean Bigeye Tuna
   E. American Samoa and Hawaii Longline Quarterly Reports
   F. International Fisheries Meetings
1. Eighth Meeting of the Western and Central Pacific Fisheries Commission
   G. Public Comment
   H. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, February 22, 2012

7. Protected Species
   A. Marine Mammal Assessments
1. Hawaiian Islands Cetacean and Ecosystem Assessment Survey (HICEAS) II Analyses
2. Draft Revisions to the Guidelines for Preparing Marine Mammal Stock Assessment Reports (SARs)
   B. Update on Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Actions
   C. New Biological Opinion for Shallow-Set Longline Fishery
   D. Sea Turtle Post Release Mortality Workshop
   E. Migratory Bird Treaty Act Permit for the Hawaii-Based Shallow-Set Longline Fishery Draft Environmental Assessment
   F. Public Comment
   G. SSC Discussion and Recommendations
8. Program Planning
   A. Review of the Data Collection Programs in the Western Pacific
   B. Fishery Data Collection Improvement Workshop
   C. Hawaii Non-Commercial Data Workshop
   D. Methodology for Reef Fish Visual Survey Length-Based Models
   E. Improving Specification of Acceptable Biological Catches (ABC): Report on Annual Catch Limit (ACL) Data Workshop
   F. Cooperative Research Priorities
   G. Public Comment
   H. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Thursday, February 23, 2012

9. Other Business
   A. 110th SSC Meeting
10. Summary of SSC Recommendations to the Council

Schedule and Agenda for Tinian Community Meeting

5 p.m–8 p.m., Tuesday, February 28, 2012

1. Introduction
2. Community Based Monitoring
3. Community Fisheries Development
4. Fishery Issues
5. Other Issues

Schedule and Agenda for Merizo Community Meeting

5 p.m.–8 p.m., Tuesday, February 28, 2012

1. Introduction
2. Community Based Monitoring
3. Community Fisheries Development
4. Fishery Issues
5. Other Issues

Schedule and Agenda for Rota Community Meeting

5 p.m.–8 p.m., Wednesday February 29, 2012

1. Introduction
2. Community Based Monitoring
3. Community Fisheries Development
4. Fishery Issues
5. Other Issues

Schedule and Agenda for Guam REAC Meeting:

9 a.m.–4 p.m., Wednesday, February 29, 2012

1. Welcome and Introductions
2. Status of 2011 REAC Recommendations
3. Community Marine Management Forum
   A. Military Activities
   i. Military Closures Impacting Southern Fishing Grounds
   ii. Report on Recommendations to US Department of Defense on Military Activities
   iii. Improving Fishery Data Collection from Military Areas
   B. Update on the Marianas Trench Marine National Monument
   i. Proposed Monument Fishing Regulations
   C. Compact Impact Issues
   D. Discussion on Options to Mitigate Impacts to Fishing Community
4. Information Needs to Manage Fisheries through Annual Catch Limits
   A. Report on Bio-Sampling Program
   B. Update on NOAA Habitat Work in Guam
   C. Summary Report of Data Improvement Workshop Findings
   D. Discussion and Recommendations
5. Communities and Traditional Fishing Rights
   A. First Stewards Climate Change Symposium
   B. Guam Village Management of a Local Beach
   C. Discussion and Recommendations
6. Upcoming Meetings/Workshops
   A. Synopsis of Upcoming 153rd Council Meeting Actions
   B. Teachers Workshop
   C. Western and Central Pacific Fisheries Commission
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for CNMI REAC Meeting

9 a.m.–4 p.m., Friday, March 2, 2012

1. Welcome and Introductions
2. Status of 2011 REAC Recommendations
3. Community Marine Management Forum
   A. Military Activities
   i. Military Closures Impacting CNMI Fishing Grounds
   ii. Report on Military Activities to Engage the Local Agencies and Community
   B. Update on the Marianas Trench Marine National Monument
   i. Report on Monument Advisory Committee
   ii. Proposed Monument Fishing Regulations
   C. Discussion on Options to Mitigate Impacts to Fishing Community
4. Information Needs to Manage Fisheries through Annual Catch Limits
   A. Report on Bio-Sampling Program
   B. Summary Report of Data Improvement Workshop Findings
   C. CNMI Data Program Review Initiative
   D. Data Collection—Mandating Participation
   E. Discussion
5. Communities and Traditional Fishing Practices
   A. First Stewards Climate Change Symposium
   B. Characterizing Mariana Spearfishing Community
   C. Offshore Aquaculture
   i. Pacific Island Aquaculture Consortium
   ii. CNMI Aquaculture Group Initiative
   D. Discussion and Recommendations
6. Upcoming Meetings/Workshops
   A. Synopsis of Upcoming 153rd Council Meeting Actions
   B. Teachers Workshop
   C. Western and Central Pacific Fisheries Commission
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for Mariana Archipelago and Pacific Pelagic FEPs AP Meeting

8:30 a.m.–5 p.m., Saturday, March 3, 2012

1. Welcome and Introductions
2. Status of 2011 Meeting Recommendations
3. Advisory Panel Duties
   A. Communications and the Role of the Advisory Panel
   B. Developing a Calendar of Events and List-serve
4. Upcoming Council Actions
   A. Annual Catch Limits
   B. Federal Regulations for the Marianas Trench Marine National Monument
   C. Cooperative Research Priorities

5. Marianas Fisheries Status
A. Review of the Current Status of the Mariana Fisheries
B. Update of EFH/HAPC for Territorial MUS
C. Stock Assessment for Territorial Bottomfish MUS
6. Reports on Local Projects
A. Marianas Spearfishing Assessment
B. Marianas Bottomfish Tagging Project
C. Marianas Small-Boat Socio-Economic Survey
7. Recreational Fisheries and NMFS Regional Action Plan
8. Community Fishery Issues
A. Marianas Trench Marine National Monument Scoping
B. Military Issues
C. Update on Guam Fisheries Act
D. CNMI Fisheries Regulation Review and Improvements
E. CNMI Aquaculture
F. Fisheries Development: Community Fish Aggregation Device Projects in Hawaii
G. Other Issues Listed by AP
9. Other Business
10. Public Comment
11. Discussion and Recommendations

Schedule and Agenda for 153rd Council Meeting:

2 p.m.–4 p.m., Sunday, March 4, 2012

Executive and Budget Standing Committee

8:30 a.m.–5 p.m., Monday March 5, 2012

1. Introductions
2. Approval of the 153rd Agenda
3. Approval of the 152nd Meeting Minutes
4. Executive Director's Report
5. Agency Reports
A. National Marine Fisheries Service (NMFS)
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Regional Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA General Counsel for Enforcement and Litigation
E. Public Comment
F. Council Discussion and Action
6. Mariana Archipelago—Part 1: CNMI
A. Arongo Flaeey
B. Legislative Report
C. Enforcement Issues
D. Report on Marianas Trench Marine National Monument Scoping
E. Report on Mariana Projects
1. Traditional Fishing Survey
2. Marianas Spearfishing Assessment
3. Small Boat Economic Assessment
F. Community Activities and Issues
1. Marianas Military Range Complex at Farallon de Medinilla
2. Potential Aquaculture Development Plans
3. Marianas Community Meetings
G. Education and Outreach Initiatives
1. Report of the Lunar Calendar Festival
2. Report of the Marianas Teachers Workshops
H. Advisory Group Recommendations
1. AP Recommendations
2. REAC Recommendations
I. SSC Recommendations
J. Public Comments
K. Council Discussion and Action
7. Program Planning and Research
A. Recommendations on Fishing Regulations for the Rose Atoll, Marianas Trench, and Pacific Remote Islands (PRI) Marine National Monuments (ACTION ITEM)
B. Research Priorities
1. Cooperative Research Priorities
2. NMFS Pacific Insular Research Plan
C. Data Improvement
1. Report on Program Review of Creel Survey Systems on Guam, CNMI and American Samoa
2. Report of the Fishery Data Collection Improvement Workshop
3. Improving Specifications of ABCs: Report of the ACL Data Workshop
D. Reef Fish Stock Assessment Methodology
E. Archipelagic FEP MUS Reviews
1. Update of Territory Bottomfish Stock Assessments
2. Revision of EFH/HAPC for Territory MUS
3. WPSAR Review of EFH/HAPC for Territory MUS

6 p.m.–9 p.m., Monday, March 5, 2012

Fishers Forum: Fisheries Development and Monitoring

9 a.m.–5 p.m., Tuesday March 6, 2012

Program Planning and Research Continued

F. National Initiatives
1. Update on Recreational Fishing
2. Update on Coastal and Marine Spatial Planning Regional Initiatives
3. First Stewards Climate Change Symposium Plans
G. Hawaii, Regional, National & International Education and Outreach
H. Advisory Group Recommendations
1. AP Recommendations
2. REAC Recommendations
I. SSC Recommendations
J. Public Hearing
K. Council Discussion and Action
8. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Community Activities and Issues
1. Update on Community Fisheries Development
2. Update on Fagatele Bay National Marine Sanctuary Management Plan Review
E. Education and Outreach Initiatives
F. SSC Recommendations
G. Public Comments
H. Council Discussion and Action
9. Public Comment on Non-Agenda Items

8:30 a.m.–5 p.m., Thursday, March 8, 2012

10. Marianas Archipelago—Part 2: Guam
A. Isla Informe
B. Legislative Report
C. Enforcement Issues
D. Draft Recommendations for Fishing Regulations for the Marianas Trench Marine National Monument (ACTION ITEM)
E. Community Activities and Issues
1. Marianas Military Range Complex
2. Guam Fisheries Act
3. Report of the Marianas Community Meetings
4. Report of the Marianas Spearfishing Assessment
F. Education and Outreach Initiatives
1. Report of the Lunar Calendar Festival
2. Report of the Marianas Teachers Workshops
3. First Stewards Climate Change Symposium Plans
G. Advisory Group Recommendations
1. AP Recommendations
2. REAC Recommendations
H. SSC Recommendations
I. Public Hearing
J. Council Discussion and Action
11. Hawaii Archipelago
A. Moku Pepa
B. Legislative Report
C. Enforcement
1. Report on Shark Finning
2. Enforcement of Bottomfish Restricted Fishing Areas (BRFAs)
D. Bottomfish
1. Update on Bottomfish Annual Catch Target
2. Report on BRFA Review
E. Report of the Hawaii Non-Commercial Data Workshop
F. Community Projects, Activities and Issues
1. Report on Hawaii Regulatory Review
2. Maunalei Ahupuaàa Restoration Project
3. Report on Community Fish Aggregating Devices
4. Supporting the Aha Moku System
5. Report on Humpback Whale National Marine Sanctuary Management Plan Review
G. SSC Recommendations
H. Public Comments
I. Council Discussion and Action
12. Public Comment on Non-Agenda Items

6 p.m.–9 p.m., Thursday, March 8, 2012

Fishers Forum: Fisheries Development and Monitoring

9 a.m.–5 p.m., Friday, March 9, 2012

13. Pelagic and International Fisheries
A. Action Items
1. Recommendations on Options for American Samoa Shallow-Set Longline Fishery (ACTION ITEM)
2. Recommendations on Territory Bigeye Tuna Catch Limits (ACTION ITEM)
B. Economic Impact for Hawaii-Based Longline Fisheries in Establishing Size Categories for Striped and Blue Marlin
C. Longline Sea Turtle Hard Caps
D. American Samoa and Hawaii Longline Quarterly Reports
E. International Fisheries Meetings
1. Eighth Meeting of the Western and Central Pacific Fisheries Commission
2. Te Vaka Moana
F. Advisory Group Recommendations
1. AP Recommendations
2. REAC Recommendations
G. SSC Recommendations
H. Public Hearing
I. Council Discussion and Action
14. Protected Species
A. New Biological Opinion for Shallow-Set Longline Fishery
B. Update on ESA and MMPA actions
C. Hawaiian Islands Cetacean and Ecosystem Assessment Survey (HICEAS) II Analyses

D. Sea Turtle Post Release Mortality Workshop
E. Migratory Bird Treaty Act Permit for the Hawaii-Based Shallow-Set Longline Fishery Draft Environmental Assessment
F. Advisory Group Recommendations
1. AP Recommendations
2. REAC Recommendations
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action
15. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Standard Operating Practices and Procedures (SOPP) Review and Changes
D. Council Family Changes
E. Meetings and Workshops
F. Program Review
G. Other Business
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
16. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 153rd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–2609 Filed 2–3–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

[OMB Control Number 3038–0007]

Agency Information Collection Activities: Rules Relating to Regulation of Domestic Exchange-Traded Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of an Existing Collection, correction.

SUMMARY: This document corrects language in the Extension of an Existing Collection published in the **Federal Register** on Thursday, January 5, 2012, seeking 60 days of public comment on the proposed extension of the collection. The collection covers rules related to risk disclosure concerning exchange traded commodity options.

DATES: Comments must be submitted on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Ryne Miller, (202) 418–5921; FAX: (202) 418–5536; email: *rmiller@cftc.gov.*

SUPPLEMENTARY INFORMATION: In the notice of Extension of an Existing Collection, FR Doc. 2011–33841, on page 477 in the issue of Thursday, January 5, 2012, on page 477, the following correction is made:

ADDRESSES: [Corrected]. Comments may be mailed to Ryne Miller, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

Dated: January 30, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–2587 Filed 2–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0014]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995, the Defense Logistics Agency* announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the reinstated collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the reinstated information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 6, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, ATTN: Mr. Mark Vincent, J–3341, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703) 767–2507.

Title; Associated Form; and OMB Number: End-Use Certificate, DLA Form 1822, OMB No. 0704–0382.

Needs and Uses: All individuals wishing to acquire government property identified as Munitions List Items (MLI) or Commerce Control List Item (CCLI) must complete this form each time they enter into a transaction. It is used to clear recipients to ensure their eligibility to conduct business with the government. That they are not debarred bidders; Specially Designated Nationals (SDN) or Blocked Persons; have not violated U.S. export laws; will not divert the property to denied/sanctioned countries, unauthorized destinations or sell to debarred/Bidder Experience List firms or individuals. The EUC informs the recipients that when this property is to be exported, they must comply with the International Traffic in Arms Regulation (ITAR), 22 CFR 120 *et seq.;* Export Administration Regulations (EAR), 15 CFR 730 *et seq.;* Office of Foreign Asset Controls (OFAC), 31 CFR 500 *et seq.;* and the United States Customs Service rules and regulations.

Affected Public: Individuals; businesses or other for profit; not-for-profit institutions.

Annual Burden Hours: 14,000.

Number of Respondents: 42,000.

Responses per Respondent: 1.

Average Burden per Response: 0.33 hours (20 minutes).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals/businesses who receive defense property identified as Munitions List Items and Commerce Control List Items through: Purchase, exchange/trade, or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws.

The form is available on the DOD DEMIL/TSC web page, Defense Reutilization and Marketing Service sales catalogs and web page, Defense Contract Management Agency offices, FormFlow and ProForm.

Dated: January 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–2501 Filed 2–3–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0013]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DLA Small Business Programs, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 6, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Office of Small Business Programs via email to *ptap@dla.mil,* or by regular mail to the Defense Logistics Agency Office of Small Business Programs, ATTN: Procurement Technical Assistance Program, DB, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060–6221; or call the Office of Small Business programs at (703) 767–0192.

Title; Associated Form; and OMB Number: Request for approval for Procurement Technical Assistance Center Cooperative Agreement Performance Report, DLA Form 1806, OMB Control Number 0704–0320.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreement awards made under 10 U.S.C. Chapter 142.

Affected Public: State and local governments, private nonprofit organizations, Indian tribal organizations and Indian economic enterprises.

Annual Burden Hours: 2744.

Number of Respondents: 98.

Responses per Respondent: 4.

Average Burden per Response: 7 hours.

Frequency: Quarterly.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Each cooperative agreement award recipient submitted goals and objectives in their application that were subsequently incorporated into their cooperative agreement awards. The level of achievement of these goals and the funds expended in the process of conducting the program is measured by the report. The government's continued funding of a cooperative agreement and the decision to exercise an option award for a cooperative agreement award is based to a significant degree on the award holder's current performance as measured by the report. Information from the report is also used to identify programs that may be in need of assistance and/or increased surveillance.

Dated: January 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–2500 Filed 2–3–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 7903, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Ocean Research Advisory Panel (hereafter referred to as ''the Panel'').

The Panel is a statutory federal advisory committee that shall provide the National Ocean Research Leadership Council (hereafter referred to as ''the Council'') with independent scientific advice and recommendations. The Panel shall: (a) Provide advice on policies and procedures to implement the National Oceanographic Partnership Program; (b) provide advice on selection of partnership projects and allocations of funds for partnership projects for implementation under the program; (c) provide advice on matters relating to national oceanographic data and requirements; and (d) fulfill any additional responsibilities that the Committee considers appropriate.

The Panel shall report to the National Ocean Research Leadership Council.

The Panel shall consist of no less than 10 and no more than 18 members, representing the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, ocean industries, State Governments, academia and others including individuals who are eminent in the

fields of marine science, marine policy or related fields including ocean resource management.

Panel Members, shall be appointed by the Chairman and their appointments shall be renewed on an annual basis by the Secretary of Defense. The panel Membership shall select the Chairperson and Vice-Chairpersons of the Panel for renewable one-year terms. In addition, the Secretary of Defense may invite other distinguished Government officers to serve as non-voting observers of the Panel, and appoint consultants, with special expertise, to assist the Panel on an ad hoc basis. Non-voting observers and those non-voting experts and consultants appointed by the Secretary of Defense shall not count toward the Panel's total membership. Panel Members who are not full-time or permanent part-time federal officers or employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members. With the exception of travel and per diem for official Panel related travel, Panel members shall serve without compensation.

The Secretary of Defense may approve the appointment of Panel members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Panel member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Panel's mission and DoD policies and procedures, may establish subcommittees deemed necessary to support the Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory committee's sponsor. Such subcommittees shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Panel; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Panel members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Panel member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee. Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Panel related travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Panel shall meet at the call of the Panel's Designated Federal Officer, in consultation with the Panel's Chairperson. The estimated number of Panel meetings is two per year. In addition, the Designated Federal Officer is required to be in attendance at all Panel and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Panel or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Ocean Research Advisory Panel's membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Ocean Research Advisory Panel. All written statements shall be submitted to the Designated Federal Officer for the Ocean Research Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Ocean Research Advisory Panel Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Ocean Research Advisory Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 1, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–2579 Filed 2–3–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the White Elk Military Operations Area White Pine and Elko Counties, Nevada Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On November 4, 2011, the United States Air Force signed the ROD for the White Elk Military Operations Area (MOA) as a result of findings in the Final Environmental Impact Statement (EIS) dealing with airspace over White Pine and Elko Counties, Nevada. The ROD states the Air Force decision to select the Proposed Action to establish the White Elk MOA airspace adjacent to the Utah Test and Training Range over White Pine County and Elko County in eastern Nevada along with the authorization of supersonic operations in the overlying Currie/Tippet Air Traffic Control Assigned Airspace (ATCAA) and use of training chafe and flare in the White Elk MOA and Currie/Tippet ATCAA airspace.

The decision was based on matters discussed in the Final EIS, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on May 20, 2011 through a NOA in the **Federal Register** (Volume 76, Number 98, Page 29241) with a wait period that ended on June 20, 2011. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

Authority: This NOA is published pursuant to the regulations (40 CFR Part 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas M. Germanos, 129 Andrews

Street, Suite 332, Langley AFB, VA; (757) 764–9334.

Shannon N. Sanchez,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–2644 Filed 2–3–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Air Space Training Initiative Shaw Air Force Base, South Carolina Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On December 9, 2011, the United States Air Force signed the ROD for the Airspace Training Initiative Shaw Air Force Base, South Carolina Final Environmental Impact Statement (EIS). The ROD states the Air Force decision to select the Preffered Alternative and adopt the mitigation measures identified in the Final EIS and also the additional compensatory mitigations identified after the Final EIS.

The decision was based on matters discussed in the Final EIS, inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on June 25, 2010 through a NOA in the **Federal Register** (Volume 75, Number 122, Page 36386) with a wait period that ended on July 25, 2010. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

Authority: This NOA is published pursuant to the regulations (40 CFR Part 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C.. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7))

FOR FURTHER INFORMATION CONTACT: Mr Jay Nash; HQ/USAF/A4/7, 1030 Air Force Pentagon, Washington, DC 20330–1030; (703) 693–4001.

Shannon N. Sanchez,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–2617 Filed 2–3–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to the List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: The Department of Energy (''Department'' or ''DOE'') periodically publishes revisions to its list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (''EEOICPA'' or ''Act''). This notice amends the list of covered facilities by removing the designation of the Monsanto Chemical Company in Dayton, Ohio, and the United Lead Company of New Jersey as atomic weapons employer (AWE) facilities.

ADDRESSES: The Department welcomes comments on this notice. Comments should be addressed to: Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (HS–10),

U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (HS–10), (301) 903–5926.

SUPPLEMENTARY INFORMATION: This notice amends the list of covered facilities by removing the designation of the Monsanto Chemical Company in Dayton, Ohio, and the United Lead Company of New Jersey as atomic weapons employer (AWE) facilities. Previous lists of revisions were published by DOE on May 26, 2011 (76 **Federal Register** (FR) 102); June 30, 2010 (75 FR 125), as amended August 3, 2010 (75 FR 148); April 9, 2009 (74 FR 67); June 28, 2007 (72 FR 124); November 30, 2005 (70 FR 229); August 23, 2004 (69 FR 162); July 21, 2003 (68 FR 139); December 27, 2002 (67 FR 249); June 11, 2001 (66 FR 112); and January 17, 2001 (66 FR 11).

Purpose

EEOICPA establishes a program to provide compensation to certain employees who develop illnesses as a result of their employment with AWEs, DOE and its predecessor Agencies, certain of its contractors and subcontractors, and listed beryllium vendors. Section 3621(4) of the Act (codified at 42 U.S.C. 7384l(4)) defines an AWE as ''an entity, other than the United States, that—(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an [AWE] for purposes of the compensation program.'' Section 3621(5) defines an AWE facility as ''a facility, owned by an [AWE], that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.''

It has recently come to the attention of the Department that the listing for the United Lead Company in Middlesex, New Jersey, was duplicative of the listing of the Middlesex Sampling Plant—a DOE facility in New Jersey for which United Lead Company was the operator. A second facility operated by the Monsanto Chemical Company in Dayton, Ohio, was mistakenly identified as an AWE facility. Records related to the Monsanto facility indicate that Monsanto provided construction and management and operations services at the Dayton facility during the period identified on the facility list pursuant to contracts with DOE and, therefore, it should not be designated as an AWE facility.

This notice formally makes the changes to the listing of covered facilities as indicated below:

- Removes the United Lead Company in Middlesex, New Jersey, as an AWE facility under EEOICPA because it was duplicative of the listing of the Middlesex Sampling Plant—a DOE facility in New Jersey for which the United Lead Company was the operator.
- The Monsanto Chemical Company facility in Dayton, Ohio, is no longer designated as an AWE facility. This change has no effect on any determination by the Department of Labor regarding the status of the site.

Issued in Washington, DC, on January 25, 2012.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

[FR Doc. 2012–2562 Filed 2–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR–001]

Notice of Petition for Waiver of Hill PHOENIX From the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for comments.

SUMMARY: This notice announces receipt of and publishes the Hill PHOENIX Inc. (Hill PHOENIX) petition for waiver (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Through this notice, DOE also solicits comments with respect to the Hill PHOENIX petition.

DATES: DOE will accept comments, data, and information with respect to the Hill PHOENIX petition until March 7, 2012.

ADDRESSES: You may submit comments, identified by case number CR–001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. CR–001'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver; and (4) DOE rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: mailto: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial refrigerators, freezers and refrigerator-freezers and other types of commercial equipment.[1] (42 U.S.C. 6311–6317)

Section 343(a)(6)(C) of EPCA (42 U.S.C. 6314(a)(6)(C)) directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 342(c)(4), *i.e.,* (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment, effective January 8, 2007. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets'' when measuring the energy consumption of those products. DOE established energy conservation standards for certain classes of commercial refrigerators effective January 1, 2012 (74 FR 1092, Jan. 9, 2009). The basic models included in Hill PHOENIX's petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure, AHRI 1200–2006, as of January 1, 2012.

The regulations set forth in 10 CFR part 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

II. Petition for Waiver

On December 1, 2011, Hill PHOENIX submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Hill PHOENIX requested the waiver for its refrigerated display merchandisers designed to display only non-perishable products refrigerated for

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated as Parts A and A–1, respectively.

customer convenience. This equipment is classified as commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors (category viii of the applicable test procedure requirement set forth in the table at 10 CFR 431.64(b)(2)). The applicable test procedure for this equipment is ARI 1200–2006. Manufacturers are directed to use this test procedure pursuant to 10 CFR 431.64.

Hill PHOENIX seeks a waiver from the applicable test procedures under 10 CFR 431.64 on the grounds that its refrigerated display merchandisers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hill PHOENIX asserts that the merchandisers are not able to operate at the specified integrated average temperature of 38 °F. Consequently, Hill PHOENIX requested that DOE grant a waiver from the applicable test procedures, allowing the specified products to be tested at 50 °F, which Hill PHOENIX asserts is the lowest product application temperature.

The following basic models are included in the petition:

FBI FT FEA NFD NFO NFT OB SF

DOE makes decisions on waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hill PHOENIX may submit a petition for waiver for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hill PHOENIX's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. DOE is publishing Hill PHOENIX's petition for waiver in its entirety pursuant to 10 CFR 430.401(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Arnie Stephens,

Research and Development Manager, Barker Specialty Products by Hill PHOENIX, 703 Franklin Street, Keosauqua, IA 52565. All submissions received must include the case number for this proceeding, CR–001. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author.

DOE does not accept telefacsimiles (faxes). According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 30, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

December 1, 2011

Assistant Secretary for Energy Efficiency and Renewable Energy U.S. Department of Energy

To Whom It May Concern:

Subject: Petition for Test Waiver as described in 10 CFR 431.401

Barker Specialty Products by Hill PHOENIX has several base models of refrigerated display merchandisers that operate significantly higher than the specified application temperatures for rating merchandisers in accordance with 10 CFR 431.62 and 431.64. These merchandisers are specifically designed and produced to only display non-perishable products that are refrigerated for customer convenience. The product displayed in these merchandisers are floral, wine and bulk produce that is not required to be refrigerated under any current food safety regulation. These products are slightly chilled primarily for customer convenience. There is some extension of product life by displaying it in a chilled space but it is not a requirement.

These merchandisers are designed specifically for these higher application temperatures. Many of the components in the merchandisers will not perform adequately at lower application temperatures. For example, the evaporator coils on these cases are smaller and designed to operate above freezing, the insulation in the case is thinner than what would be found in a medium temperature (38 °F) application merchandiser, and the airflow is matched for the particular application. In many instances, the merchandisers do not have the capacity to meet the 38 °F product temperature requirements. Requiring these merchandisers to achieve a 38 °F integrated product temperature requires significant design changes to the merchandiser and results in a more expensive product. In addition, testing the merchandiser at the medium temperature rating is extremely unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

This petition is to waive the requirement to test the merchandisers at the rating temperature for medium temperature of an integrated product temperature of 38 °F. The remaining test procedures will be followed and the energy usage and limits will be calculated based on current specifications.

1. The following basic models are included in this petition:

a. FBI
b. FT
c. FEA
d. NFD
e. NFO
f. NFT
g. OB
h. SF

2. These merchandisers are utilized only for non-perishable merchandise and operate at a higher product temperature than 38 °F.

3. The test procedure requires these models to be tested at the medium temperature application rating of 38 °F. This test is not representative of how the merchandisers are utilized in application.

4. Testing the merchandisers at this application rating increases the design and production costs of the case and is unrepresentative of its true energy consumption.

5. This petition is to waive the energy usage tests being conducted at the medium temperature application rating of 38 °F. These merchandisers would be tested and the energy usage recorded in accordance with the remaining test procedures, however the application temperature rating would be an integrated average temperature of 50°F.

6. The case models above are designed and produced only for these higher application temperatures.

7. While there are a limited number of other manufacturers of similar merchandisers, it is not known if the

design is specific to these higher temperature applications.

Very Respectfully,

Arnie Stephens

Research and Development Manager

[FR Doc. 2012–2563 Filed 2–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–020]

Decision and Order Granting a Waiver to Sub-Zero From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–020) that grants to Sub-Zero, Inc. (Sub-Zero) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. Under today's decision and order, Sub-Zero shall be required to test and rate its refrigerator-freezers with dual compressors using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–7796, Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Sub-Zero a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with dual compressors, provided that Sub-Zero tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Sub-Zero from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on January 30, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Sub-Zero, Inc. (Case No. RF–020)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *Sub-Zero's Petition for Waiver: Assertions and Determinations*

On September 6, 2011, Sub-Zero submitted a petition for waiver and application for interim waiver (petition) from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. Sub-Zero is designing new refrigerator-freezers that incorporate dual compressors. In its petition, Sub-Zero seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 for Sub-Zero's dual compressor products. Sub-Zero states that the test procedure was designed to test independent, sealed systems while Sub-Zero's dual compressor products have shared systems. Sub-Zero further states that it may not be possible to use the DOE test procedure for these products, or that use of the DOE test procedure would provide inaccurate results. In its petition, Sub-Zero set forth an alternate test procedure developed in conjunction with an independent test laboratory. DOE did not receive any comments on the Sub-Zero petition.

The DOE test procedure for dual compressor systems assumes

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

independent, sealed systems, while Sub-Zero dual compressor refrigerators have shared systems. As a result, it is not possible to test these products using the DOE test procedure, and use of the test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. Sub-Zero worked with an independent testing laboratory to develop a test procedure that would accurately measure the energy consumption of its dual compressor products while alleviating the testing difficulties, and submitted the results as an alternate test procedure. DOE reviewed the alternate procedure and determined that it will alleviate the testing problems associated with Sub-Zero's implementation of a dual compressor system while accurately measuring the energy consumption of these dual compressor products.

III. *Consultations with Other Agencies*

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Sub-Zero petition for waiver. The FTC staff did not have any objections to granting a waiver to Sub-Zero.

IV. *Conclusion*

After careful consideration of all the material that was submitted by Sub-Zero and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Sub-Zero Inc. (Case No. RF–020) is hereby granted as set forth in the paragraphs below.

(2) Sub-Zero shall be required to test and rate the following Sub-Zero models according to the alternate test procedure set forth in paragraph (3) below.

700TCI
700TR
736TCI
736TCIE
736TR
736TRE
BI–30U/O
BI–30U/S/PH
BI–30U/S/TH
BI–30UA/O
BI–30UA/S/PH
BI–30UA/S/TH
BI–30UG/O
BI–30UG/S/PH
BI–30UG/S/TH
BI–36S/O
BI–36S/S/PH
BI–36S/S/TH
BI–36U/O
BI–36U/S/PH
BI–36U/S/TH
BI–36UA/O
BI–36UA/S/PH
BI–36UA/S/TH
BI–36UFD/O
BI36UFD/S/PH
BI36UFD/S/TH
BI–36UG/O
BI–36UG/S/PH
BI–36UG/S/TH
BI–42S/O
BI–42S/S/PH
BI–42S/S/TH
BI–42SD/O
BI–42SD/S/PH
BI–42SD/S/TH
BI–42SID/O
BI–42SID/S/PH
BI–42SID/S/TH
BI–48S/O
BI–48S/S/PH
BI–48S/S/TH
BI–48SD/O
BI–48SD/S/PH
BI–48SD/S/TH
BI–48SID/O
BI–48SID/S/PH
BI–48SID/S/TH
ID–36CI
IT–27CI
IT–30CI
IT–30CIID
IT–36CI
IT–36CIID
PRO48
PRO48G
PRO48HAG

(3) Sub-Zero shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the Sub-Zero products listed in paragraph (2) only, replace the multiple defrost system section 5.2.1.4 of Appendix A1 with the following:

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1 / T1) + \sum_{i=1}^{D} \left[\left(EP2_i - (EP1 \times T2_i / T1) \right) \times (12 / CT_i) \right]$$

Where:

- 1440 = number of minutes in a day
- ET is the test cycle energy (kWh/day);
- i is the variable that can equal to 1,2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
- CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or

freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency

Measurements shall be taken at regular interval not exceeding 1 minute.

(4) Representations. Sub-Zero may make representations about the energy use of its dual compressor refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Sub-Zero's September 6, 2011 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on January 30, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy

[FR Doc. 2012–2564 Filed 2–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14293–000]

PacifiCorp; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14293–000.

c. *Date filed:* September 27, 2011, and supplemented December 1, 2011, and January 12, 2012.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Granite Hydroelectric Project.

f. *Location:* The proposed Granite Project would be located on a water supply pipeline in Salt Lake County, Utah. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Eve Davies, PacifiCorp., 1407 West North Temple, Salt Lake City, UT 84116, phone (801) 220–2245.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *robert.bell@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Granite Project would consist of: (1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 1,700 kilowatts; and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 5.015 gigawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14293, in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received

on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2570 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2680–105]

Consumers Energy Company, Detroit Edison Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Amendment of License.

b. *Project No.:* 2680–105.

c. *Date Filed:* December 16, 2011.

d. *Applicants:* Consumers Energy Company & Detroit Edison Company.

e. *Name of Projects:* Ludington Pumped Storage.

f. *Location:* On the shore of Lake Michigan in Mason County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robert M. Neustifter, Principal Attorney, Consumers Energy Company, One Energy Plaza, Jackson, MI 49201. Tel: (517) 788–2974.

i. *FERC Contact:* Mr. Vedula Sarma, (202) 502–6190, *vedula.sarma@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project numbers (P–2680–105) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee proposes to upgrade and overhaul all six pump-turbine/motor generating units of the Ludington pumped storage project, one unit at a time over the period 2013 through 2019. The overhaul would increase the authorized installed and hydraulic capacities of the project from 1,657.5 MW to 1,785 MW and from 66,600 cfs to 76,290 cfs, respectively.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–(866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2574 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–50–001]

PetroLogistics Natural Gas Storage, LLC; Notice of Application

Take notice that on January 27, 2012, PetroLogistics Natural Gas Storage, LLC (PetroLogistics), 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, filed in Docket No. CP11–50–001, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to amend its previously filed application in Docket No. CP11–50–000. Specifically, PetroLogistics request to amend its certificate by removing Cavern 102 from the PetroLogistic's proposed project in Iberville Parish, Louisiana. PetroLogistics states that Cavern 102 has been removed from the project because the Department of Energy has recently taken the cavern through a condemnation proceeding. PetroLogistics states that, aside from the removal of Cavern 102, only slight additional modifications are necessary, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Allen Kirkley, PetroLogistics Natural Gas Storage, LLC, 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, or by calling (225) 706–2253 (telephone) or (225) 706–7050 (fax).

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 21, 2012

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2576 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–338–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Penalty Revenue Crediting Report of Trailblazer Pipeline Company LLC.
Filed Date: 1/27/12.
Accession Number: 20120127–5148.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: RP12–339–000.
Applicants: Gulf South Pipeline Company, LP.
Description: ONEOK 34951 to BG Energy 39507 Capacity Release Negotiated Rate Agreement Filing to be effective 2/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5180.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–340–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Spark 39520 Capacity Release Negotiated Rate

Agreement Filing to be effective 2/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5182.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–341–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Antero 2 to Tenaska 331 Capacity Release Negotiated Rate Filing to be effective 2/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5183.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–342–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Antero 3 to Tenaska 332 Capacity Release Negotiated Rate Agreement Filing to be effective 2/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5184.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–343–000.
Applicants: Colorado Interstate Gas Company LLC.
Description: Merger Filing—Name Chg and ATC Rate Adjustment to be effective 3/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5200.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–344–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Fuel Filing Effective 3–1–2012 to be effective 3/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5252.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–345–000.
Applicants: Wyoming Interstate Company, LLC.
Description: WIC Quarterly Fuel Filing 01–2012 to be effective 3/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5268.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–346–000.
Applicants: PostRock KPC Pipeline, LLC.
Description: KPC Tariff Revisions (GT&C Section 3) to be effective 3/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5272.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–347–000.
Applicants: Ruby Pipeline, LLC.
Description: FL&U Filing effective March 1, 2012 to be effective 3/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5274.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: CP12–44–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Submits an application for the abandonment of service provided to Delmarva Power & Light Company under Transco's Rate Schedule LG–A.
Filed Date: 1/5/12.
Accession Number: 20120127–4010.
Comments Due: 5 p.m. ET 2/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1859–001.
Applicants: Equitrans, L.P.
Description: Submits tariff filing per 154.203: Pipeline Safety Cost Tracker Compliance Filing to be effective 4/1/2011.
Filed Date: 4/19/11.
Accession Number: 20110419–5191.
Comment Date: 5 p.m. ET 2/13/12.

Docket Numbers: RP11–1566–009.
Applicants: Tennessee Gas Pipeline Company, LLC.
Description: Rate Case 2011—Settlement Implementation to be effective 2/1/2012.
Filed Date: 1/27/12.
Accession Number: 20120127–5219.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: RP11–2254–002.
Applicants: Midwestern Gas Transmission Company.
Description: Omnibus Compliance to be effective 1/5/2012.
Filed Date: 1/27/12.
Accession Number: 20120127–5112.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: RP11–1745–002.
Applicants: UGI Storage Company.
Description: UGI Storage Company Compliance Tariff Filing, to be effective 2/1/2012.
Filed Date: 1/30/12.
Accession Number: 20120130–5251.
Comments Due: 5 p.m. ET 2/13/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2543 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–327–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Negotiated Rate—EDF Trading—contract 820013 to be effective 2/1/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5058.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–328–000.
Applicants: Texas Eastern Transmission, LP.
Description: Termination of Non-conforming Agreement 800474 to be effective 2/26/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5078.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–329–000.
Applicants: Eastern Shore Natural Gas Company.
Description: ACA Filing—Revised to Reflect RP11–1670–000 Settlement to be effective 10/1/2011.
Filed Date: 1/26/12.
Accession Number: 20120126–5103.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–330–000.
Applicants: Black Marlin Pipeline Company.
Description: Petition of Black Marlin Pipeline Company for Extension of Temporary Exemptions from Tariff Provisions.
Filed Date: 1/26/12.
Accession Number: 20120126–5158.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–331–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: J–W Gathering Negotiated Rate to be effective 1/6/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5177.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–332–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: S–2 Tracker Filing Effective 02–01–2012 to be effective 2/1/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5189.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–333–000.
Applicants: Steckman Ridge, LP.
Description: Termination of Non-conforming Agreement 920024 to be effective 2/26/2012.
Filed Date: 1/26/12.
Accession Number: 20120126–5192.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–334–000.
Applicants: Colorado Interstate Gas Company LLC.
Description: Black Hills Non-Conforming Negotiated Rate Filing to be effective 1/1/2012.
Filed Date: 01/26/2012.
Accession Number: 20120126–5223.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: RP12–335–000.
Applicants: Ruby Pipeline, L.L.C.
Description: Parking and Lending Service Charge Filing to be effective 2/27/2012.
Filed Date: 1/27/12.
Accession Number: 20120127–5001.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: RP12–336–000.
Applicants: Southern LNG Company, L.L.C.
Description: Dredging Surcharge Cost Adjustment—2012 to be effective 3/1/2012.
Filed Date: 1/27/12.
Accession Number: 20120127–5032.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: RP12–337–000.
Applicants: Arlington Storage Company, LLC.
Description: Arlington Storage Company, LLC—Enhanced Interruptible Services to be effective 1/6/2012.
Filed Date: 1/27/12.
Accession Number: 20120127–5049.
Comments Due: 5 p.m. ET 2/8/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–1083–005.
Applicants: Eastern Shore Natural Gas Company.
Description: Requisite tariff sheets in the Settlement of RP11–1670 to be effective 7/29/2011.
Filed Date: 1/25/12.
Accession Number: 20120125–5249.
Comments Due: 5 p.m. ET 2/6/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2012.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. 2012–2544 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–49–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 17, 2012, Mississippi Canyon Gas Pipeline, LLC (MCGP), 1100 Louisiana Street in Houston, Texas filed a prior notice application pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and MCGP's blanket certificate issued in Docket No. CP97–172, to construct and operate a new receipt point located in Federal waters offshore Louisiana in West Delta Block 143, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Cynthia Hornstein Roney, Manager, Regulatory Compliance, Mississippi Canyon Gas Pipeline, LLC, 1100 Louisiana Suite 3300, Houston, Texas 77002 or telephone (832) 214–9334 or fax (713) 353–1742 or by email *cynthia.roney@enbridge.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2572 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at the National Association of Regulatory Utility Commissioners 2012 Winter Committee Meetings

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

FERC/National Association of Regulatory Utility Commissioners (NARUC), Collaboratives on Smart Response and Emerging Issues, February 5, 2012 (8:30 a.m.–12 p.m.), Renaissance Washington Hotel, 999 Ninth Street NW., Washington, DC 20001.

FERC/NARUC Forum on Reliability and the Environment, February 7, 2012 (2:30 p.m.–5:30 p.m.), Renaissance Washington Hotel, 999 Ninth Street NW., Washington, DC 20001.

Further information may be found at *http://winter.narucmeetings.org/program.cfm.*

The discussions at these meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. EL11–62–000, Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff

Docket No. AD12–1–000, Commission Role Regarding Environmental Protection Agency's Mercury and Air Toxics Standards

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2573 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12711–005]

Ocean Renewable Power Company Maine, LLC; Notice of Staff Participation in Meeting

On February 15, 2012, Office of Energy Projects staff will participate in a meeting with representatives from Ocean Renewable Power Company Maine, LLC at the Federal Energy Regulatory Commission's (Commission) Washington, DC office to discuss the draft license articles provided in the Commission's environmental assessment issued on January 4, 2012, for the Cobscook Bay Tidal Energy Project No. 12711.

A teleconference line will be made available for parties wishing to participate. Details on the teleconference are provided below:

Date: February 15, 2012.
Time: 1 p.m.
Call-in Number: (877) 857–1347.
Meeting ID: 12711.
Password: 12711.

For further information please contact Timothy Konnert at (202) 502–6359, or email at *timothy.konnert@ferc.gov.*

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2571 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Workshop

	Docket No.
Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects.	AD12–9–000
Priority Rights to New Participant-Funded Transmission	AD11–11–000
Puget Sound Energy, Inc	EL10–72–001
National Grid Transmission Services Corporation Bangor Hydro Electric Company	EL11–49–000
Rock Island Clean Line LLC	ER12–365–000

Take notice that Federal Energy Regulatory Commission (Commission) staff will convene a workshop to obtain input on potential reforms to the Commission's policies governing the allocation of capacity on new merchant transmission projects and new cost-based, participant-funded electric transmission projects. The workshop will be held on Tuesday, February 28, 2012, from 9 a.m. to 1:15 p.m. (EST), at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Members of the Commission may attend.

Advance registration is not required, but is encouraged. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/capacity-workshop-2-28-12-form.asp.*

Attached to this notice is an agenda for the workshop. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *www.ferc.gov.*

This workshop is not intended to address the substance of any particular case pending before the Commission. However, out of an abundance of caution, notice is hereby given that discussions at the workshop may touch upon matters at issue in the above-referenced individual proceedings that are either pending or within their rehearing period.

The format of the workshop is a facilitated discussion with those persons attending the workshop. As such, there will be no panelists or presentations from participants. We encourage people to attend in person. However, if that is not possible, the Commission will provide a listen-only line. If you need a listen-only line, please email Sarah McKinley (*Sarah.McKinley@ferc.gov*) by 5 p.m. (EST) on Thursday, February 23, with your name, email, and phone number, in order to receive the call-in information the day before the conference. Please use the following text for the subject line, ''AD12–9–000 listen-only line registration.''

The workshop will not be transcribed nor webcast. The Commission will be accepting comments following the workshop from all interested parties. Comments will be due within 30 days of the workshop.

FERC workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

FOR FURTHER INFORMATION PLEASE CONTACT:

Andrew Weinstein (Legal Information), Federal Energy Regulatory Commission, Office of the General

Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6230, *andrew.weinstein@ferc.gov.*

Becky Robinson (Technical Information), Federal Energy Regulatory Commission, Office of Energy Policy & Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–8868, *becky.robinson@ferc.gov.*

Dated: January 31, 2012.

Kimberly D. Bose,

Secretary.

Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects

AD12–9–000

February 28, 2012

Agenda

9–9:15 a.m. Welcome and Opening Remarks

In March 2011, the Commission convened a conference to examine, among other things, the process of allocating transmission capacity of new transmission projects, including projects by merchant transmission developers at negotiated rates [1] and participant-funded projects being developed by incumbent public utility transmission providers and nonincumbent transmission developers at cost-of-service based rates.[2] Having analyzed the discussion and comments received, Commission staff is reviewing a range of more specific policy reforms that the Commission may wish to consider. The purpose of this workshop is to obtain input on possible policy reforms, balancing open access principles with the needs of transmission developers to reasonably allocate capacity created by new merchant transmission projects and new cost-based, participant-funded transmission projects. Each session will consist of a facilitated dialogue; there will be no panelists or presentations by participants.

9:15–11:15 a.m. Session 1: Merchant Transmission Projects

Commission staff seeks to explore the merits of potential reforms to the Commission's policies governing negotiated rate authority for merchant transmission projects. Prior to the *Chinook* order in 2009, the Commission required that all merchant transmission capacity be allocated during an open season. In *Chinook* and subsequent proceedings, the Commission has permitted flexible capacity allocations on a case-by-case basis with some share of capacity allowed for anchor customer presubscriptions and the remainder being allocated in a subsequent open season. In *SunZia,*[3] the Commission rejected a request to allocate 100 percent of a line's capacity to anchor customers, finding that the applicant did not provide sufficient justification to support that allocation. The Commission, however, did not foreclose the possibility that an applicant could propose and justify a 100 percent capacity allocation to anchor customers. During a technical conference held in March 2011 in Docket No. AD11–11–000, several commenters suggested that the Commission allow 100 percent of a line's capacity to be allocated to an anchor customer.[4]

Staff seeks comment regarding whether it would be appropriate for the Commission to return to the pre-*Chinook* requirement for open seasons as the means to allocate all capacity on a merchant transmission line, but also to allow for distinctions among prospective customers in the open season based on transparent and not unduly discriminatory criteria, with the possible result that a single customer could be awarded up to 100 percent of capacity. Staff also wants to explore the use of the terms open season and anchor customer as used by industry. While petitioners have characterized certain parties as anchor customers, staff has noticed that at times the process used to select these looks like what staff would consider an open season. In evaluating whether this policy change would be an appropriate action for the Commission, participants are encouraged to consider the following questions:

1. Would the above-noted approach provide similar benefits as presubscription of anchor customers? If not, in what ways does presubscription of anchor customers enable a project to succeed that are not also satisfied by allocating up to 100 percent of capacity through an open season, including to a single customer?

2. In the event of an oversubscription in an open season, would it be appropriate for the Commission to clarify that there is no obligation to prorate capacity allocations where bids are distinguishable by transparent and not unduly discriminatory criteria, such as creditworthiness, term of service sought, price bid, and net present value?

3. What criteria should the Commission use in evaluating whether a developer has appropriately sized a line?

4. Given the protections afforded by the open season process, should the Commission permit affiliates of the merchant transmission developer to be awarded up to 100 percent of capacity in the open season?

5. What are the characteristics of a well-designed open season process? Are there lessons learned from the use of open seasons for natural gas pipeline development that are relevant to merchant development of electric transmission?

6. Are the existing open season reporting requirements adequate to provide transparency as to how capacity rights are allocated?

7. Should the Commission retain its practice of considering responses to requests for proposals (RFP) by a merchant transmission developer to satisfy open season requirements, provided that any capacity in excess of the RFP amount be allocated through an open season? [5]

11:15 a.m.–11:30 a.m. Break

11:30 a.m.–1 p.m. Session 2: Cost-Based, Participant-Funded Transmission Projects

Staff also seeks to explore the merits of potential reforms to Commission policies regarding the development of participant-funded transmission projects at cost-based rates. In recent years, the Commission has received innovative proposals from transmission developers seeking to construct facilities for the use of specific customers in exchange for recovering the cost of the facilities from those customers.[6] To date, the Commission has not required the use of open seasons for customer solicitation for these projects, nor has it required transmission providers to follow service request procedures set

[1] See, *e.g.*, Chinook Power Transmission, LLC, 126 FERC ¶ 61,134 (2009) (Chinook).

[2] See, *e.g., Northeast Utilities Service Co. and NSTAR Electric Co., LLC,* 127 FERC ¶ 61,179, *reh'g denied,* 129 FERC ¶ 61,279 (2009) *(NU/NSTAR); Grasslands Renewable Energy, LLC,* 133 FERC ¶ 61,225 (2010) (*Grasslands*).

[3] *SunZia Transmission, LLC,* 131 FERC ¶ 61,162 (2010).

[4] *Priority Rights to New Participant-Funded Transmission,* March 15, 2011 Technical Conference, AD11–11–000. Tr. 21:24, 45:2.

[5] *See Hudson Transmission Partners, LLC,* 135 FERC ¶ 61,104 (2011).

[6] *See NU/NSTAR* and *Grasslands.*

forth in the *pro forma* Open Access Transmission Tariff (OATT).

As the Commission receives similar proposals in the future, staff anticipates that questions of customer access to capacity for such cost-based projects will arise. In resolving these questions, staff also anticipates that the nature of the transmission developer may be relevant, with potential distinctions made between incumbent public utility transmission providers and nonincumbent transmission developers.[7] With regard to incumbent public utility transmission providers, staff seeks comment regarding whether it would be appropriate for the Commission to adopt a policy requiring such entities to use service request and transmission planning rules contained in their OATTs for the development of all new transmission facilities. With regard to nonincumbent transmission developers, staff seeks comment on whether it would be appropriate for the Commission to adopt a policy requiring such entities to allocate capacity on new cost-based, participant-funded projects pursuant to an open season, similar to the development of merchant transmission projects.[8] In evaluating whether these would be appropriate actions for the Commission, participants are encouraged to consider the following questions:

1. Would it be appropriate for the Commission to distinguish for this purpose between incumbent public utility transmission providers and nonincumbent transmission developers, given that the former have a set of rules in place to govern the processing of service requests and planning of grid expansion, while the latter do not?

2. Is requiring incumbent public utility transmission providers to use the service request and transmission planning rules contained in their OATTs when allocating capacity on cost-based, participant-funded lines necessary to ensure transparent planning of transmission expansion?

3. Would requiring incumbent public utility transmission providers to use the service request and transmission planning rules contained in their OATTs when allocating capacity on cost-based, participant-funded lines undermine the ability of some projects to succeed? If so, how?

4. Is requiring nonincumbent transmission developers to allocate capacity on cost-based, participant-funded projects through an open season necessary to ensure that such developers have sufficient information to make appropriate sizing decisions and avoid undue discrimination among customers?

5. Would requiring nonincumbent transmission developers to allocate capacity on cost-based, participant-funded projects through an open season undermine the ability of some projects to succeed? If so, how?

6. For purposes of allocating capacity on cost-based, participant-funded projects, would it be appropriate for the Commission to treat a nonincumbent transmission developer as an incumbent public utility transmission provider once it energizes transmission facilities?

1–1:15 p.m. Wrap-Up

[FR Doc. 2012–2575 Filed 2–3–12; 8:45 am]

BILLING CODE 6717–01–P

[7] Nonincumbent transmission developers include a transmission developer that does not currently have a retail distribution service territory or footprint as well as public utility transmission providers proposing transmission projects outside of their existing retail distribution service territory or footprint. A similar distinction was made in Order No. 1000. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC ¶ 61,051 at P 225 (2011).

[8] In the alternative, the nonincumbent transmission developer could use the service request and transmission planning rules of the *pro forma* OATT to allocate capacity on a project, even where the developer is not yet a public utility.

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–9627–4]

Beaches Environmental Assessment and Coastal Health Act; Availability of BEACH Act Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 406(b) of the Clean Water Act (CWA) as amended by the Beaches Environmental Assessment and Coastal Health (BEACH) Act authorizes EPA to award program development and implementation grants to eligible states, territories, tribes, and local governments to support microbiological monitoring and public notification of the potential for exposure to disease-causing microorganisms in coastal recreation waters, including the Great Lakes. EPA encourages coastal and Great Lakes states and tribes that have received BEACH Act grants in the past to apply for BEACH Act grants to implement effective and comprehensive coastal recreation water monitoring and public notification programs (''implementation grants''). EPA also encourages eligible coastal and Great Lakes tribes to apply for BEACH Act grants to develop effective and comprehensive coastal recreation water monitoring and public notification programs (''development grants''). This notice announces the availability of BEACH Act grants for fiscal year 2012 and also describes the requirements associated with the receipt of BEACH Act grants for fiscal year 2012 and future years, if funds are appropriated by Congress.

DATES: States, Erie County, Pennsylvania, and tribes that previously received BEACH Act grants must submit applications for fiscal year 2012 grants on or before April 6, 2012. Other eligible tribes should notify the relevant EPA Regional BEACH Act grant coordinator of their interest in applying for a grant on or before March 22, 2012. Upon receipt of a tribe's notice of interest, EPA will establish an appropriate application deadline.

ADDRESSES: You must send your application to the appropriate EPA Regional grant coordinator listed in this notice under Section VI, Grant Coordinators.

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, 1200 Pennsylvania Ave. NW., (4305T), Washington, DC 20460. Telephone: (202) 566–0447. Email: *wilcut.lars@epa.gov*

SUPPLEMENTARY INFORMATION:

I. Background

What are BEACH Act Grants?

The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 amends the Clean Water Act (CWA) to better protect public health at our nation's beaches through improved water quality standards and beach monitoring and notification programs. The BEACH Act added Section 406 to the CWA to authorize EPA to award grants to develop and implement monitoring and public notification programs for coastal recreation waters. Currently, 34 states, two tribes, and one local government (Erie County, Pennsylvania) operate beach monitoring and notification programs using BEACH Act grant funds.

What is the statutory authority for BEACH Act Grants and what are the performance criteria?

The general statutory authority for BEACH Act grants is section 406(b) of the Clean Water Act, as amended by the BEACH Act, Public Law 106–284, 114 Stat. 970 (2000). It provides that, ''(T)he Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.'' CWA section 406(b)(2)(A), however,

limits EPA's ability to award implementation grants only to those states and tribes that meet certain requirements (see Section II, Funding and Eligibility, below for more comprehensive information on specific requirements). One of those requirements is that the program be ''consistent with the performance criteria published by the Administrator'' pursuant to CWA Section 406(a). EPA's current version of the performance criteria was published on July 19, 2002 and is titled *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). A notice of availability of the document was published in the **Federal Register** (67 FR 47540, July 19, 2002). This document can be found on EPA's Web site at *http://water.epa.gov/grants_funding/beachgrants/*. Copies of the document may also be obtained by writing, calling, or emailing: Office of Water Resource Center, U.S. Environmental Protection Agency, Mail Code RC–4100, 1200 Pennsylvania Avenue NW., Washington, DC 20460. (Phone: (202) 566–1731 or email: *center.water-resource@epa.gov*).

To what years does the information in this notice apply?

The information in this notice, including the description of the grant requirements and conditions, apply to grants awarded in FY 2012 and subsequent years, if funds are appropriated by Congress. EPA no longer intends to publish an annual **Federal Register** notice announcing the availability of BEACH Act grants. Instead, EPA headquarters intends to send a memorandum to the regional offices to communicate the amount of funds available for BEACH Act grants and the resulting allocations using EPA's existing allocation formula. EPA regional offices will communicate directly with the states, local government grant recipients, and any potentially eligible tribes in their region. In subsequent years, if EPA makes any changes to grant requirements or conditions, or the allocation formula, EPA expects those changes would be communicated directly to eligible grantees through a notice in the **Federal Register** and/or other means.

What activities are eligible for funding under the grants?

In fiscal year 2012 and subsequent years, EPA intends to award grants authorized under CWA section 406(b) to eligible states, tribes, and local governments to support the implementation of coastal recreation water quality monitoring and public notification programs that are consistent with EPA's required performance criteria for implementation grants. Also in fiscal year 2012 and subsequent years, EPA intends to award development grants to eligible tribes to support the development of coastal recreation water monitoring and public notification programs that would meet the eligibility requirements for implementation grants described in Section 406(b)(2)(A)(i)–(v). Activities in support of the development of monitoring and notification programs for coastal recreation waters consistent with those requirements and the implementation of programs consistent with EPA's Performance Criteria are eligible for funding under the grants. The term ''coastal recreation waters'' is defined in Section 502(21)(A) of the Clean Water Act to include the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under CWA Section 303(c) for use for swimming, bathing, surfing, or similar water contact activities. The statute explicitly excludes from the definition ''inland waters or waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.'' (CWA Section 502(21)(B)).

II. Funding and Eligibility

Who is eligible to apply for BEACH Act Grants?

Coastal and Great Lake states that meet the requirements of CWA section 406(b)(2)(A) are eligible for grants in the applicable fiscal year to implement monitoring and notification programs for their coastal recreation waters. The definition of the term ''state'' in CWA section 502 includes the District of Columbia, and current U.S. territories: The Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Tribes may also be eligible for BEACH Act grants. In order to be eligible, a tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public, and the tribe must demonstrate that it meets the ''treatment in the same manner as a state'' criteria in CWA section 518(e) for the purposes of receiving a section 406 BEACH Act grant.

Are local governments eligible for funding?

CWA section 406(b)(2)(B) authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after July 19, 2003, EPA determines that the state within which the local government has jurisdiction is not implementing a program that meets the requirements of CWA section 406(b), which includes a requirement that the program is consistent with the performance criteria in *National Beach Guidance and Required Performance Criteria for Grants.* EPA has awarded an implementation grant to Erie County, Pennsylvania, the local government implementing the beach monitoring and notification program for all of Pennsylvania's coastal recreation waters. Local governments may contact their EPA Regional Office for further information about BEACH Act grants.

How may tribes apply for BEACH Act Development Grants, how much funding is available for tribes, and how can a tribe demonstrate that it meets the ''Treatment in the Same Manner as a State'' Criteria in CWA Section 518(e)?

Section 518(e) of the CWA authorizes EPA to award BEACH Act grants to eligible Indian tribes. For fiscal year 2012, EPA will make $150,000 available to eligible tribes. Funding in subsequent years will depend on the total amount available, the number of tribes applying, and the amounts requested by individual tribes. In order to be eligible for a CWA section 406 development grant, a tribe must have coastal recreation waters adjacent to beaches or similar points of access that are used by the public. In addition, a tribe must demonstrate that it meets the ''treatment in the same manner as a state'' (TAS) criteria contained in CWA section 518(e) for purposes of receiving a CWA section 406 grant. To demonstrate TAS, the tribe must show that it: (1) Is federally recognized; (2) has a governing body carrying out substantial governmental duties and powers; (3) will be exercising functions pertaining to waters within the reservation; and (4) is reasonably expected to be capable of carrying out the functions consistent with the CWA and all applicable regulations. EPA encourages those tribes with coastal recreation waters to contact their EPA Regional BEACH Act grant coordinator for further information regarding the application process as soon as possible.

Are there any additional eligibility requirements and grant conditions applicable to grant recipients?

Yes, there are additional eligibility requirements and grant conditions. First, CWA section 406(b)(2)(A) provides that EPA may only award a grant to implement a monitoring and notification program if:

(i) The program is consistent with the performance criteria published by the Administrator under CWA section 406(a);

(ii) The state or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) The state or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) The state or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under CWA section 406(a); and

(v) The public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

Second, CWA section 406(c) requires that as a condition of receipt of a CWA section 406 grant, a state or local government program for monitoring and notification must identify:

(1) Lists of coastal recreation waters in the state, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) In the case of a state program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) The frequency and location of monitoring and assessment of coastal recreation waters based on—

(A) The periods of recreational use of the waters;

(B) The nature and extent of use during certain periods;

(C) The proximity of the waters to known point sources and nonpoint sources of pollution; and

(D) Any effect of storm events on the waters;

(4)(A) The methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

(B) The assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) Measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A) The Administrator, in such form as the Administrator determines to be appropriate;[1] and

(B) A designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) Measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) Measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

Third, as required by CWA section 406(b)(3)(A) and the *National Beach Guidance and Required Performance Criteria for Grants,* recipients of a CWA section 406 grant must submit to EPA a report that describes:

(1) Data collected as part of the program for monitoring and notification as described in section 406(c), and

(2) Actions taken to notify the public when water quality standards are exceeded. Grant recipients must submit to EPA both the monitoring and notification reports for any beach season by January 31 of the year following the beach season. For the 2012 beach season, the deadline for states to submit complete and correct reports is January 31, 2013. EPA first established this report submission deadline in the **Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15449 (March 31, 2003)).

Fourth, grant recipients must report to EPA, latitude, longitude and mileage data on:

(1) The extent of beaches and similar points of public access adjacent to coastal recreation waters, and

(2) The extent of those beaches that are monitored.

EPA first established this requirement in the **Federal Register** notice for the fiscal year 2003 grants (68 FR 15446, 15447 (March 31, 2003)). EPA is continuing this requirement in order to capture any changes states, tribes or local governments may make to their beach monitoring and notification programs. States, tribes or local governments must report to EPA any changes to the extent of their beaches or similar points of access, and the extent of their beaches that are monitored.

How much funding is available?

For fiscal year 2012, the total available for BEACH Act grants is expected to be $9,864,000. EPA expects to award all but $150,000 to eligible states and local governments for implementation grants. EPA intends to award the remaining $150,000 to eligible tribes.

How will the funding for States be allocated?

For fiscal year 2012 and subsequent years, EPA expects to award grants to 34 eligible states and one local government (Erie County, PA) based on a grant allocation formula that combines the formula that the Agency originally developed in 2002 and first announced in the **Federal Register** on March 31, 2003 (the ''base allocation formula'') (see 68 FR 15446) with a supplemental allocation formula introduced with the fiscal year 2010 grants (see 75 FR 1373, January 11, 2010). The base allocation formula considers three factors: (1) The length of the beach season; (2) shoreline miles; and (3) coastal county population. EPA is reviewing the latest coastal county population information from the 2010 census to determine which of several datasets is the most appropriate to use in the allocation formula for future years. For fiscal year 2012 grants, EPA continued to use coastal county population from the 2000 Census in its allocation formula.

How does EPA expect to allocate 2012 BEACH Act Grant funds?

For 2012, the total available for BEACH Act grants is expected to be $9,864,000. EPA has set aside $150,000 for eligible tribes, leaving $9,714,000 for grants to states and territories. Assuming 34 states and Erie County, Pennsylvania apply and meet the statutory eligibility requirements for implementation grants (and have met the statutory grant conditions applicable to previously awarded section 406 grants), the distribution of the funds for fiscal year 2012 is expected to be:

For the state or territory of:	The year 2012 allocation is expected to be:
Alabama	$262,000

[1] EPA established in its *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004) specific requirements and recommendations associated with measures for prompt notification to EPA and local governments (see Chapter 5).

For the state or territory of:	The year 2012 allocation is expected to be:
Alaska	150,000
American Samoa	302,000
California	506,000
Connecticut	222,000
Delaware	210,000
Florida	516,000
Georgia	284,000
Guam	302,000
Hawaii	322,000
Illinois	241,000
Indiana	205,000
Louisiana	316,000
Maine	252,000
Maryland	266,000
Massachusetts	252,000
Michigan	274,000
Minnesota	204,000
Mississippi	257,000
New Hampshire	204,000
New Jersey	274,000
New York	341,000
North Carolina	300,000
Northern Marianas	303,000
Ohio	222,000
Oregon	227,000
Pennsylvania (Erie County)	221,000
Puerto Rico	327,000
Rhode Island	212,000
South Carolina	294,000
Texas	379,000
U.S. Virgin Islands	303,000
Virginia	273,000
Washington	267,000
Wisconsin	224,000

What if a state does not apply or does not qualify for funding?

EPA expects that 34 eligible states and one local government (Erie County, Pennsylvania) will apply for a grant in fiscal year 2012. If fewer than the previously eligible entities apply for the allocated amount in a given year, or if any applicant fails to meet the statutory eligibility requirements (or the statutory conditions applicable to previously awarded section 406 grants), EPA will allocate available grant funds to previously eligible states and local governments in the following order:

(1) States and local governments that have already been awarded grants that continue to meet the eligibility requirements for implementation grants and that have met the statutory conditions applicable to previously awarded section 406 grants will be awarded the full amount of funds allocated to the state under the formula described above.

(2) EPA may award program implementation grants to additional local governments in states that the Agency determines no longer meet the requirements for implementation grants.

3) Consistent with CWA section 406(h), EPA will use grant funds to conduct a beach monitoring and notification program in the case of a state that has no program for monitoring and notification that is consistent with EPA's grant performance criteria.

What if a grantee cannot use all of its allocation?

If a grant recipient cannot use all of its allocation, the Regional Administrator may award the unused funds to any eligible coastal or Great Lake grant recipient in the Region for the continued development or implementation of its coastal recreation water monitoring and notification program. If, after re-allocation, there are still unused funds within the Region, EPA Headquarters will redistribute these funds to any eligible coastal or Great Lake BEACH Act grant recipient according to the supplemental formula described above.

How will the funding for tribes be allocated?

EPA expects to apportion the funds set aside for tribal grants evenly among all eligible tribes that apply for funding.

Does EPA require matching funds?

Recipients do not have to provide matching funds for BEACH Act grants. EPA may establish a match requirement in the future based on a review of state program activity and funding levels.

III. Eligible Activities

Recipients of implementation grants may use funds for activities to support implementing a beach monitoring and notification program that is consistent with the required performance criteria for grants specified in the document, *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). Recipients of development grants may use the funds to develop a beach monitoring and notification program consistent with the performance criteria.

IV. Selection Process

EPA Regional Offices will award CWA section 406 grants through a non-competitive process. EPA expects to award grants to all eligible state, tribal, and local government applicants that meet the applicable requirements described in this notice.

Who has the authority to award BEACH Act Grants?

The Administrator has delegated the authority to award BEACH Act grants to the Regional Administrators.

V. Application Procedure

What is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Monitoring and Notification Program Implementation Grants?

The number assigned to the BEACH Act grants is 66.472, Program Code CU.

Can BEACH Act Grant Funds Be Included in a Performance Partnership Grant?

BEACH Act grants cannot be included in a Performance Partnership Grant.

What is the application process?

Your application package should contain completed:

- EPA SF–424 Application for Federal Assistance, and
- Program Summary.

In order for EPA to determine that a state or local government is eligible for an implementation grant, the applicant must submit documentation with its application to demonstrate that its program is consistent with the performance criteria. The Program Summary must contain sufficient technical detail for EPA to confirm that a program meets the statutory eligibility requirements and statutory grant conditions for previously awarded CWA section 406 grants listed in Section II (Funding and Eligibility) of this notice. The Program Summary must also describe how the state or local government used BEACH Act grant funds to develop and implement the beach monitoring and notification program, and how the program is consistent with the nine performance criteria in *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004) which is found at *http://water.epa.gov/grants_funding/beachgrants/guidance_index.cfm.* The Program Summary should also describe the state or local program's objectives for the grant year, along with target dates and milestones for timely project completion.

States, Erie County, and tribes that have previously been awarded BEACH Act grants must submit application packages to the appropriate EPA Regional Office by April 6, 2012. EPA will make an award after the Agency reviews the documentation and confirms that the program meets the applicable requirements. The Office of Management and Budget has authorized EPA to collect this information (BEACH Act Grant Information Collection Request, OMB control number 2040–0244). Please contact the appropriate EPA Regional Office for a complete application package. See Section VI for

a list of EPA Regional Grant Coordinators or visit the EPA Beaches Web site at http://water.epa.gov/type/oceb/beaches/whereyoulive_state.cfm.

What should a tribe's notice of interest contain?

The Notice of Interest should include the tribe's name and the name and telephone number of a contact person.

Are quality assurance and quality control (QA/QC) required for application?

Yes. Three specific QA/QC requirements must be met to comply with EPA's performance criteria for grants:

(1) Applicants must submit documentation that describes the quality system implemented by the state, territory, tribe, or local government. Documentation may be in the form of a Quality Management Plan or equivalent documentation.

(2) Applicants must submit a quality assurance project plan (QAPP) or equivalent documentation.

(3) Applicants are responsible for submitting documentation of the quality system and QAPP for review and approval by the EPA Quality Assurance Officer or his designee before they take primary or secondary environmental measurements. More information about the required QA/QC procedures is available in Chapter Four and Appendix H of *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004).

Are there reporting requirements?

Recipients must submit annual performance reports and financial reports as required in 40 CFR part 31, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.40 and 31.41). As required by Section 31.40, the annual performance report includes a comparison of actual accomplishments to the objectives established for the year and the reason for any slippage if established objectives were not met. It should also describe how the grant funds were used to implement the program to meet the performance criteria listed in *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). The annual performance report required under 40 CFR 31.40 is due no later than 90 days after the grant year ends.

Recipients must also submit annual monitoring and notification reports. The contents of these reports are described in the *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004). Sections 2.2.3 and 4.3 of the document contain the performance criterion requiring an annual monitoring report, and sections 2.2.8 and 5.4 contain the performance criterion requiring an annual notification report. These annual monitoring and notification reports required to be submitted by States to EPA under CWA section 406(b)(3)(A) and by all grant recipients under the *National Beach Guidance and Required Performance Criteria for Grants,* include data collected as part of a monitoring and notification program. As a condition of award of an implementation grant, EPA requires that the monitoring report and the notification report for any beach season be submitted not later than January 31 of the year following the beach season. (See Section II, Funding and Eligibility, above.)

What regulations and omb cost circular apply to the award and administration of these grants?

The regulations at 40 CFR Part 31 govern the award and administration of grants to states, tribes, local governments, and territories under CWA section 406(b). Allowable costs will be determined according to the cost principles outlined in 2 CFR Part 225.

VI. Grant Coordinators

Headquarters—Washington, DC

Lars Wilcut, USEPA, 1200 Pennsylvania Ave. NW.,—4305, Washington, DC 20460; T: (202) 566–0447; F: (202) 566–0409; *wilcut.lars@epa.gov.*

Region 1—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Caitlyn Whittle, USEPA Region 1, 5 Post Office Square Suite 100 (OEP06–1), Boston, MA 02109–3912; T: (617) 918–1748; F: (617) 918–0748; *whittle.caitlyn@epa.gov.*

Region 2—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Helen Grebe, USEPA Region 2, 2890 Woodbridge Ave. MS220, Edison, NJ 08837–3679; T: (732) 321–6797; F: (732) 321–6616; *grebe.helen@epa.gov.*

Region 3—Delaware, Maryland, Pennsylvania, Virginia

Denise Hakowski, USEPA Region 3, 1650 Arch Street 3WP30, Philadelphia, PA 19103–2029; T: (215) 814–5726; F: (215) 814–2318; *hakowski.denise@epa.gov.*

Region 4—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel, USEPA Region 4, 61 Forsyth St. 15th Floor, Atlanta, GA 30303–3415; T: (404) 562–9274; F: (404) 562–9224; *hansel.joel@epa.gov.*

Region 5—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick, USEPA Region 5, 77 West Jackson Blvd. WT–16J, Chicago, IL 60604–3507; T: (312) 353–6704; F: (312) 886–0168; *wirick.holiday@epa.gov.*

Region 6—Louisiana, Texas

Daniel Reid, USEPA Region 6, 1445 Ross Ave. 6WQ–EA, Dallas, TX 75202–2733; T: (214) 665–6536; F: (214) 665–6689; *reid.daniel@epa.gov.*

Region 9—American Samoa, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming, USEPA Region 9, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: (415) 972–3462; F: (415) 947–3537; *fleming.terrence@epa.gov.*

Region 10—Alaska, Oregon, Washington

Rob Pedersen, USEPA Region 10, 120 Sixth Ave. OW–134, Seattle, WA 98101; T: (206) 553–1646; F: (206) 553–0165; *pedersen.rob@epa.gov.*

Dated: January 30, 2012.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2012–2607 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9627–2; EPA–HQ–ORD–2011–0738]

Draft Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer review meeting.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review meeting to review the draft human health assessment titled, ''Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/004A). The draft assessment

was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development.

EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

Versar invites the public to register to attend this meeting as observers. In addition, Versar invites the public to give brief oral comments and/or provide written comments at the meeting regarding the draft assessment under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. In preparing a final report, EPA will consider Versar's report of the comments and recommendations from the external peer review meeting and any written public comments that EPA received in accordance with the announcements of the public comment period for the vanadium pentoxide assessment in **Federal Register** Notices published September 30, 2011, (76 FR 60827) and November 9, 2011 (76 FR 69736).

DATES: The peer review panel meeting on the draft assessment for Vanadium Pentoxide will be held on Wednesday, March 7, 2012, beginning at 9:00 a.m. and end at 5:00 p.m. Eastern Standard Time.

ADDRESSES: The draft ''Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment [Mail Code: 8601P], U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (703) 347–8561; facsimile: (703) 347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

The peer review meeting on the draft Vanadium Pentoxide assessment will be held at Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202. To attend the meeting, register no later than Wednesday, February 29, 2012, by calling Versar at: (703) 750–3000, extension 737, or calling toll free: 1–(800) 2–VERSAR, sending a facsimile to: (703) 642–6809, or sending an email to: *ssarraino@versar.com.* Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time at the peer review meeting for comments from the public. Please inform Versar if you wish to make comments during the meeting.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''Vanadium Pentoxide Peer Review Meeting'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact: Stephanie Sarraino, by phone: (703) 750–3000, extension 737, or email: *ssarraino@versar.com.*

ADDITIONAL INFORMATION: For information on registration, access or services for individuals with disabilities, or logistics for the external peer review meeting, please contact Versar by calling (703) 750–3000, extension 737, or calling Toll free: 1–(800) 2–VERSAR, sending a facsimile to: (703) 642–6809, or sending an email to: *ssarraino@versar.com.*

For information on the draft assessment, please contact Maureen Gwinn, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (703) 347–8565; facsimile: (703) 347–8689; or email: *FRN_Questions@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 550 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: January 30, 2012.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–2512 Filed 2–3–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration Board; Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 9, 2012, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 12, 2012

B. New Business

- Spring 2012 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Spring 2012 Regulatory Performance Plan

Closed Session*

Reports

- Office of Secondary Market Oversight Quarterly Report

Dated: February 2, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 2012–2785 Filed 2–2–12; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 6, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,268 respondents; 22,500,000 responses.

Estimated Time per Response: 1 second (0.000278 hours) to 15 seconds (0.004167 hours).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610, and Public Law 100–394, the ''Hearing Aid Compatibility Act of 1988,'' 102 Stat. 976, Aug. 16, 1988.

Total Annual Burden: 6,693 hours.

Total Annual Cost: $266,280.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 68.224—Notice of non-hearing aid compatibility. Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously registered, newly registered or refurbished shall (a) contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid compatible; and (b) be accompanied by instructions in accordance with 47 CFR 62.218(b)(2).

47 CFR 68.300—Labeling requirements. As of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible shall have the letters ''HAC'' permanently affixed. The information collections for both rules contain third party disclosure and labeling requirements. The information is used primarily to inform consumers who purchase and/or use telephone equipment whether the telephone is hearing aid compatible.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–2542 Filed 2–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required b y the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502 -3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 7, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at

Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at (202) 418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–XXXX.

Title: Section 74.605, Registration of Stationary TV Pickup Receive Sites.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 75 respondents; 314 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 942 hours.

Total Annual Cost: $156,750.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for this new information collection and assignment of an OMB control number.

Section 74.605 requires that licensees of TV pickup stations in the 6875 -7125 MHz and 12700—13200 MHz bands shall register their stationary receive sites using the Commission's Universal Licensing System (ULS). TV Pickup licensees record their receive-only sites in the ULS database, including all fixed service locations. The TV Pickup stations, licensed under Part 74 of the Commission's rules, make it possible for television and radio stations and networks to transmit program material from the sites of breaking news stories or other live events to television studios for inclusion in broadcast programs, to transmit programming material from studios to broadcasting transmitters for delivery to consumers' televisions and radios, and to transmit programs between broadcast stations. Registering the receive sites will allow analysis to determine whether Fixed Service links will cause interference to TV pickup stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–2632 Filed 2–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 6, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0512.

Title: ARMIS Annual Summary Report.

Report Number: FCC Report 43–01.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 45 respondents; 45 responses.

Estimated Time per Response: 88 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 219 and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,960 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not involved in the ARMIS Report 43–01. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking an extension of this expiring information collection in order to obtain the full three year approval from OMB. There is no change to the annual reporting requirement. There is no change to the Commission's previous burden estimates.

The information contained in FCC Report 43–01 has helped the Commission fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data provided in the reports. Automating and organizing data submitted to the Commission facilitate the timely and

efficient analysis of revenue requirements, rates of return and price caps, and provide an improved basis for auditing and other oversight functions. Automated reporting also enhances the Commission's ability to quantify the effects of policy proposals.

The Commission has granted AT&T, Verizon, legacy Qwest, and other similarly situated carriers conditional forbearance from FCC Report 43–06. *See Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules,* WC Docket Nos. 07–21, 05–342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA* v. *FCC,* Case No. 08–1226 (D.C. Cir. filed June 23, 2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering,* WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (*Verizon/Qwest Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA* v. *FCC,* Case No. 08–1353 (D.C. Cir. filed Nov. 4, 2008). Despite this forbearance, the Commission seeks OMB approval the renewal of this information collection because petitions for reconsideration and review of those forbearance decisions are currently pending before the Commission and the court, respectively.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–2631 Filed 2–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–105]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (Committee). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, February 24, 2012, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or TTY), or email *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 12–105 released January 31, 2012, announcing the agenda, date and time of the Committee's next meeting.

Meeting Agenda

At its February 24, 2012 meeting, it is expected that the Committee will consider recommendations from its Universal Service Fund Working Group regarding Lifeline Modernization and the Connect to Compete Fund; a recommendation from its Broadband Working group regarding utilization of www.broadband.gov and tracking of implementation of the National Broadband Plan, and a recommendation from its Consumer Empowerment Working Group regarding the www.fcc.gov Web site. The Committee may also consider the matter of the harmonization of FCC/FTC telemarketing rules. The Committee will also reaffirm recommendations adopted at its November 4, 2011 meeting regarding Lifeline Link-up, funding for public Broadcasting, and the test of the Emergency Alert System. The Committee may also consider other recommendations from its working groups, and may also receive briefings from FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for comments from the public. Alternatively, Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Meetings are also broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live/.*

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with your web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video captioning. The Web site to access Accessible Event is *http://accessibleevent.com.* The web page prompts for an Event Code which is, 005202376. To learn about the features of Accessible Event, consult its User's Guide at: *http://accessibleevent.com/doc/user_guide/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–2643 Filed 2–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before April 6, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper (202) 898.3877, Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: Disclosure of Deposit Status.

OMB Number: 3064–0168.

Affected Public: Insured Depository Institutions.

Disclosures:

A. Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts:

Estimated Number of Respondents: 7,830.

Frequency of Response: on occasion (average of once per year per bank).

Average Time per Response: 8 hours.

Estimated Annual Burden: 62,640 hours.

B. Disclosure to NOW account and IOLTA depositors of change in insurance category:

Estimated Number of Respondents: 6,249.

Frequency of Response: once.

Average Time per Response: 8 hours.

Estimated Annual Burden: 49,992 hours.

Total Annual Burden: 112,632 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of February 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–2630 Filed 2–3–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 30, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10420	BankEast	Knoxville	TN	1/27/2012
10421	First Guaranty Bank and Trust Company of Jacksonville	Jacksonville	FL	1/27/2012
10422	Patriot Bank Minnesota	Forest Lake	MN	1/27/2012
10423	Tennessee Commerce Bank	Franklin	TN	1/27/2012

[FR Doc. 2012–2490 Filed 2–3–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 6, 2012.

ADDRESSES: You may submit comments, identified by FR 2018 or FR 2023, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at

http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, with revision of the following reports:

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency form number: FR 2018.

OMB control number: 7100–0058.

Frequency: Up to six times a year.

Reporters: Domestically chartered large commercial banks and large U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 1,248 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 104.

General description of report: This information collection is authorized by Sections 2A, 12A and 11 of the Federal Reserve Act (12 U.S.C. 225a, 248(a) and 12 U.S.C. 263)) and Section 7 of the International Banking Act (12 U.S.C. 3105(c)(2)) and is voluntary. Individual respondent data are regarded as confidential under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally through electronic submission, up to six times a year. The purpose of the survey is to provide qualitative and limited quantitative information on credit availability and demand, as well as evolving developments and lending practices in the U.S. loan markets. Consequently, a portion of the questions in each survey typically covers special topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or other financial entities) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

Current Actions: The Federal Reserve proposes to reduce the minimum asset size for panel institutions from $3 billion to $2 billion and add 20 domestically chartered commercial banks with $2 to $10 billion in total assets to the current reporting panel. The Federal Reserve believes that the additions to the panel would provide deeper coverage of commercial real estate loans and small business lending, as well as a more comprehensive picture of differences in lending conditions at the largest banks and regional banks.

2. *Report title:* Senior Financial Officer Survey.

Agency form number: FR 2023.

OMB control number: 7100–0223.

Frequency: Up to four times a year.

Reporters: Domestically chartered large commercial banks.

Estimated annual reporting hours: 960 hours.

Estimated average hours per response: 3 hours.

Number of respondents: 80.

General description of report: This information collection is authorized by Sections 2A, 11 and 12A of the Federal Reserve Act (12 U.S.C. 225a, 248(a), and 263) and is voluntary. Individual respondent data are regarded as confidential under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve uses this voluntary survey to collect qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets. Responses are obtained from a senior officer at each participating institution usually through an electronic submission. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest. The survey helps pinpoint developing trends in bank funding practices, enabling the Federal Reserve

to distinguish these trends from transitory phenomena.

Current Actions: The Federal Reserve proposes to add 20 domestically chartered commercial banks with $2 to $10 billion in total assets to the current reporting panel and reduce the minimum asset size for panel institutions from $3 billion to $2 billion. The Federal Reserve believes that the additions to the panel would provide a more comprehensive picture of differences in funding conditions at the largest banks and regional banks, and deeper coverage of banks that lend in commercial real estate and small business markets. The reporting panel selection criteria for the FR 2023 are consistent with those criteria from the FR 2018. The proposed FR 2023 panel revisions are necessary in order to maintain consistency with the proposed panel revision in the FR 2018.

Board of Governors of the Federal Reserve System, February 1, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–2578 Filed 2–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Independent Bank Group, Inc.,* McKinney, Texas; to merge with I Bank Holding Company, Inc., Lakeway, Texas, and thereby indirectly acquire I Bank Texas, SSB, Austin, Texas.

Board of Governors of the Federal Reserve System, February 1, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–2577 Filed 2–3–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Availability of the Department of Health and Human Services FY 2011 Service Contract Inventory

AGENCY: Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, Department of Health and Human Services.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Health and Human Services (HHS) is publishing this notice to advise the public of the availability of its FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* HHS has posted its inventory and a summary of the inventory on the HHS homepage at the following link: *http://www.hhs.gov/grants/servicecontractsfy11.html.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Terry Frederick in the HHS/Office of the Secretary, Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition on (202) 205–4321 or at *terry.frederick@hhs.gov.*

Dated: January 30, 2012.

Angela Billups,

Senior Procurement Executive, Associate Deputy Assistant Secretary for Acquisition, Office of Grants and Acquisition Policy and Accountability, Assistant Secretary for Financial Resources, Office of the Secretary.

[FR Doc. 2012–2536 Filed 2–3–12; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 77 FR 509–11, dated January 5, 2012) is amended to reflect the reorganization of the National Center for Chronic Disease Prevention and Health Promotion, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the functional statements for the National Center for Chronic Disease Prevention and Health Promotion (CUC), the Office of the Director (CUC1), the Technical Information and Services Branch (CUC12), and the Extramural Research Program Office (CUC18), and insert the following:

National Center for Chronic Disease Prevention and Health Promotion (CUC). Plans, directs, and coordinates a national program for the prevention of premature mortality, morbidity, and disability due to heart disease, cancer, stroke, diabetes, arthritis, oral disease and other major chronic diseases, conditions, and adverse health outcomes, including reproductive outcomes, and the prevention of associated major risk factors, including tobacco use, poor nutrition, and physical inactivity; and promotes the overall health of the population across the life span, and the health of population subgroups with

disproportionate burdens of chronic diseases, conditions and risk factors. In carrying out this mission, the Center: (1) Plans, directs, and supports population-based policy, environmental, programmatic and infrastructure interventions to promote population health and well-being, increase healthy life expectancy, improve quality of life, increase productivity, and reduce health care costs; (2) provides national and international leadership in the development, implementation, evaluation, and dissemination of effective programs for chronic disease prevention, risk factor reduction, and health promotion; (3) plans, develops, implements, maintains and disseminates information for action from surveillance systems to monitor and understand the distribution of chronic diseases and conditions, and risk factors, and take appropriate action to address them; (4) conducts epidemiologic and behavioral investigations and demonstrations related to major health behaviors, including tobacco use, nutrition, family planning, alcohol use, and physical activity in conjunction with state, tribal, local and territorial health agencies, academic institutions, national, state and local partners and community organizations; (5) plans, directs, and conducts epidemiologic and evaluative investigations and interventions to improve health care access, utilization, and quality of health services in order to better prevent and control chronic diseases, conditions, and selected adverse reproductive outcomes, and reduce health risk behaviors; (6) serves as the primary focus for assisting states and localities through grants, cooperative agreements, and other mechanisms, in establishing and maintaining chronic disease prevention and health promotion programs; (7) provides training and technical consultation and assistance to states and localities in planning, establishing, maintaining, and evaluating prevention and control strategies for selected chronic disease and health promotion activities; (8) fosters collaboration and coordination of chronic disease prevention and health promotion activities across the Center by leading and facilitating join planning, consultation, program management and evaluation, and technical assistance to state, tribal, local and territorial partners; (9) provides technical consultation and assistance to other nations in the development and implementation of programs related to chronic disease prevention and health promotion, and selected adverse reproductive outcomes; and (10) in carrying out the above functions, collaborates as appropriate with other centers and offices of CDC, other PHS agencies, domestic and international public health agencies, and voluntary and professional health organizations.

Office of the Director (CUC1). (1) Manages, directs, coordinates, and evaluates the national and international activities and programs of the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP); (2) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (3) coordinates expert consultation and assistance provided by NCCDPHP to other CDC components, other PHS agencies, and federal, state, tribal, local and territorial government agencies, health care and related organizations, national and international health-related voluntary organizations, employers and businesses, private sector organizations, and other nations, and facilitates collaboration with these entities; (4) provides and coordinates science and administrative support services for NCCDPHP programs, including guidance and coordination for grants, cooperative agreements, and other assistance mechanisms; (5) provides support and quality assurance functions for human subjects protection, scientific clearance of information products produced by the Center, and plans, develops, and coordinates extramural research activities in cooperation with centers, divisions, and offices; (6) provides support and coordination for ongoing internal and external review of scientific and programmatic activities and ensures compliance with relevant rules, regulations and guidance documents; (7) coordinates, manages, and supports analyses of surveillance systems and activities in support of programs carried out by various NCCDPHP components; (8) coordinates the recruitment, assignment, technical supervision, and career development of staff, including field assignees, with emphasis on goals for affirmative action; (9) provides technical information services to facilitate dissemination of significant information to NCCDPHP staff, various federal, state, and local health agencies, professional and voluntary organizations, and through them to selected target populations; and (10) supports ongoing publication of Preventing Chronic Disease: Public Health Research Practice and Policy as a resource for public health professionals.

Health Communication Science Office (CUC1B). The Health Communication Science Office (HCSO) provides ongoing communication leadership and support to NCCDPHP's Office of the Director and divisions in furthering the center's mission to prevent chronic diseases and promote overall health. The HCSO (1) plans, develops, conducts, and evaluates cross-cutting communication projects and campaigns to inform media, health professionals, and the public about the prevention of chronic diseases and the promotion of healthy behaviors; (2) provides media, communication, and marketing support to NCCDPHP's divisions and programs; (3) facilitates cross-division coordination of health communication activities, sharing of lessons learned, and development of best practices; (4) serves as primary liaison between NCCDPHP and CDC's Office of the Associate Director for Communication on communication and marketing science and its associated research and practice; (5) prepares CDC and HHS press releases and media advisories, responds to center-level media inquiries, and coordinates and clears division-level media inquiries; (6) provides media relations support and training to NCCDPHP scientists and communication specialists; (7) manages a centralized system for tracking and analyzing media coverage of NCCDPHP issues and data releases; (8) provides technical writing and editing support to NCCDPHP scientific authors; (9) designs, develops, and coordinates the publication of print and audiovisual materials such as fact sheets, newsletters, speeches and presentations, exhibits, podcasts, and educational videos; (10) manages NCCDPHP's Web site and coordinates scheduling and production of chronic-disease-related weekly features for main CDC Web site; (11) responds to cross-cutting public inquiries as part of the CDC–INFO system and coordinates NCCDPHP's utilization of the CDC publication distribution facility; (12) manages and coordinates scientific and public affairs clearance of NCCDPHP print and non-print materials, ensuring adherence to and consistency with CDC and HHS information and publication policies and guidelines; (13) manages CDC logo licensing requests from external partner organizations involving NCCDPHP divisions and programs; (14) represents NCCDPHP on committees, workgroups, and at conferences relating to health communication activities; and (15) manages the National Conference on Chronic Disease Prevention and Health Promotion.

Delete in Its Entirety the Functional Statements for the Division of Adolescent and School Health (CUCB)

Delete in Its Entirety the Functional Statements for the Division of Oral Health (CUCD) and Insert the Following

Division of Oral Health (CUCD). (1) Monitors burden of oral diseases, risk factors, preventive services, and other associated factors; (2) supports public health research that directly applies to oral health policies and programs; (3) communicates timely and relevant information to impact oral health policy, practices, and programs; (4) supports the implementation and maintenance of effective strategies and interventions to reduce the burden of oral diseases and conditions; (5) builds capacity and infrastructure for sustainable, effective, and efficient oral health programs; (6) evaluates oral health programs to ensure that implementation has been successful; (7) identifies and facilitates partnerships to support CDC's strategic priorities for oral health; (8) investigates and diagnoses oral health hazards and outbreaks in the community; (9) develops and advocates sound oral public health policies; and (10) translates and disseminates research findings to develop, enhance, and guide programs, polices and strategies.

Delete in Its Entirety the Title and Functional Statements for the Division of Adult and Community Health (CUCE)

Delete in Its Entirety the Functional Statements for the Division of Diabetes Translation (CUCG), and Insert the Following

Division of Diabetes Translation (CUCG). In collaboration with NCCDPHP divisions, other CDC components, other HHS agencies, state, tribal, local and territorial government agencies, academic institutions, and voluntary and private sector organizations, the Division of Diabetes Translation; (1) Plans, directs, and coordinates a national program to prevent diabetes and reduce morbidity, mortality, disability, and costs associated with diabetes and its complications; (2) identifies, evaluates, and implements programs and policies to prevent and control diabetes through the translation of evidence-based models and interventions for improved health care and self-care practices into widespread clinical and community practice; (3) conducts surveillance of diabetes, its complications, and the utilization of health care and prevention resources to monitor trends and evaluate program impact on morbidity, mortality, disability, and cost; (4) conducts epidemiologic studies and disseminates findings to identify and evaluate the feasibility and effectiveness of potential prevention and control strategies at the community level; (5) develops or supports clinical and public health guidelines and strategies to form the basis for community interventions; and (6) provides technical consultation and assistance to state and local health agencies to implement and evaluate cost effective interventions to reduce morbidity, mortality, and disability.

Office of the Director (CUCG1). (1) Establishes and interprets policies and determines program priorities; (2) provides leadership and guidance in strategic planning, budget formulation, programmatic and scientific planning, development, and management, administrative management and operations of the division; (3) coordinates the monitoring and reporting of division priorities, accomplishments, future directions, and resource requirements; (4) leads and coordinates policy, communications and partnership activities; (5) leads and coordinates the activities to build the National Diabetes Prevention Program; (6) leads and coordinates cross-cutting activities to eliminate diabetes health disparities and improve health equity; and (7) coordinates division activities with other components of NCCDPHP and CDC, organizations in the public and private sectors, and other federal agencies.

Epidemiology and Statistics Branch (CUCGB). (1) Conducts national surveillance of diabetes and its complications and assists state health agencies in establishing and conducting diabetes surveillance systems at the state level; (2) identifies basic and clinical research findings and technologies that have potential to prevent or control diabetes and its complications through public health avenues; (3) designs, coordinates, and funds regional and national surveillance systems and population studies of the effectiveness of health system and policy-level interventions; (4) develops and analyzes mathematical and economic models to project the burden of diabetes and prioritize effective interventions to prevent and control diabetes; (5) conducts epidemiologic studies to identify high-risk population groups and other risk factors for diabetes and its complications; (6) conducts cost and cost-effectiveness analyses of diabetes prevention and control technologies to prioritize strategies for policy-makers; (7) conducts surveillance of the degree of diffusion and dissemination of preventive services and the utilization of health care; (8) provides scientific and technical support to division staff and state and local health agencies in planning, implementing, and evaluating programs to reduce morbidity and mortality from diabetes; and (9) collaborates with counterparts in other divisions, academic institutions, and other HHS agencies by conducting national public health research projects and by providing technical assistance in areas of epidemiology, surveillance, and economics.

Program and Evaluation Branch (CUCGC). (1) Provides programmatic leadership, guidance and consultation on a range of strategies to improve diabetes prevention and control programs in states, territories, tribes and local jurisdictions; (2) identifies, develops, implements and evaluates strategies to prevent and control diabetes through translation of science into widespread community practice and through the application of policy and environmental interventions, health systems interventions and community interventions; (3) implements and evaluates program policies, plans, procedures, priorities, and guidelines to improve health, prevent or delay the development of type 2 diabetes, and reduce morbidity, mortality, disability, and costs associated with diabetes and its complications, especially among vulnerable and disparate population groups; (4) obtains, analyzes, disseminates, and publishes data from diabetes prevention and control programs to develop operational strategies for translation of results into improved practice; (5) provides leadership, management and oversight for the National Diabetes Education Program with the National Institutes of Health and other key partners; (6) designs, evaluates, and implements national educational strategies directed toward health care professionals and systems, individuals with diabetes, community leaders, businesses, and the general public; (7) develops diabetes and pre-diabetes management educational materials, training courses, tools and other materials; (8) develops, implements and supports work with native populations through the Native Diabetes Wellness Program; and (9) coordinates and collaborates with counterparts in other divisions, HHS agencies, academic institutions, and national and voluntary organizations to improve public health diabetes prevention and control programs, practices and policies.

Delete in Their Entirety the Functional Statements for the Division of Nutrition, Physical Activity and Obesity (CUCH), and Insert the Following

Division of Nutrition, Physical Activity, and Obesity (CUCH). (1) Provides national and international leadership for chronic disease prevention and control and health promotion in the areas of nutrition, physical activity, and obesity; (2) plans and implements surveillance to track and analyze policy and environmental indicators and behaviors related to nutrition, physical activity, and related risk factors for obesity and other chronic diseases; (3) builds international, national, state, and local expertise and capacity to plan, implement, and evaluate nutrition, physical activity, and obesity prevention programs; (4) conducts epidemiologic and intervention studies related to nutrition, physical activity, and obesity; (5) develops and disseminates new methods, guidelines, and recommendations for effective nutrition, physical activity, and obesity prevention strategies in multiple settings; (6) facilitates the translation and dissemination of practice- and research-tested findings into public health practice for optimal health impact; (7) provides national leadership in health communications to promote nutrition, physical activity, and obesity prevention and control, and integrates health communications with overall program efforts; and (8) collaborates across CDC and with appropriate federal and state agencies, international/national/community organizations, and others.

Office of the Director (CUCH1). (1) Provides leadership and direction in establishing agency and division priorities, strategies, programs, and policies; (2) plans and directs resources and activities in alignment with agency and division goals and objectives; (3) leads policy development efforts and analyses related to nutrition, physical activity, and obesity; (4) mobilizes and coordinates partnerships and constituencies to build a national infrastructure for nutrition and physical activity promotion and obesity prevention; (5) educates healthcare professionals, businesses, communities, the general public, and key decision-makers about the importance of nutrition and physical activity in preventing obesity and their impact on chronic disease and public health; (6) monitors progress toward achieving agency and division goals and objectives and assesses the impact of programs; and (7) facilitates cross-functional activities and operations across CDC and in coordination with other federal agencies, partners, and constituencies.

Nutrition Branch (CUCHC). (1) Provides technical and subject matter expertise and training for state and community programs on policy, systems and environmental approaches related to nutrition and obesity; (2) plans, coordinates, and conducts surveillance activities in domestic and international settings to assess nutrition practices, food systems, and behavioral risks in children, adolescents, and adults; (3) analyzes, interprets, and disseminates data from surveys, surveillance activities, and epidemiologic studies related to nutrition and nutrition factors affecting chronic disease; (4) designs, implements, and evaluates epidemiologic studies and intervention projects for domestic and international application to address nutrition; (5) plans, coordinates, and conducts nutrition research and surveillance of policy and environmental strategies and interventions; (6) develops and disseminates nutrition guidelines and recommendations for maternal and child health, child growth and development, and prevention/reduction of chronic disease; (7) designs and evaluates nutrition and obesity interventions; (8) provides nutrition expertise and consultation to develop and promote health communication strategies; (9) coordinates cross-functional nutrition-related activities across CDC; and (10) coordinates and collaborates with appropriate federal agencies, national and international organizations, and other partners.

Physical Activity and Health Branch (CUCHD). (1) Provides technical and subject matter expertise and training for state and community programs on policy, systems and environmental approaches related to physical activity and obesity; (2) plans, coordinates, and conducts surveillance to assess levels of physical activity as well as determinants of physical activity; (3) conducts epidemiologic research related to physical activity and its impact on health, obesity, and chronic disease; (4) designs and evaluates physical activity and obesity interventions; (5) develops evidence-based guidelines and recommendations for physical activity; (6) provides physical activity expertise and consultation to develop and promote health communication strategies; (7) coordinates cross-functional physical activity-related activities across CDC; and (8) coordinates and collaborates with appropriate federal agencies, national and international organizations, and other partners.

Obesity Prevention and Control Branch (CUCHG). (1) Provides technical and subject matter expertise and training for state and community programs on policy, systems and environmental approaches related to nutrition, physical activity, and obesity; (2) plans, coordinates, and conducts surveillance to assess levels of healthy weight, overweight, and obesity and associated risk factors; (3) conducts research that utilizes data from surveys, surveillance activities, and nutrition and physical activity epidemiologic studies related to overweight and obesity and associated risk factors; (4) designs and evaluates nutrition, physical activity and obesity interventions; (5) develops and disseminates guidelines and recommendations for policy and environmental changes in multiples settings; (6) provides nutrition, physical activity and obesity expertise and consultation to develop and promote health communication strategies; (7) coordinates cross-functional obesity-related activities across CDC; and (8) coordinates and collaborates with appropriate federal agencies, national and international organizations, and other partners.

Program Development and Evaluation Branch (CUCHH). (1) Provides technical and subject matter expertise and training for state and community programs on translation and evaluation of policy, systems, and environmental strategies for nutrition, physical activity, and obesity; (2) designs and conducts applied research, evaluation, and translation activities related to nutrition, physical activity, and obesity prevention; (3) uses research, guidelines, and recommendations to develop evidence-based interventions and promising practices that support improved physical activity, nutrition, and healthy weight; (4) conducts behavioral and communications research to understand knowledge, attitudes, and beliefs and achieve healthy behavior changes in populations; and (5) coordinates and collaborates with appropriate federal agencies, national and international organizations, and other partners.

Delete in Its Entirety the Functional Statement for the Office of the Director (CUCL1), Office on Smoking and Health (CUCL), and Insert the Following

Office of the Director (CUCL1). (1) Manages, directs, coordinates, and evaluates the activities of the Office on Smoking and Health; (2) develops goals and objectives for the office; (3) provides leadership, scientific oversight, and guidance in program planning and

development; (4) coordinates the development of policy related to tobacco use and health in CDC, PHS, and HHS; (5) coordinates assistance provided by the Office on Smoking and Health (OSH) to other CDC components; federal, state, and local government agencies; the private sector; and other nations; (6) stimulates additional research and program activity related to tobacco use and health by other federal agencies, international organizations, and public and private organizations; (7) coordinates the OSH public information program, technical information program, and surveillance and epidemiologic projects and studies; (8) provides program management and administrative support services; (9) as required by Public Law 98–474, produces Biennial Status Report to Congress; (10) serves as the lead for the Tobacco and Health Objectives for the Nation; (11) collects, maintains, and analyzes information provided by the tobacco industry on cigarette additives and smokeless tobacco additives and nicotine content; (12) provides staff support for a Congressionally-mandated federal advisory committee on smoking and health; (13) serves as the principal adviser to the Surgeon General of the U.S. Public Health Service on all activities related to tobacco use and health; (14) serves a leading role in providing proactive media outreach and media response to the press, health professionals, and the general public with information on tobacco prevention and control issues; and (15) manages/leads and cultivates partnerships.

Delete in Its Entirety the Functional Statement for the Health Communications Office (CUCLC), Office on Smoking and Health (CUCL), and Insert the Following

Health Communications Office (CUCLC). (1) Plans, develops, and conducts programs to inform researchers, health professionals, policy-makers and the public about the health consequences of tobacco use; (2) provides technical guidance, assistance, and consultation to health professionals in the planning, development, and implementation of information programs at the national, state, and local levels; (3) produces, distributes, and evaluates educational materials and conducts counter-advertising campaigns to support tobacco prevention and control; (4) develops and maintains a Technical Information Center, including an on-line bibliographic database of materials relative to the OSH mission; (5) manages production of the annual Surgeon General's report and other Congressionally-mandated reports on the health consequences of tobacco use; (6) conducts joint information campaigns with other federal agencies, voluntary health organizations, state health departments, and others; (7) provides reference and referral services for OSH staff and constituents in need of scientific and other technical information; (8) plans and conducts special departmental-wide initiatives addressing high-risk groups; (9) prepares and distributes information products such as fact sheets, current awareness services, bibliographies, and legislative updates in both print and electronic formats; (10) produces speeches for CDC, PHS, and departmental officials relating to tobacco; (11) responds to public inquiries and shares general information on tobacco use and tobacco cessation; (12) manages the communication functions of OSH through activities such as maintaining slide and video libraries, managing mailing lists management, and providing conference exhibits; and (13) collaborates with other groups within CDC, PHS, and HHS and with other federal agencies, as well as other professional, voluntary, international, and professional health organizations.

Delete in Its Entirety the Functional Statements for the Division for Heart Disease and Stroke Prevention (CUCM), and Insert the Following

Division for Heart Disease and Stroke Prevention (CUCM). (1) Plans, directs, and coordinates programs to reduce morbidity, risk factors, costs, disability, mortality, and disparities associated with heart disease, stroke, and other cardiovascular disease outcomes; (2) provides national leadership, technical assistance, expert consultation, and training to state and local health agencies in intervention, surveillance, evaluation, and communication or marketing activities related to implementing state programs, registries, and other surveillance systems associated with reducing and preventing cardiovascular disease outcomes; (3) implements surveillance systems and conducts surveillance of outcomes and utilization of health care and prevention resources related to heart disease, stroke, high blood pressure, high cholesterol, and other cardiovascular disease to monitor trends and evaluate program impact on morbidity, mortality, risk factor improvement, cost, disability, and disparities; (4) conducts epidemiologic studies and disseminates findings to identify emerging risk factors with potential for prevention and control strategies; (5) conducts prevention research studies and disseminates findings to identify and evaluate the feasibility and effectiveness of potential prevention and control strategies in health care systems and at the community level; (6) identifies, implements, and evaluates programs to prevent and control heart disease, stroke, high blood pressure, high cholesterol, other cardiovascular disease outcomes, and disparities through the translation and communication of best practices in health care and risk factor prevention into widespread health systems policies and community changes; (7) collaborates with within CDC, PHS, and HHS and with other federal agencies, as well as other other cardiovascular health related activities at CDC; (8) maintains collaborative relationships with official, private, voluntary agencies, academic institutions, or other groups involved in the prevention and control of heart disease, stroke, and other cardiovascular diseases or risk factors; and (9) provides technical assistance and consultation to other nations and to the World Health Organization in the global prevention and control of cardiovascular disease.

Office of the Director (CUCM1). (1) Provides leadership and direction in establishing division priorities, strategies, programs and policies; (2) plans and directs resources and activities in alignment with division goals and objectives; (3) monitors progress toward achieving division objectives and assessing impact of programs; (4) insures that division activities are coordinated with other components of CDC both within and outside the center, with federal, state and local agencies, and related voluntary and professional organizations; (5) provides national leadership in coordinating and implementing activities that prevent heart disease and stroke; (6) educates the general public, key decision-makers, healthcare professionals, businesses and communities about the importance of and opportunities to prevent heart disease and stroke; (7) serves as co-lead for Healthy People 2020 heart disease and stroke objectives for the nation; (8) develops and produces communication tools to meet the needs of division programs and mission; (9) develops health communication campaigns at the national and state levels; (10) provides leadership to the division for health communication efforts; (11) provides administrative and management support for division activities; (12) reports accomplishments, future directions and resource requirements; and (13) represents the division at official professional and scientific meetings.

Epidemiology and Surveillance Branch (CUCMB). (1) Monitors the epidemiology of cardiovascular disease risk factors, behaviors, outcomes, costs, barriers, awareness, access to care, geographic variations and disparities; (2) prepares routine surveillance reports of national and state trends in cardiovascular disease risk factors, behaviors, outcomes, and disparities, which includes the mapping of geographic variations; (3) coordinates, manages, and maintains the activities of the National Cardiovascular Disease Surveillance System (NCVDSS), including the Data Trends & Maps Web site, the Interactive Atlas Web site, surveillance summaries, and research publications; (4) develops, designs, implements, and evaluates new cardiovascular disease registries and other surveillance systems that address gaps in existing CDC surveillance systems; (5) prepares epidemiologic and scientific papers for publication in medical and public health journals and for presentation to national public health and scientific conferences on surveillance and epidemiologic findings; (6) identifies, investigates, implements, and evaluates new surveillance methodologies and technologies that involve electronic data abstraction and transfer to state and national registries and spatial analysis; (7) proposes and serves as technical advisors and project officers for epidemiologic research projects that fill gaps in surveillance and intervention and investigates emerging risk factors that will lead to the prevention of cardiovascular disease and the elimination of disparities in cardiovascular disease; (8) serves as scientific and technical experts in cardiovascular disease epidemiology and surveillance methodology to state health departments and to advisory groups at the national/international level; (9) provides scientific leadership in the development, extension, and improvement of surveillance systems, epidemiologic strategies, and/or service to cardiovascular health programs; and (10) facilitates integration of epidemiology and surveillance across the division.

Applied Research and Evaluation Branch (CUCMC). (1) Plans, develops, and implements projects related to applied research, program evaluation, and health economics research; (2) prepares scientific papers for publication in public health journals and for presentation at national and international conferences, meetings and seminars on applied research, program evaluation, and health economics research; (3) synthesizes and translates a body of best science and practice that can be applied to various public health settings; (4) prepares and disseminates products that translate applied research, program evaluation, and health economics science to state programs and others; (5) implements a comprehensive division evaluation plan addressing all facets of division activities, including state-based program evaluation, research evaluation, and evaluation training needs; (6) provides applied research, evaluation, and health economics expertise, technical assistance and training to the division, center, CDC, and national and international partners; and (7) implements demonstration and pilot projects with state programs and others to put research into practice.

Program Development and Services Branch (CUCMD). (1) Provides programmatic leadership and support for prevention and control of heart disease, stroke, and related risk factors in states, territories, tribes and local jurisdictions; (2) provides comprehensive technical advice and assistance in planning, implementing and evaluating strategies to prevent and control heart disease, stroke, and related risk factors through policy, systems, environmental changes; (3) provides program policies and guidance outlining CDC's role and the national goals and objectives related to heart disease and stroke prevention; (4) provides technical assistance to grantees on implementation of evidence- and practice-based interventions with greatest reach and impact and potential to be taken jurisdiction wide; (5) provides technical assistance to enhance coordination across chronic diseases to ensure that heart disease and stroke prevention planning and implementation optimize collaboration across chronic disease interventions; (6) provides leadership and technical expertise, in policy and system change, health disparities, healthcare, worksite and community interventions to prevent and control heart disease, stroke and related risk factors; (7) provides leadership and technical expertise in women's cardiovascular health, health disparities and healthcare interventions for cardiovascular primary and secondary prevention programs as it relates to the Well-Integrated Screening and Evaluation for Women Across the Nation (WISE WOMAN) Program; (8) facilitates programmatic coordination across the division, center, CDC to address heart disease and stroke prevention; (9) works with national partners to encourage policy and systems changes and other actions supportive of CDC and grantee work to prevent and control heart disease, stroke and related risk factors; (10) reviews and monitors cooperative agreements and contracts; (11) serves as technical experts in the implementation of policy systems, and environmental strategies for health promotion and the prevention and control of heart disease, stroke, and related risk factors for grantees and others within CDC and with partners; (12) provides comprehensive training expertise, including distance learning, training seminars, meetings, how-to-tools, promising practices documents, and other materials to promote the prevention of heart disease and stroke and assist grantees with planning, implementing, and replicating interventions; (13) monitors management information systems for heart disease and stroke prevention efforts to assess progress toward achieving division and center goals; (14) obtains, analyzes and disseminates data from interventions to develop operational strategies to encourage replication of promising program practices; (15) provides technical assistance on use of data for program planning and priority setting, including addressing specific populations with documented health disparities; (16) ensures products developed across the division for grantees are appropriate and supportive of priority work; and (17) provides forums for grantees to ensure rapid spread of promising practices and lessons learned.

After the Title and Functional Statement for the Division for Heart Disease and Stroke Prevention (CUCM), Insert the Following

Division of Community Health (CUCN). (1) Provides national leadership in training, consultation, and technical assistance to partners in the planning, development, implementation, and evaluation of programs to advance community health; (2) develops, strengthens, and sustains key community health linkages and partnerships within and across CDC, other federal agencies, states, tribes, territories, local government agencies, academia, nongovernmental organizations and international entities; (3) supports community health initiatives and integrates health equity and the elimination of health disparities into community health practices that improve physical and mental well-being; (4) conducts applied research, epidemiology, evaluation, surveillance and performance monitoring at the community level; and (5) identifies, designs, implements and administers

programs that maximize public health impact.

Office of the Director (CUCN1). (1) Mobilizes and coordinates partnerships and collaborations internally to CDC, other divisions, offices and CIOs and external constituencies to build a national infrastructure for community health and to achieve the mission of the division; (2) in coordination with other divisions, CIOs, and organizations, provides leadership in community health; (3) plans, manages, directs, coordinates and evaluates the operations of the division, including division-wide administrative, fiscal, technical, communications, research, programmatic and logistical support services, including comprehensive and continual cross-branch collaboration to assure best practices; (4) coordinates and assures the appropriate training, development, retention, succession planning for all division personnel; (5) develops budget requests, monitors and reports on progress and allocation of resources, responds to external inquiries and requests, and reports accomplishments, future directions and resource requirements; (6) builds partnerships with organizations focused on promotion of health equity and reduction of health disparities and reports on the effectiveness of community health programs in vulnerable populations; (7) provides leadership for division-wide policies, strategies, action planning, budget, and evaluation to eliminate health disparities; (8) provides leadership and technical assistance to partners to promote evidence and practice based policy, environmental, programmatic and infrastructure changes that improve community health; (9) coordinates the development, implementation and monitoring of guidelines and standards to assure ongoing high quality performance of community health programs; (10) responds to public inquiries and oversees the creation of materials designed for use by the media, including press releases, letters to the editors, other print and electronic materials and programs, and ensures appropriate clearance of materials; (11) in collaboration with the Office for State, Tribal, Local, and Territorial Support (OSTLTS), provides support and consultation for, and access to public health law expertise; including the engagement of public health law partners in developing and applying legal tools to maximize health impact in communities; (12) in coordination with others, identifies, tracks, analyzes, and disseminates policies, legislation and federal, state and local laws related to the Division of Community Health's (DCH) mission and programs.

Research, Surveillance, Evaluation Branch (CUCNB). (1) In collaboration with other divisions, CIOs, and agencies, serves as a national leader in applied research, epidemiology, evaluation, surveillance and performance monitoring to advance community health. (2) collects, analyzes, integrates, and collaborates on the dissemination of data to track and monitor the health of communities and their members, in collaboration with OSELS and other partners; (3) collaborates with other divisions to apply GIS mapping, needs assessments, simulation modeling, and other innovative technologies, research and evaluation methods to identify community-level drivers of key chronic disease indicators, especially as they relate to the creation, promotion, or elimination of health inequities; (4) evaluates policy, environmental, programmatic, and infrastructure interventions, to develop and inform the practice and evidence-base; (5) participates in setting the national agenda for the creation and maintenance of a health context database that includes information about policy, environmental, programmatic and infrastructure changes, including social determinants of health and other potential negative influences that may impact community health; (6) collaborates with Program Implementation and Development Branch to establish grantee priorities for surveillance, applied research and evaluation, and data collection; (7) collaborates with Training, Translation, Dissemination and Communications Team in the translation and dissemination of scientific and evaluation findings into culturally competent health promotion strategies, technical assistance, and training products; (8) supports applied research, surveillance, epidemiology and program evaluation to expand the evidence base; (9) builds local capacity to assess local conditions, evaluate interventions in natural settings, and collaborate with partners on the translation and dissemination of results; and (10) develops and supports performance monitoring systems that align with program and evaluation goals.

Program Implementation and Development Branch (CUCNC). (1) In collaboration with partner divisions, CIOs, and other agencies, serves as a national leader in program implementation and development to advance community health; (2) provides technical consultation and guidance to state and local health agencies, community based organizations, academic institutions, other federal agencies, and other organizations to plan, implement, monitor, and evaluate community-based prevention and health promotion programs, with an emphasis on eliminating heath disparities and achieving health equity; (3) establishes strategic goals, objectives and activities and develop funding mechanisms for intramural and extramural program activities; (4) provides administrative and management support for the development of funding opportunity announcements, oversight of grants, cooperative agreements, contracts, reimbursable agreements, and federal interagency agreements; (5) plans, develops, interprets and implements division-wide policies procedures, and practices for administrative management, acquisition and assistance mechanisms, including contracts, memoranda of agreements, discretionary grants, and cooperative agreements; (6) in collaboration with other divisions serves as subject matter experts in community health and in the implementation of policy, systems and environmental strategies for disease prevention and health promotion; (7) works with partners to build capacity for public health leadership and management through a multi-phased approach including situational analysis, capacity development, management analysis, technical assistance, and sustainability; and (8) coordinates and collaborates with other branches in DCH to support evaluation and research and the development and dissemination of practice and evidence-based strategies and tools for program implementation.

Training, Translation, Dissemination and Communications Branch (CUCND). (1) In collaboration with other divisions, CIOs, and agencies, serves as a national leader in training, translation, dissemination and communications to advance community health; (2) supports the division's community programs by developing adaptable training tools, utilizing operational research to identify and implement adapted models for state, tribal, territories, local, rural, frontier, and national contexts; (3) in collaboration with other divisions and partners, provides technical consultation, assistance, and training to government, non-government, not-for profit, and private sectors in evidence- and practice-based community and clinical prevention and wellness strategies and in capacity building at the local level; (4) supports translation and dissemination of practice and evidence findings into widespread community practices through the application of

policy, environmental, programmatic and infrastructure changes for optimal community health impact; (5) serves as a clearinghouse for the collection, organization, and dissemination of evidence-based and practice-based strategies for community health programs; (6) provides grantees marketing/communications support, technical assistance, and implementation and evaluation support for evidence-based and practice-based communications strategies that advance community health through policy, environmental, programmatic and infrastructure changes; and (7) prepares and disseminates health communication and media materials that advance community health.

After the Title and Functional Statement for the Division of Community Health (CUCN), Insert the Following

Division of Population Health. (CUCP). (1) Develops and promotes population-based policy, system, and environmental change interventions, programs, strategies, materials and tools; (2) provides national and international leadership in health education and health promotion; (3) supports epidemiologic and surveillance activities, training and intervention activities in diverse settings to promote public health and support the development of state chronic disease program capacity; (4) promotes the understanding and improvement of the social and behavioral determinants of and issues related to chronic conditions; (5) coordinates activities with other components of CDC both within and outside the center; with federal, state, and local health agencies; tribes, territories, and with voluntary and professional health and education agencies; and (6) promotes health equity among populations disproportionately affected by chronic diseases and associated risk factors.

Office of the Director (CUCP1). (1) Manages, coordinates, and evaluates the activities and programs of the division; (2) ensures that division health education and health promotion activities are coordinated with other components of CDC, with international, federal, state, and local health and education agencies, and with voluntary and professional health and education entities; (3) provides leadership and coordinates division responses to requests for research, consultation, training, collaboration, evaluation, and technical assistance or information on health care, health promotion, oral health, adolescent and school health, aging, epilepsy, arthritis, quality of life, alcohol, prevention research, and emerging chronic disease issues; (4) provides scientific oversight and strategic guidance of division programmatic and research activities; (5) provides administrative and management support for the division including guidance and logistics for personnel, including field staff; the use of financial resources; and oversight of grants, cooperative agreements, contracts, and reimbursable agreements; (6) provides leadership and technical assistance to partners to promote policy, systems, and environmental changes that improve population health; (7) provides strategic guidance and coordination of policy, issues management, and program and partnership development activities; (8) coordinates and supports division-wide communication needs; and (9) supports the professional growth and development of all staff to build staff skills, knowledge, expertise, and experience.

Applied Research and Translation Branch (CUCPB). (1) Provides leadership, management, and coordination related to the planning and implementation of prevention research, research translation, and policy development to address national health priorities, including healthy aging and workplace health; (2) develops and manages funding mechanisms that allow programs across CDC to support applied public health research and translation; and (3) supports the development, evaluation, synthesis, dissemination, and promotion of innovative and cross-cutting public health interventions, programs and policies that improve physical, mental, and social dimensions of health and quality of life of people in community settings and workplaces, and through community and clinical partnerships.

Arthritis, Epilepsy and Well-Being Branch (CUCPC). (1) Directs and supports program activities that reach and improve quality of life for people affected by arthritis and epilepsy, including improving access to and availability of appropriate medical care and self-management programs and support, improving policies, environments and systems, combating stigma and depression, and increasing public awareness and knowledge; (2) develops, validates, refines, and promotes surveillance measures and develop programs, policies and interventions, and evaluations to enhance state and local public health capacity and to promote national public health action for arthritis, epilepsy, health-related quality of life, and well-being; (3) directs and coordinates strategic evaluation efforts of community and state public health actions for arthritis and epilepsy; and (4) develops and disseminates health promotion and disease prevention programs, communication campaigns, and public health information through national, state and local partners.

Coordinated State Support Branch (CUCPD). (1) Leads and coordinates center-wide activities for Coordinated Chronic Disease Prevention and Health Promotion Programs activities and develops and implements guidelines, uniform reporting procedures, performance measures, and evaluation criteria for grantees; and (2) provides ongoing guidance, training, technical assistance and support to grantees in coordination with other NCCDPHP divisions.

Epidemiology and Surveillance Branch (CUCPE). (1) Provides support to build national, state, and local public health capacity in surveillance, epidemiology, and spatial analyses to monitor excessive alcohol use and other emerging risk factors or chronic conditions and to evaluate coordinated chronic disease programs and policies; (2) provides oversight and training to state chronic disease epidemiology assignees, state alcohol epidemiologists, and epidemiologic trainees on methods for measuring, reporting, and disseminating epidemiologic research findings to build a skilled public health workforce for addressing the leading chronic diseases and related risk factors; (3) applies Geographic Information Systems (GIS) and spatial statistical methods for identifying geographic variations in leading chronic diseases and related or emerging risk factors and providing guidance to public health policy formulation and program planning; (4) provides public health leadership in the prevention of excessive alcohol use by collaborating with other CDC components, federal, state, and local agencies, private, nonprofit organizations, and international partners to promote the development and evaluation of intervention strategies and policies; and (5) communicates scientific findings on leading chronic diseases and related or emerging risk factors, including information about evidence-based prevention strategies and policies, through publications, presentations, and instructional activities at local, state, national, and international levels.

School Health Branch (CUCPG). (1) Supports state, local, territorial, and tribal agencies and national non-governmental organizations to develop, implement, evaluate, and disseminate school policy, systems, and

environmental strategies and interventions to improve the health of students and school staff by promoting healthy eating, physical activity, and a tobacco-free lifestyle; (2) supports implementation and evaluation of a coordinated approach to school health and best practices in health education; physical education and other physical activity programs; nutrition services; school health services; school counseling, psychological, and social services; health promotion for staff; family and community involvement; and school health and safety policies and environment; (3) provides leadership and consultation on how schools work and how to foster effective collaboration between the public health and education sectors; (4) documents and strengthens the scientific associations among chronic disease-related health risks, school-based health promotion initiatives, and academic achievement; (5) evaluates school-based policy, systems, and environmental changes and interventions to improve health behaviors and reduce chronic disease-related health risks among children and adolescents; (6) synthesizes and translates scientific research to develop and disseminate guidance, tools, and resources to help schools prevent chronic disease-related risks among children and adolescents; (7) supports efforts of national, state, and local surveillance systems to monitor chronic disease-related health risk behaviors among youth, along with the policies, programs, and practices schools implement to address those health risk behaviors; (8) strengthens efforts of national, state, and local programs to provide high quality professional development services to support school-based chronic disease prevention policies, programs, and practices; (9) in accomplishing the functions listed above, collaborates with other components of CDC and HHS; the U.S. Department of Education, U.S. Department of Agriculture, and other federal agencies; national professional, voluntary, and philanthropic organizations; international agencies; and other organizations as appropriate; and (10) assists other nations in reducing chronic disease-related health risks among children and adolescents and in implementing and improving school health programs.

Dated: January 20, 2012.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–2531 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0672]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 7, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: (202) 395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0577. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices (OMB Control Number 0910–0577)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. Section 301 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250) amended section 502 of the FD&C Act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. Thus, the name for this information collection activity has been changed to more accurately describe the information collection content.

Section 2(c) of the Medical Device User Fee Stabilization Act of 2005 (Pub. L. 109–43) amends section 502(u) of the FD&C Act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol, in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record.

The requirements of section 502(u) of the FD&C Act impose a minimal burden on industry. This section of the FD&C Act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 10 establishments that distribute approximately 1,000 reprocessed SUDs. Each response is anticipated to take 0.1 hours resulting in a total burden to industry of 100 hours.

In the **Federal Register** of September 27, 2011 (76 FR 59704), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
502(u)	10	100	1,000	.1	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–2555 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 21, 2012, from 8 a.m. to 12:45 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 ((301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 202497, MARQIBO (vincristine sulfate liposomes injection), application submitted by Talon Therapeutics, Inc. The proposed indication (use) for this product is for the treatment of adult patients with Philadelphia chromosome-negative acute lymphoblastic leukemia in second or greater relapse or whose disease has progressed following two or more treatment lines of anti-leukemia therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 6, 2012. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:45 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 27, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 28, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 31, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–2460 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0057]

Cardiovascular Metallic Implants: Corrosion, Surface Characterization, and Nickel Leaching; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Cardiovascular Metallic Implants: Corrosion, Surface Characterization, and Nickel Leaching.'' The purpose of this public workshop is to provide a forum for FDA, cardiovascular device manufacturers, test houses, and academia to discuss corrosion, surface characterization, and nickel leach testing, as well as to collect comments and input regarding when these assessments should be considered.

Dates and Time: The public workshop will be held on March 8 and 9, 2012, from 9 a.m. to 5:30 p.m. EST.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503 (the Great Room), Silver Spring, MD 20993. For parking and security information, please visit the following Web site: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* The public workshop will also be available to be viewed online via webcast.

Contact Persons:

Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, (301) 796–6353, FAX: (301) 796–9959, email: *erica.takai@fda.hhs.gov;* or

Nicole Ibrahim, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, (301) 796–5171, email: *nicole.ibrahim@fda.hhs.gov.*

Registration: To register for the public workshop, please visit the following Web site: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to *http://www.fda.gov* and select the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. For those without Internet access, please call the *Contact Person* to register. Registration is mandatory as space is limited and onsite registration will not be available. FDA may limit the number of participants from each organization. There is no registration fee for the public workshop. Registration requests should be received by 5 p.m. E.S.T. on February 21, 2012.

If you need special accommodations due to a disability, please contact Susan Monahan, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4321, Silver Spring, MD 20993, (301) 796–5661 or email: *susan.monahan@fda.hhs.gov* at least 7 days in advance of the workshop.

Streaming Webcast of the Public Workshop: This workshop will also be webcast. Persons interested in viewing the webcast must register online by 5 p.m. E.S.T. on February 21, 2012. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but view using one connection per location. Webcast participants will be sent technical system requirements after registration, and will be sent connection access information in a final confirmation email by 5 p.m. E.S.T. on March 2, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

Workshop Participation: Participation in the workshop will consist of both lead participants and audience members. Lead participants will include representatives from various organizations involved in or who perform corrosion testing, surface characterization, and/or nickel leach testing and toxicological assessments of nickel, such as industry, the medical community, and test houses, and will be driving the discussions. Lead participants are expected to complete a work assignment in advance of the workshop in order to optimize the time spent during the workshop. FDA will compile the work assignment responses prior to the workshop so that any information provided from the responding organization is de-identified.

If you wish to participate as a lead participant, you must indicate this at the time of registration. There will be a tentative limit of one lead participant per organization for industry and two for test houses for each session, with a total workshop participation limit of two industry participants and three for test houses, due to space limitations. Audience members may be able to participate in discussions, if time permits.

Additional Information: Background information on the public workshop, registration information, agenda, information about lodging, food services, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to *http://www.fda.gov* and select the FDA Medical Devices News & Events—Workshops and Conferences calendar and select this public workshop from the posted events list).

Comments: FDA is holding this public workshop to obtain information on a number of questions regarding corrosion, surface characterization, and nickel leaching. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting written or electronic comments on all aspects of the workshop topics. The deadline for submitting comments related to this public workshop is April 6, 2012.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section II of this document, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday and will be posted to the docket at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Objectives

While the majority of cardiovascular implants are made of metals and may be susceptible to corrosion, it is unclear whether the current corrosion testing paradigm is predictive of in vivo corrosion outcomes, or if there may be more suitable assessments to predict corrosion failure. In addition, there has been an increase in the use of nitinol, a nickel-titanium alloy, in cardiovascular implants due to its superelastic properties, which are ideal for transcatheter-delivered therapies. Corrosion of implant devices made of nitinol and other nickel-containing metal alloys (*e.g.* stainless steel, MP35N) results in the release of nickel ions,

which may lead to various modes of toxicities. Furthermore, both nickel ion release and corrosion characteristics are dependent on surface finishing for nitinol as well as for some other nickel-containing alloys. Through the collection of information from a pre-workshop work assignment and discussions with workshop participants, FDA will be able to better determine what assessments may be considered for cardiovascular implants made of commonly used metallic alloys, and this information is expected to serve as the foundation for a future guidance document.

II. Topics for Discussion at the Public Workshop

The objective of this workshop is to provide a forum for discussion of the following topics:

- The various methods that are used for corrosion assessments, surface characterization techniques, and nickel leach testing used to evaluate the suitability of metallic cardiovascular implant devices;
- The limitations of each of these tests to predict actual in vivo performance;
- The need and utility for each test; and
- The potential testing paradigms, including when certain tests should be considered, and how to establish acceptance criteria for each test.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list), approximately 45 days after the public workshop.

Dated: February 1, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–2583 Filed 2–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Organ Transplantation (ACOT).

Date And Time: February 28, 2012, 10 am to 4 p.m. Eastern Standard Time (EST).

Place: The meeting will be via audio conference call and Adobe Connect Pro.

Status: The meeting will be open to the public.

Purpose: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

Agenda: The Committee will hear reports from the three ACOT Work Groups: Declining Rates of Donation/Geographical and Other Variations in Organ Distribution, Alignment of CMS Regulatory Requirements with OPTN and HRSA, and Brain Death Determination. ACOT presentations will include transplant tourism, and a report of the Technical Expert Panel on death determination in Uncontrolled Donation after Circulatory Determination of Death (UDCDD). Agenda items are subject to change as priorities indicate.

After presentations and Committee discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting Summary notes will be posted on the Department's donation Web site at *http://www.organdonor.gov/legislation/advisory.html#meetings.* The draft meeting agenda will be posted on *http://www.team-psa.com/ACOT/February2012.*

The public can join the meeting by:

1. [Audio Portion] Calling the Conference Phone Number (888–790–3384) and providing the Participant Code (6216514), AND

2. [Visual Portion] Connecting to the ACOT Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/acot-22812/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). The conference call leader is Patricia A. Stroup.

Call (301) 443–0437 or send an email to *ptongele@hrsa.com* if you are having trouble connecting to the meeting site. Participants should call and connect to the meeting no later than 9:45 a.m. EST in order for logistics to be set up. If you have never attended an Adobe Pro Connect Meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm.* For a quick overview, please access: *http://www.adobe.com/go/connectpro_overview.*

Those planning on attending this conference call should register by contacting Brittany Carey, the Logistical Coordinator, at *bcarey@explorepsa.com* (or by telephone at (703) 889–9033) before the registration deadline of February 24, 2012.

Public Comment: It is preferred that persons interested in providing an oral presentation submit a written request, along with a copy of their presentation to: Passy Tongele, Division of Transplantation, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Requests and presentations also may be emailed to *ptongele@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative.

Persons may also request to speak at the time of the public comment period. Public participation and ability to comment may be limited as time permits.

FOR FURTHER INFORMATION CONTACT: Patricia Stroup, Executive Secretary, ACOT, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–1127.

Dated: January 31, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–2646 Filed 2–3–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Contact Person: Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of R24 Grant Applications.

Date: February 10, 2012.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An12A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12, Bethesda, MD 20892, (301) 594–3998, *trempemo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to technical difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 31, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2655 Filed 2–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0016]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collections of information: 1625–0035, Title 46 CFR Subchapter Q: Lifesaving, Electrical, Engineering and Navigation Equipment, Construction and Materials & Marine Sanitation Devices (33 CFR part 159); and 1625–0079, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before April 6, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0016] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(4) *Fax:* (202) 493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone (202) 475–3652, or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this

request, [USCG–2012–0016], and must be received by April 6, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0016], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0016'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0016'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Title 46 CFR Subchapter Q: Lifesaving, Electrical, Engineering and Navigation Equipment, Construction and Materials & Marine Sanitation Devices (33 CFR part 159).

OMB Control Number: 1625–0035.

Summary: This information is used by the Coast Guard to ensure that regulations governing specific types of safety equipment, material and Marine Sanitation Devices (MSDs) installed on commercial vessels and pleasure craft are met. Manufacturers are required to submit drawings, specifications, and laboratory test reports to the CG before any approval is given.

Need: Title 46 U.S.C. 2103, 3306, 3703, and 4302 authorize the Coast Guard to establish safety equipment and material regulations. Title 46 CFR parts 159 to 164 prescribe these requirements. Title 33 U.S.C. 1322 authorizes the Coast Guard to establish MSD regulations. Title 33 CFR part 159 prescribes these rules. NVIC 8–01 (Chg 2) prescribes the standards for navigation equipment. This information will be used to determine whether manufacturers are in compliance with Coast Guard regulations. When the Coast Guard approves any safety equipment, material or MSD for use on a commercial vessel or pleasure craft, the manufacturer is issued a Certificate of Approval.

Forms: CGHQ–10030.

Respondents: Manufacturers of safety equipment, materials and marine sanitation devices.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 103,289 hours to 58,414 hours a year.

2. *Title:* Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 and 1997 Amendments to the International Convention

OMB Control Number: 1625–0079.

Summary: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Need: Chapter 71 of 46 U.S.C. authorizes the Coast Guard to issue regulations related to licensing of merchant mariners. These regulations are contained in 46 CFR chapter I, subchapter B.

Type of Request: Extension of currently approved collection for the existing STCW requirements. NOTE—The Coast Guard has an ongoing rulemaking related to STCW [USCG–2004–17914; RIN 1625–AA16]. Comments related to that rulemaking are outside the scope of this extension request.

Forms: None.

Respondents: Owners and operators of vessels, training institutions, and mariners.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 17,927 hours a year.

Dated: January 27, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–2548 Filed 2–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1162]

Ocean Renewable Power Company, Tidal Energy Project, Cobscook Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: The Coast Guard seeks public comments and information on how to best address the proposal put forth by Ocean Renewable Energy Company (ORPC) to install five turbine generator units secured to the ocean floor, used for generating electricity from tidal currents and is now providing the public the opportunity to provide additional comments. The proposed project will take place in the navigable waters of Cobscook Bay, between the City of Eastport and the Town of Lubec in Washington County, Maine. The proposal does not impede surface navigation, but could pose a threat to navigation safety for activities that occur within the water area where these underwater turbines operate. To protect the maritime public and underwater

turbine equipment, the Coast Guard is considering several options to ensure the safety of all waterway users and is garnering comments and information from the public with regards to these various options.

DATES: All written comments and related material must be received by the Coast Guard on or before February 21, 2012.

ADDRESSES: You may submit written comments identified by docket number USCG–USCG–1162 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–USCG–2011–1162.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the proposed rule, please call or email Lieutenant Megan Drewniak of the Waterways Management Division, U.S. Coast Guard Sector Northern New England; email *Megan.L.Drewniak@uscg.mil,* telephone 207–741–5421. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

ORPC's tidal energy project involves installation of five underwater turbines on the seabed in the navigable waters of Cobscook Bay. The nature and operation of the structure is hazardous and poses risks to the mariner. In order to mitigate the inherent risks involved with these tidal generators, it may be necessary to control or limit vessel movement and activity through the area.

Several maritime practices that involve physical contact with the seabed (*e.g.,* anchoring, dragging, trawling, *etc.*) pose a specific risk to the mariner as inadvertent entanglement with an underwater turbine could pose the risk of a marine casualty. It is also conceivable that mariners who become entangled in the underwater turbine and auxiliary power cables could be electrocuted.

In order to minimize the risk of a marine casualty, entanglement, or electrocution, the Coast Guard may propose regulatory action or, in the alternative, it may decide to take other actions outside of a regulatory act. The proposed regulatory action might consist of a regulated navigation area or safety zone. This option may look to prohibit anchoring, fishing, dredging, diving, surface or submarine scientific equipment, dragging, trawling, or any other activities that could pose the risk of a marine casualty or impact the underwater turbines. It is important to note that violations of these regulations may result in law enforcement action and liable a civil or criminal penalty.

Potential non-regulatory actions that could be taken by the Coast Guard are routing measures that would amount to recommendations to the mariner of an area to be avoided or a precautionary area in which the mariner would have notice that they should avoid the area in order to reduce the risk of a marine casualty.

This request invites public comment on the merits, advantages, and disadvantages of taking action to prohibit certain activities in the vicinity of the proposed tidal energy project. We are attempting to determine the scope of any safety concerns associated with vessel navigation in the area. We expect that information gathered during the comment period and public meetings will identify any problems and appropriate solutions. We will use your comments to evaluate if the Coast Guard will pursue action within a designated area of Cobscook Bay, ME and what activities should be excluded once these underwater turbines are installed.

The Coast Guard is also interested in receiving comments and information about the current aids to navigation (ATON) configuration, proposed private aids to navigation (PATON) to mark the turbine generator units, and potential impacts associated with installation of an underwater cable assembly to transfer electricity to a power control and grid interface facility in Lubec, Maine.

You may view documents prepared by the Coast Guard in our online docket, and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert ''USCG–2011–1162'' in the ''Keyword'' box and click ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate by submitting comments in writing. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments must reach the Coast Guard on or before February 21, 2012. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Dated: January 20, 2012.

C.L. Roberge,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern New England.

[FR Doc. 2012–2547 Filed 2–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of open federal advisory committee teleconference meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet by teleconference on February 21, 2012. The meeting will be open to the public.

DATES: The meeting will take place Tuesday, February 21, 2012, from 1 p.m. to 4 p.m. EDT. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to obtain the call-in number, access code and other information for the public teleconference may contact Ruth MacPhail as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business February 16, 2012, as the number of teleconference lines is limited and available on a first-come, first-served basis. For information on services for individuals with disabilities or to request special assistance, contact Ruth MacPhail as soon as possible.

Members of the public may also participate by coming to the National Emergency Training Center (NETC), Building H, Room 200, Emmitsburg, Maryland. A picture identification is needed for access. Contact Ruth MacPhail for directions.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than February 16, 2012, and must be identified by docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* (703) 483–2999.
- *Mail:* Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Board, go to *http://www.regulations.gov.*

Public comments will be requested prior to discussion and deliberation of each agenda item. Speakers will be afforded 5 minutes to make comments. Contact Ruth MacPhail to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and email *ruth.macphail@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, regarding the operation of the Academy and any improvements therein that the Board deems appropriate. The Board makes interim advisories to the Administrator of FEMA, through the United States Fire Administrator, whenever there is an indicated urgency to do so in fulfilling its duties. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions which are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits an annual report through the United States Fire Administrator to the Administrator of FEMA, in writing. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

The Board will select a Chairperson and Vice Chairperson for fiscal year (FY) 2012 and will review and approve the minutes of the October 14–15, 2011, meeting. The Board will review Academy program activities, including instructor-led online course pilot tests, Academy online courses, current curriculum developments, and anticipated FY 2012 curriculum developments. The Academy will report on the American Council on Education (ACE) review of Academy programs and recommendations for implementing a more rigorous system of evaluating and documenting student and instructor performance.

The Board will review the status of the Fire and Emergency Services Higher Education (FESHE) Institutional Recognition and Certificate program, which the North American Fire Training Directors have approved. The Board will review the status of Training Resources and Data Exchange (TRADE)/FESHE Adobe Connect sessions. The Board will discuss the status of deferred maintenance and capital improvements on the NETC campus, to include FY 2012 Budget Planning, and National Fire Programs update. The Board will review and consider reports from the Applicant Outreach Subcommittee, FESHE/Professional Development Subcommittee, Training Resources and Data Exchange Review Subcommittee, and Emergency Medical Services Subcommittee.

After deliberation, the Board will recommend actions to the Superintendent of the National Fire Academy and the Administrator of FEMA.

Dated: January 27, 2012.

Denis G. Onieal,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2012–2466 Filed 2–3–12; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Neutral Customs Brokers, Inc	13905	Los Angeles.
R.J. McCracken & Son, Inc	07020	Detroit.
HLM Cargo Clearance Brokers, Inc	12744	Miami.
Cortez Customhouse Brokerage Co	08070	Detroit.
Inter-Cargo CHB, Inc	20650	Miami.
AM Worldwide, Inc	21543	Houston.
Seajet Express, Inc	14827	Boston.
John C. Herrera, Inc	04120	Chicago.

Name	License No.	Issuing port
International Trade & Commerce, Inc	12736	Laredo.

Dated: January 26, 2012.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–2658 Filed 2–3–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Geospatial Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Renewal.

SUMMARY: This notice advises the public that the Secretary of the Interior has renewed the National Geospatial Advisory Committee. The Committee will provide advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary of the Interior or designee), related to management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee will review and comment upon geospatial policy and management issues and will provide a forum to convey views representative of non-Federal partners in the geospatial community.

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (phone: (206) 220–4621, email: *jmahoney@usgs.gov*).

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (FACA), Public Law 92–463 (Codified as amended at 5 U.S.C. Appendix 2).

The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior through the Chair of the FGDC Steering Committee and will function solely as an advisory body. The Committee will provide recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The Secretary of the Interior will appoint Committee members. The Committee will be composed of up to 30 representatives, who will be selected to generally achieve a balanced representation of the viewpoints of the various stakeholders involved in national geospatial activities and the development of the NSDI.

The Committee is expected to meet 3–4 times per year. Committee members will serve without compensation. Travel and per diem costs will be provided for Committee members by the U.S. Geological Survey (USGS). The USGS will provide necessary support services to the Committee. Committee meetings will be open to the public. Notice of Committee meetings will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

In accordance with FACA, we will file a copy of the Committee's charter with the Committee Management Secretariat, General Services Administration; Committee on Energy and Natural Resources, United States Senate; Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

The Certification for renewal is published below.

Certification:

I hereby certify that the National Geospatial Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Office of Management and Budget (OMB) Circular A–16 (Revised), *''Coordination of Geographic Information and Related Spatial Data Activities.''* The Committee will assist the Department of the Interior by providing advice and recommendations related to the management of Federal geospatial programs and the development of the National Spatial Data Infrastructure.

Dated: January 13, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–2556 Filed 2–3–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0097]

Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts—Call for Information and Nominations

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations.

SUMMARY: BOEM invites the submission of nominations for commercial leases that would allow a lessee to propose the construction of a wind energy project on the OCS offshore Massachusetts and to develop a project if approved after further environmental review. On December 29, 2010, BOEM issued the Massachusetts Request for Interest (RFI) requesting submission of nominations and other information by February 28, 2011 (75 FR 82055). In response to requests from several interested and affected parties, including the Commonwealth of Massachusetts, BOEM reopened the comment period for the RFI on March 17, 2011 (76 FR 14681), asking for submissions by April 18, 2011. BOEM received 11 nominations of interest from 10 individual entities responding to the RFI, as well as 247 comments from members of the public and state and Federal agencies. On May 2, 2011, BOEM announced it would reduce the area identified in the RFI based on comments received from the fishing community, the Massachusetts Executive Office of Energy and Environmental Affairs, and the Massachusetts congressional delegation. BOEM further refined the area that is under consideration for this Call for Information and Nominations (Call) based on consultation with the BOEM Massachusetts Renewable Energy Task Force, as described in the ''Development of the Call Area'' section later in this notice. The area that is under consideration for this Call is referred to herein as the ''Call Area.''

Although this announcement is not itself a leasing announcement, the Call Area described herein, or portions thereof, may be made available for future leasing. BOEM will use the responses to this Call to gauge specific interest in acquiring commercial wind leases in some or all of the Call Area,

and to determine whether competitive interest exists in any particular portion of the Call Area, as required by 43 U.S.C. 1337(p)(3). Parties wishing to submit a nomination in response to this Call should submit detailed and specific information in response to the requirements described below in the section entitled, ''Required Nomination Information.''

This announcement also requests comments and information from interested and affected parties about site conditions, resources, and multiple uses in close proximity to, or within, the Call Area that would be relevant to BOEM's review of any nominations submitted and/or to BOEM's subsequent decision to offer all or part of the Call Area for commercial wind leasing. The information that BOEM is requesting is described below in the section of this Call entitled, ''Requested Information from Interested or Affected Parties.''

This Call is published pursuant to subsection 8(p)(3) of the OCS Lands Act, 43 U.S.C. 1337(p)(3), as well as the implementing regulations at 30 CFR Part 585.

The Call Area is located off the coast of Massachusetts beginning approximately 12 nautical miles (nmi) south of Martha's Vineyard and 13 nmi southwest of Nantucket. From its northern boundary, the Call Area extends 33 nmi southward to the 60 meter depth contour and has an east/west extent of approximately 47 nmi. The Call Area is approximately 826,241 acres or 975 square nmi in size and contains 132 whole OCS lease blocks as well as 19 partial blocks.

DATES: BOEM must receive your nomination describing your interest in this potential commercial leasing area postmarked or delivered by March 22, 2012 for your nomination to be considered. BOEM requests comments or other submissions of information be postmarked or delivered by this same date. BOEM will consider only the nominations received that conform to this requirement.

Submission Procedures: If you are submitting a nomination for a lease in response to this Call, please submit your nomination to the following address: BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. In addition to a paper copy of the nomination, please include an electronic copy of the nomination on a compact disc (CD). BOEM will list the parties that submitted nominations and the location of the proposed lease areas (i.e., OCS blocks nominated) on the BOEM Web site after the 45-day comment period has closed.

Comments and other information may be submitted by either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0097, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice. BOEM will post all comments which are not labeled ''Contains Confidential Information.''

2. *By U.S. Postal Service or other delivery service, sending your comments and information to the following address:* Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. All responses will be reported on *www.regulations.gov.*

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this Call entitled ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Jessica Bradley, Renewable Energy Program Specialist, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1730 or *jessica.bradley@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Call for Information and Nominations

The OCS Lands Act requires BOEM to award leases competitively, unless BOEM determines that there is no competitive interest (43 U.S.C. 1337(p)(3)). The issuance of this Call is not intended to indicate that BOEM has determined that competitive interest exists in the Call Area. Rather, this Call is the next step in the renewable energy planning and leasing process after the publication of the RFI. As described below in the section of this Call describing development of the Call Area, BOEM received numerous expressions of interest and comments in response to the RFI. After considering the comments, BOEM announced on May 2, 2011, that the Call Area would exclude all blocks east of 70° longitude. This Call provides all potential nominators—including those who submitted nominations in response to the RFI—the opportunity to indicate their interest in the reduced Call Area now being considered for leasing and invites additional comments and information relevant to the Call Area. The original nominators may confirm, revise, or withdraw the nominations they submitted in response to the RFI or may submit new nominations, and new nominators may indicate their interest in the Call Area. The responses to this Call will assist BOEM in determining if there is any competitive interest in the Call Area. This Call also requests information from interested and affected parties on issues relevant to BOEM's review of nominations for potential leases in the Call Area. A lease, whether issued through a competitive or non-competitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process. *See* 30 CFR 585.600 and 585.601.

The responses to this Call could lead to the initiation of a competitive leasing process in some parts of the Call Area (*i.e.,* where competition exists for certain tracts), and a noncompetitive process in other parts of the Call Area (*i.e.,* where no competitive interest exists for certain tracts). The leasing process is described more completely under the ''Determination of Competitive Interest'' and ''Noncompetitive Leasing Process,'' sections of this Call. In any parts of the Call Area where BOEM determines there is no competitive interest, BOEM may proceed with the noncompetitive lease process pursuant to 30 CFR 585.232. If BOEM determines that there is competitive interest in some or all of the Call Area, then BOEM may proceed with Area Identification, as set forth in 30 CFR 585.211(b), and the competitive leasing process set forth under 30 CFR 585.211 through 585.225. Whether the leasing process is competitive or noncompetitive, it will include additional opportunities for the public to provide input and be reviewed thoroughly for potential environmental and multiple use impacts. The area(s) that may be finally offered for lease, if any, has/have not yet been determined, and may include less than the total areal

extent of the Call Area as identified in this Call.

Background

Energy Policy Act of 2005 (EPAct)

The EPAct amended the OCS Lands Act by adding subsection 8(p)(1)(C), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas, including renewable energy sources. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations, to the Director of BOEM. On April 29, 2009, BOEM published the Renewable Energy and Alternate Uses (REAU) rule, at 30 CFR Part 585, which can be found at: *http://www.boem.gov/uploadedFiles/FinalRenewableEnergyRule.pdf.*

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

On July 19, 2010, the President signed Executive Order 13547 (Order) establishing a national ocean policy and the National Ocean Council (75 FR 43023). The Order establishes a comprehensive, integrated national policy for the stewardship of the ocean, our coasts, and the Great Lakes. Where BOEM actions affect the ocean or coast, the Order requires BOEM to take such action as necessary to implement the policy, stewardship principles, and national priority objectives adopted by the Order, with guidance from the National Ocean Council.

BOEM appreciates the importance of coordinating its planning endeavors with other OCS users and regulators and intends to follow principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council. BOEM anticipates that continued coordination with the state Renewable Energy Task Forces will help inform comprehensive coastal and marine spatial planning efforts. BOEM also anticipates that tools developed to enhance regional ocean planning efforts, such as the Northeast Ocean Data Portal, will help inform its leasing processes. The Northeast Ocean Data Portal was launched in June 2011 and contains regional spatial data for New England's coasts and ocean waters, and is available at *http://www.northeastoceandata.org/.*

Department of the Interior ''Smart From the Start'' Atlantic Wind Initiative

Secretary Ken Salazar announced the *Smart from the Start* wind energy initiative for the Atlantic OCS on November 23, 2010. The key element of this initiative that relates to commercial wind leasing off Massachusetts is the identification of a Wind Energy Area (WEA) to be analyzed in an environmental assessment (EA) for the purpose of supporting lease issuance and initial on-lease activities. A WEA is a portion of the Call Area that appears to be suitable for the consideration of wind energy development based on information concerning wind energy potential, natural resources, competing uses, and other relevant issues. BOEM is using the planning notices it publishes (the December 2010 RFI and this Call), responses to these notices, and consultation with interested and affected parties through the BOEM Massachusetts Renewable Energy Task Force, to develop and designate a WEA on the OCS off Massachusetts. A WEA may be identified at the Area Identification stage of the planning and leasing process. A description of BOEM's deliberations to date, which have led to delineation of the Call Area, is presented in the section of this notice entitled, ''Development of the Call Area.''

BOEM/Massachusetts Renewable Energy Task Force

BOEM established the BOEM Massachusetts Renewable Energy Task Force in November 2009 to facilitate coordination among affected Federal agencies and state, local, and tribal governments throughout the OCS renewable energy leasing and development process. Task Force meeting materials are available on the BOEM Web site at *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx.*

Environmental Review Process

BOEM intends to prepare an EA, which will consider the environmental consequences associated with issuing commercial wind leases and approving site assessment activities on those leases within all or some of the Call Area. BOEM is publishing, concurrently with this Call, a Notice of Intent (NOI) to prepare an EA, which seeks public input in identifying the environmental issues and alternatives to be considered in the EA.

The EA will consider the environmental consequences associated with reasonably foreseeable leasing and site characterization scenarios within the Call Area (including geophysical, geotechnical, archaeological, and biological surveys), and reasonably foreseeable site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the potential leaseholds. The EA will consider, at a minimum, two alternatives: (1) No action, (*i.e.* no issuance of leases or approval of site assessment activities), and (2) the issuance of leases and approval of site assessment activities within the Call Area. The NOI solicits input on the environmental effects associated only with the activities described above. The environmental effects of the construction or operation of any wind energy facility would be considered under a separate National Environmental Policy Act (NEPA) environmental review process.

Several consultations will be conducted concurrently with, and integrated into, the current NEPA/EA process. These consultations include, but are not limited to, those required by the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act (NHPA), and Executive Order 13175—''Consultation and Coordination with Tribal Governments.'' The results of these consultations will assist BOEM in deciding whether and where leases may be issued.

BOEM intends to conduct review under Section 106 of the NHPA in coordination with NEPA review and preparation of the EA (36 CFR 800.8(3)(c)). After evaluating the responses to the Call, but before publishing the Proposed Sale Notice (PSN) for a competitive lease sale or issuing a lease noncompetitively, BOEM will conduct consultations pursuant to Section 106, seeking comment from State Historic Preservation Officers, local governments, tribal governments, and organizations and individuals with a demonstrated interest in the Call Area. Furthermore, as permitted by 36 CFR 800.2(d)(3), BOEM will use public information sessions as public involvement opportunities in lieu of the public involvement requirements set forth in Federal regulations issued pursuant to the NHPA. Finally, pursuant to Executive Order 13175, BOEM has initiated government-to-government tribal consultation with three Federally-recognized tribes that

have a demonstrated interest in the Call Area.

Actions Taken by the Commonwealth of Massachusetts in Support of Offshore Renewable Energy Development

BOEM recognizes the importance of the steps that the Commonwealth of Massachusetts has taken to encourage environmentally-sound offshore wind energy development. While a state may promote such development, BOEM retains the exclusive authority to issue leases, easements, and rights-of-way on the OCS for renewable energy purposes. The following information is a summary of the initiatives and actions undertaken by the Commonwealth of Massachusetts to promote the development of wind energy on the OCS.

The Commonwealth of Massachusetts has been working proactively to foster commercial wind development on the OCS off Massachusetts for several years. The Massachusetts RFI that BOEM issued on December 29, 2010 (75 *FR* 82055), briefly described several of the Commonwealth's key initiatives, including formulation of the *Massachusetts Ocean Management Plan.* The *Massachusetts Ocean Management Plan* and related information are available from the Commonwealth at *http://www.mass.gov/eea/mop.*

In addition, the Commonwealth of Massachusetts has established a Fisheries Working Group on Offshore Renewable Energy to discuss issues and compatibilities between commercial fishing activities and offshore commercial wind energy development, and a Habitat Working Group on Offshore Renewable Energy to discuss available ecosystem data and information within the area under consideration and identify gaps therein. To inform these discussions, the Commonwealth has collected and presented spatial information and data for the RFI area regarding marine mammals, avifauna, bathymetry, surficial geology, commercial ship traffic, and recreational boating, and made it available at *http://www.mass.gov/moris.* The Commonwealth has conducted more than 30 public meetings and stakeholder sessions in Boston, New Bedford, Martha's Vineyard, and Nantucket to discuss the Federal offshore wind leasing process. BOEM supports the Commonwealth's efforts in engaging the public and stakeholders in the planning process for renewable energy development on the OCS.

BOEM's Planning and Leasing Process

BOEM has been involved in a planning process for renewable energy on the OCS off the coast of Massachusetts since the establishment of the BOEM Massachusetts Renewable Energy Task Force in 2009. BOEM coordinated with the Massachusetts Renewable Energy Task Force on the development of the December 2010 RFI and this Call. BOEM also collaborated with the State of Rhode Island and the Commonwealth of Massachusetts jointly on the development of the Call for the Area of Mutual Interest (AMI), published in the **Federal Register** on August 18, 2011, under Docket ID ''BOEM–2011–0049.'' In addition, BOEM participated in the state-hosted public information sessions with stakeholders from both states to provide information regarding BOEM's planning process. Additional information, including presentations and materials from the public information sessions and the Task Force meetings, can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx.*

Determination of Competitive Interest

The first step in the leasing process is to determine whether or not there is any interest in acquiring a lease within the Call Area. At the same time, BOEM can determine whether there is overlapping interest in any particular portion of the Call Area that would result in the need for a competitive process. At the conclusion of the comment period for this Call, BOEM will review the nominations received, undertake a completeness review and a qualifications review, and determine whether competitive interest exists in any specific location within the Call Area.

If two nominated areas of interest fully or partially overlap, BOEM may proceed with competitive leasing as described in the section of this Call entitled ''Competitive Leasing Process.'' For areas where BOEM determines that there is no competitive interest, BOEM may proceed with noncompetitive leasing described in the section herein entitled ''Non-Competitive Leasing Process.'' While BOEM anticipates that this Call would result in multiple nominations for particular areas, indicating competitive interest exists, it is possible that the responses to the Call could result in a competitive process, a noncompetitive process, or partially both. BOEM may consult with the BOEM Massachusetts Renewable Energy Task Force throughout the leasing process.

Situations may arise in which several parties nominate areas that do not overlap. Under these circumstances, BOEM could choose to employ an allocation system of leases that involves the creation of competition across tracts. This system is referred to as intertract competition and would also be implemented under the competitive process outlined in the regulations. BOEM may consult with the BOEM Massachusetts Renewable Energy Task Force in determining the need for, and/or use of, intertract competition.

Respondents to this Call and members of the public should be aware that no lease will be issued, either competitively or noncompetitively, until the necessary consultations and environmental analysis have been completed and the public has been given ample opportunity to comment. As a result, it is possible that certain areas nominated may not be leased, or that the areas nominated may be modified from their original, proposed form before being offered for lease.

Competitive Leasing Process

If, after receiving responses to this Call, BOEM proceeds with the competitive leasing process for certain areas, it would follow the steps required by 30 CFR 585.211 through 585.225:

(1) *Area Identification:* Based on the information submitted in response to this Call, BOEM would identify the area in which interest exists, and which will be subject to environmental analysis, in consultation with appropriate Federal agencies, states, local governments, tribes and other interested parties. The area identified will constitute a WEA under the ''Smart from the Start'' initiative, and will be the area analyzed in the EA. The NOI to prepare the EA is being published concurrently with this Call.

(2) *Proposed Sale Notice (PSN):* If BOEM decides to proceed with lease issuance in the area, BOEM would first complete the analyses necessary to inform the issuance of the PSN, including any final NEPA documentation, the Consistency Determination as required by the CZMA and its implementing regulations, and various analyses of proposed lease sale economic terms and conditions. BOEM would then publish the PSN in the **Federal Register** and send the PSN to any affected tribes, the State Historic Preservation Office, the Governor of any affected state, and the executive of any affected local government. The PSN would describe the areas to be offered for leasing and the proposed conditions of a lease sale, and the proposed auction format, lease document, and lease

provisions/stipulations. Additionally, the PSN would describe the criteria and process for evaluating bids. The comment period following issuance of a PSN is 60 days.

(3) *Final Sale Notice (FSN):* If BOEM decides to proceed with lease issuance after considering comments on the PSN, it would publish the FSN in the **Federal Register** at least 30 days before the date of the lease sale.

(4) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, qualified bidders would be able to submit their bids to BOEM in accordance with procedures specified in the FSN. The bids, including any required deposits, would be reviewed for technical and legal adequacy. BOEM would evaluate the bids to determine if the bidder had complied with all applicable regulations. BOEM always reserves the right to reject any or all bids and the right to withdraw an offer to lease an area.

(5) *Issuance of a Lease:* Following the selection of a winning bid(s) by BOEM, the submitter(s) would be notified of the decision and provided a set of official lease documents for execution. The successful bidder(s) would be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease documents. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEM would issue a lease to the successful bidder(s).

Noncompetitive Leasing Process

If, after evaluating the responses to this Call, BOEM determines that there is no competitive interest in a proposed lease area, it may proceed with the noncompetitive lease issuance process pursuant to 30 CFR 585.232, as amended by the rulemaking which took effect on June 15, 2011 (76 FR 28178). Should BOEM decide to proceed with the noncompetitive leasing process, it would ask if the sole respondent who nominated a particular area wants to proceed with acquiring the lease, and if so, the respondent must submit an acquisition fee as specified by 30 CFR 585.502(a). After receiving the acquisition fee, BOEM would follow the process outlined in 30 CFR 585.231. Within 60 days of the date of that notice, the respondent would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 585.231(d)(2)(i).

BOEM will comply with the requirements of NEPA, CZMA, ESA, NHPA, and other applicable Federal statutes before issuing a lease noncompetitively. BOEM would coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, and affected state and local governments, and provide opportunity for public comment prior to issuing a noncompetitive lease and in formulating lease terms, conditions, and stipulations for such a lease.

It is possible that responses to this Call may result in a determination that there is competitive interest in acquiring leases in some areas but not in others. BOEM will announce publicly its determinations before proceeding with any type of leasing process.

Description of the Call Area

The Call Area is located off the coast of Massachusetts, beginning approximately 12 nautical miles (nmi) south of Martha's Vineyard and 13 nmi southwest of Nantucket. From its northern boundary, the Call Area extends 33 nmi southward to the 60 meter depth contour and has an east/west extent of approximately 47 nmi. The Call Area is approximately 826,241 acres or 975 square nmi in size and contains 132 whole OCS lease blocks as well as 19 partial blocks.

The following full OCS lease blocks are included within the Call Area:

In Providence NK19–07: 6976, 6977, 6978, 7022, 7023, 7024, 7025, 7026, 7027, 7028, 7029, 7072, 7073, 7074, 7075, 7076, 7077, 7078, 7079, 7118, 7119, 7120, 7121, 7122, 7123, 7124, 7125, 7126, 7127, 7128, 7129;

In Block Island Shelf NK19–10: 6019, 6020, 6021, 6022, 6023, 6024, 6025, 6026, 6027, 6028, 6029, 6030, 6069, 6070, 6071, 6072, 6073, 6074, 6075, 6076, 6077, 6078, 6079, 6080, 6081, 6082, 6083, 6084, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6132, 6133, 6134, 6175, 6176, 6177, 6178, 6179, 6180, 6181, 6182, 6183, 6184, 6225, 6226, 6227, 6228, 6229, 6230, 6231, 6232, 6233, 6234, 6275, 6276, 6277, 6278, 6279, 6280, 6281, 6282, 6283, 6284, 6325, 6326, 6327, 6328, 6329, 6330, 6331, 6332, 6333, 6334, 6376, 6377, 6378, 6379, 6380, 6381, 6382, 6383, 6384; and

In Hydrographer Canyon NK19–11: 6051, 6052, 6101, 6102, 6151, 6152, 6201, 6202, 6251, 6252, 6301, 6302, 6351, 6352.

Parts of the following OCS lease blocks are included within the Call Area as listed in the following table:

LIST OF PARTIAL OCS BLOCKS IN THE CALL AREA

Protraction name	Protraction No.	Block No.	Sub block
Providence	NK19–07	6972	M,N,O,P.
Providence	NK19–07	6973	M,N,O,P.
Providence	NK19–07	6974	L,M,N,O,P.
Providence	NK19–07	6975	D,F,G,H,I,J,K,L,M,N,O,P.
Block Island Shelf	NK19–10	6119	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O.
Block Island Shelf	NK19–10	6120	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6121	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6122	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6123	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6124	A,B,C,D,E,F,G,H,I,J,K,L,N,O,P.
Block Island Shelf	NK19–10	6169	A,B,C,E,F,G,I,J,K,M,N,O.
Block Island Shelf	NK19–10	6174	B,C,D,F,G,H,J,K,L,N,O,P.
Block Island Shelf	NK19–10	6219	A,B,C,E,F,G,I,J,K,M,N,O.
Block Island Shelf	NK19–10	6224	B,C,D,F,G,H,J,K,L,N,O,P.
Block Island Shelf	NK19–10	6269	A,B,C,E,F,G,I,J,K,M,N,O.
Block Island Shelf	NK19–10	6428	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6429	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6430	A,B,C,D,E,F,G,H,I,J,K,L.
Block Island Shelf	NK19–10	6431	A,B,C,D,E,F,G,H,I,J,K.

The boundary of the Call Area follows the points listed in the table below in clockwise order. Point numbers 1 and 31 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone 19N, NAD 83 and geographic (longitude, latitude), NAD83.

Massachusetts Call Area Boundary

Point No.	X (easting)	Y (northing)	Longitude	Latitude
1	364400	4555200	−70.615653	41.136789
2	380000	4555200	−70.429840	41.139245
3	380000	4550400	−70.428902	41.096020
4	384800	4550400	−70.371762	41.096715
5	384800	4531200	−70.368180	40.923806
6	413600	4531200	−70.026196	40.927357
7	413600	4497600	−70.021549	40.624717
8	389600	4497600	−70.305250	40.621859
9	389600	4495200	−70.304830	40.600243
10	388400	4495200	−70.319009	40.600082
11	388400	4494000	−70.318797	40.589275
12	370400	4494000	−70.531439	40.586651
13	370400	4497600	−70.532179	40.619071
14	360800	4497600	−70.645631	40.617510
15	360800	4502400	−70.646693	40.660734
16	356000	4502400	−70.703452	40.659911
17	356000	4512000	−70.705656	40.746356
18	352400	4512000	−70.748279	40.745718
19	352400	4522800	−70.750833	40.842965
20	330800	4522800	−71.006912	40.838793
21	330800	4507200	−71.002689	40.698345
22	327200	4507200	−71.045274	40.697598
23	327200	4540800	−71.054600	41.000088
24	346400	4540800	−70.826429	41.003931
25	346400	4551600	−70.829121	41.101169
26	359600	4551600	−70.671998	41.103557
27	359600	4552800	−70.672272	41.114362
28	362000	4552800	−70.643698	41.114774
29	362000	4554000	−70.643967	41.125579
30	364400	4554000	−70.615387	41.125983
31	364400	4555200	−70.615653	41.136789

Map of the Call Area

A map of the Call Area is available at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx*. A large scale map of the Call Area showing its boundaries, and with numbered blocks, is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1320, Fax: (703) 787–1708.

Development of the Call Area

The Call Area was identified by BOEM after consideration of the comments received in response to the December 2010 RFI, which are described below, and further delineated in consultation with the BOEM Massachusetts Renewable Energy Task Force. Specific mitigation, stipulations, or exclusion areas may be developed as a result of: (1) Consultations with appropriate Federal, state, and local agencies, and Indian Tribes, (2) comments and information received in response to this Call, (3) continued coordination with the BOEM Massachusetts Renewable Energy Task Force, and (4) the EA for which BOEM is concurrently publishing a NOI in the **Federal Register**.

Responses to the December 2010 RFI

BOEM received a total of 11 expressions of interest from 10 individual entities in response to the December 2010 RFI. A table showing the interested parties and the OCS blocks nominated for leasing is available at the following link: *http://www.boemre.gov/offshore/RenewableEnergy/PDFs/state activities/MA/CommercialIndicationsof Interest4-22-11.pdf*.

BOEM also received 247 comments from members of the public as well as state and Federal agencies. The comments received in response to the December 2010 RFI are available at the following link: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx.*

BOEM will continue to consider all comments submitted in response to the RFI throughout the leasing process. In particular, the comments submitted in response to the RFI related to commercial wind energy leasing and site assessment activities and site characterization surveys will be analyzed in the EA (refer to the concurrently published NOI). The comments submitted in response to the RFI related to commercial wind energy development (e.g. construction, operation, decommissioning) will be considered in the NEPA analysis that will be conducted when these development activities are subject to a BOEM decision. A brief summary of the comments is provided below.

The comments that BOEM received ranged over a variety of topics in addition to general support or opposition, including avian resources, coastal and marine spatial planning (CMSP), community-owned projects, fishing activities and fishery resources, historic properties and national natural landmarks, marine mammal resources, the NEPA process, shipping and navigation, tribal resources, viewshed, and the Cape Wind Energy Project. Many commenters—including the Nature Conservancy, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), and the Sierra Club—submitted maps showing information related to particular resources overlapping with the RFI area. The comments received by BOEM are

available at the following link: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx*.

Avian resources

Comments regarding the potential impact of offshore commercial wind energy development to avian species were received from The Humane Society of the United States, Massachusetts (Mass) Audubon Society, and the National Wildlife Federation. The Humane Society recommended a requirement for multiple years of pre-construction monitoring. Mass Audubon Society noted that the RFI area includes two species of concern: Long tailed ducks and roseate terns. Mass Audubon recommended multi-year studies on these species' individual movements using radio or satellite transmitters and aerial and boat surveys to identify the potential risk to the endangered roseate tern and the state-listed common tern from any wind energy development in the Muskeget Shoals area. Mass Audubon identified an area offshore Massachusetts that appears to overlap with the RFI area that has been identified as globally significant habitat for long tailed ducks and indicated that data collected from 1997 to 2011 demonstrate that approximately 30 percent of the global breeding population of long tailed ducks completes a daily commute from Nantucket Sound to forage on high concentrations of pelagic amphipods in the waters immediately west of Nantucket Shoals.

Coastal and Marine Spatial Planning (CMSP)

Comments related to CMSP were received from Alliance to Protect Nantucket Sound, Conservation Law Foundation, Environmental Entrepreneurs, Fishing Vessel Holly and Abby, Martha's Vineyard Commission, National Marine Fisheries Service, New England Fishery Management Council, Oceans Public Trust Initiative, Sandy Hook Pilots, Sierra Club, and individual citizens. Comments included concerns that the process used to identify the RFI would circumvent the CMSP process. Recommendations requested that BOEM use the principles of the National Ocean Policy, particularly CMSP, prior to the siting of wind facilities offshore Massachusetts. The Sierra Club recommended that BOEM coordinate its CMSP efforts with existing plans and policies and with the CMSP activities of the Northeast Regional Ocean Council.

Community-Owned Projects

BOEM received comments related to community-owned projects from the Commonwealth of Massachusetts, State Representative Timothy Madden, Martha's Vineyard Commission, Town of Oak Bluffs, members of the Vineyard Power Cooperative, and individual citizens. BOEM received many comments that requested BOEM to give priority to applications that include a community-owned component, reduce the financial and technical qualification requirements for community-owned projects that express interest in the RFI area, and set aside specific blocks for community-owned development within the RFI area. The Martha's Vineyard Commission recommended that BOEM involve affected communities early in the process and establish a fund to assist with mitigation of effects on local communities, and that developers should be encouraged to work with local communities to facilitate construction of community-owned wind projects.

Fishing Activities and Fishery Resources

Comments related to fishing activities and fishery resources were received from the American Alliance of Fishermen, Atlantic Capes Fisheries, City of New Bedford Mayor Scott Lang, Commonwealth of Massachusetts, Conservation Law Foundation, David Frulla, Kelly Drye & Warren LLP, Fishing Vessel Holly and Abby, GAO Associates, Hunter Scalloping Company, Martha's Vineyard Commission, National Wildlife Federation, New England Fishery Management Council, NMFS, The Nature Conservancy, Sierra Club, and individual citizens. Comments included concerns about insufficient outreach to fishermen and concerns related to potential impacts to the commercial fishing industry from commercial wind energy development of the RFI area. The American Alliance of Fishermen, City of New Bedford Mayor Scott Lang, and the Commonwealth of Massachusetts requested that extensive studies be conducted of stocks west of the 70° longitude line and that OCS blocks within the RFI area east of the 70° longitude line be excluded from further consideration in order to protect valuable fisheries resources. BOEM has already acted on the latter request, thus reducing the size of the Call Area from that of the originally-proposed RFI area. The Nature Conservancy submitted information from the Northwest Atlantic Marine Ecoregional Assessment, including maps that show information related to average pounds of catch of certain fish species (cod, yellowtail flounder, winter flounder, sea scallop, etc.) overlapping the RFI area.

NMFS identified designated essential fish habitat (EFH) for multiple species within the RFI area for a range of federally managed species. NMFS indicated that complex benthic substrates vulnerable to disturbances are located within the RFI area, and included maps of certain ecologically important factors within the RFI area. NMFS noted that specific proposals within the RFI area must include an expanded EFH assessment under the federal review process. NMFS indicated there are many critical resources in the RFI area, including habitat for endangered species and federally managed fishing resources, and included information as to locations of critical habitat as well as fishery management areas such as the Nantucket Lightship Closed Access Area and the Nantucket Lightship Habitat Closure Area. NMFS also described fishery activities and associated fishery resources within the RFI area, and included maps of specific fishing activity for the RFI area using Vessel Trip Report data for five types of fishing activities from 2006–2012. The New England Fishery Management Council identified active fishing grounds for species within the RFI area and recommended BOEM obtain information on species distribution, fishing effort, and revenues from NMFS. The New England Fishery Management Council also noted the RFI area encompasses EFH for a broad range of federally managed species, and requested that projects in the area and their accompanying NEPA documents include an expanded EFH impact assessment.

The American Alliance of Fishermen requested that BOEM conduct additional studies on tuna and swordfish, and fishery stocks that have not been reported on, such as squid, winter flounder, lobster, scup, whiting, black sea bass, skates and dogfish. The Sierra Club recommended that BOEM consider the relationship of the RFI area to the EFH Omnibus Amendment process underway by the New England Fishery Management Council. David Frulla, Kelley Drye & Warren LLP, on behalf of the Fisheries Survival Fund, suggested that BOEM use the following sources of information when identifying fishing grounds: Vessel Monitoring System data, Vessel Trip Reports, Swept Area Seafloor Impact Model (to identify fishing impacts on essential fish habitats), and Scallop Survey Data. Comments also included concerns

regarding commercial wind energy development and interference with vessel radar systems, and exclusions by fishing vessel insurance companies.

The Martha's Vineyard Commission expressed support for the Commonwealth's Fisheries Working Group on Offshore Renewable Energy and recommended extensive mapping of fishing and fish resource areas. The Martha's Vineyard Commission also recommended that developers work with the fishing community to implement practices that minimize the impact on fishing, such as assistance with increased insurance costs and coordination of cable-laying. Atlantic Capes Fisheries recommended areas rich in scallops and other fisheries such as the Nantucket Lightship Area and the eastern area of the RFI be removed from leasing consideration and that areas the New England Fishery Management Council would make permanent closures for habitat be considered as preferred and initial leasing targets provided that other major environmental resources are not compromised.

National Natural Landmarks

BOEM received comments from the National Park Service regarding two designated National Natural Landmarks that are located in proximity to the RFI area: Gay Head Cliffs, located at the southwest end of Martha's Vineyard and Muskeget Island, located off the western tip of Nantucket. The National Park Service noted that Federal agencies should consider the existence and location of designated National Natural Landmarks in assessing the effects of their activities on the environment under section 102(2)(c) of NEPA (42 U.S.C. 4321). The National Park Service recommended consideration of the status of Gay Head Cliffs and Muskeget Island as registered National Natural Landmarks in evaluating the probable impact of the proposed activity on the public interest. The National Park Service noted that increased erosion impacts to the cliffs, changes to sediment transport, and impacts to grey seal breeding areas (Muskeget being considered one of the southernmost breeding areas) are of particular concern.

Marine Mammal Resources

BOEM received comments related to marine mammal resources from the Commonwealth of Massachusetts, The Humane Society of the United States, Marine Mammal Commission, National Wildlife Federation, NMFS, The Nature Conservancy, Sierra Club, Whale and Dolphin Conservation Society, and individual citizens. Comments included concerns that insufficient baseline data is currently available about marine mammals or their habitats and recommendations to initiate monitoring and baseline studies to acquire additional information. Comments also indicated that many species of marine mammals have been sighted within the RFI area, including harbor porpoises and endangered North Atlantic right whales. The Nature Conservancy submitted information from the Northwest Atlantic Marine Ecoregional Assessment, including maps that show information related to important marine mammal areas overlapping the RFI area.

The Humane Society of the United States expressed reservations regarding the data provided on the Massachusetts Ocean Management Plan Web site, and stated that monitoring should be required immediately using aerial and vessel-based surveys and passive acoustic monitoring. The Humane Society of the United States also expressed concern regarding the changes to migration patterns and potential for increased vessel collisions. NMFS indicated several species of marine mammals are common residents or occasional visitors to the RFI area, included locations of critical habitat for several species, and noted the consultation requirements for Section 7(a)(2) of the ESA, and the similar requirements of the Marine Mammal Protection Act. The Marine Mammal Commission requested that BOEM consult with NMFS, U.S. Fish and Wildlife Service, the Marine Mammal Commission, and the Army Corps of Engineers to develop a set of standards for the collection of baseline information on marine mammals and their environment, and identify and address any significant data gaps, before initiating the leasing process for renewable energy operations. The Marine Mammal Commission also expressed concerns regarding vessel collisions with marine mammals, marine mammal collisions with turbines, toxic chemical spills from turbines, and the unknown effects of electromagnetic fields.

NEPA Process

BOEM received comments from the Alliance to Protect Nantucket Sound, Defenders of Wildlife, Environmental Entrepreneurs, Marine Mammal Commission, and Oceans Public Trust Initiative, about the NEPA process. The Alliance to Protect Nantucket Sound, Defenders of Wildlife, Marine Mammal Commission, and Oceans Public Trust Initiative recommended that DOI develop an Environmental Impact Statement rather than an EA at the leasing stage.

The Environmental Entrepreneurs supported the ''Smart from the Start'' initiative to streamline the process and requested that BOEM incorporate the Offshore Wind Development Coalition's principles for offshore wind leasing into the initiative to make it easier for wind developers to obtain preliminary, exclusive leases for site exploration while still ensuring that there will be full environmental review when an actual project is proposed.

Shipping and Navigation

BOEM received comments related to shipping and navigation from the U.S. Coast Guard First District, American Association of Port Authorities, The American Waterways Operators, Sandy Hook Pilots, Port Authority of New York and New Jersey, Commonwealth of Massachusetts, and individual citizens. Comments focused on concerns regarding commercial wind energy development overlapping or in proximity to existing Traffic Separation Schemes (TSS). The U.S. Coast Guard First District suggested that OCS blocks overlapping with and in proximity to the Boston and Nantucket to Ambrose TSS be highlighted for possible exclusion or imposition of mitigation measures. The U.S. Coast Guard First District also suggested that historical Automated Identification System (AIS) data be used to determine vessel traffic density, recommended that the consequences of funneling traffic into the traffic lane or closer to shore be identified, and suggested a study of potential impacts of offshore wind energy development on the U.S. Coast Guard's ability to conduct search and rescue missions.

The American Waterways Operators expressed concerns related to the placement of wind turbines and impacts to navigation and operation safety, and suggested that BOEM exclude areas for wind development that are within at least 800 meters from a TSS. BOEM has already excluded, in consultation with the U.S. Coast Guard, aliquot parts of OCS blocks within 1 nmi of the TSS from the Call Area. The American Waterways Operators expressed support for BOEM's use of AIS to identify vessel traffic patterns, and requested BOEM consult with maritime industry stakeholders as part of the NEPA scoping process. The American Association of Port Authorities recommends that future RFIs exclude areas near a TSS before the official release of the RFI, and recommends that BOEM use U.S. Coast Guard personnel

and resources to analyze the AIS data and provide recommendations.

Tribal Resources

BOEM received comments from the Martha's Vineyard Commission, National Wildlife Federation, and the Town of Oak Bluffs regarding tribal resources. The Martha's Vineyard Commission recommended that BOEM involve tribal representatives in all stages and aspects of the process of planning, research, project selection, and project design. The Town of Oak Bluffs expressed support for the Wampanoag Tribe of Gayhead's (Aquinnah) request that any project less than 21 miles offshore should be reviewed with particular sensitivity to tribal concerns and historic scenic views.

Viewshed

BOEM received comments from the Martha's Vineyard Commission, National Wildlife Federation, and the Town of Oak Bluffs related to viewshed concerns. The Martha's Vineyard Commission requested that BOEM should work to mitigate any impacts to scenic views through siting and turbine configuration. The Town of Oak Bluffs expressed concern about the effects of the RFI on historic and scenic viewscapes. The National Wildlife Federation recommended that the Federal Government fully pursue its government-to-government consultation obligation by reaching out directly to tribes and ensure that the appropriate tribal officials and tribal staff have been fully consulted, involving more than an official letter of notice, and including every possible communication method (letter, email, phone, and face-to-face meetings). The National Wildlife Federation also recommended the Federal Government fully address and pursue measures to minimize and fully mitigate impacts to tribal cultural, wildlife, water and other natural resources, with the ultimate objective of having no impact on those resources or traditional properties.

The Cape Wind Energy Project

BOEM received comments from the Alliance to Protect Nantucket Sound, Oceans Public Trust Initiative, and individual citizens expressing concerns regarding the Cape Wind Energy Project. Comments included general opposition to the Cape Wind Energy Project and stated that BOEM should consider the RFI area as an alternative site to the Cape Wind Energy Project. The Alliance to Protect Nantucket Sound and Oceans Public Trust Initiative expressed that the RFI area demonstrates that there are alternative locations to Cape Wind's location in Nantucket Sound. The Oceans Public Trust Initiative suggested that DOI disapprove the Cape Wind project.

Additional Task Force Membership Comments

Issues discussed through consultation with the BOEM/Massachusetts Renewable Energy Task Force, and areas where site-specific stipulations may be required are described below. NMFS noted that the Call Area overlaps with the Nantucket Lightship Groundfish Closed Area, and also noted the New England Fishery Management Council (NEFMC) is considering a range of new possible habitat closed area alternatives because of habitat vulnerability within proximity to the Call Area, such as Cox Ledge and Nantucket Shoals. NMFS provided in its comment the following references for detailed information regarding areas that are actively managed by NMFS: *http://www.nero.noaa.gov/nero/fishermen/charts.html* and *http://www.nero.noaa.gov/nero/regs/info.html*. NMFS noted this information is important for developers when considering proposed cable routes as well as potential for interactions with fishing activities displaced from these closed areas. Concerning cables, NMFS further identified the need for BOEM to proactively develop cable corridors in order to minimize the cumulative impact of multiple cables from sites within a Wind Energy Area to shore. BOEM has requested information regarding potential cable configurations and consolidations from nominators that submit a response to this Call (refer to the section entitled ''Required Nomination Information''), and will consider the information it receives in response to the Call as it moves forward with the leasing and planning process and in the EA.

NMFS made recommendations concerning several other aspects of potential OCS development. NMFS recommended that information generated by lessees through site assessment and leasing activities be made public and used to populate the National Ocean Council's ''National Information Management System,'' and/or regional data portals. The Northeast Regional Ocean Council (NROC) has been working with a partnership of government agencies, non-government organizations, and academic entities to develop a Northeast Ocean Data Portal, which can be accessed at: *http://northeastoceandata.org/*. NMFS also recommended the Call acknowledge the issue of climate change and the anticipated shift in fishery resource populations as well as shifts in fishing activities. NMFS also recommended that BOEM require coordinated fisheries studies once leases have been issued to ensure a consistent fishery research methodology throughout the area and minimize duplicative costs to developers.

Department of Defense (DoD) Activities

The DoD conducts offshore testing, training, and operations on the OCS. BOEM will consult with the DoD about all areas nominated for leasing to ensure that any future development can be compatible with defense activities on the OCS.

BOEM Approach to Exclusion Requests

Several comments received by BOEM in response to the RFI have recommended areas to be excluded from consideration of potential leasing. As explained in the section of the Call entitled, ''Purpose of the Call for Information and Nominations,'' the inclusion of an area of the OCS within the Call Area is not a decision to lease that area. The Call solicits information from all interested and affected parties that BOEM can use in identifying portions of the Call Area where interest exists and which will be subject to environmental analysis and stakeholder consultation. The information the Call seeks relates to both renewable energy development interest and to other resources within, and current uses of, the Call Area. After considering the information it receives in response to the Call, BOEM may decide to exclude certain areas at the next step in the planning process—the Area Identification—or to include those areas for further consideration and analysis in the NEPA review. Please refer to the NOI that is being published concurrently with this notice. Generally, BOEM's approach is to first analyze the entire Call Area thoroughly with the goal of eliminating or reducing to an acceptable level any potential resource and use conflicts. However, if BOEM concludes that such conflicts cannot be properly mitigated, exclusions may be necessary. BOEM intends to make fully-informed decisions on exclusions at the appropriate time in the lease planning process.

Task force members and comments received in response to the RFI have both identified competing uses within the Call Area. BOEM hereby highlights in the Call two such uses: (1) Vessel traffic and (2) commercial fishing, and requests specific data and information relevant to these uses, which will be used to inform its subsequent decisions.

BOEM will consider the information received from interested developers, maritime interests, commercial fishers, and others concerning these uses in reaching an Area Identification and in planning the ensuing NEPA analysis. It is possible that certain geographic areas and/or associated mitigation measures could be framed as alternatives in the NEPA analysis to enable thorough and conclusive consideration by BOEM in its decisionmaking.

Required Nomination Information

If you intend to submit a nomination for a commercial wind energy lease within the Call Area, you must provide the following:

(1) The BOEM Protraction name, number, and specific whole or partial OCS blocks or sub-blocks within the Call Area that are of interest to you for commercial wind leasing, including any required buffer area. This information should be submitted as a spatial file compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83), in addition to a hard copy submittal. If your proposed lease area includes one or more partial blocks, please describe those partial blocks in terms of a sixteenth (*i.e.,* sub-block) of an OCS block. BOEM will not consider any areas outside of the Call Area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives, including: A general description of devices and infrastructure you intend to use; anticipated power production and likely purchasers; a statement that the proposed activity conforms with state and local energy planning requirements, initiatives or guidance, as appropriate;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the Call Area, including energy and resource data and information used to evaluate the Call Area. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) If available, identification of potential cable landfall sites, staging areas, and any other support sites that may be necessary for your project;

(6) If available, information regarding proposed land-side and near-shore project elements and their potential effects on viewsheds, historic, cultural, and/or tribal resources;

(7) Description of the compatibility of your project with commercial fishing activity (e.g. spacing between individual turbines, array configurations, cable burial depths, routing measures, inspections, cable configurations or consolidations, etc.) occurring, or expected to occur, both within, and within proximity to, your proposed area;

(8) Documentation demonstrating that you are qualified to hold a lease as set forth in 30 CFR 585.106 and 107. Examples of documentation appropriate for demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of the BOEM Renewable Energy Framework Guide Book available at: *http://www.boemre.gov/offshore/RenewableEnergy/PDFs/REnGuidebook_03August2009_3_.pdf.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under a separate cover (*See* ''Protection of Privileged or Confidential Information Section,'' below);

(9) You must also include documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in (2) above. Guidance regarding documentation appropriate for demonstrating your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a CD to be an acceptable format for submitting an electronic copy; and

(10) Applicants who submitted a nomination in response to the RFI should indicate in response to this Call whether: (1) They wish to continue with their original RFI nomination within the Call Area; (2) they wish to continue with, but modify, their original RFI nomination within the Call Area; (3) they wish to withdraw their original RFI nomination from further consideration; and/or (4) they wish to submit a new nomination of interest within the Call Area. An applicant may make more than one nomination within the Call Area. Therefore, for example, even if the applicant wishes to continue with its original RFI nomination, it may also make a new nomination.

It is critical that you submit a complete nomination so that BOEM may evaluate your submission in a timely manner. If BOEM reviews your nomination and determines that it is incomplete, BOEM will inform you of this determination in writing. This letter will describe the information that BOEM determined to be missing from your nomination, and direct you to submit it in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to submit the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines this second submission to be insufficient, then BOEM may deem your nomination invalid. In such a case, BOEM would not move forward with your nomination submitted in response to this Call.

Requested Information From Interested or Affected Parties

BOEM is requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including bottom and shallow hazards);

(2) Known archeological and/or cultural resource sites on the seabed or nearshore and methodologies used to acquire that data;

(3) Historic properties potentially affected by the construction of meteorological towers, the installation of meteorological buoys, or commercial wind development in the Call Area;

(4) Other uses of the area, including navigation (in particular, commercial and recreational vessel use), recreation, and fisheries (commercial and recreational); and

(5) Other relevant socioeconomic, biological, and environmental information.

Protection of Privileged or Confidential Information Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential.

If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as ''Confidential.''

Dated: February 1, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–2645 Filed 2–3–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2011–0116]

Commercial Wind Leasing and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent to Prepare an Environmental Assessment.

SUMMARY: This Notice of Intent to Prepare an Environmental Assessment (Notice) is being published as an initial step for the purpose of involving Federal agencies, states, tribes, local governments, offshore wind energy developers, and the public in the Department of the Interior's (DOI) ''Smart from the Start'' wind energy initiative offshore Massachusetts. The purpose of the ''Smart from the Start'' wind energy initiative is to identify areas that may be most suitable for wind energy leasing on the Outer Continental Shelf (OCS), and to obtain public and expert input that will inform the Department's decision-making with regard to issuing leases and approving site assessment activities in these areas, in accordance with applicable DOI regulations and the Council on Environmental Quality (CEQ) regulations implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.*).

On November 23, 2010, Secretary of the Interior Ken Salazar announced the ''Smart from the Start'' renewable energy initiative to accelerate the responsible development of renewable energy resources on the Atlantic OCS. The initiative focuses on the identification and refinement of areas on the OCS that are most suitable for renewable energy development, known as Wind Energy Areas (WEAs), and utilizes coordinated environmental studies, large-scale planning processes, and expedited review procedures within these areas to achieve an efficient and responsible renewable energy leasing process.

In consultation with other Federal agencies and the Massachusetts Renewable Energy Task Force, BOEM has identified an area for consideration for potential future wind energy leasing offshore Massachusetts (Call Area). This Call Area is identified in the document entitled *Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts-Call for Information and Nominations (Call),* which is being published concurrently with this Notice. This is the first public step in the potential leasing process which requires several more opportunities for public involvement before leasing can occur, including a proposed sale notice. A commercial lease gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the lessee the right to use the leased area to develop its plans, which BOEM must approve before the lessee can move on to the next stage of the process. See 30 CFR 585.600 and 585.601.

More information on the renewable energy task forces and the ''Smart from the Start'' initiative can be found at: *http:boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx* and at: *http://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast.cfim.*

BOEM intends to prepare an environmental assessment (EA), which is the subject of this Notice, that will consider the environmental consequences associated with issuing commercial wind leases and approving site assessment activities on those leases (within all or some of this Call Area). If a lessee proposes development activity, the specific proposal will be given full environmental review at that time. BOEM is seeking public input regarding the identification of the alternatives to be considered in the EA, as well as the environmental and/or socioeconomic issues to be analyzed.

Furthermore, Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and it's implementing regulations (36 CFR 800), require Federal agencies to consider the effects of their actions on historic properties. Therefore, BOEM will conduct Section 106 review for the issuance of leases and approval of site assessment activities within some or all of the Call Area, in coordination with its environmental review. As part of this Section 106 review, BOEM will initiate consultation with state historic preservation officers, tribal officials, and others. BOEM is now reaching out to the general public for comments regarding the identification of historic properties or potential effects to historic properties from leasing and site assessment activities in the Call Area. Submitted information will allow BOEM to consider the views of the public and document historic preservation concerns early in the Section 106 process.

Authority: This Notice of Intent to prepare an environmental assessment is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@BOEM.gov.*

SUPPLEMENTARY INFORMATION:

1. The OCS Wind Energy Leasing and Development Process

There are three key phases in the wind energy leasing and development process on the OCS: (1) Lease issuance; (2) approval of a site assessment plan (SAP); and (3) approval of a construction and operation plan (COP). The first phase, issuance of a commercial renewable energy lease, gives the lessee an exclusive right to apply for approval of subsequent plans, the approval of which is necessary for a lessee to advance to the next stage of the renewable energy development process. We are at the beginning of this phase offshore Massachusetts. The second phase is the applicant's submission and BOEM's subsequent review and approval of a SAP. Approval of a SAP allows the lessee to construct

and install equipment on the leasehold, such as a meteorological tower and/or buoys, to perform site assessment functions. See 30 CFR 585.600–585.601; 585.605–585.618. Although BOEM does not authorize site characterization activities (i.e., geological and geophysical surveys and core samples), a lessee must submit the results of such surveys with the supporting data in its SAP. See 30 CFR 585.610. The submission of a SAP is separate from the submission of a COP. After the lessee has collected the further site characterization and assessment data necessary for a COP, the lessee may submit its COP, the approval of which could authorize the actual construction and operation of a renewable energy facility on the lease. See 30 CFR 585.620–585.629.

2. Proposed Action and Scope of Analysis

The proposed action that will be the subject of the EA is the issuance of renewable energy leases within all or some of the Call Area described in this Notice, and the approval of site assessment activities on those leases (*i.e.,* Phases l and 2 of the wind energy leasing and development process). BOEM will also consider in the EA the environmental impacts associated with the site characterization activities that it anticipates lessees might eventually undertake to fulfill the SAP and COP information requirements at 30 CFR 585.610 and 585.626, respectively.

Additional analysis under NEPA will be required before any future decision is made regarding the approval of the construction or operation of any wind energy facility on leases that may be issued within all or some of this Call Area. If and when a lessee is ready to begin this third phase of renewable energy development, it will submit a COP. BOEM is not currently considering any such COP, nor has any COP been submitted for this Call Area. If, in the future, a COP is submitted for a particular project on a lease, a separate site- and project-specific NEPA analysis would be prepared. This specific NEPA analysis would likely take the form of an Environmental Impact Statement (EIS) and would provide additional opportunities for public involvement pursuant to NEPA and the CEQ regulations at 40 CFR Parts 1500–1508. Such an EIS process would provide the public and Federal officials with comprehensive site- and project-specific information, and the EIS would consider the reasonably foreseeable environmental impacts of the specific project the lessee is proposing. These potential impacts will be taken into account when deciding whether to approve, approve with modification, or deny the COP pursuant to 30 CFR 585.628.

Based on the information submitted in response to this Notice and the Call, BOEM would identify the areas within the Call Area in which interest exists, and which will be subject to environmental analysis in consultation with appropriate Federal agencies, states, local governments, tribes and other interested parties. The areas identified will constitute WEA(s) under the ''Smart from the Start'' initiative, and will be the area(s) analyzed in the EA.

The EA will consider the environmental consequences associated with reasonably foreseeable leasing scenarios (not development itself), reasonably foreseeable site characterization scenarios within these lease areas (including geophysical, geotechnical, archaeological, and biological surveys), and reasonably foreseeable site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the leases that may be issued within all or some of the Call Area. At a minimum, two alternatives will be considered: no action (*i.e.,* no issuance of leases or approval of site assessment activities); and the issuance of leases and approval of site assessment activities within the identified portion(s) of the Call Area. BOEM is therefore soliciting input on these and/or other alternatives, and on the environmental and socioeconomic issues to be considered in the EA related to the potential environmental effects of the activities listed above.

Federal, state, and local government agencies, tribal governments, and other interested parties may assist BOEM in determining the issues, and any additional alternatives, to be analyzed in the EA. Input is also requested on measures (*e.g.,* limitations on activities based on technology, distance from shore, or timing) that could mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment activities taking place in the Call Area or from support activities taking place outside the Call Area itself. Consultation with other Federal agencies, tribal governments, and affected states will be carried out during the EA process and will be completed before a final decision is made on whether any particular lease will be issued or site assessment activities on those leases approved.

If BOEM determines during the EA process that issuing leases and conducting site characterization and assessment activities within the Call Area would result in significant environmental impacts, BOEM will publish a Notice of Intent to prepare an EIS for the issuance of renewable energy leases and approval of site assessment activities within all or some of this Call Area. If BOEM determines during the EA process that issuing leases and conducting site characterization and assessment activities within the Call Area would not result in significant environmental impacts, BOEM will issue a Finding of No Significant Impact (FONSI). After either a FONSI is issued or the EIS process is completed, BOEM may issue one or more renewable energy leases within all or some of this Call Area. In the event that a particular lease is issued, and the lessee submits a SAP, BOEM will determine whether the EA adequately considers the environmental impacts of the activities proposed in the lessee's SAP. If the analysis in the EA adequately addresses these impacts, then no further NEPA analysis would be required before the SAP is approved. If the EA analysis is inadequate, additional NEPA analysis would be conducted before the SAP could be approved.

3. Information That Will Be Incorporated Into the EA

On November 6, 2007, BOEM published a Notice of Availability (NOA) in the **Federal Register** (72 FR 62,672) of the Programmatic EIS for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final EIS (OCS Report MMS 2007–046) (Programmatic EIS). On June 26, 2009, BOEM published a NOA in the **Federal Register** (74 FR 30,616) of the EA for Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey (OCS EIS/EA MMS 2009–025) (Interim Policy EA), which addressed activities similar to those to be addressed in the EA for which this Notice is being published.

BOEM will incorporate the environmental and socioeconomic analyses of site characterization and assessment activities from the Programmatic EIS, Interim Policy EA, and other public information to help inform its analysis in the EA. The EA will be developed using the principles of coastal and marine spatial planning, such as comprehensive interagency coordination, to identify information necessary for future decision making regarding wind energy development.

4. Description of the Call Area

A detailed description of the Call Area can be found in the Call that is being published concurrently with this Notice.

Map of the Call Area

A map of the Call Area can be found at the following URL: *http://boem.gov/Renewable-Energy-Program/State-Activities/Massachusetts.aspx*

A large-scale map of the Call Area showing its boundaries and with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, Phone: (703) 787–1320.

5. Cooperating Agencies

BOEM invites Federal, state, and local government agencies, as well as tribal governments, to consider becoming cooperating agencies in the preparation of this EA. CEQ regulations implementing the procedural provisions of NEPA define cooperating agencies as those with ''jurisdiction by law or special expertise'' (40 CFR 1508.5). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling predecisional information. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the NEPA. A copy of this document is available at: *http://ceg.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and at: *http://ceg.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input phases of the NEPA/EA process.

6. Comments

Federal, state, local government agencies, tribal governments, and other interested parties are requested to send their written comments regarding environmental issues and the identification of reasonable alternatives related to the proposed action described in this Notice in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0116, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on Massachusetts EA'' to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817. Comments should be submitted no later than March 22, 2012.

Dated: February 1, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–2649 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000.FR0000.24–1A]

Conveyance of Federally-Owned Mineral Interests; Renewal of OMB Control Number

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to continue the collection of information from owners of surface estates who apply for underlying Federally-owned mineral interests. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0153.

DATES: Submit comments on the proposed information collection by April 6, 2012.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at (202) 245–0050.

Electronic mail: *Jean_Sonneman@blm.gov.*

Please indicate ''Attn: 1004–0153'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Marilyn A. Roth, at (202) 912–7345. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339, to leave a message for Ms. Roth.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Conveyance of Federally-Owned Mineral Interests (43 CFR Part 2720).

OMB Control Number: 1004–0153.

Abstract: The respondents in this information collection are owners of surface estates who apply for underlying Federally-owned mineral estates. The Bureau of Land Management (BLM) needs to conduct the information collection to determine if the applicants are eligible to receive title to the

Federally-owned minerals lying beneath their lands. When certain specific conditions have been met, the United States will convey legal title to the Federally-owned minerals to the owner of the surface estate.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 11 businesses, 10 individuals, and 3 State/Local/Tribal Governments annually.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 240 hours annually.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $1,200 annually.

The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours (Column B × Column C)
Conveyance of Federally-Owned Mineral Interests—Businesses	11	10	110
Conveyance of Federally-Owned Mineral Interests—Individuals	10	10	100
Conveyance of Federally-Owned Mineral Interests—State/Local/Tribal Governments	3	10	30
Totals	24		240

Before including your address, telephone number, email address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–2561 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1310–PP–OSHL]

Notice of Availability of the Draft Programmatic Environmental Impact Statement for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared Draft Resource Management Plan (RMP) Amendments and a Draft Programmatic Environmental Impact Statement (EIS) for the Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming, and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendments and Draft Programmatic EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will hold public meetings on the Draft Programmatic EIS. The locations of the public meetings are listed in the ''**SUPPLEMENTARY INFORMATION**'' section below. The public will be notified of the dates and times of these meetings at least 15 days in advance via local media and the project Web site listed in the ''**SUPPLEMENTARY INFORMATION**'' section below.

ADDRESSES: You may submit comments related to the Draft Programmatic EIS by any of the following methods:

- *Web site:* Using the online comment form available on the project Web site: *http://ostseis.anl.gov.* This is the preferred method of commenting.
- *Mail:* Addressed to: Oil Shale and Tar Sands Resources Draft Programmatic EIS, Argonne National Laboratory, 9700 South Cass Avenue—EVS/240, Argonne, Illinois 60439.

A complete, printed copy is available for review at the addresses listed in the ''**SUPPLEMENTARY INFORMATION**'' section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the Draft Programmatic EIS should be directed to Sherri Thompson, BLM Oil Shale and Tar Sands Resources Programmatic EIS Project Manager, BLM Washington Office, by email at *sthompso@blm.gov*, or by telephone at (303) 239–3758. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft Programmatic EIS, references, and additional information regarding oil shale and tar sands resources allocation are available at the project Web site: *http://ostseis.anl.gov.* An electronic copy of the Draft Programmatic EIS can be viewed in any BLM State Office public room in the three state study area and will be available through the BLM Web site at *http://www.blm.gov.* A complete, printed copy is available for review at the following BLM offices:

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.
Northwest District Office, 2815 H Road, Grand Junction, Colorado 81506.
Colorado River Valley Field Office, 2300 River Frontage Road, Silt, Colorado 81652.
White River Field Office, 220 East Market Street, Meeker, Colorado 81641.
Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.
Green River District Office, 170 South 500 East, Vernal, Utah 84078.
Price Field Office, 125 South 600 West, Price, Utah 84501.
Color Country District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84721.
Richfield Field Office, 150 East 900 North, Richfield, Utah 84701.
Canyon Country District Office, 82 East Dogwood, Moab, Utah 84532.
Monticello Field Office, 365 North Main, Monticello, Utah 84535.
Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
High Desert District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101.

Rawlins Field Office, 1300 North Third, Rawlins, Wyoming 82301.

The BLM will hold public meetings on the Draft Programmatic EIS to provide an overview of the document, respond to questions, and take written public comments. The meetings will be announced through local news media and the project Web site: (*http://ostseis.anl.gov*), at least 15 days in advance. Public meetings are currently planned for the following locations:

Rifle, Colorado; Rock Springs, Wyoming; Salt Lake City and Vernal, Utah.

At these meetings, the public will have an opportunity to provide written comments. Written comments from the meetings and additional written comments submitted during the comment period will be considered by the BLM in preparing the Final Programmatic EIS. Comments submitted after the close of the comment period will be considered to the extent practicable.

Background

In 2008, the BLM amended eight land use plans in Colorado, Utah, and Wyoming to make public lands available for potential leasing and development of oil shale resources, and two other land use plans to expand the acreage available for potential tar sands leasing in Utah, where these resources are located. These 2008 Amendments, supported by the preparation of a Programmatic EIS required under Section 369(d)(1) of the Energy Policy Act of 2005, made approximately 2,000,000 acres available for potential development of oil shale resources and approximately 431,000 acres available for potential development of tar sands resources. The 2008 Programmatic EIS and Record of Decision (ROD) amending the land use plans are available at the following Web site: *http://ostseis.anl.gov*, and include maps and more specific information about the geographic area studied in 2008. Information specific to the individual RMPs amended in 2008 can be found at the individual BLM Field Office Web sites, which can be accessed through *http://www.blm.gov*.

The BLM has decided to take a fresh look at the land use plan allocation decisions made in the 2008 ROD associated with the Programmatic EIS, in order to consider which lands should be open to future leasing of oil shale and tar sands resources. The planning area for the oil shale resource is the Piceance Basin in Colorado, the Uintah Basin in Utah, and the Green River and Washakie Basins in Wyoming. For the tar sands resources, the planning area is certain sedimentary provinces in the Colorado Plateau in Utah. The BLM, through NEPA and the BLM planning process, intends to take a hard look at whether, given the current state of technology, future leasing opportunities should be focused on lower conflict lands with the approximately 2,000,000 acres currently available for potential development of oil shale, and the approximately 431,000 acres currently available for potential development of tar sands.

A Notice of Intent to prepare this Programmatic EIS was published in the **Federal Register** on April 14, 2011 (76 FR 21003). This notice initiated the scoping period, which lasted from April 14 to May 16, 2011. During that period, the BLM invited the public to provide comments on the scope and objectives of the Programmatic EIS, including identification of issues and alternatives that should be considered in the Programmatic EIS analyses. Public meetings were held at seven locations across the three states. Comments were also collected via the project Web site and by mail. Approximately 28,520 individuals, organizations, and government agencies provided comments during the scoping process.

The Programmatic EIS analyzes amending the following RMPs: the White River, Grand Junction, and Glenwood Springs RMPs in Colorado; the Vernal, Price, Richfield, and Monticello RMPs in Utah; and the Kemmerer, Rawlins, and Green River RMPs in Wyoming. The purpose and need for the proposed planning action is to reassess the appropriate mix of allowable uses with respect to oil shale and tar sands leasing and potential development.

The BLM will decide whether any changes should be made to the existing land use allocation decisions, in light of the nascent character of technology for developing oil shale and tar sands resources, and any relevant new information. Specifically, the BLM is considering amending the applicable RMPs to specify whether any areas in Colorado, Utah, and Wyoming currently open for future leasing and development of oil shale or tar sands should not be made available for such leasing and development.

The Programmatic EIS analyzes four alternatives in detail for allocation of oil shale (two of these include sub-alternatives), and four analogous alternatives for allocation of tar sands. Alternative 1 is the No Action alternative, which would leave in place the current allocation decisions from the 2008 ROD. Under each of Alternatives 2 through 4, the ''Action'' alternatives described in brief below, something less than 1,991,222 acres (acreage opened under 2008 Programmatic EIS ROD) would be available for future consideration for leasing for commercial oil shale leasing, and something less than 431,224 acres (acreage opened under 2008 Programmatic EIS ROD) would be available for application for commercial tar sands leasing.

Alternative 2(a), the Conservation Focus Alternative, analyzes removing from possible oil shale and tar sands leasing the following kinds of areas:

(1) All areas that the BLM has identified or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics (preliminary information may be found in chapters 2 and 3 of the 2008 Programmatic EIS, at *http://ostseis.anl.gov*);

(2) The whole of the Adobe Town ''Very Rare or Uncommon'' area, as designated by the Wyoming Environment Quality Council on April 10, 2008 (*http://deq.state.wy.us/eqc/orders/Rare%20or%20Closed%20Cases/UandI_Final_for_DEQ.pdf*);

(3) Core or priority sage grouse habitat, as defined by such guidance as the BLM or the Department of the Interior may issue;

(4) All Areas of Critical Environmental Concern (ACEC) located within the areas analyzed in the September 2008 Oil Shale and Tar Sands Resources Leasing Final EIS (2008 OSTS Programmatic EIS, chapter 2, with further discussion in chapters 3 and 4, at *http://ostseis.anl.gov*); and

(5) All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 OSTS Programmatic EIS (see *http://ostseis.anl.gov*).

Under Alternative 2(b), the lands open for future leasing consideration for oil shale would be the same as those in Alternative 2(a), but only for Research, Development, and Demonstration (RD&D) leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR subpart 3926 for conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease would be specified in the RD&D lease. The environmental impacts of Alternative 2(b) would be analytically indistinguishable from those of Alternative 2(a). Only the method of obtaining a lease would be different.

Alternative 3, the Research Lands Focus Alternative, was developed by the BLM in response to several comments received during the public scoping process that suggested that the BLM should not move forward to establish commercial leasing programs for oil shale or tar sands development on public lands. The variety of concerns cited as reasons for not establishing commercial programs included: (1) The sensitivity of specific resources within the three state study area, such as lands with wilderness characteristics, visual resources, ecological resources, and cultural resources; (2) the lack of definitive information about the technologies that will be employed in commercial operations; (3) the need for the nation to focus on alternative sources of energy, such as renewable resources; and (4) in the case of oil shale, the potential recurrence of adverse socioeconomic impacts resulting from a possible boom/bust cycle of development. Under the oil shale Research Lands Focus Alternative, 10 land use plans in Colorado, Utah, and Wyoming would be amended to limit public lands available for commercial leasing to the those lands encompassed by existing oil shale RD&D leases and their associated preference right lease acreage, plus the areas encompassed by the three RD&D lease applications currently under review. For the tar sands Research Lands Focus Alternative, the lands identified as available for application for commercial leasing would be limited to those lands in the Vernal, Utah, planning area, for which there is a pending tar sands lease application.

Under Alternative 4(a), the Moderate Development Alternative, only the following kinds of areas would be excluded from commercial oil shale or tar sands leasing:

(1) The whole of the Adobe Town ''Very Rare or Uncommon'' area, as designated by the Wyoming Environment Quality Council on April 10, 2008 (180,910 acres total; 167,517 acres of public land, of that, 10,920 acres are already designated as a BLM Wilderness Study Area).

(2) All ACECs located within the areas analyzed in the September 2008 Oil Shale and Tar Sands Resources Leasing Final EIS; (76,666 acres in existing ACECs in the 2008 Programmatic EIS, plus additional ACEC acreage as a result of Utah and Wyoming planning efforts recently completed).

Under Alternative 4(b), the lands open for future leasing consideration for oil shale would be the same as those in Alternative 4(a), but only for RD&D leases. The BLM would issue a commercial lease only when a lessee satisfies the conditions of its RD&D lease and the regulations at 43 CFR subpart 3926 for conversion to a commercial lease. The preference right acreage, if any, which would be included in the converted lease, would be specified in the RD&D lease.

The environmental impacts of Alternative 4(b) would be analytically indistinguishable from those of Alternative 4(a). Only the method of obtaining a lease would be different. This planning initiative addresses the allocation of BLM-administered lands as closed or open to the potential leasing and development of oil shale and tar sands resources, but, as in the oil shale and tar sands planning process completed in 2008, will not disturb other management decisions contained in the RMPs governing the areas to be included in the study area.

The BLM is including in the Programmatic EIS, for reference, the mitigation measures developed during the previous oil shale and tar sands planning initiative completed in 2008, and has developed additional mitigation measures. No decision regarding the adoption of such measures is being made as part of this planning initiative; such measures may be applied, if appropriate, at the discretion of the decision-maker, at the time these resources are leased and/or developed.

The BLM has used an interdisciplinary approach to develop the Programmatic EIS in order to consider the variety of identified resource issues and concerns. Specialists with expertise in the following disciplines were involved in the developing this Programmatic EIS: Minerals and geology; wildlife and fisheries; air quality; outdoor recreation, including lands with wilderness characteristics; archeology; paleontology; hydrology; soils; sociology; and economics.

The BLM will use and coordinate public participation opportunities consistent with the NEPA and land use planning processes to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800.2(d)(3)).

At this stage in the planning and NEPA process, the BLM has chosen Alternative 2(b) as the preferred alternative for oil shale, and Alternative 2 as the preferred alternative for tar sands.

In addition to public scoping, and under Federal requirements and policy, the BLM initiated government-to-government consultation with 26 Indian tribes, chapters, and bands with a potential interest in oil shale and tar sands resources development on BLM-administered lands in the three state study area. The BLM is also coordinating with and soliciting input from the State Historic Preservation Offices in each of the three states in the study area and from the Advisory Council on Historic Preservation. Cooperating Federal agencies on the Programmatic EIS include the National Park Service and the U.S. Fish and Wildlife Service. Other cooperating agencies include: Garfield County, Colorado; Grand County, Utah; the States of Colorado, Utah, and Wyoming; the City of Rifle, Colorado; Sweetwater County, Wyoming; Duchesne County, Utah; the Coalition of Local Governments (Wyoming); Lincoln County, Wyoming; Carbon County, Utah; and Uintah County, Utah.

In addition to notifying the public of the availability of the Draft Programmatic EIS, this notice also informs the public of an error in the Programmatic EIS. The Draft Programmatic EIS includes incorrect figures for the number of archeological and historical sites within the most geologically prospective areas in Colorado and Utah. In Colorado, the Draft Programmatic EIS states that there are 1,951 sites within the most geologically prospective oil shale area. The correct number is 2,298 sites. In Utah, the number of archeological and historic sites within the most geologically prospective oil shale lands reported in the Draft Programmatic EIS is 2,104; the number should be 3,289. For the Tar Sands areas, the Draft Programmatic EIS reports 1,846 sites; there should be 2,699 sites. Unfortunately, this error was discovered after printing of the document, but will be rectified in the Final Programmatic EIS.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10; 43 CFR 1610.2.

Timothy Spisak,

Deputy Assistant Director, Minerals and Realty Management.

[FR Doc. 2012–2412 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG12–0085]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 41 S., R. 7 E., accepted January 12, 2012
T. 40 S., R. 8 W., accepted January 12, 2012
T. 22 S., R. 6 W., accepted January 24, 2012

Washington

T. 33 N., R. 20 E., accepted January 12, 2012

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2012–2620 Filed 2–3–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: Kingman Museum, Inc., Battle Creek, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Kingman Museum, Inc., in consultation with the appropriate Indian tribe, has determined that the cultural item meets the definition of unassociated funerary object and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural item may contact the Kingman Museum, Inc.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the Kingman Museum, Inc. at the address below by March 7, 2012.

ADDRESSES: Beth Yahne, Kingman Museum, Inc., Battle Creek, MI 49037, telephone (269) 965–5117.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Kingman Museum, Inc., Battle Creek, MI that meets the definition of an unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1997, a pair of wampum beads was donated to the Kingman Museum, Inc. from the family of Clifford Birkholz after his death. At an unknown date, Birkholz had found the beads in an apparent grave in Sacramento County, CA. The two beads are small and disc-shaped with a hole in the middle, held together by a piece of string threaded through each hole. The beads appear to be made out of wood or soapstone and were painted white.

Based upon research done by Kingman Museum, Inc., it was believed that the beads were of Miwok, Pomo, or Wintun origin. Further research and consultation with tribes from the Sacramento County area found that the beads are mostly likely to be of Miwok origin as there are many Miwok burial sites in and around Sacramento County, CA.

Determinations made by the Kingman Museum, Inc.:

Officials of the Kingman Museum, Inc. have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the wampum beads and the Ione Band of Miwok Indians of California.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the wampum beads should contact Beth Yahne, Kingman Museum, Inc., Battle Creek, MI 49037, telephone (269) 965–5117, before March 7, 2012. Repatriation of the wampum beads to the Ione Band of Miwok Indians of California may proceed after that date if no additional claimants come forward.

The Kingman Museum, Inc. is responsible for notifying the Ione Band of Miwok Indians of California that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2517 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Department of Anthropology and Museum of Anthropology, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the University of Denver Department of Anthropology and Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the University of Denver Department of Anthropology and Museum of Anthropology at the address below by March 7, 2012.

ADDRESSES: Anne Coats Amati, NAGPRA Coordinator/Registrar, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E Asbury, Sturm 146, Denver, CO 80208, telephone (303) 871–2687.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Denver Department of Anthropology and Museum of Anthropology (DUMA), that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe), the four baskets in this notice (1638 A–B, 1640, 1655, 3789) are determined to be sacred objects.

Between 1951 and 1952, a lidded basket in the collection of Mrs. Charles S. Sprague, was accessioned into DUMA. The treasure basket (1638 A–B) is a finely woven, small, lidded basket that features a diamond design in a brown-red color. Remnants of a leather loop are present on the lid. The diamond design on the treasure basket has been identified as a snake design that represents the gopher or king snake.

Between 1951 and 1952, a basket in the collection of Mrs. Charles S. Sprague, was accessioned into DUMA. The hat basket or small offering basket (1640) is a small, finely woven, coiled basket with steeply slanted sides and a stepped red-brown design that symbolizes the four stages of life.

Between 1951 and 1952, a basket in the collection of Mrs. Charles S. Sprague, was accessioned into DUMA. The hat basket (1655) has steeply slanted sides and is constructed from single-rod coils. It is colored dark brown, red-brown and a natural fiber color. The basket has a band one coil wide in red-brown near the rim and a similar band at the edge of the base. The lightning design, five radiating lines that form stepped parallelograms in dark brown, associate the basket with the ''Rain Ceremony'' worn by female ''Rain Doctors.'' The basket was also worn as ceremonial regalia by young girls in the ''Coming of Age Ceremony.''

In 1969, Kate Peck Kent donated a bowl-shaped, single-rod, coiled basket (3789) to DUMA. The decoration features two bands of three coils each in dark brown around the shoulder. The rest of the basket is a variegated natural fiber color. Parts of three coils approximately 3.0 cm from the base are broken but have been stabilized. The basket was identified as a Ceremonial Cooking basket used on such occasions as the ''Spring Ceremony'' for the preparation of acorn. It was identified as being made by two different weavers, from the Tubatalatal and Lake Isabella areas.

Determinations Made by the University of Denver Department of Anthropology and Museum of Anthropology

Officials of DUMA have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the four cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe).

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Anne Coats Amati, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E Asbury Ave, Sturm 146, Denver, CO 80208, telephone (303) 871–2687, before March 7, 2012. Repatriation of the sacred objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) may proceed after that date if no additional claimants come forward.

DUMA is responsible for notifying the Berry Creek Rancheria of Maidu Indians of California; Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Cedarville Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Enterprise Rancheria of Maidu Indians of California; Federated Indians of Graton Rancheria, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Greenville Rancheria of Maidu Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe); Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Susanville Indian Rancheria, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch,

Nevada that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2526 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: USDA Forest Service, Coconino National Forest, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The USDA Forest Service, Coconino NF, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the USDA Forest Service, Southwestern Region.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the USDA Forest Service, Southwestern Region at the address below by March 7, 2012.

ADDRESSES: Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Coconino National Forest that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In the early 1930s, 12 unassociated funerary objects were removed from San Francisco Mt:11:2(GP) in the Coconino National Forest, Coconino County, AZ, during archeological excavations conducted by the Gila Pueblo Foundation (a private archeological research facility formerly located in Globe, AZ). In the early 1950s, the Gila Pueblo Foundation closed and the collection became in the physical custody of the Arizona State Museum (ASM), Tucson, AZ. The 12 unassociated funerary objects are: 7 projectile points, 4 bone whistles and 1 spindle whorl.

Based on the ceramic collection, San Francisco Mt:11:2(GP) has been identified as a small Northern Sinagua residential site. The ceramic seriation suggests the site was occupied in the 11th and/or 12th centuries. Records at ASM indicate that these 12 cultural items were removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In the early 1930s, one unassociated funerary object, a miniature bowl, was removed from the Coconino National Forest at the Picture Canyon Site [San Francisco Mt:14:1(GP)] in Coconino County, AZ, during archeological excavations conducted by the Gila Pueblo Foundation. Since the early 1950s, the object has been in the physical custody of ASM.

Based on the ceramic collection, Picture Canyon Site has been identified as a small Northern Sinagua residential site. The ceramic seriation suggests the site was occupied in the 11th and/or 12th centuries. Records at ASM indicate that the single cultural item was removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In the early 1930s, 909 unassociated funerary objects were removed from the Coconino National Forest at the New Caves Site [San Francisco Mt:14:5(GP)] in Coconino County, AZ, during archeological excavations conducted by the Gila Pueblo Foundation. Since the early 1950s, the objects have been in the physical custody of ASM. The 909 unassociated funerary objects are: 1 shell bracelet; 1 shell necklace; 1 shell trumpet; 862 shell beads; 2 ceramic pitchers; 2 ceramic ladles; 1 ceramic canteen; 21 ceramic bowls; 7 ceramic jars; 1 sherd disc; 1 stone disc; 5 projectile points; 3 stone artifacts and 1 bone awl.

Based on the ceramic collection, material culture and architecture, the New Caves Site has been identified as a large Northern Sinagua residential site. The ceramic seriation suggests the site was occupied between the 13th and 14th centuries A.D. Records at ASM indicate that the 909 cultural items were removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In 1928 and 1929, 812 unassociated funerary objects were removed from the Coconino National Forest at the Turkey Hill Pueblo Site [AZ I:14:1 (ASM)] during archeological excavations conducted by Dr. Byron Cummings of the University of Arizona. Since removal, this collection has been stored at ASM. The 812 unassociated funerary objects are: 24 ceramic jars; 91 ceramic bowls; 8 ceramic pitchers; 9 ceramic ladles; 1 ceramic mug; 1 ceramic rattle; 1 ceramic scoop; 1 ceramic dipper; 1 ceramic boot pot; 1 ceramic sherd; 11 pendants; 639 beads; 1 button; 4 awls; 1 piece of petrified wood; 1 piece of pigment; 1 turquoise necklace; 2 shell necklaces; 1 shell bracelet; 1 shell trumpet; 1 shell artifact; 1 bone needle; 1 bone hairpin; 1 bone knife; 5 stone knives; 1 stone hammer; and 2 macaw bones.

Based on the ceramic collections, material culture and architecture, the Turkey Hill Site has been identified as a large Northern Sinagua Pueblo Site. Ceramic seriation suggests the Site was occupied between the 13th and 14th centuries A.D. The records at ASM indicate that the 812 cultural items were removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In 1928 or 1929, one unassociated funerary object, a piece of azurite, was removed from an unidentified archeological site in the Coconino National Forest near the Turkey Hill Pueblo in Coconino County, AZ. The azurite was removed during archeological excavations conducted by Dr. Byron Cummings of the University of Arizona and was curated at ASM.

Based on the ceramic items from the site (none of which are funerary objects), the site has been identified as Northern Sinagua. Ceramic seriation suggests the site was occupied in the 13th and/or 14th centuries. The records at ASM indicate that the single cultural item was removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In 1928 or 1929, three unassociated funerary objects were removed from an

unidentified archeological site in the Coconino National Forest near the Winona Village complex [AZ 1:15:1 (ASM)] in Coconino County, AZ. These items were removed during archeological excavations conducted by Dr. Byron Cummings of the University of Arizona and curated at ASM. The three unassociated funerary objects are ceramic bowls.

Based on the ceramic items from the site and its association with the Winona Village complex (pithouse villages), the site has been identified as Northern Sinagua. Ceramic seriation suggests the site was occupied in the late 11th and/or early 12th centuries. The records at ASM indicate that the three cultural items were removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

In the early 1930s, one unassociated funerary object, a ceramic bowl, was removed from the Coconino National Forest near San Francisco Mt:15:4(GP) in Coconino County, AZ, during archeological excavations conducted by the Gila Pueblo Foundation. Since the early 1950s, the object has been in the physical custody of ASM.

Based on the ceramic collection, San Francisco Mt: 15:4(GP) has been identified as a small Northern Sinagua residential site. The ceramic seriation suggest the site was occupied in the 11th and/or 12th centuries. Records at ASM indicate that the one cultural item was removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time.

Based on archeological evidence and material culture, the sites listed above have been identified as Northern Sinagua sites. Continuities of ethnographic materials indicate the affiliation of Northern Sinagua sites in the Flagstaff area of north central Arizona with the Hopi Tribe, Arizona. Oral traditions presented by representatives of the Hopi Tribe support their claims of cultural affiliation with Northern Sinagua sites in this portion of north central Arizona.

Determinations Made by the USDA Forest Service, Southwestern Region

Officials of the USDA Forest Service, Southwestern Region and the Coconino National Forest have determined that

- Pursuant to 25 U.S.C. 3001(3)(B), the 1,739 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe, Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238 before March 7, 2012. Repatriation of the unassociated funerary objects to the Hopi Tribe, Arizona may proceed after that date if no additional claimants come forward.

The Coconino National Forest is responsible for notifying the Hopi Tribe, Arizona that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2530 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate a Cultural Item: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Department of Anthropology and Museum of Anthropology, in consultation with the appropriate Indian tribes, has determined that a cultural item meets the definition of sacred object and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the item may contact the University of Denver Department of Anthropology and Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural item should contact the University of Denver Department of Anthropology and Museum of Anthropology at the address below by March 7, 2012.

ADDRESSES: Anne Coats Amati, NAGPRA Coordinator/Registrar, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E Asbury, Sturm 146, Denver, CO 80208, telephone (303) 871–2687.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the University of Denver Department of Anthropology and Museum of Anthropology (DUMA), that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Between 1951 and 1952, a lidded basket from the collection of Mrs. Charles S. Sprague was accessioned into DUMA. The finely woven, coiled lidded basket (1641 A–B) features a red-brown design on both the bowl and the lid. The Pine Tree design identifies the item as a ceremonial basket used in the ''Spring Ceremony''. Baskets such as this one were used for the storage of sacred items, shell money, beads and other treasured items. Ceremonial baskets were sometimes left at gravesites with special offerings for the deceased individual's safe passage into the Spirit World.

In consultation with representatives from the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) and the Ione Band of Miwok Indians of California, this basket is determined to be a sacred object.

Determinations Made by the University of Denver Department of Anthropology and Museum of Anthropology

Officials of the DUMA have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group

identity that can be reasonably traced between the sacred object and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) and the Ione Band of Miwok Indians of California.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Anne Coats Amati, University of Denver Department of Anthropology and Museum of Anthropology, 2000 E Asbury Ave, Sturm 146, Denver, CO 80208, telephone (303) 871–2687, before March 7, 2012. Repatriation of the sacred object to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) and the Ione Band of Miwok Indians of California may proceed after that date if no additional claimants come forward.

The University of Denver Department of Anthropology and Museum of Anthropology is responsible for notifying the Berry Creek Rancheria of Maidu Indians of California; Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Cedarville Rancheria, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Enterprise Rancheria of Maidu Indians of California; Federated Indians of Graton Rancheria, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Greenville Rancheria of Maidu Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shingle Springs Band of Miwok Indians, Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe); Shingle Springs Rancheria (Verona Tract), California; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Susanville Indian Rancheria, California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2528 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Kingman Museum, Incorporated, Battle Creek, MI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: This notice corrects the cultural affiliation of the human remains of two individuals described in a Notice of Inventory Completion previously published in the **Federal Register** (73 FR 20941–20942, Thursday, April 17, 2008), and also corrects the identity of the category of cultural item for a scalp, from human remains to associated funerary object.

DATES: Representatives of any other Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Kingman Museum, Incorporated at the address below by March 7, 2012.

ADDRESSES: Beth Yahne, Kingman Museum, Inc., 175 Limit Street, Battle Creek, MI 49037, telephone (269) 965–5117.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Kingman Museum, Incorporated (Kingman Museum), Battle Creek, MI. The human remains and associated funerary objects were removed from a cave on an island near Metlakatla, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Kingman Museum professional staff in consultation with representatives from the Metlakatla Indian Community and the Central Council of Tlingit and Haida Indian Tribes of Alaska.

In the **Federal Register** notice (73 FR 20941–20942, Thursday, April 17, 2008), paragraph number 5 is corrected by substituting the following paragraph:

Sometime before 1904, human remains representing, at minimum, one individual were removed from a mountain cave on an island near Metlakatla, AK. According to museum documentation, the human remains, consisting of a mummified head, were found by two Native American boys and subsequently collected by Esther Gibson, an Alaskan missionary. The mummified head was in a burial box containing a cedar bark basket used for cremation ashes, a buckskin pouch, and the scalp of a Caucasian man. Esther Gibson delivered the human remains and funerary objects to Dr. John Harvey Kellogg, who donated them to the Kingman Museum of Natural History in 1904. No known individuals were identified. The four associated funerary objects are one burial box, one basket for cremation ashes, one buckskin pouch, and the scalp of a Caucasian man.

Paragraph number 6 is corrected by substituting the following paragraph:

The human remains have been identified as Native American based on the museum's documentation, geographic information, and consultation evidence. The location of the burial is within the historically documented territory of the Tlingit Indians. Based on burial practices and the styles of associated funerary objects, the human remains are post-contact, and likely date to the mid 19th century. Information provided at the time of consultation indicates that the human remains and associated funerary objects are likely to be affiliated to the members of the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Paragraph number 9 is corrected by substituting the following paragraph:

Officials of Kingman Museum have determined that:

- Pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001 (3)(A), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite ceremony.
- Pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced

between the mummified head and associated funerary objects, and the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Beth Yahne, Kingman Museum, Incorporated, 175 Limit Street, Battle Creek, MI 49037 telephone (269) 965–5117, before March 7, 2012. Repatriation of the human remains and associated funerary objects to the Central Council of Tlingit and Haida Indian Tribes of Alaska may proceed after that date if no additional claimants come forward.

The Kingman Museum, Incorporated is responsible for notifying the Central Council of Tlingit and Haida Indian Tribes of Alaska that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2522 Filed 2–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Department of Anthropology, University of Massachusetts, Amherst, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Massachusetts Amherst, Department of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Massachusetts Amherst, Department of Anthropology. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Massachusetts Amherst, Department of Anthropology at the address below by March 7, 2012.

ADDRESSES: Robert Paynter, Repatriation Committee Chair, telephone (413) 545–2221, or Rae Gould, Repatriation Coordinator, telephone (413) 545–2702, University of Massachusetts, Department of Anthropology, 201 Machmer Hall, 240 Hicks Way, Amherst, MA 01003.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Massachusetts Amherst, Department of Anthropology. The human remains were purchased by Harris Hawthorn Wilder of Smith College. They were later transferred to the University of Massachusetts Amherst for permanent curation in the 1970s.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Massachusetts Amherst, Department of Anthropology professional staff in consultation with representatives of the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe (Sheep Ranch Rancheria of Me-Wuk Indians), California; Chicken Ranch Rancheria of Me-Wuk Indians, California; Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California; Federated Indians of Graton Rancheria (Federated Coast Miwok), California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians, California; Middletown Rancheria (Lake Miwok), California; Picayune Rancheria of Chukchansi Indians, California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria, California; and the United Auburn Indian Community of the Auburn Rancheria of California (hereinafter referred to as ''The Tribes''). Representatives of the University of Massachusetts Amherst, Department of Anthropology also contacted the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; Wilton Rancheria, California; and the Tule River Indian Tribe of the Tule River Reservation, California.

History and Description of the Remains

In the early 1900s, two crania were purchased by Harris Hawthorn Wilder of Smith College, Northampton, MA, from Ward's Natural Science Establishment of Rochester, NY, and became part of the Wilder Collection at Smith College. They were transferred to the University of Massachusetts Amherst, Department of Anthropology in the 1970s for permanent curation. Both crania are represented by a complete skull and mandible. No known individuals were identified. No associated funerary objects are present.

Ward's Natural Science Establishment, which is still in operation today, could not provide further information about these two individuals. The Rush Rhees library, which holds the older collection of Ward's materials and catalogs, did not provide any further information either. Harris Hawthorn Wilder recorded in his accession books that both skulls were of the ''Malkelkos'' Indians of California.

Multiple lines of evidence, guided by tribal consultations, including geographic and linguistic sources, maps and oral tradition, verified that the Malkelkos (also known as Mokelko, Moquelemnes, Moguelemnes, Muquelues, Machalumbry and Magnele in historical and ethnographic literature) were Plains Miwok and/or Yokut-speaking people with multiple villages concentrated along the Mokelumne River and Dry Creek, east of the Suisun Bay, in California.

Determinations Made by the University of Massachusetts Amherst, Department of Anthropology

Officials of the University of Massachusetts Amherst, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Robert Paynter, Repatriation Committee Chair, telephone (413) 545–2221, or Rae Gould, Repatriation Coordinator,

telephone (413) 545–2702, University of Massachusetts, Department of Anthropology, 201 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, before March 7, 2012. Repatriation of the human remains to the Ione Band of Miwok Indians of California; Picayune Rancheria of Chukchansi Indians, California; and Santa Rosa Indian Community of the Santa Rosa Rancheria, California, may proceed after that date if no additional claimants come forward.

The University of Massachusetts Amherst, Department of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2533 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Minnesota Indian Affairs Council has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Minnesota Indian Affairs Council. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Minnesota Indian Affairs Council at the address below by March 7, 2012.

ADDRESSES: James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Minnesota Indian Affairs Council. The human remains were removed from the following counties in Minnesota: Aitkin, Crow Wing, and Kanabec.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Minnesota Indian Affairs Council (MIAC) professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereinafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing 33 individuals were removed from site 21–AK–9, Battle Island, in Big Sandy Lake, Aitkin County, MN by Mr. Eugene Grolla. In 1966, the human remains were donated to the Minnesota Historical Society (MHS 150.6) and in 1987, they were transferred to the MIAC. No known individuals were identified. No associated funerary objects are present.

Additional remains from this site were published in a **Federal Register** notice (64 FR 43220, Monday, August 9, 1999). These human remains are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

During the 1970s, human remains representing eight individuals were removed from a bulldozed mound located on the southeast tip of Platte Lake during archeological recovery by Richard Lane, St. Cloud State University (Acc. 103). The mound may have been located in either Crow Wing County, MN or Morrison County, MN. In 1992, the human remains were transferred to the MIAC (H233B). No known individuals were identified. No associated funerary objects are present.

These human remains may be associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

During the 1960s, human remains representing one individual were recovered from an unknown location in the city of Brainerd, Crow Wing County, MN by unknown person(s). In 1995, the human remains were donated to the MIAC (H298). No known individuals were identified. No associated funerary objects were present.

The condition of the bones suggests the remains are ancient while; morphologically, the femora indicate American Indian ancestry. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing one individual were removed from an undesignated mound site in Crow Wing County, MN by unknown person(s) and donated to the Crow Wing County Historical Society (Acc. 73–69). In 1995, the remains were transferred to the Minnesota Office of the State Archeologist. In 1997, the human remains were transferred to the MIAC (H330). No known individuals were identified. No associated funerary objects are present.

These human remains may be associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

In the 1920s and 1930s, human remains representing one individual were removed from an undesignated location in the Pequot Lakes area, Crow Wing County, MN by a collector from the region. In 1975, the human remains were donated to the Crow Wing County Historical Society (Acc. 1226) as part of the Gustavson collection. In 1998, the human remains were donated to the Minnesota Office of the State Archaeologist by the descendants of the collector. In 2002, the human remains were transferred to the MIAC (H385). No

known individuals were identified. No associated funerary objects are present.

Based on their condition, the human remains belong to a pre-contact, American Indian individual. These human remains have no archeological classification and cannot be associated with any present-day Indian tribe.

At an unknown date, human remains representing one individual were recovered from a mound near Fish Lake, site 21KA12, Kanabec County, MN by unknown person(s). In 2002, the human remains were transferred to the Minnesota Office of the State Archaeologist and then to the Minnesota MIAC (H406). No known individuals were identified. No associated funerary objects are present.

These human remains are associated with the Woodland Tradition, a broad archeological classification which cannot be associated with any present-day Indian tribe.

Determinations Made by the Minnesota Indian Affairs Council

Officials of the MIAC have determined that:

- Based on non-destructive physical analysis and catalogue records, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 45 individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. (Jim) Jones, Cultural Resource Director, Minnesota Indian Affairs Council, 3801 Bemidji Avenue NW., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before March 7, 2012. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Minnesota Indian Affairs is responsible for notifying The Tribes that this notice has been published.

Dated: January 31, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2012–2524 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0112–9326; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 14, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by February 21, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Yell County

Sulphur Springs Cemetery, Slo Fork Rd., Sulphur Springs, 12000038

CONNECTICUT

New London County

New England Hebrew Farmers of the Emanuel Society Synagogue and Creamery Site, Jct. of CT 161 & CT 85, Chesterfield, 12000039

ILLINOIS

Cook County

Chicago Park Boulevard System Historic District, Douglas, Gage, McKinley, Jackson, Sherman, Washington, Garfield, & Humboldt Parks, E. Oakwood, S. Drexel Blvds., Chicago, 12000040

KANSAS

Sedgwick County

Bitting Building, 107 N. Market St., Wichita, 12000046

KENTUCKY

Boone County

Roberts, Thomas Zane, House and Workshop, (Boone County, Kentucky MPS),5074 Middle Creek Rd., Burlington, 12000042

Walton, John J., House, (Boone County, Kentucky MPS), 5408 Belleview Rd., Belleview, 12000041

Jackson County

Annville Institute, 190 Campus Dr., Annville, 12000043

Jefferson County

Jacob, Charles D, Elementary School, 3670 Wheeler Ave., Louisville, 12000044

Lee County

St. Therese Church, 4375 KY 399, Beattyville, 12000045

McCracken County

Wallace Park Neighborhood Historic District, Roughly bounded by Buckner Ln., Maple Ave., Forest Cir., & Lone Oak Rd., Paducah, 12000047

Mercer County

Forsythe—Shewmaker House, 603 Vanarsdall Rd., Harrodsburg, 12000048

MISSOURI

Warren County

Hickory Grove Cemetery, Hickory Grove Cemetery Rd., Wright City, 12000049

Wright County

Mountain Grove City Hall, 301 E. 1st St., Mountain Grove, 12000050

MONTANA

Missoula County

Fort Missoula Historic District (Boundary Increase), Jct. of Reserve St. & South Ave., Missoula, 12000051

NEW YORK

Queens County

Parkway Village, Bounded by Union Tpk., 150th St., Goethals Ave., Parsons Blvd., Grand Central Pkwy., & Main St., Queens, 12000052

WISCONSIN

Door County

Jacksonport Wharf Archeological District, Off Cty. Rd. V at Lakeside Park in Lake Michigan, Jacksonport, 12000053

WYOMING

Carbon County

Site 32 SL-O Intermediate Field Historic District, .9 mi. SE. of Medicine Bow off Cty. Rd. 1, Medicine Bow, 12000054

Fremont County

South Pass City Historic District (Boundary Increase), 675 Atlantic City Rd., South Pass City, 12000055

A request for removal has been made for the following resources:

INDIANA

Huntington County

Snider, S.C., and George McFeeley Polygonal Barn, IN 9/37 ½ mi. S of jct. with Division Rd., Huntington, 93000185

KANSAS

Osborne County

I.O.O.F. Lodge, Nicholas & Mill Sts., Alton, 12000046

[FR Doc. 2012–2537 Filed 2–3–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–703 (Third Review)]

Furfuryl Alcohol From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 1, 2011 (76 FR 54493) and determined on December 5, 2011 that it would conduct an expedited review (76 FR 78945, December 20, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on January 30, 2012. The views of the Commission are contained in USITC Publication 4302 (January 2012), entitled *Furfuryl Alcohol From China: Investigation No. 731–TA–703 (Third Review).*

By order of the Commission.

Issued: January 31, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–2540 Filed 2–3–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0062]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Identification of Imported Explosives Materials

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until [insert the date 60 days from the date this notice is published in the **Federal Register**]. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, at *eipb@atf.gov,* Chief, Explosives Industry Programs Branch, Room 6N–672, 99 New York Avenue NE., Washington, DC 20226. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Imported Explosives Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The information is necessary to ensure that explosive materials can be effectively traced. All licensed importers are required to identify by marking all explosive materials they import for sale or distribution. The process provides valuable information in explosion and bombing investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15 respondents will spend 1 hour placing marks of identification on imported explosives 3 times annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 45 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–2613 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0026]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Theft or Loss of Explosives

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' April 6, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anthony Purpura, United States Bomb Data Center, 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Losses or theft of explosives must, by statute be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete the form within 1 hour and 48 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 540 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–2614 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Acoustical Society of America

Notice is hereby given that, on January 17, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Acoustical Society of America (''ASA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since December 2, 2011, ASA has expanded the scope of its standard development activity to include underwater acoustics.

On September 20, 2004, ASA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65224).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–2597 Filed 2–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 8, 2011, Formulation Technologies LLC., 11501 Domain Drive, Suite 130, Austin, Texas 78758, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for analytical research and clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement

Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 7, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2569 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62447, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from opium, raw, and poppy straw concentrate.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cody Laboratories, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2590 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 11, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51398, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture a bulk intermediate for sale to its customers. With regard to the Phenylacetone, the company plans to use it as a base material in the bulk manufacture of another controlled substance.

No comments or objections have been received regarding Phenylacetone.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, in accordance with 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cambrex Charles City, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2584 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 15, 2011, Pharmagra Labs, Inc., 158 McLean Road, Brevard, North Carolina 28712, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed substance for analytical research and clinical trials.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 6, 2012.

Dated: January 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2608 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 20, 2011, Siemens Healthcare Diagnostics Inc., 100 GBC Drive, Mail Stop 514, Newark, Delaware 19702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator controls which are DEA exempt products.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 6, 2012.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2580 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 6, 2011, PCAS-Nanosyn, LLC, 3331–B Industrial Drive, Santa Rosa, California 95403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form only.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 6, 2012.

Dated: January 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2604 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 15, 2011, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4-methyl-N-methylcathinone (1248).	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
3,4-methylenedioxypyrovalerone (7535).	I
3,4-methylenedioxy-N-methylcathinone (7540).	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative

(ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 6, 2012.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2581 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62450, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2582 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 20, 2011, and published in the **Federal Register** on October 28, 2011, 76 FR 66994, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana, and cocaine derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2585 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62449, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Diphenoxylate (9170), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance for sale in bulk to its customers for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2589 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62449, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (GHB) (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium raw (9600)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company will manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC § 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 27, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2591 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62450, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture a radioactive product to diagnose Parkinson's disease, and to manufacture a bulk investigational new drug (IND) for clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of GE Healthcare to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 26, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2586 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 23, 2011, and published in the **Federal Register** on July 5, 2011, 76 FR 39127, Johnson Matthey Pharmaceutical Materials, Inc., Pharmaceuticals Service, 25 Patton Road, Devens, Massachusetts 01434, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Remifentanil (9739), the basic class of controlled substance in schedule II.

The company plans to utilize this facility to manufacture small quantities of the listed controlled substance in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Pharmaceutical Materials, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Johnson Matthey Pharmaceutical Materials, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 27, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–2568 Filed 2–3–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

Notice of Sunshine Act Meeting

TIME AND DATE: 11:30 a.m., Thursday, February 9, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on one original jurisdiction case.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: January 31, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–2635 Filed 2–2–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Notice of Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, February 9, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of December 8, 2011 minutes; reports from the Chairman, the Commissioners, and senior staff; Mental Health Docket.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: January 31, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–2637 Filed 2–2–12; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Random Assignment Study To Evaluate Workforce Investment Act Adult and Dislocated Worker Programs; Final Notice

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL or the Department) will conduct an evaluation to provide rigorous, nationally-representative estimates of the net impacts of intensive services and training provided under the Workforce Investment Act (WIA) Adult and Dislocated Worker Programs. The Department has determined that it is in the public interest to use a random assignment impact methodology for the study. This methodology will provide ETA with estimates of the net impacts of WIA intensive services and training that are offered during the evaluation study period. On July 21, 2011 (76 FR 43729–43731), the Department solicited comments concerning the Department's plan to use random assignment methodology in carrying out the study. This notice is to provide the Department's response to the comments received.

FOR FURTHER INFORMATION CONTACT: Eileen Pederson, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue NW., Frances Perkins Bldg., Room N–5641, Washington, DC, 20210. Telephone: (202) 693–3647 (this is not a toll-free number) or email: *pederson.eileen@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–(877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2011, the Department announced its plans to conduct an evaluation of the net impacts of intensive services and training provided under WIA (Pub. L. 105–220) Adult and Dislocated Worker Programs. To obtain rigorous, nationally representative estimates of WIA's effectiveness for adults and dislocated workers, the Department determined that it would use random assignment impact methodology for the evaluation.

The design of the study was described as follows: The evaluation will be done in approximately 30 randomly selected LWIAs. WIA applicants in the selected LWIAs who are eligible for intensive services would be randomly assigned to one of three groups. The three research groups to which they would be assigned are: (1) The full-WIA group—adults and dislocated workers in this group can receive any WIA services and training for which they are eligible, (2) the core-and-intensive group—adults and dislocated workers in this group can receive any WIA services for which they are eligible but no training, and (3) the core-only group—adults and dislocated workers in this group can receive only WIA core services but no intensive services or training.

In the LWIAs selected for the study, all applicants for intensive services and/or training will be asked to participate in the study during the 12–18 month study enrollment period. They will be informed of the evaluation, provided an opportunity to ask questions or seek clarification of their role and responsibilities should they agree to participate, and then required to give their consent to participate. Applicants who do not consent to participate in the study will not be randomly assigned to one of the study groups but will be allowed to receive core services only. The participant enrollment period will range between 12 and 18 months in each LWIA.

To protect the rights and welfare of WIA program applicants who agree to participate in the evaluation, the evaluation team, led by researchers from Mathematica and its subcontractor MDRC, submitted the WIA Adult and Dislocated Worker Programs evaluation design to MDRC's Institutional Review Board (IRB) for concurrence. An IRB is a committee specifically responsible for protecting the rights and welfare of humans involved in biomedical and behavioral research. On June 17, 2010, MDRC's IRB determined this study to be of no more than minimal risk and approved it.

The Department requested comments concerning its intent to carry out the random assignment study described above. The Department asked for comments focused on whether there is a methodology that would yield as credible and reliable impacts of the WIA programs as random assignment, but avoids adverse effect on the study participants. The Department also welcomed comments that suggest ways to more effectively minimize any adverse impact on the study participants who participate in the study described above.

II. Discussion of Comments Received

The Department received comments from four sources in response to the notice. The comments were received from two workforce departments, one advocacy group, and one private citizen. The Department's responses to the comments are provided below.

Comment: Two commenters asked about how other sources of funding for services would be accounted for in the study. One of these commenters asked whether the core-only group would have access to other partner services and, if so, the commenter suggested that the study take it into account through the follow-up survey. The other commenter was concerned that the study would not capture the nature of

the ''WIA system'' in which individuals are referred to partner services.

Response: Training and employment services can be funded by many sources other than WIA (such as via Pell grants or State grants) and, as a commenter pointed out, staff from the One-Stop Career Centers may refer customers to services funded by these other sources. Accordingly, we will estimate the impact of WIA-funded services in communities as they exist, which includes services from other providers, rather than estimate the impact of WIA-funded services in a vacuum. Hence, all customers in the study (including members of the core-only group) will have access to services provided by other community service providers. After the 12–18 month study enrollment period concludes, we will conduct two follow-up surveys of study participants, one at 15 months after enrollment and one at 30 months after. The surveys will collect detailed information on services received by study participants. The LWIA counselors will be trained not to refer anyone to services to which they would not have referred them in the absence of the study. The study research questions address the impact of the *additional* receipt of WIA-funded intensive services and training above the other services in the community that customers may access. Through our analysis of the study, we will document the WIA system that is in place in each of the participating LWIAs. Through on-site visits, researchers will document the availability of non-WIA training and employment services provided by partner agencies.

Comment: One commenter suggested that because of variation in how LWIAs label services as core, intensive, or training, the study should focus on the impact of specific services with similar intensity rather than the relative effectiveness of level of service as authorized by WIA.

Response: As the commenter correctly points out, the activities labeled as core, intensive, and training vary by LWIA. However, consistent with the commenter's suggestion, for purposes of this study, during the analysis of outcomes and qualitative data, we will develop a standard definition of services so that the definition of ''core services,'' ''intensive services,'' and ''training'' are similar across all study sites, irrespective of how each LWIA individually defines its services.

Comment: One commenter asked how the study would estimate the effectiveness of training when customers are randomly assigned to a group that is eligible for training in general—which can vary tremendously across and within LWIAs—rather than a specific type of training. Two commenters noted the importance of taking into account the fact that different study participants in the full-WIA group may receive different forms of training for different industries and occupations.

Response: Customers will be randomly assigned to three groups: (1) The core-only group, in which customers can only receive core services; (2) the core-and-intensive services group, in which customers can receive core or intensive services, but not training; and (3) the full-WIA group, in which customers can receive core, intensive, and training services. We will estimate the impact of training by comparing customers in the full-WIA group with customers in the intensive-services group. We can account statistically for customers in the full-WIA group who do not receive training. To do so, we will use (1) information from the study registration forms on counselors' projections made prior to random assignment on the likelihood customers will receive WIA training services and (2) standard instrumental variables methods that assume zero impacts for those in the full-WIA group who do not receive WIA intensive or training services.

We agree with the commenters that it is important to take into account different types of training that may be received by participants. Our follow-up survey will collect detailed information about the type of training received, including the occupation targeted by the training, the length of the training, any credentials received as a result of the training, and the type of training provider. Through qualitative data collection, the researchers also will document the types of training available through the local workforce investment area and larger community.

Comment: One commenter asked whether the study enrollment period would be long enough to capture the impacts of training.

Response: The enrollment period refers to the period during which customers will be enrolled into the study and randomly assigned. Participants in the study will be surveyed twice, once at 15 months after random assignment and once at 30 months after random assignment. The 30-month follow-up period is long enough to capture the impacts of training, including quite long-term training.

Comment: One commenter was concerned about 50 percent of the participants being placed in a control group. The commenter was also concerned about the time and effort taken by LWIA staff to determine eligibility for training and then after that, the time a customer is denied access to WIA-funded training because of the study.

Response: Only about six percent of all study participants will be placed in one of the two restrictive-service groups (that is, the core- or intensive-services groups). All study participants will be allowed to receive core services or other services available in the community. This percentage limits services to the smallest number of customers while still meeting requirements for a valid, rigorous evaluation of the impact of intensive services and training. Random assignment of customers will be determined right after they have been determined eligible for intensive services, and the time it takes for customers to be determined eligible for training will take place well *after* they know the results of random assignment. Customers randomly assigned to one of the restrictive service groups will be eligible to reapply for all WIA intensive services and training 15 months after random assignment into the study.

Comment: The Department received three comments that questioned the timing of the evaluation at a time of high unemployment. These commenters had two concerns: (1) that it is wrong to deny customers services in time of great need, and (2) that services are less effective when there is high unemployment.

Response: While demand for intensive services and training increases as unemployment increases, there has not been an increase in funding for these services. Hence, because of funding limitations, not all customers who apply for these services can access them even in the absence of the study. During the study enrollment period, random assignment is also a fair way to allocate the resources that are available. The LWIAs participating in the study will be able to serve the same number of people who were able to access services and training in the absence of the study. Rather than the One-Stop allocating resources on a first-come, first-served basis, random assignment will give everyone who enrolls during the entire study enrollment period an equal chance of receiving intensive services and training.

Whether intensive services and training are more or less effective when unemployment is high is unknown. Arguments can be made that training will be more effective in these periods because it provides workers with skills for which there is demand, or connections with employers that the

average person may not have; arguments can also be made that training is ineffective in periods of high unemployment because there are no jobs in the areas in which customers are trained. However, a study of the impacts of training in Europe finds that the magnitude of the impacts is higher in periods of high unemployment (Lechner and Wunsch, 2006, IZA discussion paper number 2355). The Department believes that the public workforce investment system must prove its worth under all economic conditions, including during times of economic challenges and high unemployment, since Federal funding for these programs is not—currently—predicated on the country's or area's employment situation.

Comment: Two comments mentioned the additional work the study will require of local staff. One commenter suggested that participating sites should receive monetary compensation for participating in the study.

Response: We recognize that the study requires additional work of local staff in the selected LWIAs and, therefore, participating LWIAs are receiving compensation for extra costs incurred due to the study. In addition, evaluation staff will work with staff in the selected LWIAs to minimize the effect that study procedures may have on each area's ongoing procedures.

Comment: One commenter suggested that there should be adjustments for performance measures for participating sites.

Response: The restricted service groups are so small that the evaluation is unlikely to affect performance measures for participating sites.

The Department appreciates the comments received in response to the request for public comment. All the comments gave useful information and provided suggestions which we had already incorporated into the study's design. The responses provided above outline the specific aspects of the evaluation methodology that address each comment.

Conclusion: Accordingly, the Department has determined that it is in the public interest to use a random assignment methodology for the study since this methodology will provide the most reliable estimates of the net impacts of WIA intensive services and training.

Signed: at Washington, DC, this 25th day of January 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–2521 Filed 2–3–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 7, 2012 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Fax: (202) 395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number (301) 837–1694 or fax number (301) 713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on November 23, 2011 (76 FR 72449). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Use of NARA Official Seals.

OMB number: 3095–0052.

Agency form number: N/A.

Type of review: Regular.

Affected public: Business or other for-profit, Not-for-profit institutions, Federal government.

Estimated number of respondents: 10.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the Nationals Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Dated: January 26, 2012

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2012–2342 Filed 2–3–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Centers for Chemical Innovation (CCI) Cyber Review Reverse Site Visit 2012 Site Visit (1191).

Date and Time: Thursday, February 9, 2012 (8:30 a.m.–6 p.m.); Friday, February 10, 2012 (8:30 a.m.–5 p.m.) .

Place: ACCESS Grid Facility, Arlington, VA.

Type of Meeting: Partially-Open.

Contact Person: Katharine Covert, Program Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, (703) 292–4950.

Purpose of Meeting: To provide advice and recommendations concerning center

proposals submitted to NSF for financial support.

Agenda:

Thursday, February 9, 2012

8:30 a.m.–9:15 a.m. Closed—Executive Session.
9:30 a.m.–11:45 a.m. Open—Center for Quantum Information and Computation for Chemistry Presentations.
11:45 a.m.–1 p.m. Closed—Executive Session, review and drafting report.
1:15 p.m.–3:30 p.m. Open—Center for Aerosol Impacts on Climate and Environment Presentation.
3:30 p.m.–6 p.m. Closed—Executive Session, review and drafting report.

Friday, February 10, 2012

8:30 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–11:15 a.m. Open—Center for Nanostructured Electronic Materials Presentation.
11:30 p.m.–5 p.m. Closed—To prepare and finalize the site visit report.

Reason for Late Notice: The late notice is due to administrative complications and the necessity to proceed with the review of proposals.

Reason for Closing: The meeting is closed to the public because the Site Visitors will be reviewing proposal actions that will include privileged intellectual property and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: January 31, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–2495 Filed 2–3–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0028; Docket Nos.: 50–333; 50–313; 50–368; 50–416; 50–247; 50–286; 50–255; 50–293; 50–458; 50–271; 50–382: License Nos.: DPR–59; DPR–51; NFP–6; NFP–29; DPR–26; DPR–64; DPR–20; DPR–35; NFP–47; DPR–28; NFP–38; EA–10–090; EA–10–248; EA–11–160]

In the Matter of Entergy Nuclear Operations Inc; Confirmatory Order Modifying License (Effective Immediately)

I

Entergy Nuclear Operations, Inc. (Entergy or licensee) is the holder of Operating License Nos. DPR–59, DPR–51, NFP–6, NFP–29, DPR–26, DPR–64, DPR–20, DPR–35, NFP–47, DPR–28, and NFP–38, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to *Title 10 of the Code of Federal Regulations* (10 CFR) part 50. The licenses authorize operation of the James A. FitzPatrick Nuclear Power Plant, Arkansas Nuclear One Units 1 & 2, Grand Gulf Nuclear Station Unit 1, Indian Point Nuclear Generating Units 2 & 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, River Bend Station, Vermont Yankee Nuclear Power Station and Waterford Steam Electric Station Unit 3 (collectively, the Facilities), in accordance with conditions specified therein. The Facilities are located in the vicinity of the following cities: Oswego, New York; Russellville, Arkansas; Vicksburg, Mississippi; New York City, New York; South Haven, Michigan; Boston, Massachusetts; Baton Rouge, Louisiana; Brattleboro, Vermont; and New Orleans, Louisiana; respectively.

This Confirmatory Order is the result of an agreement reached during an ADR mediation session conducted on November 9, 2011, in the NRC Region I office in King of Prussia, Pennsylvania.

II

On July 1, 2009, February 5, 2010, and April 8, 2010, the NRC Office of Investigations (OI) initiated separate investigations (OI Case Nos. 1–2009–041, 1–2010–019, and 1–2010–031, respectively) at Entergy's James A. FitzPatrick Nuclear Power Plant facility (FitzPatrick). Based on the evidence developed during these investigations, the NRC concluded that FitzPatrick radiation protection technicians (RPTs), on occasions between 2006 and 2009, failed to: (1) Test required individuals for respirator fit in accordance with the requirements specified in 10 CFR Section 20.1703 and site procedures;

(2) maintain accurate documentation of completed respirator fit tests in accordance with the requirements of 10 CFR 50.9; (3) perform and/or accurately document in accordance with site procedures required by Technical Specifications (TS) and 10 CFR 50.9, independent verification of Drywell Continuous Atmospheric Monitoring System valve positions after the valves were manipulated; (4) document a personal contamination event in accordance with site procedures required by TS; (5) perform a contamination survey in accordance with site procedures required by TS, prior to removing an item from the radiologically controlled area; and (6) perform daily radiological surveys in accordance with 10 CFR 20.1501(a).

In a letter dated September 8, 2011, the NRC provided Entergy the results of the investigations, informed Entergy that escalated enforcement action was being considered for apparent violations identified during the investigations, and offered Entergy the opportunity to attend a predecisional enforcement conference or to participate in ADR.

III

In response to the September 8, 2011 NRC letter, Entergy requested ADR. Consequently, on November 9, 2011, the NRC and Entergy met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. During that ADR mediation session, an agreement in principle was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. The NRC and Entergy agree on the facts as set forth in the NRC's September 8, 2011, letter to Entergy, the violations described therein, and willfulness of some of the violations, including deliberate actions by one of the RPTs.

2. The NRC agrees that Entergy, upon receiving the information from the NRC regarding these issues, immediately conducted a comprehensive investigation into the issues. Entergy also ensured affected staff were properly re-tested for respirator fit and determined there were no previous radiological uptakes for the time period in question.

3. In addition, the NRC acknowledges that, prior to the ADR session, Entergy took a number of corrective actions in response to the violations identified at the FitzPatrick site, so as to preclude the occurrence of similar violations in the future. These actions included:

A. *Completed Corrective Actions affecting the FitzPatrick site:*

a. Actions to address Individual Accountability:

i. Reviewed and adjudicated the unescorted access authorization with individuals involved in the respirator fit test issue and subsequent radiation protection (RP) performance issues.

ii. Completed disciplinary reviews/actions against the individuals involved with the conduct of or the receipt of a respirator qualification without performance of a quantitative fit test and subsequent RP performance issues.

iii. Conducted a series of station and small group meetings between Entergy senior management and staff to reinforce station expectations with regard to raising issues via available station processes and procedure compliance.

b. Actions to improve RP Procedures/Processes, and adherence to standards:

i. Completed actions to address identified RP respirator test deficiencies as documented in condition report CR–JAF–2009–02298. An apparent cause evaluation was performed to identify the causes and corrective actions.

ii. Increased management oversight of RP activities, as a corrective action implemented as a result of CR–JAF–2010–1419, which identified an adverse trend in RP Department performance. Management provided coaching and other training to other RP supervision and personnel to enhance effectiveness.

iii. Modified the mask fit test procedure to require individuals being tested to sign a statement affirming that the mask fit test was performed. Management also reviewed and modified the operation of the portable fit test machine.

iv. Required RP technicians to complete focused training to remediate the work practices identified during the extent of condition review and fact finding and to bring them into alignment with station procedures and expectations.

c. Actions to identify the extent that procedure compliance/safety culture issues may exist in other areas:

i. Conducted a review of other processes that could be affected by single act vulnerabilities.

ii. Completed focused crew assessments regarding departments outside of RP.

iii. Performed an extent of condition review by an independent reviewer regarding activities outside of RP.

iv. Completed an independent safety culture assessment, and developed and completed actions to enhance the safety culture at FitzPatrick.

v. Implemented cross-functional observations by managers of other departments with a focus on procedure adherence and enforcement of standards in the conduct of work.

d. Performed an effectiveness review of corrective actions taken to enhance procedural compliance and related work practices in the FitzPatrick RP Department. Additionally, Entergy Quality Assurance personnel performed a minimum of two observations of each shift RPT to confirm that the technicians performed assigned tasks in accordance with applicable procedures.

B. *Completed Corrective Actions affecting the Entergy Nuclear Fleet:*

a. Completed safety culture assessments at each of Entergy's nine commercial nuclear power plants in 2009.

b. Conducted training for Entergy nuclear fleet personnel, including personnel at FitzPatrick, on the requirements of 10 CFR 50.5 and 50.9. Supervisors and above, as well as those non-supervisors who have responsibility for communicating with the NRC, received instructor-based training. Others received computer-based training.

c. Provided training to detect and prevent retaliation (based on the requirements of 10 CFR 50.7) to supervisors and above at FitzPatrick and other fleet sites.

d. Entergy's Chief Nuclear Officer sent a message to the entire Entergy nuclear workforce, via electronic mail, informing them of the underlying misconduct related to the violations and stressing the importance of integrity.

4. As part of the settlement agreement in principle, Entergy also agreed to take additional actions to ensure that the effectiveness of corrective actions previously taken, and to ensure that lessons learned from these events, is extended to the Entergy fleet and to the industry:

A. Entergy will review its existing fleet-wide general employee training to ensure adequate coverage of the lessons learned from the event that formed the basis for the Confirmatory Order (CO), regarding both procedural compliance and the requirement to maintain complete and accurate records in accordance with 10 CFR 50.9. Entergy will document the results of this review of the general employee training within 60 days after the issuance of the CO. If this review reveals a need to revise the general employee training, Entergy will make the appropriate revisions within 180 days of the date of the CO.

B. Entergy will prepare a case study about the event that formed the basis of the CO, highlighting the role of those who had the opportunity to detect, report, and prevent the misconduct, as well as on the actions of the individuals who engaged in the misconduct. The Site Vice President or General Manager for Plant Operations at each of Entergy's nine commercial nuclear power plants will present the case study during two station-wide meetings to ensure that both day and night shift personnel will have the opportunity to attend. Entergy will complete these presentations within 180 days of the date of the CO. Entergy will make this case study available for NRC review before conducting these station-wide meetings.

C. Within 90 days of the date of the CO, Entergy will add a commitment to the commitment tracking system to maintain the safety culture monitoring processes as described in NEI 09–07 ''Fostering a Strong Nuclear Safety Culture,'' or similar processes, at Entergy's nine commercial nuclear power plants.

D. Within 90 days of the date of the CO, Entergy will review its procedure EN–QV–136, Nuclear Safety Culture Monitoring, which implements the safety culture monitoring processes in NEI 09–07 ''Fostering a Strong Nuclear Safety Culture,'' to determine whether the procedure (if that procedure had been in effect at the time of the violations) would have detected the safety culture weaknesses that led to the misconduct that formed the basis for the CO. If the review indicates that the implementation of that procedure may not have detected the weaknesses, Entergy will develop enhancements to the NEI process that would improve the ability to detect those weaknesses and revise the Entergy procedure accordingly. Entergy will complete this procedure revision, if needed, within 120 days of the completion of that review. Additionally, within 30 days after revising its procedure, Entergy will provide the results of its review to NEI for its consideration in revising NEI document 09–07 ''Fostering a Strong Nuclear Safety Culture.'' Entergy will make the results of this review available for NRC review.

E. Within 360 days of the date of the CO, Entergy will deliver a presentation to Regional Utility Groups (RUG) or Plant Managers Meetings at Regions I, II, III, and IV, which will discuss the events that led to this CO, the lessons learned, and actions taken. If any of the RUGS or Plant Managers Meetings schedules will not support completion of this action, Entergy will contact the Regional Administrator, Region I, to provide notice and to resolve the scheduling issue.

F. Within 360 days of the date of the CO, Entergy will develop an assessment plan and conduct an assessment consistent with that plan of the RP Departments at the nine Entergy commercial nuclear power plants. That assessment will review the rigor with which members of the RP Departments perform and document routine department activities. If those assessments identify performance or documentation issues, Entergy will enter those issues into its corrective action programs. Prior to the conduct of the first assessment, Entergy will make the assessment plan available to the NRC for review.

G. Within 30 days of completion of all of the actions described in items 4A–F, Entergy will send the NRC a letter informing the Commission that all actions are complete, to facilitate NRC confirmatory reviews.

5. Entergy also agreed to notify the senior resident inspectors at each of the Entergy sites, regarding the dates and

times of the site-wide case study presentation meetings, described above in Item 4.B, which will be conducted at their respective sites.

In light of the actions that Entergy took as noted in Item 3, as well as the additional actions Entergy committed to as described in Items 4 and 5, the NRC agreed to not issue a civil penalty for the violations that are the subject of this ADR.

On January 20, 2012, the Licensee consented to issuing this Order with the commitments, as described in Section V below. Entergy further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Entergy's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Entergy's commitments be confirmed by this Order. Based on the above and Entergy's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective immediately, that:*

A. Entergy will review its existing fleet-wide general employee training to ensure adequate coverage of the lessons learned from the event that formed the basis for the CO, regarding both procedural compliance and the requirement to maintain complete and accurate records in accordance with 10 CFR 50.9. Entergy will document the results of this review of the general employee training within 60 days after the issuance of the CO. If this review reveals a need to revise the general employee training, Entergy will make the appropriate revisions within 180 days of the date of the CO.

B. Entergy will prepare a case study about the event that formed the basis of the CO, highlighting the role of those who had the opportunity to detect, report, and prevent the misconduct, as well as on the actions of the individuals who engaged in the misconduct. The Site Vice President or General Manager for Plant Operations at each of Entergy's nine commercial nuclear power plants will present the case study during two station-wide meetings to ensure that both day and night shift personnel will have the opportunity to attend. Entergy will complete these presentations within 180 days of the date of the CO. Entergy will make this case study available for NRC review before conducting these station-wide meetings, and will notify the senior resident inspectors at each of the Entergy sites regarding the dates and times of these meetings at their respective sites.

C. Within 90 days of the date of the CO, Entergy will add a commitment to the commitment tracking system to maintain the safety culture monitoring processes as described in NEI 09–07 ''Fostering a Strong Nuclear Safety Culture,'' or similar processes, at Entergy's nine commercial nuclear power plants.

D. Within 90 days of the date of the CO, Entergy will review its procedure EN–QV–136, Nuclear Safety Culture Monitoring, which implements the safety culture monitoring processes in NEI 09–07 ''Fostering a Strong Nuclear Safety Culture,'' to determine whether the procedure (if that procedure had been in effect at the time of the violations) would have detected the safety culture weaknesses that led to the misconduct that formed the basis for the CO. If the review indicates that the implementation of that procedure may not have detected the weaknesses, Entergy will develop enhancements to the NEI process that would improve the ability to detect those weaknesses and revise the Entergy procedure accordingly. Entergy will complete this procedure revision, if needed, within 120 days of the completion of that review. Additionally, within 30 days after revising its procedure, Entergy will provide the results of its review to NEI for its consideration in revising NEI document 09–07 ''Fostering a Strong Nuclear Safety Culture.'' Entergy will make the results of this review available for NRC review.

E. Within 360 days of the date of the CO, Entergy will deliver a presentation to Regional Utility Groups (RUG) or Plant Managers Meetings at Regions I, II, III, and IV, which will discuss the events that led to this CO, the lessons learned, and actions taken. If any of the RUGS or Plant Managers Meetings schedules will not support completion of this action, Entergy will contact the Regional Administrator, Region I, to provide notice and to resolve the scheduling issue.

F. Within 360 days of the date of the CO, Entergy will develop an assessment plan and conduct an assessment consistent with that plan of the RP Departments at the nine Entergy commercial nuclear power plants. That assessment will review the rigor with which members of the RP Departments perform and document routine department activities. If those assessments identify performance or documentation issues, Entergy will enter those issues into its corrective action programs. Prior to the conduct of the first assessment, Entergy will make the assessment plan available to the NRC for review.

G. Within 30 days of completion of all of the actions described in items A–F, Entergy will send the NRC a letter informing the Commission that all actions are complete, to facilitate NRC confirmatory reviews.

The NRC Region I Regional Administrator, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

hearing.docket@nrc.gov, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html* system requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://adams.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than Entergy) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A Request For Hearing Shall Not Stay The Immediate Effectiveness Of This Order.

For the Nuclear Regulatory Commission Dated this 26th day of January 2012.

William M. Dean,

Regional Administrator, NRC Region I.

[FR Doc. 2012–2596 Filed 2–3–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0254]

Common-Cause Failure Analysis in Event and Condition Assessment: Guidance and Research, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of comment period.

SUMMARY: On November 2, 2011 (76 FR 67764), the U.S. Nuclear Regulatory Commission (NRC) published for public comment Draft NUREG, ''Common-Cause Failure Analysis in Event and Condition Assessment: Guidance and Research.'' The public comment period was scheduled to expire on January 31, 2012. In order to allow the public sufficient time to review and comment on the Draft NUREG, the NRC has decided to reopen the comment period until March 2, 2012.

DATES: The comment period has been reopened and now closes on March 2, 2012. Comments received after this date will be considered if it is practical to do so. The NRC is only able to assure consideration of comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0254 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0254. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Song-Hua Shen, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 251–7571, email: *Song-Hua.Shen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG is available electronically under ADAMS Accession No. ML111890290. The draft NUREG will also be accessible through the NRC's public site under draft NUREGs for comment.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0254.

Discussion

On November 2, 2011 (76 FR 67764), the NRC published for public comment Draft NUREG, ''Common-Cause Failure Analysis in Event and Condition Assessment: Guidance and Research.'' The NRC is aware of broad stakeholder interest, and believes that it is important the document receives a thorough technical review. In order to allow the public sufficient time to review and comment on the Draft NUREG, the NRC has decided to reopen the comment period until March 2, 2012.

Dated at Rockville, Maryland, this 30th day of January 2012.

For the Nuclear Regulatory Commission.

Gary M. DeMoss,

Chief, Performance and Reliability Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2012–2593 Filed 2–3–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meeting

[NRC–2012–0002]

DATE: Week of February 6, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of February 6, 2012

Wednesday, February 8, 2012

3:30 p.m. Briefing on International Issues (Closed—Ex. 1).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

February 1, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–2708 Filed 2–2–12; 11:15 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and Purpose of information collection: Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007.

Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and Section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20 CFR 260 and 20 CFR 320. The notification letter, which is sent at the time of the original action on the application, informs the applicant of such right. When an applicant protests a decision, the concerned RRB office reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The appeal process is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is Form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to explain the basis for their request for an appeal and, if necessary, to describe any additional evidence they wish to submit in support of the appeal. Completion is voluntary, however, if the information is not provided the RRB cannot process the appeal.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 63959 on October 14, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act.

OMB Control Number: 3220–0007.

Form(s) submitted: HA–1.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 7(b)(3) of the Railroad Retirement Act and Section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action.

Changes proposed: The RRB proposes minor editorial and cosmetic changes to Form HA–1.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
HA–1	600	20	200

2. Title and Purpose of information collection: Evidence of Marital Relationship, Living With Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of the employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence, the RRB needs to determine if a valid marriage existed between a spouse or widow(er) annuity applicant and a railroad employee. The RRB utilizes Forms G–124, Individual Statement of Marital Relationship; G–124a, Certification of Marriage Information; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment, to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 72010 on November 21, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence of Marital Relationship, Living With Requirements.

OMB Control Number: 3220–0021.

Forms submitted: G–124, G–124a, G–237, G–238, G–238a.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, an applicant must submit information to be used to determine if the marriage requirements

for such benefits have been met. The collection contains information supporting claimed common-law marriage, termination of previous marriages, and residency requirements.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No,	Annual responses	Time (minutes)	Burden (hours)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

3. Title and Purpose of information collection: Evidence for Application of Overall Minimum; OMB 3220–0083.

Under Section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. This is referred to as the Social Security Overall Minimum Guarantee, which is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of Forms G–319, Statement Regarding Family and Earnings for Special Guaranty Computation, and G–320, Student Questionnaire for Special Guaranty Computation. One response is required of each respondent. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 65219 on October 20, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence for Application of Overall Minimum.

OMB Control Number: 3220–0083.

Forms submitted: G–319 and G–320.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 3(f)(3) of the Railroad Retirement Act, the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–319 (completed by the employee):			
With assistance	5	26	2
Without assistance	330	55	302
G–319 (completed by spouse):			
With assistance	5	30	3
Without assistance	15	60	15
G–320:			
(Age 18 at Special Guaranty Begin Date or Special Guaranty Age 18 Attainments)	150	15	37
(Student Monitoring done in Sept, March and at end of school year)	50	15	12

4. Title and Purpose of information collection: Pension Plan Reports; OMB 3220–0089

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment, including a distribution from a 401(k) savings plan, from a private pension from a railroad employer, to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.40–216.42.

The RRB requires the following information from railroad employers to

calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump-sum in lieu of month pension payments from such a plan, or received a lump-sum distribution from a 401(k) savings plan; (c) the date monthly pension payments began or a lump-sum payment was received; and (d) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Forms G–88p, *Employer's Supplemental Pension Report,* G–88r, *Request for Information About New or Revised Employer Pension Plan,* and G–88r.1, *Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 58848 on September 22, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Pension Plan Reports.

OMB Control Number: 3220–0089.

Forms submitted: G–88p, G–88r, and G–88r.1.

Type of request: Revision of a currently approved collection of information.

Affected public: Businesses or other for-profits.

Abstract: The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Changes proposed: The RRB proposes Forms G–88p and G–88r be revised to include information related to the reporting of 401(k) savings plans and to remove items that are no longer relevant. Form G–88r.1 will no longer be utilized.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	750	8	100
G–88r	10	8	1
Total	760		101

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2012–2610 Filed 2–3–12; 8:45 am]

BILLING CODE 7905–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

[Doc. No. 12–001]

Privacy Act of 1974; System of Records

AGENCY: Recovery Accountability and Transparency Board

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is issuing public notice of its intent to amend a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended (Privacy Act or the Act); specifically, RATB–13, entitled ''Fast Alert System.'' RATB–13 is being amended to reflect legislation expanding the purview of the Board's responsibilities, *see, e.g.,* Consolidated Appropriations Act of 2012, Public Law 112–74, (Dec. 23, 2011); Education Jobs Fund, Public Law 111–226, 124 Stat. 2389, § 101 (2010). Accordingly, the Board is making substantive amendments to its system notice to include: amended categories of individuals covered by the system, amended categories of records in the system, additional authorities for maintenance of the system, amended routine uses, and amended record source categories. In addition, the Board is renaming the system as RATB–13–FederalAccountability.gov System. The amended system of records reads as follows:

RATB—13

SYSTEM NAME:

FederalAccountability.gov System.

SECURITY CLASSIFICATION:

Controlled Unclassified Information.

SYSTEM LOCATION:

The principal location for the system is the Recovery Accountability and Transparency Board, located at 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals acting in a personal capacity who relate to official Board efforts undertaken in support of its mission to coordinate and conduct oversight of Recovery Act funds to prevent fraud, waste, and abuse, and to develop and test technology resources and oversight mechanisms to detect and remediate fraud, waste, and abuse in Federal spending. These individuals include but are not limited to those that have applied for, sought, or received Federal funds. The system also contains records concerning individuals in their entrepreneurial capacity, corporations, and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective oversight of fraud, waste, and abuse of Federal spending may be maintained in this system of records, including but not limited to records on Federal funding

recipients and subrecipients (including vendors) and records on other individuals, corporations, sole proprietors, and other legal entities that have applied for, sought, or received Federal funds.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Recovery Act established the Board to coordinate and conduct oversight of Recovery Act funds to prevent fraud, waste, and abuse. Public Law 111–5, §§ 1521, 1523(a)(1). The Education Jobs Fund required, among other things, that the funds it appropriated be administered under the same accountability provisions as Recovery Act funds. Public Law 111–226, § 101. The Consolidated Appropriations Act of 2012 provided appropriations for the Board ''to develop and test information technology resources and oversight mechanisms to * * * detect and remediate waste, fraud, and abuse in Federal spending.'' Public Law 112–74.

PURPOSE(S):

The purpose of collecting this information is to assist with the Board's efforts to detect and prevent fraud, waste, and abuse of Federal funds. By collecting data that is relevant to determinations of recipient and potential recipient responsibility and risk, the Board can create technology resources and oversight tools to be utilized by the Board and by other agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the FederalAccountability.gov System may be used:

A. For auditing or other internal purpose of the Board, including but not limited to: review, analysis, and investigation of possible fraud, waste, abuse, and mismanagement of Federal funds.

B. To provide responses to queries from Federal agencies, including but not limited to regulatory and law enforcement agencies, regarding Federal fund recipients, subrecipients, or vendors, or those seeking Federal funds.

C. To furnish information to the appropriate Federal, state, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

D. To disclose information to a Federal, state, local, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee or retention of a security clearance. That entity, authority, or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses.

E. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. To disclose information to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

1. The Board, or any component thereof; or

2. Any employee of the Board in his or her official capacity; or

3. Any employee of the Board in his or her individual capacity where the DOJ or the Board has agreed to represent the employee; or

4. The United States, if the Board determines that litigation is likely to affect the Board or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the Board is deemed by the Board to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. To disclose information to the National Archives and Records Administration in records management inspections.

H. To disclose information to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Board and who have a need to have access to the information in the performance of their duties or activities for the Board.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The FederalAccountability.gov System records will be stored in digital format on a digital storage device. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by database management systems software designed to retrieve data elements based upon role-based (*e.g.,* law enforcement or non-law enforcement) user access privileges.

SAFEGUARDS:

The Board has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access uses a defense in-depth approach restricting access at each layer closest to where the actual system resides. The entire complex is patrolled by security during non-business hours. Physical access to the data system housed within the facility is controlled by a computerized badge-reading system. Multiple levels of security are maintained via dual factor authentication for access using biometrics. The computer system offers a high degree of resistance to tampering and circumvention. This system limits data access to Board and contract staff on a need-to-know basis, and controls individuals' ability to access and alter records within the system. All users of the system of records are given a unique user identification (ID) with personal identifiers, and those user IDs are consistent with the above referenced role-based access privileges to maintain proper security of law enforcement and any other sensitive information. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

Board personnel will review records on a periodic basis to determine whether they should be retained or modified. Further, the Board will retain and dispose of these records in accordance with Board Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Michael Wood, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her acting in a personal capacity, who wants access to such records, or who wants to contest the contents of such records should make a written request to the system manager.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above. To the extent a

portion of this system contains law enforcement records, such records are exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that such law enforcement records are not subject to exemption, they are subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests shall be directed to the System Manager listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager and identify the record to be changed, identify the corrective action sought, and provide a written justification.

RECORD SOURCE CATEGORIES:

Information may be obtained from recipients and subrecipients (including vendors) of Recovery Act funds or other Federal funds for which the Board has been assigned responsibilities; Federal, state, and local agencies; public-source and/or commercially available materials.

DATES: Comments on this amendment must be received by the Board on or before March 19, 2012. The Privacy Act, at 5 U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records. Appendix I to Office of Management and Budget Circular A–130 requires an additional 10-day period, for a total of 40 days, in which to make such comments. The system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the **Federal Register**.

ADDRESSES: Comments on the proposed new system of records should be clearly identified as such and may be submitted:

By Mail or Hand Delivery: Atticus Reaser, Assistant General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By Email to the Board: comments@ratb.gov.

FOR FURTHER INFORMATION CONTACT: Atticus Reaser, Assistant General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006, (202) 254–7900.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2012–2505 Filed 2–3–12; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66282; File No. SR–NASDAQ–2012–016]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Assessed Under Rule 7015(c) for Subscription to Computer to Computer Interface Stations

January 31, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to modify the fees assessed under Rule 7015(c) for subscription to Computer to Computer Interface Stations (''Stations''). NASDAQ will implement the proposed change on February 1, 2012.

The text of the proposed rule change is below. Proposed new language is underscored; proposed deletions are in brackets.

7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Rule 7053.

(a)–(b) No change.

(c) Computer to Computer Interface (CTCI) Stations

Fee component	Fee
[1st] *Per* Station *Fee*	[$200]*$600*/Station/month.
[Each Additional Station	$600/Station/month].

The bandwidth-based fees in the table below apply to CTCI subscribers that have not transitioned off of Nasdaq-supported circuits.

Bandwidth

Fee component	Fee
Single 56kb line with single hub and router (for remote disaster recovery sites only)	$900/month.
Option 1:	
Dual 56kb lines (one for redundancy) and single hub and router	$1,000/month.
Option 2:	
Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual router (one for redundancy).	$1,200/month.
Option 3:	
Dual TI lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$2,500/month.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Fee component	Fee
Bandwidth Enhancement Fee (for TI subscribers only):	
Per 64kb increase above 128kb TI base	$200/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Installation Fee	$2,000 per site for dual hubs and routers. $1,000 per site for single hub and router.
Relocation Fee (for the movement of TCF/IP-capable lines within a single location)	$1,700 per relocation.

(d)–(h) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to eliminate from Rule 7015(c) the $200 per station/per month fee assessed for the first Station subscribed and assess a uniform fee for all Stations of $600 per Station, per month, which is the current fee assessed for each Station subscribed in excess of one. Stations are logical channels used to manage the flow of data to and from a member firm user. A Station allows a subscribing member firm to send orders to NASDAQ or to report trades, using the member firm's computer system and not a NASDAQ Workstation. Stations are synonymous with the logical access ports used for FIX and QIX as they have the same characteristics, including a one-to-one relationship between the member firm and Station and throughput limits.[3] Unlike FIX and QIX ports, which are limited to a single service, Stations allow member firms to access multiple services. For example, if a member firm wished to access ACT, ACES and TRACE using FIX it would have to order three separate ports, totaling $1,500 per month, whereas the member firm may connect to all three facilities through a single Station for a proposed fee of $600 per month.

Use of this service is voluntary and member firms have the option of subscribing to other protocols that offer similar connectivity. NASDAQ notes that the Station fees have not increased since March 2006, when the current fee structure was adopted.[4] NASDAQ developed and implemented enhancements to CTCI since March 2006, such as updating protocol formatting based on changing industry requirements and adding new servers to support the updated product. NASDAQ also added the ability to receive DROP copies over CTCI, which allows subscribing member firms to send in order information and receive back their DROP copies over a single connection.[5] As a consequence of adding enhancements, the value of the service has incrementally increased over time and NASDAQ believes that it is appropriate to now raise the fee assessed for CTCI to better align it with the increased value of the service and rising costs associated with technology and connectivity. Accordingly, NASDAQ proposes to eliminate the discounted fee assessed for the first Station subscribed and assess a uniform fee of $600 for each Station subscribed. NASDAQ anticipates that the proposed fees may provide NASDAQ with a profit, in addition to covering costs discussed above.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. NASDAQ believes that the proposal constitutes an equitable allocation of fees because all similarly-situated member firms would be charged the same amount. In addition, access to NASDAQ will continue to be offered on fair and non-discriminatory terms.

NASDAQ believes that the proposal is reasonable because the fee increase will realign the cost of administering and enhancing the service with the revenue generated by the fee. As noted above, NASDAQ has developed and implemented enhancements to CTCI since last increasing fees in March 2006. As a consequence of adding enhancements, the value of the service has incrementally increased over time and NASDAQ believes that it is appropriate to now raise the fee assessed for the initial Station to better align the fee with the increased value of the service. NASDAQ anticipates that the proposed fee will cover the costs associated with responding to customer requests, configuring NASDAQ's systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit. As discussed, the proposed fee increase applies to only the first Station subscribed, aligning that fee with the fee historically applied to all Stations subscribed in excess of one. NASDAQ notes that the proposed single Station fee is structured similarly to the FIX port fee that, although offered at $100 per port, per month less than the proposed Station fee, does not provide the flexibility in connectivity that Stations provide.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

[3] Rules 7015(a) and (b).

[4] Securities Exchange Act Release No. 53536 (March 21, 2006), 71 FR 15784 (March 29, 2006) (SR–NASD–2006–026).

[5] Prior to this enhancement, member firms would have to order a separate port dedicated to the receipt of their DROP copies.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] Rule 7015(b).

necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–016. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–016, and should be submitted on or before February 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2588 Filed 2–3–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Along Mobile Technologies, Inc., and China Yingxia International, Inc., Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Along Mobile Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Yingxia International, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2687 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

BluePoint Linux Software Corp., China Bottles Inc., Long-e International, Inc., and Nano Superlattice Technology, Inc.; Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BluePoint Linux Software Corp. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Bottles, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Long-e International, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nano Superlattice Technology, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2688 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

American Unity Investments, Inc., China Display Technologies, Inc., China Wind Energy, Inc., Fuda Faucet Works, Inc., Greater China Media & Entertainment Corp., and Xechem International, Inc.; Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Unity Investments, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Display Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Wind Energy, Inc. because it has not filed any periodic reports since the period ended July 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fuda Faucet Works, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greater China Media & Entertainment Corp., because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xechem International, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2693 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Beicang Iron & Steel, Inc.; Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beicang Iron & Steel, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Beicang Iron & Steel, Inc. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Beicang Iron & Steel, Inc. is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2692 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Blue Earth Refineries, Inc.; Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Blue Earth Refineries, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2689 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China Agro-Technology Holdings Ltd.; Order of Suspension of Trading

February 2, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Agro-Technology Holdings Ltd. because it has not filed any periodic reports since the period ended December 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of China Agro-Technology Holdings Ltd. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of China Agro-Technology Holdings Ltd. is suspended for the period from 9:30 a.m. EST on February 2, 2012, through 11:59 p.m. EST on February 15, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2691 Filed 2–2–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7787]

Privacy Act; System of Records: State-59, Refugee Case Records

SUMMARY: Notice is hereby given that the Department of State proposes to consolidate two existing systems of records, Refugee Case Records, State-59 and Refugee Processing Center Records, State-60, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The consolidated system will be titled State-59, Refugee Case Records.

DATES: This system of records will be effective on March 19, 2012 unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the amended system of records may do so by writing to the Senior Advisor for Privacy Policy, A/

GIS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Senior Advisor for Privacy Policy, A/GIS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: The Department of State proposes that the proposed system retain the name ''Refugee Case Records.'' In accordance with the Privacy Act of 1974, the Department of State proposes to consolidate two record systems: State-59, Refugee Case Records (72 FR 45081) and State-60, Refugee Processing Center Records (72 FR 45084) into one system of records. State-60, Refugee Processing Center Records will be removed from the Department of State's inventory of record systems. The proposed system will include revisions to the following sections: Categories of Records, Purpose, Safeguards, Retrievability, and other administrative updates.

The Department's report was filed with the Office of Management and Budget. The amended system description, ''Refugee Case Records, State-59,'' will read as set forth below.

Dated: January 23, 2012.

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

STATE-59

SYSTEM NAME:

Refugee Case Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) Refugee processing sites, such as designated U.S. embassies, consulates and/or offices of Resettlement Support Centers (agencies under cooperative agreement with the Department of State that assist in the processing of refugee applicants); and

(2) The Refugee Processing Center, 1401 Wilson Blvd., Arlington, VA 22209.

The Department of State may change processing locations as needed. A list of refugee processing sites is available from the Office of Admissions, Bureau of Population, Refugees, and Migration, SA–9, 8th floor, Department of State, 2505 E Street NW., Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for admission to the United States under the U.S. Refugee Admissions Program; individuals in the United States who claim a relationship with certain family members overseas in order to establish their qualifications for applying for refugee admission to the United States family members of the individuals in the United States; and certain Special Immigrant Visa (SIV) applicants who wish to access resettlement benefits in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Refugee or refugee-following-to-join (Visa-93) applications and supporting documentation, including required biographic, biometric (including, with respect to some individuals covered by the system, the results of DNA relationship testing), medical, security, and sponsorship information, as well as correspondence related to individual refugees including Affidavits of Relationship (AOR) submitted by relatives in the United States. Similar information is included for Afghan and Iraqi Special Immigrant Visa applicants that have elected to receive resettlement benefits.

Overseas, records include both hard copy case files and electronic records in the Worldwide Refugee Admissions Processing System (WRAPS). The case record is entered or scanned by Resettlement Support Centers under cooperative agreement with the Department of State. WRAPS includes electronic information on individual applicants for admission to the United States as refugees, SIVs electing resettlement benefits, and U.S. based relatives.

The categories of records maintained by the Refugee Processing Center (RPC) are primarily the electronic master records of overseas refugee applications in the WRAPS; data input records related to processing steps performed by the RPC; periodic and ad hoc statistical and case status reports related to refugee processing; and system audit reports.

Records categories entered by the Refugee Processing Center include Affidavits of Relationship; series of alien numbers transferred by the Department of Homeland Security U.S. Citizenship and Immigration Services (USCIS); electronic files with biographic data of refugees referred by the United Nations High Commissioner for Refugees (UNHCR); electronic files from the International Organization for Migration (IOM) with travel and arrival information; results of DNA relationship testing between anchor relatives in the United States and family members overseas to determine if they are qualified to apply for admission as refugees based on their familial relationship; security clearances from various U.S. Government agencies; and electronic files from resettlement agencies with sponsorship assurance and post-arrival information such as address, provision of services, English as a Second Language enrollment, employment, and Social Security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1522(b) (Authorization for Programs for Initial Domestic Resettlement of and Assistance to Refugees); 8 U.S.C. 1157 (Annual Admission of Refugees and Admission of Emergency Situation Refugees); Letter of President Carter of January 13, 1981, 17 Weekly Compilation of Presidential Documents, Pg. 2880 (Refugee Resettlement Grants Program); Refugee Crisis in Iraq Act of 2007, Public Law 110–181; Afghan Allies Protection Act of 2009, Public Law 111–8.

PURPOSE(S):

Records in this system support the Bureau of Population, Refugees, and Migration in tracking and managing case processing of applicants for the U.S. Refugee Admissions Program from application through the initial reception and placement period in the United States of those individuals approved for resettlement. This system is used for conducting security clearance checks on refugee applicants, verifying employment information, and matching up refugees with domestic resettlement agencies in the United States.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may routinely be disclosed:

(1) To the Department of Homeland Security to determine the eligibility and admissibility of individuals applying for admission to the United States as refugees or any other immigration benefit under U.S. law.

(2) To the International Organization for Migration (IOM) to perform required medical examinations and arrange appropriate transportation to the United States, including departure and transit formalities.

(3) To the United Nations High Commissioner for Refugees (UNHCR) to coordinate resettlement and protection activities.

(4) To members of Congress or other Federal, State, and local government agencies having statutory or other lawful authority, as needed for the formulation, amendment, administration or enforcement of immigration, nationality, and other laws of the United States.

(5) To resettlement agencies to ensure appropriate placement in the United States.

(6) To state refugee coordinators, health officials, and interested community organizations for statistical and demographic purposes.

(7) To consumer reporting agencies (31 U.S.C. 3711), debt collection contractors (31 U.S.C. 3718) and the Department of the Treasury (31 U.S.C. 3716) to assist in the collection of indebtedness reassigned to the U.S. Government under the refugee travel loan program administered by the International Organization for Migration (IOM).

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Refugee Case Records, State-59.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and hard copy.

RETRIEVABILITY:

Individual name, case number, alien number, and sponsor name.

SAFEGUARDS:

WRAPS users at the Refugee Processing Center (RPC) are given cyber security awareness training by the contractor which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information. Annual refresher training is mandatory. All RPC employees are subject to a thorough background security investigation.

At the Resettlement Support Centers (RSC) overseas, all paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. RSC staff are briefed on the confidentiality of refugee data and instructed regarding proper handling procedures. Access to computerized files is password-protected and under the direct supervision of the system manager. Centralized electronic storage and retrieval assist operational managers at headquarters and overseas to identify and resolve processing delays, plan accurately for refugee arrivals, improve program analysis, and preserve overseas records in case of evacuation or disasters in overseas processing locations. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

Records are retired or destroyed in accordance with the published records schedules of the Department of State as approved by the National Archives and Records Administration. If individuals have been assigned alien numbers, their hard copy files are transferred to USCIS and subject to its disposition schedules. Electronic records at the RSC will be retained for five years after the last action has been taken on the case. At the RPC, WRAPS records are maintained offline for an additional 10 years, and then deleted when 15 years old. Statistical data are kept indefinitely.

Hard copies of the results of the DNA relationship testing between individuals in the United States and family members overseas applying for admission based on their familial relationship will be destroyed immediately after relevant information is entered into Worldwide Refugee Admissions Processing System database by RPC staff.

More specific information may be obtained by writing to the Director, Office of Information Programs and Services, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8001.

SYSTEM MANAGER AND ADDRESS:

Director; Office of Admissions Bureau of Population, Refugees, and Migration, SA–9, 8th floor, Department of State, 2025 E Street NW., Washington, DC 20522.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Admissions, Bureau of Population, Refugees, and Migration might have records pertaining to themselves should write to the Director, Office of Information Programs and Services, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8001. The individual must specify that he or she wishes the Refugee Processing Center Records of a specific processing location to be checked. At a minimum, the individual should include: Name (and any aliases): date and place of birth; the approximate date of arrival in the United States; his or her immigration Alien number; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records, relatives, sponsors, members of Congress, U.S. Government agencies, Resettlement Support Centers, the Refugee Processing Center, resettlement agencies, international organizations, and local sources at overseas sites.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), records in this system may be exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act. See 22 CFR 171.36 for more information.

[FR Doc. 2012–2626 Filed 2–3–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 7735]

Suggestions for Environmental Cooperation Pursuant to the United States-Jordan Joint Statement on Environmental Technical Cooperation

ACTION: Notice of preparation of the 2012–2013 U.S.-Jordan Environmental Cooperation Work Program and request for comments.

SUMMARY: The Department invites the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for inclusion in a new work program for implementing the U.S.-Jordan Joint Statement on Environmental Technical Cooperation, which was signed on October 24, 2000. We encourage submitters to refer to: (1) The U.S.-Jordan Joint Statement on Environmental Technical Cooperation; (2) the U.S.-Jordan 2008–2011 Work Program on Environmental Cooperation; (3) Article 5 (Environment) of the Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (U.S.-Jordan Free Trade Agreement (FTA); and (4) the environmental review of the U.S.-Jordan FTA. These documents are available at *http://www.state.gov/e/oes/env/trade/jordan/index.htm*.

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than February 29, 2012.

ADDRESSES: Written comments or suggestions should be emailed (*pratherta@state.gov*) or faxed ((202) 647–5947) to Tiffany Prather, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line ''U.S.-Jordan Environmental Cooperation Work Program.'' If you have access to the Internet, you may make comments electronically by going to *http://contact-us.state.gov/app/ask* and searching on public notice number 7735.

FOR FURTHER INFORMATION CONTACT: Tiffany Prather, telephone (202) 647–4548.

SUPPLEMENTARY INFORMATION: The United States and Jordan announced the establishment of the U.S.-Jordan Joint Forum on Environmental Technical Cooperation (Joint Forum) when they signed the U.S.-Jordan Joint Statement on Environmental Technical Cooperation (Joint Statement), on October 24, 2000, along with the U.S.-Jordan FTA. The Joint Forum is to meet regularly and advance environmental protection in Jordan by developing environmental technical cooperation initiatives, which take into account environmental priorities, and which are agreed to by the two governments. In paragraph 4 of the Joint Statement, the countries identify an initial focus of technical cooperation on Jordanian environmental quality issues and the development and effective implementation of Jordanian environmental laws, as defined in Articles 5.4 and 18.2(a) of the U.S.-Jordan FTA.

The Joint Forum has met twice since 2000—in September 2004 and March 2009—and issued two plans for implementing the Joint Statement. The first—a Plan of Action—focused on implementing a strategic vision for Jordan's Ministry of Environment, established in 2002, to promote sustainable economic growth and development. The plan outlined activities to, among other things, strengthen the Ministry's capacity for setting, implementing, and ensuring compliance with environmental standards; harness market forces to protect the environment while bringing economic benefits; undertake industrial wastewater treatment and hazardous waste management for a target region; seek out economic benefits of ecotourism; and promote the development of a regional network of environmental lawmakers and enforcement officials.

The second, a Work Program for 2008–2011, identifies long-term goals and specifies activities in four priority areas. The long-term goals are to achieve: (1) Compliance with obligations in Article 5 (Environment) of the U.S.-Jordan FTA; (2) improved protection and conservation of the environment, including natural resources; (3) transparency and meaningful public participation in environmental decision-making; and (4) a culture of environmental protection and compliance with environmental laws through, among other things, the promotion of economic opportunities, voluntary measures to enhance environmental performance, and job creation. The priority areas are: (1) Institutional and policy strengthening; (2) biodiversity conservation and improved management of protected areas; (3) improved private sector environmental performance; and (4) environmental education, transparency, and public participation in environmental decision-making and enforcement.

For the 2012–2013 Work Program, we anticipate building upon the cooperative work initiated under the previous two plans. We are requesting suggestions that may be considered for inclusion in the next Work Program.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Work Program. There is no expectation of resources or funding associated with any comments or suggestions for the Work Program.

Dated: January 31, 2012.

George Sibley,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 2012–2624 Filed 2–3–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Public Availability of the Department of Transportation FY 2011 Service Contract Inventory

AGENCY: Department of Transportation.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Transportation is publishing this notice to advise the public of the availability of the FY 2011 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* Department of Transportation has posted its inventory and a summary of the inventory and the Service Contract Inventory Analysis Report on the Department of Transportation's homepage at the following link: *http://www.dot.gov/ost/m60/serv_contract_inv_2011.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Ames Owens in the Senior Procurement Executive office at (202) 366–9614 or *ames.owens@dot.gov.*

Dated: January 31, 2012.

Ames Owens,

Associate Director of Commercial Services Management.

[FR Doc. 2012–2566 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–9x–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0386]

Agency Information Collection Activities; Extension of a Currently Approved Information Collection: Motor Carrier Identification Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to extend an ICR entitled, Motor Carrier Identification Report,'' which is used to identify FMCSA regulated entities, to help prioritize the agency's activities, to aid in assessing

the safety outcomes of those activities, and for statistical purposes.

DATES: We must receive your comments on or before April 6, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0386 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–(202) 493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Oliver, Transportation Specialist, Office of Information Technology, Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2974; email address: *Vivian.Oliver@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: Title 49, United States Code Section 504(b)(2) provides the Secretary of Transportation (Secretary) with authority to require carriers, lessors, associations, or classes of these entities to file annual, periodic, and special reports containing answers to questions asked by the Secretary. The Secretary may also prescribe the form of records required to be prepared or compiled and the time period during which records must be preserved (See § 504(b) (1) and (d)). The FMCSA will use this data to administer its safety programs by establishing a database of entities that are subject to its regulations. This database necessitates that these entities notify the FMCSA of their existence. For example, under 49 CFR 390.19(a), FMCSA requires all motor carriers beginning operations to file a Form MCS–150 entitled, Motor Carrier Identification Report.'' This report is filed by all motor carriers conducting operations in interstate or international commerce before beginning operations. It asks the respondent to provide the name of the business entity that owns and controls the motor carrier operation, address and telephone of principal place of business, assigned identification number(s), type of operation, types of cargo usually transported, number of vehicles owned, term leased and trip leased, driver information, and certification statement signed by an individual authorized to sign documents on behalf of the business entity.

The Department of Transportation (DOT) and Related Agencies Appropriations Act for fiscal year 2002 (DOT Appropriations Act) (Pub. L. 107–87, 115 Stat. 833) directed the agency to issue an interim final rule (IFR) to ensure that new entrant motor carriers are knowledgeable about the Federal Motor Carrier Safety Regulations (FMCSRs) and standards.

On June 30, 2004, the agency issued a final rule entitled, ''Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits,'' (69 FR 39350) which required all HM carriers (both interstate and intrastate) to complete and file the Form MCS–150B entitled, ''Combined Motor Carrier Identification Report and HM Permit Application,'' to obtain a safety permit to transport hazardous materials. The safety program under 49 CFR 390.19(a) also requires all HM permitted carriers to complete Form MCS–150B in place of the current Form MCS–150 to ''renew'' both their permit and their DOT numbers according to the DOT number renewal schedule.

On December 17, 2008, FMCSA issued a final rule entitled, ''Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment,'' (73 FR 76794) which required all intermodal equipment providers to complete Form MCS–150C entitled, ''Intermodal Equipment Provider Identification Report'' in order to register with the Agency and receive a USDOT number. FMCSA now regulates intermodal equipment providers and requires them to complete Form MCS–150C, instead of the current Form MCS–150. In addition, intermodal equipment providers must complete Form MCS–150C to update their USDOT number record according to the USDOT number update schedule in 49 CFR 390.19.

Title: Motor Carrier Identification Report.

OMB Control Number: 2126–0013.

Type of Request: Extension of a currently approved information collection.

Respondents: Motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 447,109.

Estimated Time per Response: To complete Form MCS–150—20 minutes and 7.5 minutes for the biennial update. To complete Form MCS–150B (HM Permit Application), interstate carriers that have already completed the Form MCS–150 will need 6 minutes and intrastate carriers that have never completed a Form MCS–150 will need about 16 minutes and 5 minutes for the biennial update. Form MCS–150C—Intermodal Equipment Providers will need 20 minutes the first time they file this report and 7.5 minutes for the biennial update.

Expiration Date: July 31, 2012.

Frequency of Response: Biennially.

Estimated Total Annual Burden: 93,792 hours [93,534 hours for Form MCS–150 + 249 hours for Form MCS–

150B + 9 hours for Form MCS–150C = 93,792 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection request, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection request.

Issued on: January 25, 2012.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2012–2507 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0381]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from nineteen individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 7, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0381 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The nineteen individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Roger L. Arcand, Jr.

Mr. Arcand, 48, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Arcand understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arcand meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class 10 operator's license from Rhode Island.

Marsha M. Colberg

Ms. Colberg, 61, has had ITDM since 2010. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Colberg that she understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Colberg meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Washington.

Robert D. Crissinger

Mr. Crissinger, 60, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in

impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crissinger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crissinger meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Scott W. Forsyth, Jr.

Mr. Forsyth, 28, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Forsyth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Forsyth meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Jose A. Garcia

Mr. Garcia, 51, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garcia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garcia meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Fritz D. Gregory

Mr. Gregory, 55, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gregory understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gregory meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Gordon R. Kellogg

Mr. Kellogg, 53, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kellogg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kellogg meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Anthony P. Kesselring

Mr. Kesselring, 48, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kesselring understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kesselring meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Don R. Kivi

Mr. Kivi, 53, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kivi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kivi meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Vincent Ligotti

Mr. Ligotti, 42, has had ITDM since 1975. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ligotti understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ligotti meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Larry D. Miller

Mr. Miller, 60, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Michael R. Miller

Mr. Miller, 36, has had ITDM since 1983. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jack L. Phippen

Mr. Phippen, 54, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Phippen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phippen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Richard A. Purk

Mr. Purk, 25, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Purk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Purk meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C Operator's license from California.

Timothy M. Rearick

Mr. Rearick, 31, has had ITDM since 1991. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rearick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rearick meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Jeremy Simmons

Mr. Simmons, 27, has had ITDM since 2002. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simmons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simmons meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Jack A. Tidey

Mr. Tidey, 37, has had ITDM since 1999. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tidey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tidey meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arkansas.

Brian E. Quick

Mr. Quick, 33, has had ITDM since 1979. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Quick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quick meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class M operator's license from Virginia.

Timothy W. Work

Mr. Work, 48, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Work understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Work meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: January 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–2503 Filed 2–3–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0326]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 6, 2012. The exemptions expire on February 6, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On December 19, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifteen individuals and requested comments from the public (76 FR 78725). The public comment period closed on January 18, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the fifteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifteen applicants have had ITDM over a range of 1 to 29 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 19, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it has reviewed the driving records for Frank H. Ford, Jr. and is in favor of granting him a Federal diabetes exemption.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without

the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the fifteen exemption applications, FMCSA exempts, Howard A. Betz (OH), Keith R. Boyington (ID), Adam C. Cochran (GA), Kevin J. Coppens (ME), Frank H. Ford, Jr. (PA), Daniel R. Harris (TX), Alva L. Keifer (OH), Edwin J. Lundquist (MN), John B. Marriott (UT), Joseph L. Owings (AL), Richard L. Pinkhard (AL), Samuel E. Sanders (NY), Jerry H. Small (NY), Michael L. Tyler (MI) and Richard D. Wollman (SD) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–2514 Filed 2–3–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0366]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from twelve individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before March 7, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0366 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Program Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The twelve individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR

391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Eugenio V. Bermudez

Mr. Bermudez, age 33, has had amblyopia in his right eye since childhood. The best corrected visual acuity in right eye is 20/80 and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''I believe that he is capable of performing the driving tasks required to operate a commercial vehicle.'' Mr. Bermudez reported that he has driven straight trucks for 3½ years, accumulating 175,000 miles. He holds a Class A Commercial Driver's License (CDL) from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a Commercial Motor Vehicle (CMV).

John A. Carroll, Jr.

Mr. Carroll, 48, has had a retinal artery occlusion in his right eye sustained ten years ago. The best corrected visual acuity in right eye is 20/80 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''I think Mr. John Carroll's vision is sufficient to perform commercial driving.'' Mr. Carroll reported that he has driven straight trucks for 6 years, accumulating 180,000 miles and tractor-trailer combinations for 26 years, accumulating 780,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark W. Crocker

Mr. Crocker, 53, has had glaucoma in his right eye since 2007. The best corrected visual acuity in right eye is 20/400 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''I feel his vision is sufficient to operate a commercial vehicle at this time.'' Mr. Crocker reported that he has driven tractor-trailer combinations for 34 years, accumulating 3.4 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Johnny Dillard

Mr. Dillard, 50, has had a prosthetic right eye due to a traumatic injury sustained in 1974. The best corrected visual acuity in left eye, 20/20. Following an examination in 2011, his optometrist noted, ''At this time, I consider Mr. Dillard to demonstrate sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dillard reported that he has driven straight trucks for 31 years, accumulating 620,000 miles and tractor-trailer combinations for 31 years, accumulating 1.24 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith J. Haaf

Mr. Haaf, 52, has had a prosthetic left eye due to a traumatic injury sustained in 1989. The best corrected visual acuity in right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''We do feel that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Haaf reported that he has driven straight trucks for 23 years, accumulating 1.6 million miles. He holds a Class B CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Edward M. Jurek

Mr. Jurek, 45, has had macular scar in his right eye due to a traumatic injury sustained when he was 8 years old. The best corrected visual acuity in right eye is 20/200 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion Mr. Jurek has sufficient vision to perform the driving tasks required to operate a commercial vehicle; as he has driven a commercial vehicle for many years without a problem.'' Mr. Jurek reported that he has driven straight trucks for 17 years, accumulating 153,000 miles and tractor-trailer combinations for 17 years, accumulating 153,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Allen J. Kunze

Mr. Kunze, 64, has had complete loss of vision in his left eye due to a traumatic injury sustained in 2008. The best corrected visual acuity in right eye is 20/20 and in his left eye, finger-count vision. Following an examination in 2011, his optometrist noted, ''Mr. Kunez does have sufficient vision to operate a commercial vehicle.'' Mr. Kunez reported that he has driven straight trucks for 54 years, accumulating 1.35 million miles and tractor-trailer combinations for 17 years, accumulating 595,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jack W. Murphy, Jr.

Mr. Murphy, 56, has had a retinal artery occlusion in his left eye sustained in 2006. The best corrected visual acuity in right eye is 20/15 and in his left eye, 20/200. Mr. Murphy reported that he has driven tractor-trailer combinations for 26 years, accumulating 2.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash in a CMV, for which he was cited for an unsecured load, and no other convictions for moving violation in a CMV.

Mark A. Smalls

Mr. Smalls, 41, has had a prosthetic right eye due to a traumatic injury sustained 14 years ago. The best corrected visual acuity in left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, I feel Mark has sufficient visual activity and visual field to operate a commercial motor vehicle.'' Mr. Smalls reported that he has driven straight trucks for 8 years, accumulating 275,600 miles and tractor-trailer combinations for 2 years, accumulating 68,900 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows one crash for which he was cited for having an unsecure load while in a CMV.

Glenn R. Theis

Mr. Theis, 42, has had amblyopia in his right eye since childhood. The best corrected visual acuity in right eye is 20/200 and in his left eye, 20/25. Following an examination in 2011, his optometrist noted, ''It is my opinion that he has adapted to his amblyopiua or reduced vision in his right eye and can safely perform driving tasks required to operate a commercial motor vehicle.'' Mr. Theis reported that he has driven straight trucks for 4 years, accumulating 135,200 miles. He holds a Class D operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Peter A. Troyan

Mr. Troyan, 30, has had amblyopia in his left eye since childhood. The best corrected visual acuity in right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''Patient has good

vision field and 20/20 correction OU, good for driving tasks of commercial vehicles.'' Mr. Troyan reported that he has driven straight trucks for 8 years, accumulating 8,000 miles and tractor-trailer combinations for 5 years, accumulating 175,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary Vines

Mr. Vines, 47, has had complete loss of vision in his left eye due to a traumatic injury sustained 30 years ago. The best corrected visual acuity in right eye is 20/20 and in his left eye, hand motion vision. Following an examination in 2011, his ophthalmologist noted, ''He certainly has excellent right eye monocular vision that should be sufficient to operate that sort of vehicle.'' Mr. Vines reported that he has driven straight trucks for 35 years, accumulating 2.8 million miles and tractor-trailer combinations for 20 years, accumulating 1.5 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 7, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–2509 Filed 2–3–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Rail Advisory Committee for Safety (TRACS)

AGENCY: Federal Transit Administration, DOT.

Action: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Transit Rail Advisory Committee for Safety (TRACS). TRACS is a Federal Advisory Committee established by the Secretary of the Department of Transportation in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the Secretary and the Federal Transit Administrator on matters relating to the safety of public transportation systems.

DATES: The TRACS meeting will be held on February 23–24, 2012, beginning at 8:30 am.

ADDRESSES: The meeting will be held at MARTA Headquarters, 2424 Piedmont Rd, NE, Atlanta, GA 30324.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Office of Safety and Security, Federal Transit Administration, Room E43–435, 1200 New Jersey Avenue SE., Washington, DC, 20590; (202) 366–2010; *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.2). TRACS is a Federal Advisory Committee established to provide information, advice, recommendations to the Secretary and the Federal Transit Administrator on matters pertaining to the safety of public transportation systems. TRACS is comprised of 26 members, including 7 new members (listed below), representing a broad base of expertise necessary to discharge its responsibilities. The newest TRACS members are:

Amir Ahmed, Oklahoma State University;

Grace Gallucci, Regional Transportation District;

Susan Hausmann, Texas Department of Transportation;

Phyllis McDonald, John Hopkins University;

Karen Philbrick, Mineta Transportation Institute;

Nagal Shashidara, New Jersey Transit;

George Young, North Carolina Department of Transportation.

The tentative agenda for the meeting of TRACS is set forth below:

Agenda

February 23–24, 2012

1. Facility Use Briefing
2. Welcome Remarks/Introductions
3. Discuss TRACS Taskings
4. Close Call Reporting
5. RX/OTC
6. Public Comments
7. Wrap-Up

This meeting will be open to the public. Members of the public who wish attend the meeting or make an oral statement at the meeting are directed to make a request to Iyon Rosario, Office of Safety and Security, Federal Transit Administration, (202) 366–2010; or at *TRACS@dot.gov* on or before February 16, 2012. Members of the public may also submit written comments or suggestions concerning the activities of TRACS at any time before or after the meeting at *TRACS@dot.gov;* or to the U.S. Department of Transportation, Federal Transit Administration, Office of Safety and Security, Room E43–435, 1200 New Jersey Avenue SE., Washington, DC 20590, Attention: Iyon Rosario.

Requests for special accommodations should be directed to Iyon Rosario, at the phone number noted above, or at *TRACS@dot.gov,* on or before the close of business February 16, 2012.

Minutes of the meeting will be posted at *TRACS@dot.gov.* Written comments submitted to the Committee will also be posted at the above Web address.

Issued on: February 1, 2012.

Peter Rogoff,

Federal Transit Administrator.

[FR Doc. 2012–2654 Filed 2–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it

displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Bank Activities and Operations.''

DATES: You should submit written comments by April 6, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0204, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0204, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Bank Activities and Operations—12 CFR 7.

OMB Control No.: 1557–0204.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- 12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities): National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.
- 12 CFR 7.1014 (Sale of money orders at nonbanking outlets): A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.
- 12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.
- 12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.
- 12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments.
- 12 CFR 7.2024(a) Staggered terms for national bank directors—Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.
- 12 CFR 7.2024(c) Size of bank board—A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Responses: 1,300.

Estimated Total Annual Burden: 418 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–2603 Filed 2–3–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Investment Securities.''

DATES: You should submit written comments by April 6, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0205, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security

screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0205, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills or Mary H. Gottlieb, OCC Clearance Officers, (202) 874–6055 or (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities.

OMB Control No.: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 [1] if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk. Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

[1] 15 U.S.C. 80a–3(c)(1).

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 31, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–2606 Filed 2–3–12; 8:45 am]

BILLING CODE 4810–33–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 15, 2012, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis Shea, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 15, 2012, to address ''China's State-Owned and State-Controlled Enterprises.''

Background: This is the second public hearing the Commission will hold during its 2012 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The February 15 hearing will examine China's state controlled enterprises and their competitive challenges. The hearing will be co-chaired by Commissioners Robin Cleveland and Michael Wessel.

Any interested party may file a written statement by February 15, 2012, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web Site *www.uscc.gov.*

DATE AND TIME: Wednesday February 15, 2012, 8:45 a.m.–3 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *www.uscc.gov* as soon as available. Please check the Web site for possible changes to the hearing schedule.

ADDRESSES: The hearing will be held on in Room 562 of the Dirksen Senate Office Building, located at Constitution Avenue and 1st Street NE., in Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Michael Danis, Executive Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; phone: (202) 624–1407, or via email at *contact@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: February 1, 2012.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2012–2611 Filed 2–3–12; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 24 February 6, 2012

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Wildlife and Plants; Threatened and Endangered Status for Distinct Population Segments of Atlantic Sturgeon in the Northeast Region; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XJ00

[Docket No. 100903414–1762–02]

Endangered and Threatened Wildlife and Plants; Threatened and Endangered Status for Distinct Population Segments of Atlantic Sturgeon in the Northeast Region

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

ACTION: Final rule.

SUMMARY: We, NMFS, are issuing a final determination to list the Gulf of Maine (GOM) Distinct Population Segment (DPS) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) as a threatened species under the Endangered Species Act (ESA), and the New York Bight (NYB) and Chesapeake Bay (CB) DPSs of Atlantic sturgeon as endangered species under the ESA. We have proposed protective regulations for the GOM DPS in accordance with ESA section 4(d) in a separate rulemaking published in the **Federal Register** on June 10, 2011. We are currently considering the available information in order to designate critical habitat. With this rule, we are also soliciting information that may be relevant to the designation of critical habitat for all three DPSs in the Northeast Region. Details of our analyses, their outcome, and a request for public comment on our proposed critical habitat designations will be published in subsequent **Federal Register** documents.

DATES: This final rule is effective on April 6, 2012.

ADDRESSES: Information concerning this final rule may be obtained by contacting NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930. The final rule, list of references and other materials relating to this determination can be found on our Web site at *http://www.nero.noaa.gov./prot_res/atlsturgeon/.*

FOR FURTHER INFORMATION CONTACT: Kimberly Damon-Randall, (978) 282–8485; Lynn Lankshear, (978) 282–8473; or Lisa Manning, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

We first identified Atlantic sturgeon as a candidate species under the ESA in 1991; at that time, the candidate species list served to notify the public that we had concerns regarding these species that may warrant listing in the future, and it facilitated voluntary conservation efforts. On June 2, 1997, the U.S. Fish and Wildlife Service (USFWS) and NMFS (collectively, the Services) received a petition from the Biodiversity Legal Foundation requesting that we list Atlantic sturgeon in the United States as threatened or endangered and designate critical habitat within a reasonable period of time following the listing. A notice was published in the **Federal Register** on October 17, 1997, stating that the Services had determined substantial information existed indicating the petitioned action may be warranted (62 FR 54018). In 1998, after completing a comprehensive status review, the Services published a 12-month determination in the **Federal Register,** announcing that listing was not warranted at that time (63 FR 50187; September 21, 1998). We retained Atlantic sturgeon on the candidate species list (subsequently changed to the Species of Concern List (69 FR 19975; April 15, 2004)). Concurrently, the Atlantic States Marine Fisheries Commission (ASMFC) completed Amendment 1 to the 1990 Atlantic Sturgeon Fishery Management Plan (FMP), which imposed a 20–40 year moratorium on all Atlantic sturgeon fisheries until the Atlantic Coast spawning stocks could be restored to a level where 20 subsequent year classes of adult females were protected (ASMFC, 1998). In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101 *et seq.*), we followed this action by closing the Exclusive Economic Zone (EEZ) to Atlantic sturgeon retention.

In 2003, we sponsored a workshop with USFWS and the ASMFC titled ''Status and Management of Atlantic Sturgeon,'' to discuss the status of Atlantic sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery (Kahnle *et al.,* 2005). The results of the workshop indicated that some riverine populations seemed to be recovering while others were declining. Bycatch and habitat degradation were noted as possible causes for continued declines.

Based on the information gathered from the 2003 workshop on Atlantic sturgeon, we decided that a second review of Atlantic sturgeon status was needed to determine if listing as endangered or threatened under the ESA was warranted. We therefore established an Atlantic sturgeon status review team (ASSRT) consisting of NMFS, USFWS, and U.S. Geological Survey (USGS) scientists with relevant expertise to assist us in assessing the viability of the species throughout all or a significant portion of its range. The ASSRT was asked to consider the best scientific and commercial information available, including the technical information and comments from state and regional experts. The draft status review report prepared by the ASSRT was peer reviewed by experts from academia, and their comments were incorporated. A Notice of Availability of this report was published in the **Federal Register** on April 3, 2007 (72 FR 15865).

On October 6, 2009, we received a petition from the Natural Resources Defense Council to list Atlantic sturgeon throughout its range as endangered under the ESA. As an alternative, the petitioner requested that the species be listed as the five DPSs described in the 2007 Atlantic sturgeon status review (ASSRT, 2007; *i.e.,* GOM, NYB, CB, Carolina, and South Atlantic DPSs), with the GOM and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. We published a Notice of 90-Day Finding on January 6, 2010 (75 FR 838; January 6, 2010), stating that the petition presented substantial scientific or commercial information indicating that the petitioned actions may be warranted.

We considered the information provided in the status review report, the petition, other new information available since completion of the status review report, and information submitted in response to the **Federal Register** announcement of the 90-day finding (75 FR 838; January 6, 2010). Based on this information, we determined that there are five DPSs of Atlantic sturgeon that qualify as species under the ESA. We also determined that, for those DPSs that are located within the jurisdiction of NMFS' Northeast Region, the GOM DPS is likely to become endangered within the foreseeable future, and the NYB and CB DPSs are in danger of extinction. Therefore, on October 6, 2010, we published a proposed rule to list the GOM DPS of Atlantic sturgeon as threatened under the ESA, and the NYB and CB DPSs as endangered (75 FR 61872).

After publication of the proposed rule, new tagging and tracking data as a result of on-going studies were provided to us indicating that Atlantic sturgeon tagged in the United States range in the marine environment from as far north as the St. Lawrence River, Canada (D. Fox, DSU, pers. comm.) to as far south as

Cape Canaveral, FL (T. Savoy, CTDEP, pers. comm.). The description of the northern and southern extent of the marine range for the GOM, NYB, and CB DPSs was extended to include these areas. Based on information provided in the proposed rule and this new information, the GOM, NYB, and CB DPSs are defined as follows. The GOM DPS includes all Atlantic sturgeons that are spawned in the watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA. The NYB DPS includes all Atlantic sturgeons that are spawned in the watersheds that drain into coastal waters from Chatham, MA to the Delaware-Maryland border on Fenwick Island. The CB DPS includes all Atlantic sturgeons that are spawned in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA. The marine range for the three DPSs is the same; all marine waters, including coastal bays and estuaries, from Labrador Inlet, Labrador, Canada to Cape Canaveral, FL. Each DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) that are identified as fish belonging to either the GOM, NYB, or CB DPS, respectively, based on genetic analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (was spawned in) a river within the range of that DPS, or is the progeny of any fish that originated from that DPS.

Listing Species Under the Endangered Species Act

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' As provided in section 4(a) of the ESA, the statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)(E)).

Recent case law (*In Re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation,* D.D.C WL 2601604 (June 30, 2011 Order); 748 F.Supp.2d 19 (D.D.C. 2010)) regarding USFWS's listing of the polar bear as threatened provides a discussion of the ESA definitions of the terms threatened and endangered in the context of the Services' broad discretion and expertise to determine on a case by case basis whether a species is in danger of extinction. The Court found that Congress did not intend to make any single factor controlling when drawing the distinction between endangered and threatened species, nor did it seek to limit the applicability of the endangered category to only those species facing imminent extinction, and that Congress delegated responsibility to the Services to determine whether a species is 'in danger of extinction' in light of the ESA section 4(a)(1) factors and the best available science for that species.

To be considered for listing under the ESA, a group of organisms must constitute a ''species.'' A ''species'' is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, the Services adopted a policy to clarify our interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted.

We evaluated whether Atlantic sturgeon population segments met the DPS Policy criteria and described the delineation of five Atlantic sturgeon DPSs in detail in the proposed rule. Comments regarding the delineation are addressed in the section below, ''Summary of Peer Review and Public Comments Received.''

Section 4(b)(1)(A) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available after taking into account efforts being made to protect the species. In judging the efficacy of protective efforts, we rely on the Service's joint ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE''; 68 FR 15100; March 28, 2003). The PECE provides direction for consideration of conservation efforts that have not yet been implemented, or have been implemented but not yet demonstrated their effectiveness.

Summary of Peer Review and Public Comments Received

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential scientific information disseminated on or after June 16, 2005. Pursuant to our 1994 policy on peer review (59 FR 34270; July 1, 1994), we solicited peer review of the proposed listing determination from three independent sturgeon experts. One of the three reviewers submitted comments as part of his state agency's response to the proposed listing. Those comments and our responses are included in the response to public comments. The remaining two solicitations for review went unanswered. The independent expert review under the joint NMFS/USFWS peer review policy collectively satisfies the requirements of the OMB Peer Review Bulletin and the joint NMFS/USFWS peer review policy.

We solicited comments on the proposed rule from all interested parties including the public, and other governmental agencies. Fifty-five respondents provided comments during the 120-day comment period and four public hearings. We also received comments from 111 respondents from a solicitation for information in the Notice of 90-Day Finding on the petition to list Atlantic sturgeon and designate critical habitat (75 FR 838; January 6, 2010). We have addressed all public comments received on the action, including comments received during the 120-day public comment period, comments received at the four public hearings, and comments and information received in response to the solicitation for information in the Notice of 90-Day Finding.

Public comments supporting and opposing listing were submitted by interested individuals; state and Federal

agencies; fishing groups; environmental organizations; and industry groups. Some submissions provided information for our consideration, including additional information on Atlantic sturgeon distribution, information on tidal turbines in the East River, and management of Atlantic sturgeon in Canada. Many comments were complex and had multiple inferences, and thus individual statements are addressed in multiple comments and responses below. The comments addressed five general topics: (1) The 2007 Atlantic Sturgeon Status Review; (2) delineation of the GOM, NYB, and CB DPSs; (3) identification and consideration of specific threats; (4) conservation efforts for the GOM, NYB, and CB DPSs; and (5) additional comments.

The 2007 Atlantic Sturgeon Status Review

Comment 1: Several commenters expressed concern over the divergence of the proposed listing rule from the status review team's (ASSRT, 2007) listing classification recommendations that the CB DPS and the NYB DPS should be listed as threatened, and that there was not enough information for the GOM DPS to make a listing recommendation. Additionally, some commenters felt that there was insufficient information available to support a divergence from the 1998 negative listing determination for Atlantic sturgeon (63 FR 50187; September 21, 1998), and that the eight reasons given for the negative finding are still applicable today. One commenter stated that the only differences between the 1998 determination and today are increased prevalence of sturgeon and decreased levels of bycatch as compared with 1989–2000 (based on ASMFC, 2007 and Daniel, 2010).

Response: NMFS must rely on the definition of ''endangered'' and ''threatened'' species provided in section 3 of the ESA, the implementing regulations, and case law in applying the definitions to marine and anadromous species. Section 3 of the ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered within the foreseeable future. Recent case law (*In Re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation,* D.D.C WL 2601604 (June 30, 2011 Order); 748 F.Supp.2d 19 (D.D.C. 2010)) regarding USFWS's listing of the polar bear as threatened provides a discussion of the ESA's definitions of the terms threatened and endangered in the context of the Services' broad discretion and expertise to determine on a case by case basis whether a species is in danger of extinction. Upon listing the polar bear as threatened, USFWS's rule was challenged by a number of parties who claimed that the polar bear was in danger of extinction and should have been listed as endangered, and by others who conversely argued that the bear did not warrant listing even as threatened. The Court determined that neither the ESA nor its legislative history compels the interpretation of ''endangered'' as a species being in ''imminent'' risk of extinction, finding instead that the phrase ''in danger of extinction'' is ambiguous. The Court held that there is a temporal distinction between endangered and threatened species in terms of the proximity of the ''danger'' of extinction, noting that the definition of ''endangered species'' is phrased in the present tense, whereas a threatened species is ''likely to become'' so in the future. Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently at risk of extinction. A ''threatened species,'' on the other hand, is not currently at risk of extinction, but is likely to become so. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened). The Court concluded, however, that the distinction is not based ''solely and unambiguously'' on the imminence of the species' anticipated extinction,'' and that Congress delegated responsibility to the Services to determine whether a species is presently 'in danger of extinction' in light of the five statutory listing factors and the best available science for that species. The Court ruled that although imminence of harm is clearly one factor that the Services weigh in their decision-making process, it is not necessarily a limiting factor. In many cases, the Services might appropriately find that the imminence of a particular threat is the dispositive factor that warrants listing a species as 'threatened' rather than 'endangered,' or vice versa. The Services have broad discretion to decide that other factors outweigh the imminence of the threat. In conclusion, the Court confirmed that the Services have flexibility to determine ''endangerment'' on a case-by-case basis. Congress did not intend to make any single factor controlling when drawing the distinction between endangered and threatened species, nor did it seek to limit the applicability of the endangered category to only those species facing imminent extinction.

Thus, there is no per se requirement that a species be experiencing current or imminent significant downward trends, or that there are no single historical spawning riverine populations within the DPSs that are relatively abundant and simultaneously regularly-reproducing, in order to be listed as endangered. Our determination that the NYB and CB DPSs are endangered species and the GOM DPS is a threatened species is based on the exercise of our expert professional judgment on the basis of the best available information for each DPS, as was held appropriate in the polar bear listing litigation discussed above. In addition, we agree with the USFWS' judgment, discussed in its supplemental explanation filed in the polar bear litigation, that to be listed as endangered does not require that extinction be certain, and that it is possible for a species validly listed as ''endangered'' to actually persist indefinitely.

We determined that the NYB and CB DPSs of Atlantic sturgeon are currently in danger of extinction throughout their range, and the GOM DPS of Atlantic sturgeon is likely to become endangered within the foreseeable future throughout its range, on the basis of low population size and the level of impacts and number of threats such as continued degraded water quality, habitat impacts from dredging, continued bycatch in state and federally-managed fisheries, and vessel strikes to each DPS. Historically, each of the DPSs likely supported more than 10,000 spawning adults (Kennebec River Resource Management Plan 1993; Secor 2002; ASSRT, 2007). The best available data support that current numbers of spawning adults for each DPS are one to two orders of magnitude smaller than historical levels (*e.g.,* hundreds to low thousands (ASSRT, 2007; Kahnle *et al.,* 2007)). A long life-span allows multiple opportunities for Atlantic sturgeon to contribute to future generations, but it increases the timeframe over which exposure to the multitude of threats facing the DPSs can occur. Atlantic sturgeons also demonstrate clinal variation in growth associated with water temperature. For example, Atlantic sturgeons mature in South Carolina river systems at 5 to 19 years (Smith *et al.,* 1982), in the Hudson River at 11 to 21 years (Young *et al.,* 1998), and in the Saint Lawrence River at 22 to 34 years (Scott and Crossman, 1973). Thus, their late age at maturity also provides more opportunities for individual Atlantic sturgeon to be

removed from the population before reproducing.

We have determined that for the long-term persistence of Atlantic sturgeon, it is important to have multiple stable riverine spawning populations within each DPS and suitable habitat to support the various life functions (spawning, feeding, growth) of Atlantic sturgeon. This is best supported by looking at the concept of metapopulations. Generally, each Atlantic sturgeon DPS should be comprised of multiple riverine populations, which is analogous to a metapopulation (*i.e.,* a ''population of populations'') (Levins, 1969). A metapopulation is a group of spatially separated populations of the same species which interact at some level. Separation into metapopulations is expected by sturgeon and other anadromous fishes, given their likely stepping-stone sequential model of recolonization of northern rivers following post-Pleistocene deglaciation (Waldman *et al.* 2002).

Metapopulation persistence depends on the balance of extinction and colonization in a static environment (Hanski, 1996). If habitat remains suitable following local extirpation, recolonization via immigrants into now-empty habitat may replace at least some of those losses (Thomas, 1994). However, if the cause of extinction is a deterministic population response to unsuitable conditions (*e.g.,* lack of suitable spawning habitat, poor water quality, or disturbance of substrates through repeated dredging), the local habitat is likely to remain unsuitable after extinction and be unavailable for effective recolonization (Thomas, 1994). Therefore, recolonization is dependent upon both immigration from adjacent, healthy populations and habitat suitability. Because these DPSs are groups of populations, the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. The loss of any population within a DPS will result in: (1) A long-term gap in the range of the DPS that is unlikely to be recolonized, or recolonized only very slowly; (2) loss of reproducing individuals; (3) loss of genetic biodiversity; (4) potential loss of unique haplotypes; (5) potential loss of adaptive traits; and (6) reduction in total number.

In the NYB DPS, there are two known spawning populations—the Hudson and Delaware Rivers. While the Hudson is presumably the largest extant reproducing Atlantic sturgeon population, the Delaware is presumably very small and extremely vulnerable to any sources of anthropogenic mortality. There are no indications of increasing abundance for the NYB DPS (ASSRT, 2009; 2010). There are anecdotal reports of increased sightings and captures of Atlantic sturgeon in the James River, which comprises the only known spawning river for the CB DPS. However, this information has not been comprehensive enough to develop a population estimate for the James River or to provide sufficient evidence to confirm increased abundance. Some of the impact from the threats that facilitated the decline of these two DPSs have been removed (*e.g.,* directed fishing) or reduced as a result of improvements in water quality since passage of the Clean Water Act (CWA). In addition, there have been reductions in fishing effort in state and Federal waters, which most likely would result in a reduction in bycatch mortality of Atlantic sturgeon. Nevertheless, areas with persistent, degraded water quality, habitat impacts from dredging, continued bycatch in state and federally-managed fisheries, and vessel strikes remain significant threats to both the NYB and CB DPSs.

Mixed stock analysis of Atlantic sturgeon collected along the U.S. coast indicates that Atlantic sturgeon occur most prominently in the vicinity of their natal river(s). This means that Atlantic sturgeon of the NYB and CB DPSs will occur most frequently in the coastal environment of the Mid-Atlantic. Bycatch mortality for Atlantic sturgeon is known to occur predominantly in sink gillnet gear (Stein *et al.,* 2004; ASMFC, 2007), and this gear type is used in the monkfish and spiny dogfish fisheries that occur in the Mid-Atlantic. Based on the mixed stock analysis results, a significant number of bycatch interactions occur in the Mid Atlantic Bight region (see Figure 1), and over 40 percent of these interactions were with fish from the NYB DPS and 20 percent were with fish from the CB DPS. Given that fish from these two DPSs are most likely to occur in the Mid Atlantic Bight region (*e.g.,* in close proximity to their rivers of origin), they are highly susceptible to take as bycatch in fisheries. In accordance with the Magnuson Stevens Fishery Conservation and Management Act (MSA), effort control measures were implemented to address rebuilding of monkfish and spiny dogfish stocks via fishery management plans developed in the late 1990's. Fish from the NYB and CB DPSs likely benefited from these effort control measures, because the amount of sink gillnets in Mid-Atlantic waters was reduced. However, monkfish is no longer overfished, and quota allocations for spiny dogfish have been increased. Therefore, as fish stocks are rebuilt, we anticipate that sink gillnet fishing effort will increase in the Mid-Atlantic. In addition, individual-based assignment and mixed stock analysis of samples collected from sturgeon captured in Canadian fisheries in the Bay of Fundy indicated that approximately 1–2% were from the NYB DPS, and perhaps 1% from the Chesapeake DPS (Wirgin *et al.,* in draft). There are no current regulatory measures to address the bycatch threat to the NYB and CB DPSs of Atlantic sturgeon posed by U.S. Federal fisheries or fisheries that occur in Canadian waters.

Studies have shown that Atlantic sturgeon can only sustain low levels of bycatch mortality (Boreman, 1997; ASMFC, 2007; Kahnle *et al.,* 2007). A recent study also indicated that the loss of only a few adult female Atlantic sturgeon from the Delaware River riverine population as a result of vessel strikes would hinder recovery of that riverine population (Brown and Murphy, 2010). We have concluded that the NYB and CB DPSs are currently at risk of extinction (*i.e.,* are endangered) given the following: (1) Both the NYB and CB DPSs are at low levels of abundance with a limited number of spawning populations within each DPS; (2) both continue to be significantly affected by threats to habitat from continued degraded water quality and dredging in some areas as well as threats from bycatch and vessel strikes; (3) these threats are considered to be unsustainable at present and the threat posed by bycatch is likely to increase in magnitude in the future; and, (4) the lack of existing regulatory mechanisms to adequately address these threats.

While there is only one known spawning population within the GOM DPS (*i.e.,* the Kennebec River), there is possible spawning in the Penobscot River. Additionally, there are indications of increasing abundance of Atlantic sturgeon belonging to the GOM DPS. Atlantic sturgeon continue to be present in the Kennebec River; in addition, they are captured in directed research projects in the Penobscot River, and are observed in rivers where they were unknown to occur or had not been observed to occur for many years (*e.g.,* the Saco River and the Presumpscot River). These observations suggest that abundance of the GOM DPS of Atlantic sturgeon is sufficient such that recolonization to rivers historically suitable for spawning may be occurring.

As is the case for other DPSs, the GOM DPS was significantly affected by a directed fishery in the 1800's (Bigelow and Schroeder, 1953; Kennebec River Resource Management Plan 1993).

Industrialization and population expansion during the same time period contributed to the decline in water quality and habitat availability (*e.g.,* construction of dams, contamination of river systems) that likely impacted the GOM DPS as well. Despite these past impacts, the DPS has persisted and is now showing signs of potential recovery (*e.g.,* increased abundance and/or expansion into its historical range). The level of impact from the threats which facilitated its decline have been removed (*e.g.,* directed fishing) or reduced as a result of improvements in water quality since passage of the CWA; removal of dams (*e.g.,* the Edwards Dam on the Kennebec River in 1999); reductions in fishing effort in state and Federal waters, which may have resulted in a reduction in overall bycatch mortality; and the implementation of strict regulations on the use of fishing gear in Maine state waters that incidentally catch sturgeon. Additionally, when completed, the Penobscot River Restoration Project will provide Atlantic sturgeon with access to all of historical spawning habitat in the Penobscot River.

As indicated by the mixed stock analysis results, fish from the Gulf of Maine DPS are not commonly taken as bycatch in areas south of Chatham, MA (see Figure 1), with only 8 percent (*e.g.,* 7 of the 84 fish) of interactions observed in the Mid Atlantic/Carolina region being assigned to the GOM DPS. Tagging results also indicate that GOM DPS fish tend to remain within the waters of the Gulf of Maine and only occasionally venture to points south.

While still present and still affecting the long term persistence of the fish from the GOM DPS, threats from bycatch and habitat impacts from areas of continued degraded water quality and dredging are not as significant in the Gulf of Maine as in other areas occupied by Atlantic sturgeon. Water quality within the Gulf of Maine has improved significantly over time and unlike in areas farther south, it is very rare to have issues with low dissolved oxygen concentrations (that negatively affect Atlantic sturgeon) in the Gulf of Maine. A significant amount of fishing in the Gulf of Maine is conducted using trawl gear, which is known to have a much lower mortality rate for Atlantic sturgeon. Given the reduced level of threat to the GOM DPS, the anticipated distribution of GOM DPS fish predominantly in the Gulf of Maine, and the positive signs regarding distribution and abundance within the DPS, we concluded that the GOM DPS is not currently endangered. Effort control measures were implemented to achieve rebuilding of groundfish, monkfish, and spiny dogfish and may have provided some indirect benefit to Atlantic sturgeon from the GOM DPS. However, as fish stocks are rebuilt, we anticipate that sink gillnet fishing effort will increase in the Gulf of Maine. In addition, individual-based assignment and mixed stock analysis of samples collected from sturgeon captured in Canadian fisheries in the Bay of Fundy indicated that approximately 35 percent were from the GOM DPS (Wirgin *et al.,* in draft). There are no current regulatory measures to address the bycatch threat to GOM DPS Atlantic sturgeon posed by U.S. Federal fisheries or fisheries that occur in Canadian waters. As noted previously, studies have shown that Atlantic sturgeon can only sustain low levels of bycatch and other anthropogenic mortality (*e.g.,* vessel strikes) (Boreman, 1997; ASMFC, 2007; Kahnle *et al.,* 2007; Brown and Murphy, 2010). Therefore, despite some management efforts and improvements, we concluded that the GOM DPS is at risk of becoming endangered in the foreseeable future throughout all of its range (*i.e.,* is a threatened species) based on the following: (1) The persistence of some degree of threat from bycatch and habitat impacts from continued degraded water quality and dredging in some areas; (2) the likelihood of increased impact from existing threats; and, (3) the lack of measures to address these threats.

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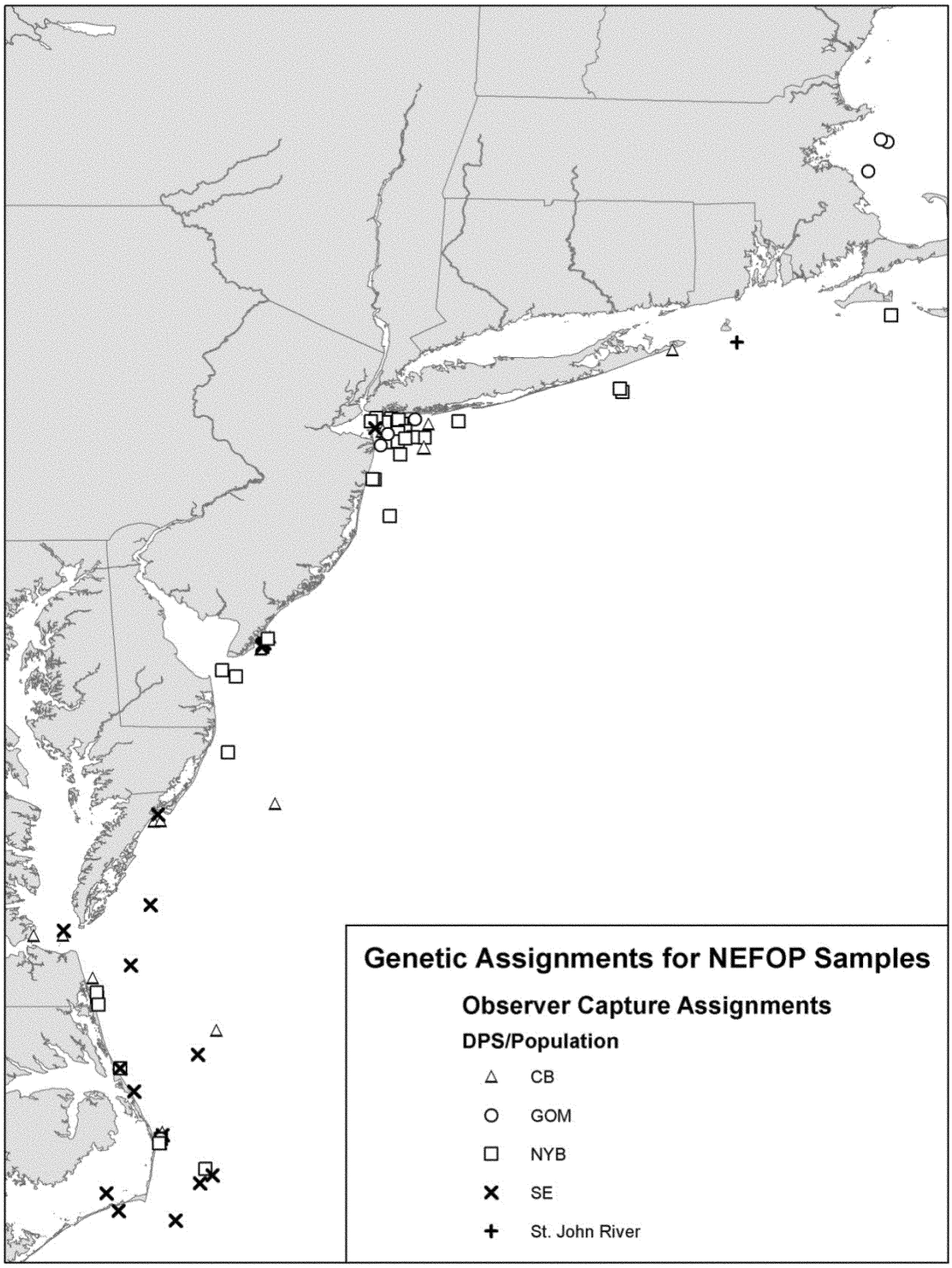

Figure 1: Map of Atlantic Sturgeon, by DPS, Genetically Sampled Through the NEFOP

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In response to comments about divergence from the status review's listing recommendations for the NYB, CB, and GOM DPSs, NMFS' Protected Resources Divisions have the responsibility to make listing recommendations to the Assistant Administrator. Status review reports are an important part of the information base for such recommendations, but NMFS must independently review the information in status review reports and apply the ESA's listing determination requirements in accordance with regulations, case law, and agency guidance. The Atlantic Sturgeon Status Review Report states that ''risks of extinction assessments are performed to help summarize the status of the species, and do not represent a decision by the Status Review Team on whether the species should be proposed for listing as endangered or threatened under the ESA'' (page 106; ASSRT, 2007). Subsequent to the status review report, we conducted a comprehensive assessment of the combined impact of

the five ESA section 4(a)(1) factors across each entire DPS in classifying extinction risk. We focused on evaluating whether the DPSs are presently in danger of extinction, or whether the danger of extinction is likely to develop in the future. In our proposed rules to list 5 DPSs of Atlantic sturgeon, we determined that each DPS was at greater risk of extinction than concluded in the 2007 status review report. In addition, because of the lapse in time between the development of the status review report (ASSRT, 2007) and the publication of the proposed listing rule (75 FR 61904, October 6, 2010), new information on bycatch (ASMFC, 2007) and water quality (USEPA, 2008) became available to us, and we incorporated this information into our listing determinations.

Since publication of the proposed rules, a Federal District Court has considered the definitions of threatened and endangered species in the ESA and issued an opinion regarding their interpretation, as discussed above (*In re. Polar Bear Endangered Species Act Litigation*). Prompted by this decision and the comments received requesting further explanation of the divergence of our proposed listing statuses and the conclusions of the ASSRT, we have reviewed our determinations and concluded that all of the proposed listings of specific DPS's as ''threatened species'' or ''endangered species'', respectively, satisfy the requirements of the relevant ESA definitions. Thus, we have not changed these classifications in the final rules. We found that four DPSs of Atlantic sturgeon meet the definition of an endangered species because they are presently in danger of extinction, and thus, listing them as endangered is warranted. These DPSs are the NYB, CB, Carolina, and South Atlantic DPSs. We further determined that the GOM DPS meets the ESA's definition of a threatened species, because while it is not currently in danger of extinction, it is likely to become so in the foreseeable future.

In 1998, the Services determined that an ESA listing of Atlantic sturgeon was not warranted (63 FR 50187; September 21, 1998). The Services cited eight reasons for the negative determination at that time: (1) Evidence that the historical range of the species has not been substantially reduced and that its current range is not likely to be significantly reduced in the foreseeable future; (2) persistence of at least 14 spawning populations; (3) existing prohibitions on harvest and possession in all 15 states comprising the species' U.S. range; (4) detailed evaluation of current habitat conditions and threats to habitat showing that conditions are adequate to sustain the species and are likely to remain so in the foreseeable future; (5) lack of substantial information indicating that overutilization for commercial, recreational, scientific or educational purposes is currently significantly affecting the species; (6) lack of information indicating that disease or predation are causing significant mortality; (7) existing regulatory mechanisms that provide adequate protection and further the conservation of the species; and (8) lack of information indicating that artificial propagation is currently posing a threat to the species.

The proposed listing rule (75 FR 61872; October 6, 2010) discussed that bycatch, which was identified as the primary risk to the persistence of Atlantic sturgeon in the Northeast Region, is not adequately regulated and is contributing to the lack of recovery of Atlantic sturgeon populations. Furthermore, at the time of the 1998 determination, the ASMFC moratorium on retention of Atlantic sturgeon had recently gone into effect. Because this eliminated directed fishing for Atlantic sturgeon, which was the primary known threat to the existence of the species at that time, the Services weighed this heavily in the decision not to list the species in 1998. NMFS followed this with the 1999 closure of the EEZ to fishing for Atlantic sturgeon. However, since implementation of the moratorium, additional bycatch information (Stein *et al.,* 2004; ASMFC, 2007) became available indicating that Atlantic sturgeon are vulnerable to bycatch in commercial fisheries, and that the current rate of bycatch is unsustainable in the long term (ASMFC, 2007).

Comment 2: Comments from the New Jersey Department of Environmental Protection, Division of Fish and Wildlife stated that in 2006, the Division's biologists employed an expert opinion-based technique (the Delphi technique) to determine the status of Atlantic sturgeon in New Jersey state waters (Jenkins and Bowers-Altman, 2007). Expert opinion and data were shared to try to reach consensus (defined as 85 percent or greater) on the species status of either endangered, threatened, special concern, stable/secure, undetermined, no opinion or not applicable. For this process, ''endangered'' was defined as applying to species whose prospects for survival within the state are in immediate danger due to one or several factors, such as loss or degradation of habitat, overexploitation, predation, competition, disease or environmental pollution, etc. (*i.e.,* an endangered species likely requires immediate action to avoid extinction within New Jersey). A ''threatened'' species was defined as a species that may become endangered if conditions surrounding it begin to or continue to deteriorate (*i.e.,* a threatened species is one that is already vulnerable as a result of small population size, restricted range, narrow habitat affinities, significant population decline, etc.). Although consensus was not achieved for assigning Atlantic sturgeon species status using the Delphi technique, final votes were divided between endangered and threatened, with three more reviewers voting for the threatened status.

Response: We appreciate the information provided. However, a listing of ''endangered'' or ''threatened'' under state law for a species within state jurisdiction does not equate to a listing of ''endangered'' or ''threatened'' under the ESA. As described in response to Comment 1, above, recent case law (*Ctr. for Biological Diversity, et al.* v. *Salazar, et al., No. 08–2113; State of Alaska* v. *Salazar, et al., No. 08–1352; Safari Club Int'l, et al.* v. *Salazar, et al., No. 08–1550; California Cattlemen's Ass'n, et al.* v. *Salazar, et al., No. 08–1689; Conservation Force, et al.* v. *Salazar, et al., No. 09–245*) supports that Congress did not intend to make any single factor controlling when drawing the distinction between endangered and threatened species, nor did it seek to limit the applicability of the endangered category to only those species facing imminent extinction.

The Atlantic sturgeon status review team did use an approach comparable to the Delphi technique (see ASSRT, 2007, and Patrick and Damon-Randall, 2008 for a detailed description), and after completing their assessment, found that the NYB, CB, and Carolina DPSs of Atlantic sturgeon were at risk of becoming endangered within the foreseeable future (*i.e.,* a ''threatened'' species as defined under the ESA). However, as described in response to Comment 1, while we considered and relied heavily on the biological information in the 2007 status review report, we independently reviewed the information in the status review report as well as new information on bycatch (ASMFC, 2007) and water quality (USEPA, 2008), and applied the ESA's listing determination requirements in accordance with regulations, case law and agency guidance. We thus concluded that the NYB and CB DPSs warranted listing as endangered, and the GOM DPS warranted listing as threatened.

Comment 3: Numerous comments were submitted with respect to the lack of abundance data for Atlantic sturgeon as well as our reliance on the Kahnle *et al.* (2007) estimate for the Hudson River, which is based on data collected from 1985–1995 when there was still a directed fishery for Atlantic sturgeon in the Hudson River estuary. The commenters oppose listing until abundance data are available and encourage new or continued research to acquire this information in lieu of a listing determination at this time.

Response: As was noted in the status review report (ASSRT, 2007) and the proposed listing rule, only two abundance estimates are available for Atlantic sturgeon riverine populations—one, for the Hudson River and one for the Altamaha River. The Hudson River riverine population was estimated to have 870 spawning adult Atlantic sturgeon per year based on data collected from 1985–1995 when a directed Atlantic sturgeon fishery was on-going (Kahnle *et al.,* 2007). The Altamaha River riverine population was estimated to have 343 spawning adult Atlantic sturgeon per year based on more recent scientific research studies (Schueller and Peterson, 2006).

Information was provided in the proposed rule that explained the caveats associated with the Kahnle *et al.* (2007) estimate for the Hudson River. Specifically, the accuracy of the estimate may be affected by bias in the reported harvest or estimated exploitation rate for that time period (Kahnle *et al.,* 2007). Underreporting of harvest would have led to underestimates of stock size, while underestimates of exploitation rates would have resulted in overestimates of stock size (Kahnle *et al.,* 2007). Therefore, the estimate may be either higher or lower than the actual number of spawning adults per year in the Hudson River during the 1985–1995 timespan. As stated in the proposed rule, we do not consider the Kahnle *et al.* (2007) estimate to be an estimate for the entire riverine population given that: (1) The estimate is for spawning adults only; (2) mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley, 1963; Smith, 1985; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999; Collins *et al.* 2000; Caron *et al.,* 2002); and, (3) it is unclear to what extent mature fish in a non-spawning condition occur on the spawning grounds (Vladykov and Greeley, 1963).

Having received a petition and subsequently finding that there was substantial scientific and commercial information indicating that listing Atlantic sturgeon may be warranted (75 FR 838; January 6, 2010), we are required to use the best scientific and commercial data available to determine whether Atlantic sturgeon should be listed under the ESA because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)(E)), and after taking into account efforts being made to protect the species. We are required to make a determination within 1 year of receipt of a petition. The best available information indicates that all riverine populations of Atlantic sturgeon in the Northeast Region are at reduced levels from those reported historically, and are being exposed to significant threats that are ongoing and not being adequately addressed.

Under section 4(c)(2) of the ESA, we are required to evaluate the listing classification of a species every 5 years. New, relevant scientific and commercial information should be considered during the 5-year evaluation process. Should new abundance data become available to indicate that the listing classification warrants changing, we would complete a thorough review of the best available data and proceed with any rulemaking as appropriate.

Comment 4: The State of Maine, Department of Marine Resources cautioned that differences in catch-per-unit-effort for subadult and adult Atlantic sturgeon in the Kennebec River over two time periods may not be directly comparable since the areas sampled during the two time periods were not similar. The selection of the sampling location during the first time period likely resulted in an underestimate of catch-per-unit-effort since fall sampling included areas where Atlantic sturgeon do not congregate at that time of year.

Response: In this final rule we have revised the description of available abundance information for the GOM DPS to reflect the information submitted.

Comment 5: One commenter felt that NMFS did not provide evidence of decreasing population abundance in the Chesapeake Bay DPS, and that abundance in other DPSs appears to be stable or increasing. We received several comments that the James River Atlantic sturgeon riverine population is increasing based on increased catches of sturgeon in the river by researchers and an increase in the number of Atlantic sturgeon unintentionally caught in commercial fishing gear. Several comments pointed to NMFS statements in the proposed rule and newspaper accounts that sturgeon are expanding in areas where they have historically never been.

Response: We noted in the proposed rule that increasing numbers of Atlantic sturgeon are being observed in the James River (Garman and Balazik, unpub. data in Richardson *et al.,* 2009). Similarly, we noted that Atlantic sturgeons are being observed in increasing numbers in the Kennebec River, Saco River, and the Merrimack River estuary. However, given the extensive mixing of Atlantic sturgeon from the five DPSs and Canada, genetic analysis is needed to identify whether and to what extent any reported increase in abundance within 'mixing areas' is the result of increased abundance of the nearest spawning population or the result of increased abundance or movement of one or more of the other DPSs.

Based on the best available information, we cannot determine whether the observations reflect actual increases in abundance. Directed sampling for Atlantic sturgeon has been limited in duration, intensity, and continuity. While the reports of increased sightings are encouraging, given the limited information, we cannot determine whether the increased sightings and/or captures are indicative of: (1) An increase in abundance of any one particular riverine population; (2) an increase in abundance of all Atlantic sturgeon riverine populations; or (3) an artifact of increased or improved sampling? Even relatively slight changes in sampling methodology can account for substantial differences in capture success of Atlantic sturgeon. For example, the Maine Department of Marine Resources has provided information on differences in sampling times and areas that likely account for perceived but not actual changes in abundance during two sampling time periods (see Comment 4).

While it may be possible that some Atlantic sturgeon riverine populations are experiencing some increase in abundance, they remain at significantly reduced abundance levels compared to historical levels; and, factors such as bycatch mortality, vessel strikes, water quality and habitat destruction are keeping them at reduced levels despite the fishing moratorium and other protective efforts. Long-term, continuous, standardized studies of Atlantic sturgeon abundance (including genetic analysis to differentiate between

sturgeon) are needed. We are funding several studies of Atlantic sturgeon within the riverine range of the CB, NYB, and GOM DPS to better assess abundances of Atlantic sturgeon riverine populations.

Comment 6: One commenter questioned NMFS' proposed listing of the NYB DPS as endangered and noted NMFS' statement from the proposed listing rule in regard to the Hudson River abundance estimate that ''The current number of spawning adults may be higher given that the estimate is based on the time period prior to the moratorium on fishing for and retention of Atlantic sturgeon'' (page 61881, 75 FR 61872; October 6, 2010).

Response: In the proposed rule we relied on the best available data, which included the existing population estimate for the Hudson of 870 spawning adults per year (Kahnle *et al.,* 2007). We provided context for this estimate and indicated that it does not represent an estimate of the total number of adults in the riverine population, since mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley, 1963; Smith, 1985; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999; Collins *et al.,* 2000; Caron *et al.,* 2002), and it is unclear to what extent mature fish in a non-spawning condition occur on the spawning grounds. The accuracy of the estimate may also be affected by bias in the reported harvest or estimated exploitation rate for that time period (Kahnle *et al.,* 2007). Underreporting of harvest would have led to underestimates of stock size, while underestimates of exploitation rates would have resulted in overestimates of stock size (Kahnle *et al.,* 2007). In addition to these caveats, as the commenter indicates, we noted in the proposed rule that the current number of spawning adults may be higher given that the estimate is based on commercial fisheries data collected 16–26 years ago and prior to the moratorium on fishing for and retention of Atlantic sturgeon. This information was provided to further clarify why the estimate of 870 spawning adults per year (Kahnle *et al.,* 2007) could not be used to generate a total abundance estimate for the current Hudson River riverine population of Atlantic sturgeon.

The Kahnle *et al.* estimate does, however, provide a benchmark of the number of spawning adults per year for the Hudson River prior to the moratorium on fishing for Atlantic sturgeon. Kahnle *et al.* (2007) also showed that the level of fishing mortality from the Hudson River Atlantic sturgeon fishery during the period of 1985–1995 exceeded the estimated sustainable level of fishing mortality for the riverine population. Information on catch-per-unit-effort of juvenile Atlantic sturgeon in the Hudson River estuary from 1985–2010 suggest that recruitment has declined since the mid-1980's and remains depressed relative to catches of juvenile Atlantic sturgeon in the estuary during the mid-late 1980's (Sweka *et al.,* 2007; ASMFC, 2010).

Comment 7: Some commenters noted that while NMFS recognized that the abundance data cited for the Hudson River (Kahnle *et al.,* 2007) may underestimate current conditions, no mention was made of an updated report, Kahnle *et al.,* (in press), titled ''Status of Atlantic sturgeon of the Hudson River estuary'', published by the American Fisheries Society.

Response: The report, ''Kahnle *et al.* (in press),'' was referenced in the Atlantic sturgeon status review report, and is the same as Kahnle *et al.* (2007) since publication of the report occurred after the status review report was made available. The full citation for the report is as follows: Kahnle, A.W., K.A Hattala, and K.A. McKown. 2007. Status of Atlantic sturgeon of the Hudson River estuary, New York, USA. American Fisheries Society Symposium 56:347–363.

Comment 8: Some commenters recommended that Atlantic sturgeon be listed only in areas where they are rare, and that the listing not apply to areas where many sturgeons are known to be found.

Response: To be considered for listing under the ESA, a group of organisms must constitute a ''species.'' A ''species'' is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Given the ESA's definition of ''species'', if Atlantic sturgeons are found to comprise multiple DPSs, it is possible to list some but not all DPSs if such a listing is warranted. Such was the case for green sturgeon on the U.S. West Coast where the southern DPS of green sturgeon is listed as threatened, and the northern DPS of green sturgeon is not listed under the ESA (71 FR 17757, April 7, 2006). Once listed, the species retains that listing status wherever it is found, and all persons within U.S. jurisdiction must comply with the protective regulations of the ESA for that listed species. Based on our review of the best available data, we determined that all U.S. DPSs of Atlantic sturgeon warrant listing under the ESA.

Comment 9: A commenter stated that the lack of recent abundance estimates does not allow NMFS to evaluate the efficacy of the coastwide moratorium and expressed concern that NMFS has not allowed enough time to pass, nor collected enough data since 1998 to adequately conclude whether the moratorium alone has served to prevent the species from further decline.

Response: We would like to have had recent and complete abundance information for each DPS prior to making a final determination. However, we must comply with the statutory and regulatory requirements that we make a finding within a specified timeframe and use the best scientific and commercial data currently available in making this finding.

The objective of the coastwide moratorium is to restore Atlantic sturgeon abundance to a level at which each riverine population contains 20 consecutive year classes of females. The exact time that this will take is unknown but is expected to range from 20–40 years given Atlantic sturgeon's generation time. At a workshop in 2003, ''Status and Management of Atlantic Sturgeon'', Atlantic sturgeon experts met to discuss the status of the species and identify any threats that might be impeding recovery. Because participants of the workshop were concerned that some populations were continuing to decline, a status review was initiated. As described in the status review report (ASSRT, 2007) the abundance of Atlantic sturgeon spawning populations is far below historical levels, some spawning populations have likely been extirpated (*i.e.,* no longer exist), and most DPSs have only one or two spawning populations. There are threats to each DPS that are not being adequately addressed, and at least some could have a greater effect on Atlantic sturgeon in the foreseeable future (*e.g.,* changes in fishing practices resulting in higher Atlantic sturgeon bycatch, changes to major ports resulting in more and/or larger ships where vessel strikes are known to occur). Based on the review of the information, the status review team concluded that at least three Atlantic sturgeon DPSs warranted listing under the ESA. As described in the proposed rule, additional information on threats was received after completion of the status review report. Our evaluation of this information indicates that the moratorium on directed fisheries has not and will not be sufficient to address the impacts that are preventing sturgeon populations from recovering (including bycatch, habitat degradation, and vessel strikes).

In January 2010, we determined that a petition to list Atlantic sturgeon presented substantial information indicating that the requested listing actions may be warranted (75 FR 838). Once such a finding is made, we are required by regulation to comply with specific timeframes. Specifically, we were required (50 CFR 424.14(B)(3)) to determine within 12 months of receipt of the petition whether listing is warranted and publish in the **Federal Register** either a proposed rule to list or a notice that listing is not warranted. Since we determined that listing the five Atlantic sturgeon DPSs was warranted and published proposed rules to that effect (75 FR 61872 and 75 FR 61904; October 6, 2010), we are required to make a final determination on the proposed listing within 1 year of publication of the proposed rule. Therefore, we are required to make a final listing determination for the GOM, NYB, and CB DPSs no later than October 6, 2011, unless there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination, in which case we could have extended the timeframe for making the final listing determination by up to 6 months (50 CFR 424.17(a)(1)(iv)). Information provided during the public comment period on the proposed rule did not indicate that such substantial disagreement exists. Thus, we were required to comply with the statutory requirement to publish a final determination by October 6, 2011. However, additional time was necessary given the complexity of ensuring consistency between the two rules that address listing of the five DPSs of Atlantic sturgeon.

Delineation of the GOM, NYB, and CB DPSs

Comment 10: One commenter felt that instead of having five individual DPSs, we should list the whole population as one entity. The commenter added that it would be simpler for NMFS and the Federal agencies engaging in ESA section 7 consultations.

Response: If the species were listed as one entity, the section 7 consultation process would likely be simpler to conduct given that there is substantial mixing throughout the marine range of Atlantic sturgeon. However, we found that discrete and significant population segments of Atlantic sturgeon exist, as defined in Services' joint DPS Policy (61 FR 4722; February 7, 1996), and have decided to list the species as DPSs. Regardless of how the entities are listed, consultations under section 7 will follow the same process and will apply the same standards.

For purposes of section 7, Federal agencies proposing to take an action will need to describe the effects of the proposed action on each of the Atlantic sturgeon DPSs that are likely to occur within the action area. We, as the consulting agency, will need to consider whether the proposed action is likely to jeopardize the continued existence of any of the Atlantic sturgeon DPSs that occur within the action area, provide an incidental take statement, and monitor the take of Atlantic sturgeon by DPS as a result of the proposed action. We acknowledge that this will be difficult given the complexity of Atlantic sturgeon life history and available information. However, while this issue may add complexity, at least temporarily, to consultations, we have determined that the identified DPSs warrant listing under the ESA. Furthermore, information is available to help us and other Federal agencies to address the section 7 requirements. Such information includes genetic information from a mixed stock analysis of Atlantic sturgeon captured in marine waters from Canada to North Carolina. Genetic analyses of additional Atlantic sturgeon tissue samples are in progress to improve our understanding of the extent of DPS mixing in the marine environment. The results of the additional analyses will be available by spring 2012.

Comment 11: A commenter representing a group of fishermen stated that the data used in formulating the proposed listing of the NYB DPS as endangered are flawed and incomplete. Specifically, the commenter asserts that no mention is made of Wirgin *et al.,* 2007, which provides information indicating that the genetic structure of sturgeon populations in the Hudson River and Delaware River are distinct. Nor did we note the statements made in Grunwald *et al.,* 2008, with respect to statements made in Sweka *et al.* 2007, that there was evidence of increasing Atlantic sturgeon recruitment in the Hudson River since the fishery closure in 1996. The conclusions reached by these scientists support that the Hudson River riverine population and the Delaware River riverine population must be viewed as distinct and given separate risk analyses.

Response: We disagree with the commenter. The word ''distinct'' as commonly used is not synonymous with the phrase ''distinct population segment''. A vertebrate population that is, in layman's terms, distinct from another is not necessarily a ''distinct population segment''. The DPS Policy (61 FR 4722; February 7, 1996) describes how we will interpret the term ''distinct population segment'' for the purposes of listing, delisting, and reclassifying vertebrates under the ESA. While genetic differences between Atlantic sturgeon originating in the Delaware and Hudson Rivers have been detected, and while there are likely differences in abundance, the Hudson and Delaware River riverine populations of Atlantic sturgeon meet the criteria for listing as a single DPS.

As described in the proposed listing rule (75 FR 61872), genetic analyses for Atlantic sturgeon using mitochondrial DNA (mtDNA), which is maternally inherited, and nuclear DNA (nDNA), which reflects the genetics of both parents, have consistently shown that Atlantic sturgeon riverine populations are genetically diverse and that individual riverine populations can be differentiated (Bowen and Avise, 1990; Ong *et al.,* 1996; Waldman *et al.,* 1996a; Waldman *et al.,* 1996b; Waldman and Wirgin, 1998; Waldman *et al.,* 2002; King *et al.,* 2001; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Wirgin and King supplemental data, 2006; Grunwald *et al.,* 2008). The results of Wirgin *et al.* (2007) are consistent with the studies cited in the proposed listing rule. However, genetic discreteness alone does not qualify a population as a DPS. In evaluating whether the test for discreteness has been met under the DPS policy, we allow but do not require genetic evidence to be used (DPS policy at page 4723), and the measures of both discreteness and significance must be met for a vertebrate population to be recognized as a DPS (DPS policy at page 4724).

Nothing in the DPS policy points to differences in abundance as a reason for or against delineating DPSs. For clarification, Grunwald *et al.* (2008) incorrectly cited the source for the information on juvenile abundance in the Hudson River as Sweka *et al.* (in press) (subsequently published as Sweka *et al.,* 2007). The source of this information on juvenile abundance is the New York State Department of Environmental Conservation 2004 annual compliance report to the ASMFC for Atlantic sturgeon (NYSDEC, 2005). The 2010 ASMFC Annual Report provides an update of catch-per-unit-effort of juvenile Atlantic sturgeon in the Hudson River estuary between 1996 and 2004. As described in NYSDEC (2005), catch-per-unit-effort was slightly higher in 2004 compared to 1996 but has remained relatively unchanged since 2004 (ASMFC, 2010).

Comment 12: Commenters felt that the genetic analyses used to support the discreteness of the NYB DPS were not accurate, because genetic samples for the Delaware River riverine population used in these analyses were collected from subadult fish in the Delaware Bay. Subadult fish that are non-natal to the Delaware River are known to occur in the Delaware Bay.

Response: Genetic analyses used in determining the DPS structure for Atlantic sturgeon did not include analysis of samples from subadult fish, because subadults are known to travel widely and enter estuaries of non-natal rivers. New analyses of both mitochondrial DNA, which is maternally inherited, and nuclear DNA, which reflects the genetics of both parents, were conducted specifically for the status review. In comparison to previous studies, the genetic analyses used in the DPS analysis used larger sample sizes from multiple rivers, and limited the samples analyzed to those collected from young-of the-year and mature adults (> 130 cm total length (TL)) to ensure that samples represented fish originating from the particular river in which it was sampled (King, Supplemental data. 2011; Wirgin and King supplemental data, 2006; ASSRT, 2007).

Comment 13: One commenter also questioned the analysis we used to support grouping the Hudson River and Delaware River riverine populations into the same DPS as it relates to the significance criterion in our DPS Policy. The commenter asserted that while there are many similarities between the Hudson and Delaware watersheds, there are also sufficient differences between the watersheds to produce distinct genetic adaptations to each watershed, and that combining the Hudson and Delaware riverine populations into the same DPS dismisses the unique genetic lineage of the Delaware River riverine population. In addition, some benthic habitat categorizations based on The Nature Conservancy's marine ecoregions for U.S. Atlantic coastal waters can be used to place the waters off of New York and Delaware into separate habitat groups. The commenter also noted that the argument under the significance criterion that loss of the NYB DPS would create a significant gap in the range of the species could be applied to any grouping of populations of Atlantic sturgeon and is therefore meaningless. Similarly, the commenter stated that the argument that the DPS represents the only surviving natural occurrence of a taxon that may be found more abundantly elsewhere could also be applied to any geographic grouping.

Response: We agree that the Hudson River and Delaware River riverine populations are genetically distinguishable. The proposed rule described four factors cited in the DPS Policy that could be considered when evaluating populations under the significance criterion of the policy. These four factors are: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We used evidence of persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, and evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon for identifying the Atlantic sturgeon DPSs, including the NYB DPS. We did not present any evidence that any of the DPSs represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere.

We evaluated whether the five discrete populations we identified persist in ecological settings unique for the taxon by comparing the area encompassing the present or historical spawning range of each discrete population with the terrestrial ecoregions identified by The Nature Conservancy. We used the terrestrial ecoregions rather than the Nature Conservancy marine ecoregions because the terrestrial ecoregions included rivers in which Atlantic sturgeon spawn. Since the separation of Atlantic sturgeon to different spawning rivers accounts for the differences in genetic variation observed among the discrete populations, we focused on whether spawning rivers represented unique ecological settings versus evaluating the uniqueness of the coastal marine areas where Atlantic sturgeon originating from different rivers can co-occur.

We also considered whether the loss of any of the DPSs would create a significant gap in the range of the taxon. The loss of the discrete population which is comprised of the Hudson River and Delaware River riverine populations would create a gap in known Atlantic sturgeon spawning rivers from the Kennebec River, Maine to the James River, Virginia. Genetic data support the idea that the straying of individuals from the Kennebec River to the James River or vice versa for spawning is unlikely to occur. Therefore, the loss of the NYB DPS would be significant.

Comment 14: Several commenters questioned the proposal to list the CB DPS of Atlantic sturgeon as endangered. Some commenters felt that this DPS warrants listing as threatened, and others recommended no listing at all under the ESA. We received several comments that the James River Atlantic sturgeon riverine population is increasing based on increased catches in the river. One commenter reported that Virginia Commonwealth University researchers have interacted with 87 different spawning adult Atlantic sturgeon on the James River and noted increasing numbers of Atlantic sturgeon (from two in 2007 to 34 in 2010) while gill netting in the James River near the confluence with the Appommattox River. Other commenters pointed to anecdotal reports of increased interactions in commercial fisheries, as well as the work of other Virginia researchers who have also documented capture of a very large number of sturgeon from 1997 to the present (see Spells, 1998). Commenters also pointed to the presence of sturgeon in tributaries of the York River, the potential presence of a spawning population in the York River, the likelihood that the threats identified in the proposed rule would remain the same or decrease as a result of current measures (*e.g.,* temporal dredging restrictions, the recently published Total Maximum Daily Load measures for the Chesapeake Bay), and the discovery of summer holding areas in the James River and possibly the Mattaponi River.

Response: While these reports are encouraging, this perceived increase in abundance may not reflect an actual increase in abundance for the CB DPS; several reasons for this are discussed further in our response to Comment 5 above. Additionally, no data have been provided to suggest that the increased catch consisted entirely of Atlantic sturgeon from the CB DPS. The Chesapeake Bay and tributaries are known to be a mixing zone for Atlantic sturgeon of multiple DPSs (ASSRT, 2007). Without genetic analyses or other identifying information (*e.g.,* tags), it is not possible to attribute increases in the catch of non-spawning adults to an increase in abundance of a particular DPS or riverine population. The proposed listing rule did note that increasing numbers of Atlantic sturgeon are being observed in the Chesapeake Bay area (Garman and Balazik, unpublished data in Richardson *et al.,* 2009). These fish may originate from the

James River; however, the data do not allow us to make any conclusions regarding the origin of the fish. Richardson *et al.* (2009) went on to say that the Chesapeake Bay DPS remained severely depleted, and that little information exists on sturgeon behavior, movements, and reproduction in the Chesapeake Bay. The status review team acknowledged that spawning may be occurring in the York River (ASSRT, 2007), and the proposed rule likewise stated that spawning is suspected to occur in the York River.

We acknowledge, as stated in the proposed rule, that the Commonwealth of Virginia imposes a dredging moratorium during the spawning season for anadromous fish species in the James River, and that waivers to this restriction are only granted in very limited circumstances (*e.g.,* studying the impacts of dredging on sturgeon). However, there remains the potential for habitat degradation as a result of dredging operations, and for Atlantic sturgeon to be taken in dredging operations that occur outside of the spawning season restriction period. With respect to water quality, the Total Maximum Daily Load for Nitrogen, Phosphorous, and Sediments (USEPA, 2010) should contribute to the trend of improving water quality that has been reported for the Northeast Coast in general (USEPA, 2008), and add to initiatives that are already in place to improve water quality within the Chesapeake Bay (Executive Order, May 12, 2009; NOAA's Chesapeake Bay Protection and Restoration Final Strategy, 2010). Nevertheless, the extensive watersheds of this area funnel nutrients, sediment, and organic material into secluded, poorly flushed estuaries that are more susceptible to eutrophication (USEPA, 2008). Using a multivariable bioenergetics and survival model, Niklitschek and Secor (2005) demonstrated that within the Chesapeake Bay, a combination of low dissolved oxygen, water temperature, and salinity restricts available Atlantic sturgeon habitat to 0–35 percent of the Bay's modeled surface area during the summer.

Comment 15: Some commenters disagreed with the proposed listing determination for the NYB DPS, and felt that the best available information indicates that the DPS should be listed as threatened. Specifically, the commenters felt that evidence of spawning in the Delaware River, increasing returns from the New Jersey Ocean Assessment Trawl from 2001–2008, and increases in juvenile and adult Atlantic sturgeon abundance in the Hudson River indicate that the status of the NYB DPS is improving. Additionally, commenters felt that the threat of bycatch was overstated in the proposed listing rule, impacts from climate change are uncertain and were inadequately explained in the proposed listing rule, and that a listing is not likely to result in the ability to reduce ship strikes in the Delaware River. One commenter also felt that if the DPS were listed as threatened, NMFS should provide a 4(d) exemption for scientific research that follows recently published research protocols (Damon-Randall *et al.,* 2010), as the Agency's attention would be better focused on managing threats to the species.

Response: In making a listing determination for the NYB DPS, we considered that the Delaware River was a spawning river for Atlantic sturgeon. We determined that the NYB DPS of Atlantic sturgeon was currently in danger of extinction on the basis of precipitous declines to population sizes that are unstably low, the protracted period in which sturgeon populations have been depressed, the limited amount of current spawning, and the impacts and threats that have and will continue to prevent population recovery.

With respect to other information suggesting increases in abundance of Atlantic sturgeon, we refer to the response for comment 5. We have not received any new information to show that there is an increasing abundance of juvenile and/or adult Atlantic sturgeon in the Hudson River. Information on catch-per-unit-effort of juvenile Atlantic sturgeon in the Hudson River estuary from 1985–2010 suggest that recruitment has declined since the mid-1980's and remains depressed relative to catches of juvenile Atlantic sturgeon in the estuary in the mid-late 1980's (Sweka *et al.,* 2007; ASMFC, 2010). As described above, identifying information (*e.g.,* genetic data or tags) is necessary to determine whether sturgeon abundance in mixing areas is attributable to a particular DPS.

We disagree with the comments that bycatch was overstated in the proposed rule as a threat to the DPSs. While the most recent bycatch report for Atlantic sturgeon (ASMFC, 2007) suggests a level of bycatch mortality that is less than what was reported by Stein *et al.,* 2004, the levels of bycatch mortality in sink gillnet gear are still high and unsustainable based on modeling of anthropogenic mortality for Atlantic sturgeon (Boreman 1997, ASMFC, 2007; Kahnle *et al.,* 2007; Brown and Murphy, 2010). In addition, reported levels of bycatch mortality are expected to be a minimum of what is actually occurring since some fish may be released alive but later die, and some bycatch mortality may be unreported.

We agree with the commenter that the extent of impacts from climate change is uncertain. Expected environmental effects from climate change, according to the latest report from the Intergovernmental Panel on Climate Change (IPCC), include higher water temperatures and changes in extreme weather events, including floods and droughts, that are projected to affect water quality and exacerbate many forms of water pollution, including sediments, nutrients, dissolved organic carbon, pathogens, pesticides, and salt, as well as thermal pollution, with possible negative impacts on ecosystems, human health, and water system reliability and operating costs. Changes in water quality (*e.g.,* temperature, salinity, dissolved oxygen, contaminants) have the potential to impact Atlantic sturgeon riverine populations using impacted river systems. Although these effects are expected to be more severe for southern portions of the U.S. range of Atlantic sturgeon, low dissolved oxygen levels from eutrophication have impacted systems throughout the range of the species, and recent water quality improvements (including increases in dissolved oxygen such as those noted for the Delaware River) indicate that even northern riverine populations of Atlantic sturgeon could be impacted by degraded water quality as a result of climate change. Simulations conducted by Niklitschek and Secor (2005), predicted that a 1 °C increase of water temperature in the Chesapeake Bay would decrease the amount of available Atlantic sturgeon habitat by 65 percent.

Vessel strikes are a significant threat to the species in certain portions of its range (*e.g.,* the Delaware River and the James River). Thus, it is appropriate to consider vessel strikes when determining the ESA listing status of Atlantic sturgeon. We agree that vessel strikes of Atlantic sturgeon are a challenging problem given the limited information of how, where, and when the strikes occur. However, the ESA provides tools for addressing threats to ESA-listed species, including funding of research initiatives, use of existing Federal authorities in accordance with section 7(a)(1), consultation with Federal agencies in accordance with section 7(a)(2), as well as public awareness and outreach with state agencies and non-Federal partners. We will use these tools to address the problem of vessel strikes of Atlantic sturgeon in the Delaware River and elsewhere within its range.

All of the prohibitions listed under section 9(a)(1) of the ESA apply automatically when a species is listed as endangered but not when listed as threatened. In the case of a species listed as threatened, section 4(d) of the ESA requires the implementation of measures deemed necessary and advisable for the conservation of species. We have proposed measures in accordance with section 4(d) for the GOM DPS (76 FR 34023; June 10, 2011). The proposed 4(d) regulations for the GOM DPS include an exception for certain scientific research conducted within the river range of the DPS when the research followed NMFS-approved research protocols (*e.g.,* Damon-Randall *et al.,* 2010; Kahn and Mohead, 2010). If other DPSs were listed as threatened, we would likewise consider what measures were necessary for the conservation of the species, including any exceptions to those measures (*e.g.,* for scientific research).

Comment 16: Some commenters felt that listing the NYB DPS should be expedited due to several projects that could imminently place the species at risk of extinction. Other commenters felt that the Delaware River should be listed as its own DPS, and on an emergency basis, with the entire Delaware River Estuary designated as critical habitat. The commenters cited several projects that could occur in 2011 and that have the potential to cause the extirpation of the Delaware River riverine population. The projects that commenters felt necessitated an emergency listing included the: (1) Delaware Deepening project; (2) Southport River fill project; (3) airport expansion project; (4) natural gas drilling in the Upper Delaware River and the Schulykill River; and, (5) LNG Crown Point project.

Response: We considered whether the Delaware River riverine population of Atlantic sturgeon met the definition of a DPS as identified in the DPS policy (61 FR 4722; February 7, 1996). As described in comment 13 above, we evaluated whether Atlantic sturgeon population segments met the DPS Policy criteria and described the delineation of five Atlantic sturgeon DPSs in detail in the proposed rule. Based on application of the DPS policy criteria, we determined that the Delaware River riverine population does not meet the criteria of a DPS on its own.

Although the Delaware River riverine population of Atlantic sturgeon does not meet the criteria for a DPS on its own, we did consider whether the NYB DPS, of which the Delaware River riverine population is a part, warranted an emergency listing under the ESA given activities expected to occur in the Delaware River. Emergency listing is authorized under the section 4(b)(7) of the ESA at the discretion of the Secretary upon determination that an emergency poses a significant risk to the well-being of the species. In the case of an emergency listing, the Secretary must publish the regulation with a detailed explanation of why the regulation is necessary, and provide notice of the regulation to each state where the species is known to occur. The listing goes into effect immediately at the time of publication in the **Federal Register** and is in effect for 240 days following its publication, at which time any regular rulemaking that occurred during the emergency listing period would go into effect.

We concluded that multiple planned actions including those identified by the commenter did not pose significant risk to the well-being of the NYB DPS to warrant an emergency listing. We are currently conferencing with the Army Corp of Engineers (USACE) on the Delaware Deepening project and the Southport River fill project in accordance with section 7(a)(4) of the ESA. As the agency responsible for carrying out the project, the USACE is working with us to ensure that the project does not jeopardize the continued existence of any Atlantic sturgeon DPS.

In 2010, the Federal Aviation Administration (FAA) consulted with us to ensure that the Philadelphia International Airport expansion project did not jeopardize the existence of shortnose sturgeon. As part of this consultation, we provided technical assistance on candidate species in the action area, including Atlantic sturgeon. Additionally, in our letter to the FAA, we indicated that the FAA should coordinate with us prior to beginning any in-water work, in order to ensure that Atlantic sturgeon and shortnose sturgeon are sufficiently protected. In 2006, the Federal Energy Regulatory Commission (FERC) consulted with us on the Crown Point LNG project. At this time, the project is not moving ahead, and there is no indication that it will be initiated. We have no information that the natural gas drilling project is already occurring or is about to occur. If the action agency informs us of its proposal to drill in the upper Delaware River, we will consult on the action to determine what effects there will be to Atlantic sturgeon or any other ESA-listed species.

Critical habitat will be considered in a separate rulemaking. We welcome information that will assist us in identifying the physical or biological features essential to the conservation of the species which may require special management considerations or protection. We have not yet determined which portions, if any, of the Delaware River Estuary, contain such features.

Comment 17: One commenter requested that we consider the importance of Atlantic sturgeon to the Delaware Estuary when making our final listing decision. This commenter noted that Atlantic sturgeon have been identified as a priority resource by the Delaware Estuary Program's Habitat Task Force.

Response: We are responsible for determining whether Atlantic sturgeon are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). Accordingly, based on the statutory, regulatory, and policy provisions described in the proposed rule (October 6, 2011; 75 FR 61872), we evaluated the status of the species and the factors affecting it, and identified and assessed efforts being made to protect the species. After considering public comment on the proposed rule, we believe the best available information as outlined in the proposed listing and as supplemented by public comments and our responses to the public comments, continue to support the determination that the NYB DPS is in danger of extinction throughout all or a significant portion of its range.

Comment 18: One commenter submitted a scientific paper (Erickson *et al.,* 2011) that showed Atlantic sturgeon mixing during their time in the ocean, with Atlantic sturgeon tagged in the Hudson River (the authors presumed that these were fish from the NYB DPS) traveling as far south as the coast of Georgia and as far north as the Bay of Fundy. Given this data, the commenter suggests that all DPSs be listed as endangered, and the impact of Canadian fisheries on Atlantic sturgeon populations that spawn in the United States be considered in the recovery plan.

Response: The information provided in the proposed rule and this final rule notes the extensive mixing of Atlantic sturgeon in the marine environment. We appreciate the information presented that further demonstrates the mixing of Atlantic sturgeon in the marine environment. Listing decisions are made on the basis of the best available scientific and commercial information, taking into consideration: The status of the species and the factors affecting it, and efforts being made to protect the species. The notable mixing of Atlantic sturgeon in the marine environment does not necessitate that all Atlantic sturgeon DPSs are listed identically. Because each DPS was considered for

listing as a species, we evaluated the status of each DPS to determine their appropriate listing classification under the ESA.

The Erickson *et al.* (2011) reference shows that while two Atlantic sturgeon tagged in the Hudson River made extensive migrations (*i.e.,* they were tracked to Georgia and the Bay of Fundy), the remaining thirteen fish did not leave the Mid-Atlantic Bight. The same pattern is expected to be seen for each Atlantic sturgeon riverine population, with the highest concentrations of fish from a riverine population being found in close proximity to the spawning river from which they originated. Because of this pattern, we expect fish from each Atlantic sturgeon riverine population to be exposed to similar threats, yet at different degrees. This differential threat exposure, combined with the differing population status of each DPS, has led to the listing determination that the NYB and CB DPSs are endangered, while the GOM DPS is threatened.

We expect to prepare a recovery plan for each DPS. Canada's Department of Fisheries and Oceans has submitted information to us with respect to operation of the Atlantic sturgeon fisheries that occur in the St. Lawrence River and in the Bay of Fundy. We will consider all of this information when preparing the recovery plans for the GOM, NYB, and CB DPSs as well as in ESA section 7 consultations.

Comment 19: Some commenters felt that the NYB and CB DPSs should not be listed under the ESA, or should be listed as threatened rather than endangered, with section 4(d) take exemptions for recreational fishing and boating, as well as cooperative fisheries, management and scientific research activities.

Response: As noted previously, the best available information indicates that Atlantic sturgeon are currently at reduced levels that are well below historical abundance levels, and are impacted by ongoing, significant threats that are not currently being adequately regulated (*e.g.* water quality, dredging, vessel strikes, and bycatch in commercial fisheries). These threats place the NYB and CB DPSs at risk of extinction. Thus, we have concluded that listing both the NYB and CB DPSs as endangered is warranted. Listing as endangered precludes the use of section 4(d) of the ESA to promulgate other protective regulations as suggested by the commenter. We have, however, proposed protective 4(d) regulations for the GOM DPS (76 FR 34023; June 10, 2011).

Identification and Consideration of Specific Threats

Comment 20: Several commenters recommended that there should be more research done on the potential impacts on Atlantic sturgeon and ways to mitigate and reduce these impacts. Some research subjects that were mentioned include: Structures that block passages such as dams, genetic diversity, vessel strikes, Atlantic sturgeon habitat that could be potentially threatened by dredging, bycatch mortality, toxins, climate change, migration patterns, and behavioral (*e.g.,* spawning, nursing, overwintering, foraging, etc.) investigations, and habitat mapping. Other commenters stated that data on the threats of Atlantic sturgeon are incomplete and more research is needed.

Response: We agree with the comments that more research on threats to Atlantic sturgeon and their habitat is needed. Currently, there are multiple Atlantic sturgeon research initiatives underway, the results of which should aid in the management and recovery of the species. We are actively working with many partners, including ASMFC, state agencies, and academic institutions to fill some of the existing data gaps identified by the commenters and have funded several research projects through regional and Species Recovery Grant awards (''section 6'' grants).

Comment 21: One commenter stated that silviculture activities and forest manufacturing facilities do not appear to have significant implications for sturgeon or their habitat, particularly when compared to other land uses like agriculture or development. The commenter supplied information on forestry best management practices, sedimentation, the use of herbicides, and urged us to reconsider our assertion that forest management practices pose a significant threat to biological diversity or to habitat for the Atlantic sturgeon.

Response: In the discussion on impacts to the species' habitat or range, the proposed listing rule identified forestry as one of several activities that can affect water quality. Degraded water quality from past activities such as agriculture, urban development, and forestry activities may have negatively impacted the GOM, NYB, and CB DPSs. Forestry practices were not identified as a threat to the GOM, NYB, or CB DPSs. Forestry practices were mentioned as a contributing factor to past water quality degradation in the GOM DPS. However, the proposed rule also noted that many rivers and watersheds within the range of the GOM DPS have demonstrated improvement in water quality (USEPA, 2008). In general, the most recent (third edition) USEPA Coastal Condition Report identified that water quality was good to fair for waters north of Cape Cod (USEPA, 2008).

We appreciate the information provided by the commenter on the degree of threat to Atlantic sturgeon from forestry activities, as well as forestry best management practices (BMPs) and the efforts of the industry to ensure successful BMP implementation, including education and monitoring. We believe that our characterization of the past threat of forestry practices to the GOM, NYB, and CB DPSs was correctly characterized in the proposed listing rule, and was consistent with information provided by the commenter.

Comment 22: One commenter argues that not only has bycatch decreased, but so has fishing in general. For example, there are fewer fishermen each year, and very few young people go into the fishing industry. Therefore, fishing effort and bycatch have both decreased.

Response: Bycatch and bycatch mortality of Atlantic sturgeon have been well documented, and occur in multiple fisheries in marine waters from Maine through Virginia (Stein *et al.,* 2004, and ASMFC, 2007). Based on modeling work (Boreman, 1997; Kahnle *et al.,* 2007, ASMFC, 2007), the most recent estimate of bycatch mortality is expected to not be sustainable for any of the DPSs (ASMFC, 2007). It should also be noted that the levels of bycatch mortality described in ASMFC, 2007 and Stein *et al.* (2004) are assumed to be underestimates of true bycatch levels. Atlantic sturgeon can only sustain relatively low levels of anthropogenic mortality (Boreman, 1997; Kahnle *et al.,* 2007). Estimated levels of bycatch mortality exceed levels that Atlantic sturgeon can sustain (Boreman, 1997; Kahnle *et al.,* 2007, ASMFC, 2007), and bycatch mortality is in addition to mortality suffered from other anthropogenic activities such as vessel strikes (Brown and Murphy, 2010).

We also note that levels of fishing effort can increase or decrease depending on the condition of the stocks and their status under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The most recent Status of the Stocks report indicates that in the Northeast, several stocks are no longer being overfished and/or overfishing is no longer occurring (NMFS, 2011); therefore, fishing effort in these fisheries may increase. In the absence of measures to address Atlantic sturgeon

bycatch mortality in fisheries in which it is known to occur, fisheries bycatch remains a threat to the GOM, NYB, and CB DPSs now and in the foreseeable future.

Comment 23: One commenter felt that our portrayal of predation and disease as driving factors for the decrease in Atlantic sturgeon abundance is based on assumptions. The commenter then referred to a recent tank study that showed that sturgeon juveniles were not the preferred prey for most predators.

Response: As discussed in the status review report and the proposed listing rule, disease and predation are not likely contributing significantly to the decline of the GOM, NYB or CB DPSs, and are not discussed as primary factors necessitating listing the GOM, NYB or CB DPSs of Atlantic sturgeon. The proposed rule describes potential threats from predation, including seal predation of shortnose sturgeon in the GOM DPS, and the potential for predation of Atlantic sturgeon by introduced flathead catfish in the Delaware River and Susquehanna River. However, as there is no evidence that these threats are impacting Atlantic sturgeon to any significant degree, we concluded that predation was not a significant factor contributing to the listing of the species.

Although we did not consider disease to be a primary factor impacting Atlantic sturgeon populations significantly, the proposed listing rule did note that the species may be impacted by saxitoxin poisoning after eating infected shellfish. This evidence comes from one event in Sagdahoc Bay, Maine where thirteen sturgeon were found dead. Two of these were confirmed to be Atlantic sturgeon. Stomach content analysis of shortnose sturgeon carcasses recovered during the event revealed that the sturgeon had saxitoxin levels of several hundred nanograms per gram (S. Fire, NOAA, pers. comm., 2009). However, it was not conclusively determined that saxitoxin poisoning was the cause of death. Therefore, based on this information and other considerations of disease for Atlantic sturgeon, we concluded that disease is not a primary threat to the GOM, NYB or CB DPSs of Atlantic sturgeon.

Comment 24: One commenter stated that the ongoing national consultation between the USEPA and the Services over cyanide national water quality criteria was never considered in the proposed rule. The commenter suggested that this may be of particular importance to the NYB DPS, and a more restrictive criterion may be needed for Atlantic sturgeon. The commenter suggested adding information on the consultation to the water quality discussion contained in the proposed rule.

Response: In 2007, the Services entered into consultation with the USEPA on USEPA'a aquatic life criteria for cyanide. This followed from a 2001 Memorandum of Agreement (MOA) to enhance coordination under the ESA and the Clean Water Act (CWA). In 2004, the first data exchanges pursuant to the MOA began between the agencies. The Services sent a letter in 2006 to the USEPA detailing why we could not concur with the USEPA'a determination that its cyanide water quality standards ''may effect, but are not likely to adversely affect'' threatened and endangered species or critical habitat. The formal consultation is currently underway. Information on this consultation will be added to the information considered for this rule.

Comment 25: One commenter noted that we mentioned but did not explicitly describe potential threats from artificial propagation activities, in the ''Other Natural or Manmade Factors Affecting the Species Continued Existence'' section of the listing factor analysis of the proposed rule.

Response: Because artificial propagation was not considered a significant threat to the species, specific threats that may arise from artificial propagation were not discussed in the proposed listing rule. However, the status review report (ASSRT, 2007) identifies potential threats stemming from artificial propagation activities, including the unintentional introduction of cultured fish into wild populations that may compete with wild fish for scarce resources and potentially introduce pathogens or non-native genetic strains into wild populations. Additionally, while commercial aquaculture operations can provide a legal product that reduces illegal harvest of the species, enforcement of a ban on possession of wild fish could become difficult if cultured fish and wild fish are indistinguishable.

Comment 26: One commenter agreed with the endangered listing for the NYB DPS, but requested that we identify open loop cooling systems as an important threat to Atlantic sturgeon in the Delaware River and other rivers on the East Coast of the United States, specifically citing the Indian Point nuclear power plant on the Hudson River, NY, in addition to several Delaware River power plants (Salem I and II nuclear plants, Delaware City Refinery, Conectiv, Inc. power plant in Edgemoor, DE, and a power plant in Eddystone, PA). The commenter stated that we should continue the ban on commercial fishing for Atlantic sturgeon, enforce the CWA, which would include a ban on open loop cooling systems, and require industries to use closed loop cooling systems to protect Atlantic sturgeon.

Response: We appreciate the information provided by the commenter and acknowledge that open loop cooling systems were not specifically identified in the proposed listing rule or the status review as a major threat to the GOM, NYB or CB DPSs of Atlantic sturgeon. The potential for mortality due to the discharge of heated effluents was discussed in both documents. However, as stated in the proposed listing rule there are no known mortalities as a result of effluent discharge of heated water.

The CWA, also known as the Federal Water Pollution Control Act, mandates Federal protection of water quality. The USEPA is the Federal agency responsible for administration of the CWA, and we do not have the authority to mandate closed loop cooling systems through that law. However, we will consult under section 7 of the ESA as appropriate to ensure that projects do not jeopardize the continued existence of any Atlantic sturgeon DPS.

Comment 27: One commenter stated that 100 percent of historical habitat is available in the Connecticut River, because Atlantic sturgeon were mostly limited to below the fall line near Enfield, CT, where significant rapids may have inhibited passage of Atlantic sturgeon, especially during periods of high flows. The commenter also indicated that of the three reported incidents of Atlantic sturgeon upstream of Enfield mentioned in the ASSRT status review report (2007), only one was likely to be an Atlantic sturgeon. The other two historical observations might have been shortnose sturgeon. The commenter felt that no critical habitat for Atlantic sturgeon is present upstream of Enfield, CT.

Response: This comment refers to the Judd (1905) reference cited in the ASSRT status review report (2007). We agree that Judd (1905) refers only to the term ''sturgeon'', and it is possible that the fish were shortnose sturgeon. However, as described in the ASSRT status review report, a fish captured in the Holyoke fish lift was positively identified as an Atlantic sturgeon. Therefore, the best available information indicates that Atlantic sturgeon are capable of accessing areas of the Connecticut River up to Holyoke Dam. Critical habitat will be considered in a separate rulemaking, and we welcome

any additional information on the current or historical use of habitat in the Connecticut River.

Comment 28: One commenter questioned our assertions that dredging negatively impacts Atlantic sturgeon. The commenter provided a power point presentation showing the results of a study involving a hydraulic cutterhead dredge and five Atlantic sturgeon implanted with acoustic transmitters. Movements of the tagged Atlantic sturgeon in the James River were not impeded during dredging operations, and no attraction or avoidance behavior in relation to the active dredging operation was detected during the study. The commenter asserted that there is no scientific evidence supporting our claim that dredging impacts spawning habitat, and pointed out that, based on the same study, turbidity plumes from dredging are of a sufficiently limited scope (*e.g.,* ambient turbidity was observed within about 200m from dredging activity in monitoring data submitted by the commenter) such that they do not impact Atlantic sturgeon. Another commenter suggested that a threatened listing may allow more monitoring of dredging projects.

Response: As the commenter and the proposed listing rule cited, USACE data on sturgeon taken during hopper dredging indicate a minimum rate of 0.6 Atlantic sturgeon takes per year coast-wide. We also note that this estimate is likely to represent a minimum estimate, because documentation of any Atlantic sturgeon is incidental to observer coverage of dredging activities for other, already listed species (*e.g.,* shortnose sturgeon and sea turtles). Given that Atlantic sturgeon do not have the same temporal and spatial distribution as these ESA-listed species, it is likely that Atlantic sturgeon takes occur during unobserved dredging operations.

Impacts of dredging on habitat and water quality have been documented in the scientific literature. According to the status review report, environmental impacts of dredging include the following: Direct removal/burial of benthic prey organisms; turbidity/siltation effects; contaminant resuspension; noise/disturbance; alterations to hydrodynamic regime and physical habitat and actual loss of riparian habitat (Chytalo, 1996; Winger *et al.,* 2000). According to Smith and Clugston (1997), dredging and filling impact important features of Atlantic sturgeon habitat as they disturb benthic fauna, eliminate deep holes, and alter rock substrates. Nellis *et al.* (2007) documented similar impacts as dredge spoil was documented to drift 12 km downstream over a 10 year period in the Saint Lawrence River, and those spoils have significantly lower amounts of macrobenthic biomass compared to control sites. Using an acoustic trawl survey, researchers found that Atlantic and lake sturgeon were substrate dependent and avoided spoil dumping grounds (McQuinn and Nellis, 2007). Similarly, Hatin *et al.* (2007) tested whether dredging operations affected Atlantic sturgeon behavior by comparing catch-per-unit-effort before and after dredging events in 1999 and 2000. The authors documented a three to seven-fold reduction in Atlantic sturgeon presence after dredging operations began, indicating that sturgeon avoid these areas during operations.

The level of monitoring for dredging projects is not conditioned on whether the species being monitored is listed as threatened or endangered. In many cases, monitoring may occur for more than one protected species (*e.g.,* ESA-listed, MMPA-listed, state protected species) at the same time.

Comment 29: Some commenters felt that we currently have sufficient regulatory authority to restrict the gill net and otter trawl fisheries in the range of Atlantic sturgeon enough to eliminate bycatch, and thus, listing under the ESA is not necessary. One commenter stated that an endangered listing for the NYB DPS would provide no greater protection to sturgeon than a threatened listing, as NMFS could still work to incorporate bycatch reduction measures into fisheries where sturgeon take is known to occur.

Response: In accordance with the ESA, a species must be listed as endangered if it is in danger of extinction throughout all or a significant portion of its range because of one or more of the factors enumerated in section 4(a)(1) of the ESA. A listing determination made under the ESA does not include consideration of whether additional protections for the species will result from the listing or whether the species may be afforded better protection under some other regulatory authority or mechanism. In making a listing determination, we are required to consider efforts being made to protect the species. The Services' joint Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE''; 68 FR 15100; March 28, 2003) establishes two basic criteria for evaluating protective efforts: (1) The certainty that the conservation efforts will be implemented and, (2) the certainty that the efforts will be effective. Satisfaction of the criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration but does not mean that effort will ultimately change the risk assessment for the species.

The available data indicate that Atlantic sturgeon bycatch occurs in both state and federally-managed fisheries. We have responsibility for regulating federally-managed fisheries under the MSA, and we work with the regional fishery management councils. Measures to reduce bycatch of Atlantic sturgeon in federally-managed fisheries could be considered for incorporation into relevant fishery management plans; however, none currently do include such measures. There are a variety of other Federal, state, and local laws and programs (*e.g.,* regulations governing construction activities and gear configurations that reduce bycatch) that benefit Atlantic sturgeon, but we believe that threats from habitat modification and bycatch (as well as other threats) are not sufficiently managed through current regulatory mechanisms in place. We have also evaluated efforts according to the criteria in PECE and have determined that the current protective efforts do not negate the need to list the GOM, NYB, or CB DPSs of Atlantic sturgeon. Therefore, the listing determinations made through this final rule are warranted.

We acknowledge that it is possible that an endangered listing for the NYB DPS may not necessarily provide greater protection to NYB DPS sturgeon than a threatened listing. All of the prohibitions listed under section 9(a)(1) of the ESA apply automatically when a species is listed as endangered but not when listed as threatened. In the case of a species listed as threatened, section 4(d) of the ESA requires the implementation of measures deemed necessary and advisable for the conservation of species. Therefore, for any species listed as threatened, we can impose any or all of the section 9 prohibitions if such measures are necessary and advisable for the conservation of the species. However, determining whether a species warrants listing as endangered or threatened must be made in accordance with the statutory and regulatory requirements, and policy (see Comment 1). If a species warrants listing as endangered, then it must be listed as endangered regardless of whether we could impose the same prohibitions under section 4(d) for a similar species that is listed as threatened.

Comment 30: One commenter felt that we did not adequately describe the impacts of impaired water quality on Atlantic sturgeon and did not detail how activities that can impair water

quality contribute to the problem in areas containing important habitat for the species. Another commenter argued that the impacts of water quality are only theoretical due to the lack of supporting data.

Response: In our ''Analysis of Factors Affecting the Three Northeast Region DPSs of Atlantic Sturgeon'' in the proposed listing rule, we considered the best available data. While we agree with the commenter that data on specific impacts to Atlantic sturgeon are lacking, some evidence is available to indicate that impaired water quality is a threat to Atlantic sturgeon and their habitat. Where data were available, the proposed listing rule provided more specific information on some of the likely impacts to Atlantic sturgeon in certain areas (*e.g.,* effect of coal tar leachate in the Connecticut River and legacy pollution from PCB contamination in the Hudson River on sturgeon reproduction). The best available data also indicate that Atlantic and shortnose sturgeon are both sensitive to contaminants (Dwyer *et al.,* 2000), and that coal tar leachate from the Connecticut River may be impairing reproduction in shortnose sturgeon, which may have sensitivities similar to those of Atlantic sturgeon. Bioenergetics studies combined with modeling of environmental conditions in the Chesapeake Bay revealed that a combination of low dissolved oxygen, water temperature, and salinity restricts available Atlantic sturgeon habitat to 0–35 percent of the Bay's modeled surface area during the summer (Niklitschek and Secor, 2005). This and other information provided in the proposed rule supported the conclusion that water quality is one of the significant threats affecting the GOM, NYB, and CB DPS of Atlantic sturgeon.

Activities identified in the proposed listing rule that have contributed to water quality issues included industrial activities, agricultural activities, forestry, land development, and urbanization. These activities have the potential to reduce reproductive success (*e.g.,* as a result of damaging spawning habitat, reducing hatching success, damaging nursery habitat), reduce foraging success (*e.g.* contamination of sediments and/or prey species where foraging occurs, changes to the distribution and or abundance of prey species resulting from habitat alterations as a result of eutrophication, siltation, water availability) or cause other negative effects to Atlantic sturgeon. We will consider specific information and how a specific activity may or may not contribute to impaired water quality through section 7 consultation with Federal agencies that are proposing to authorize, fund, or carry-out these activities.

Comment 31: One commenter felt that recreational fishing and boating in tidal and brackish waters of the CB DPS do not pose a risk to sturgeon and should not be subject to the prohibitions of the ESA if the CB DPS is listed.

Response: Once a species is listed as endangered, the ESA section 9 take prohibitions of the ESA automatically apply and any 'take' of the species is illegal unless that take is authorized under an incidental take statement following ESA section 7 consultation or under an ESA section 10 permit authorizing directed take (*e.g.,* for scientific research or enhancement of the species) or incidental take during an otherwise lawful activity. If recreational fishing and boating do not take Atlantic sturgeon then it is not necessary to pursue one of these ESA take authorizations.

Comment 32: One commenter felt that our conclusion in the proposed listing rule that water quality is improving in the Delaware River was based in part on the designation of a portion of the Delaware River (Roebling-Trenton area) as a Superfund site by the USEPA. The commenter requested that we acknowledge that absent implementation of remediation efforts, the designation as a Superfund site simply indicates that the river is contaminated.

Response: Our conclusion that water quality has improved in the Delaware River was not based on designating the Roebling-Trenton area as a Superfund site. Our intent in including information on the Superfund site in the proposed listing rule was to illustrate that steps are being taken or considered that could further improve water quality in the Delaware River. We agree with the commenter that designating the Superfund site (with no remediation efforts to address the contamination) merely indicates that the river is contaminated. Our conclusion that water quality has improved is based on information in the USEPA Coastal Condition Report III (USEPA, 2008), suggesting that other fish species are using the Delaware River mainstem as spawning and rearing habitat (*e.g.,* striped bass, American shad, and river herring), apparent improvements in dissolved oxygen levels (*e.g.,* dissolved oxygen levels have not dropped below minimum state standards since 1990; R. Green, Delaware DNREC, pers. comm. 1998), and improvements to the population status of shortnose sturgeon in the Delaware River. Steps are being taken to ensure that the observed water quality improvements will continue as illustrated by designation of the Superfund site in the Roebling-Trenton area, and consideration of ways to cap or reduce the contamination from the Roebling Steel plant.

Comment 33: Some commenters felt that the degree of uncertainty over the impacts of climate change on Atlantic sturgeon is too great to contribute to the listing determination. One commenter noted that the uncertainty surrounding the impacts of climate change on Atlantic sturgeon does not necessarily mean that extinction risk will increase, but simply indicates that there is greater uncertainty in estimating that risk. Another commenter noted that sturgeon have overcome more drastic climate changes in their evolutionary past, and would, therefore, still be able to increase in abundance during this current climate change.

Response: The status review report (ASSRT, 2007) did not address climate change in its assessment of threats to the species, but we believe climate change should be considered as part of the evaluation of threats to the species and assessment of extinction risk. Section 4(a)(1)(A) of the ESA stipulates that a species may be threatened or endangered as a result of the present or threatened destruction, modification, or curtailment of the species' habitat or range. Climate change is one of several threats (e.g, dams, dredging, turbines, and water quality) that we considered under this broader habitat factor. Anticipated impacts to the environment from climate change include changes in frequency and intensity of floods and droughts and higher water temperatures (IPCC, 2007), which could exacerbate many forms of water pollution, such as sediments, nutrients, dissolved organic carbon, pathogens, pesticides, salt, and thermal pollution. These impacts could in turn affect Atlantic sturgeon habitat. Based on bioenergetics studies, Niklitschek and Secor (2005) found that a 1 °C increase in water temperature in the Chesapeake Bay would reduce available Atlantic sturgeon habitat by 65 percent. Therefore, we believe that climate change represents a real threat to the species.

Species adaptations occur over evolutionary timescales. The rate of climate change reported and/or anticipated to occur is faster than what we can reasonably expect Atlantic sturgeon to be able to adapt to, particularly at reduced population levels.

Comment 34: One commenter felt that using ship strikes as a prominent reason for listing the NYB DPS as endangered was improper given that it only affects

the Delaware River riverine population of Atlantic sturgeon of the NYB DPS.

Response: While vessel strikes were considered among the threats known to be impacting the NYB DPS, the proposed listing rule listed bycatch as the primary threat impacting Atlantic sturgeon in the NYB DPS. The proposed listing rule cited vessel strikes as a threat to Atlantic sturgeon in their riverine range in the NYB DPS. When evaluating threats to a DPS, we considered impacts to any riverine population within that DPS and did not limit analysis of threats to only those that affect the entire DPS. Additionally, it should be noted that Hudson River Atlantic sturgeon and Atlantic sturgeon from other DPSs are likely to be impacted by vessel strikes in the Delaware River, due to the coastal migrations and the use of non-natal estuaries.

Comment 35: While poor water quality was a concern in the Delaware River, there have been noted improvements and it is no longer thought to be hampering sturgeon recovery, as evidenced by increases in population abundance of other species in the river (*e.g.,* striped bass, American shad, shortnose sturgeon).

Response: As mentioned in the proposed listing rule, we agree that water quality has improved in the Delaware River. This conclusion was based on the apparent improvement in the status of shortnose sturgeon in the Delaware River, as well as improved dissolved oxygen levels (R. Green, Delaware DNREC, pers. comm., 1998). Nevertheless, waters from Connecticut to Delaware received fair and poor ratings in the USEPA's Third Coastal Condition Report (USEPA, 2008). In particular, the report noted that most of the Northeast Coast sites with poor water quality ratings were concentrated in a few estuarine systems, including New York/New Jersey Harbor, some tributaries of the Delaware Bay, and the Delaware River (USEPA, 2008).

Comment 36: Some commenters felt that our analysis of the impact of bycatch on Atlantic sturgeon was inaccurate. One commenter argued that information in the status review report was at odds with conclusions drawn in the proposed listing rule. Another commenter felt that the updated bycatch information cited in the ASMFC (2007) bycatch report provided only similar, or perhaps less damaging, evidence for the impact of bycatch mortality over the report analyzed by the ASSRT (2007) report (Stein *et al.* 2004), since reported bycatch was similar between the reports and mortality rates were lower in the ASMFC (2007) report. Thus, the commenter felt that we did not provide sufficient bycatch evidence to warrant an endangered listing.

Response: We agree with the commenter that the ASMFC (2007) bycatch report provided similar estimates of Atlantic sturgeon bycatch to the bycatch report used by the ASSRT (2007) status review (*i.e.,* Stein *et al.,* 2004), and documented lower mortality than the earlier report (mean mortality of 13.8 percent versus 22 percent mortality estimated in Stein *et al.,* 2004). However, Atlantic sturgeon can only sustain relatively low levels of anthropogenic mortality (Boreman, 1997; Kahnle *et al.,* 2007), and bycatch mortality is in addition to mortality suffered from other anthropogenic activities such as vessel strikes (Brown and Murphy, 2010).

Based on modeling work (Boreman, 1997; Kahnle *et al.,* 2007, ASMFC, 2007), the most recent estimate of bycatch mortality is expected to not be sustainable for any of the DPSs (ASMFC, 2007). Additionally, the report noted that the estimates of bycatch used in the analysis are likely to be underestimates of true bycatch and mortality levels, since they rely only on reported bycatch from the NMFS Observer program, which does not account for delayed mortality.

Comment 37: One commenter noticed that the proposed rule mentioned only the Delaware River Dredging Project and not other dredging projects along the East Coast. The commenter also mentioned that small recreational vessels should not be singled out as the only cause of ship strikes.

Response: The proposed rule discussed dredging as a threat to each of the Atlantic sturgeon DPSs, since dredging occurs in almost all major rivers where Atlantic sturgeon are found. Specifically, we are aware of dredging projects in the Northeast Region that could take or have taken Atlantic sturgeon in the Kennebec River, the Penobscot River, the Hudson River, the Delaware River, and the James River, as discussed in the proposed listing rule. The Delaware River Main Channel Deepening Project was discussed in detail in the proposed rule, because information on this project became available after the status review report, and the location and scope of the project in the Delaware River, coupled with the lack of information on the precise location of spawning and other important habitat in the Delaware River, indicate that the project could be very harmful to the Delaware River riverine population of Atlantic sturgeon.

The proposed listing rule stated that external examination of Atlantic sturgeon apparently struck by vessels indicates that most vessel strikes are likely from larger, ocean going vessels. However, because strikes by large vessels may cause more apparent injuries, vessel strikes by smaller vessels, including recreational vessels, may be less frequently identified. There have been small vessel strikes of Atlantic sturgeon in the Delaware River and the Kennebec River. Thus, we felt it important to provide information on both types of vessel strikes in the listing determination.

Comment 38: Some commenters felt that threats other than bycatch were responsible for the continued low abundance of Atlantic sturgeon populations. Commenters cited loss of habitat, dams, and vessel strikes as larger impediments to recovery of Atlantic sturgeon than bycatch.

Response: We agree with the commenter that there are various threats to Atlantic sturgeon throughout the range of the species. However, we have determined that one of the primary threats to the species is bycatch in commercial fisheries, as evidenced by the ASMFC bycatch report (ASMFC, 2007). During recovery planning, we will consider all threats to the species and will develop strategies to minimize those threats, in order to recover the species.

Comment 39: One commenter stated that he has observed more ship strikes than bycatch mortalities in the James River. Based on his observations, he suggests that boats should be restricted from running up and down the river instead of having gill net restrictions.

Response: Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, private groups, and individuals. Specific measures to address the threats to the CB DPS will be addressed using all of the conservation measures of the ESA.

Conservation Efforts for the GOM, NYB and CB DPSs

Comment 40: Several commenters pointed to the 1998 ASMFC moratorium on Atlantic sturgeon retention, as well as other state and Federal moratoria on Atlantic sturgeon harvest, and argued that NMFS did not adequately describe the impact that these conservation efforts are having on the species or

allow enough time for these existing conservation measures to prove their effectiveness. One commenter cited the 1998 ASMFC moratorium on Atlantic sturgeon retention, the closure of the EEZ to Atlantic sturgeon retention, periodic closure of gillnet fisheries aimed at protecting bottlenose dolphins, harbor porpoise, and large whales which reduce fishing effort, as examples of regulatory mechanisms that protect Atlantic sturgeon. The commenter wondered how these protections, which were significant enough to preclude NMFS from listing Atlantic sturgeon in 1998, are not sufficient for the species at this time.

Response: In the 1998 negative finding on the petition to list Atlantic sturgeon, the ASMFC moratorium was considered to be the critical component in the Atlantic sturgeon FMP that indicated Atlantic sturgeon were not likely to become endangered in the foreseeable future throughout all or a significant portion of the species' range. We followed this with the 1999 closure of the EEZ to fishing for Atlantic sturgeon. However, since implementation of the moratorium, additional bycatch information (Stein *et al.,* 2004; ASMFC, 2007) became available indicating that Atlantic sturgeon are vulnerable to bycatch in commercial fisheries, and that the current rate of bycatch is unsustainable in the long term (ASMFC, 2007).

We understand the concerns that listing is premature because the moratorium has not been allowed to run its course and realize all potential resultant benefits. However, having received a petition and subsequently finding that there was substantial scientific and commercial information indicating that listing Atlantic sturgeon may be warranted (75 FR 838; January 6, 2010), we are required to use the best scientific and commercial data available to determine within one year of receipt of a petition whether Atlantic sturgeon should be listed under the ESA because of any of the five factors (see Comment 3). The best available information indicates that all riverine populations of Atlantic sturgeon in the Northeast Region remain at reduced levels compared to those reported historically, and are being exposed to significant threats that are ongoing and not being adequately addressed.

The ASSRT (2007) status review report and the proposed listing rule both discussed conservation efforts and analyzed them according to the PECE and pursuant to section 4(b)(1)(A) of the ESA. The ASMFC Atlantic sturgeon FMP was considered in these analyses, including the 1998 moratorium. It was concluded that the 1998 Amendment to the ASMFC Atlantic Sturgeon FMP strengthens conservation efforts by formalizing the closure of the directed fishery and eliminates any incentive to retain Atlantic sturgeon. However, bycatch is known to occur in several fisheries (ASMFC, 2007), and it is widely accepted that bycatch is underreported (PECE Implementation criterion 5). Despite actions taken by the states and NMFS to prohibit directed fishing and retention of Atlantic sturgeon, subsequent to the 1998 Amendment, we learned that Atlantic sturgeon bycatch mortality is a major threat affecting the recovery of Atlantic sturgeon. Therefore, there is considerable uncertainty that the Atlantic Sturgeon FMP will be effective in meeting its conservation goals (PECE Effectiveness criterion 1). In addition, there are limited resources for assessing current abundance of spawning females for each of the DPSs. Therefore, PECE effectiveness criterion 5 is not being met. For these reasons, there is no certainty of implementation and effectiveness of the intended ASMFC FMP conservation effort for the GOM, NYB, or CB DPSs of Atlantic sturgeon.

Restrictions on gill net fisheries that occur in Atlantic sturgeon habitat are likely to provide a conservation benefit to Atlantic sturgeon. However, the estimates of bycatch and bycatch mortality reported in the ASMFC bycatch report (2007) were derived from observer data collected from 2001–2006, meaning that any closures or restrictions on fishing practices would have been implemented and accounted for during the data collection process. It should also be noted that the observer data most likely provided an underestimate of true bycatch levels, since the observer program primarily targets Federal fisheries. Additionally, if restrictions put in place for other species are removed or reduced (due to changes in status of the species of interest or gear modifications that reduce interactions with the species of interest), Atlantic sturgeon bycatch and bycatch mortality may increase.

Comment 41: One commenter agreed that the protective measures (*e.g.,* the moratorium) implemented by the ASMFC FMP for Atlantic sturgeon have not been sufficient in the Delaware River, citing juvenile catch rates that are lower than prior to the implementation of the moratorium.

Response: The commenter's point is noted and appreciated.

Comment 42: Multiple commenters recommended that we continue to work with ASMFC and individual states to ensure Atlantic sturgeon are being adequately protected, and that ASMFC should retain management authority of the species. It was further recommended that if the species is to be federally managed (*e.g.,* listed under the ESA), then management should be focused on riverine units rather than DPSs. One commenter said that DPS configurations are subjective and do not consider the management needs of specific Atlantic sturgeon riverine populations.

Response: The ASMFC has been very active in the management of Atlantic sturgeon. In 1990, a Fishery Management Plan for Atlantic sturgeon was published, and in 1998, Amendment 1 to the FMP imposed a 20–40 year moratorium on all Atlantic sturgeon fisheries until the Atlantic Coast spawning stocks could be restored to a level where 20 subsequent year classes of adult females were protected (ASMFC, 1998). These represented important management measures for the species. In 2007, the ASMFC published a bycatch report (ASMFC, 2007), which indicated that bycatch is having a negative impact on Atlantic sturgeon population growth and recovery. In combination with the ASSRT (2007) report, we determined that the best scientific and commercial data available indicated that each DPS of Atlantic sturgeon is in danger of extinction or likely to become endangered within the foreseeable future.

We agree that the most appropriate management unit to achieve recovery of Atlantic sturgeon is the riverine population unit. Although there is considerable mixing of Atlantic sturgeon stocks in the marine environment, Atlantic sturgeon exhibit a high degree of spawning river fidelity, and managing the species at the spawning river level is the most logical option based on the biology of the species. We intend to publish a recovery plan in accordance with ESA section 4(f)(1) unless it is determined that such a plan will not promote the conservation of the Atlantic sturgeon. If a recovery plan is developed, recovery criteria will be developed for each DPS, and recovery activities aimed at achieving those criteria will be based on the individual riverine populations of Atlantic sturgeon. We intend to work closely with ASMFC during the recovery planning process.

Comment 43: One commenter noted that ongoing studies by state researchers in the Delaware River have provided information that has allowed the state of Delaware to more effectively regulate and require delays and modifications to projects in order to protect sturgeon. This commenter was concerned that vessel traffic may increase as a result of

the Delaware deepening project, and that Atlantic sturgeon mortalities due to vessel strikes may increase with the increase in vessel traffic.

Response: We appreciate the update on the usefulness of current research projects being conducted by state agencies in enhancing management actions to protect Atlantic sturgeon. Research projects that provide information on the spatial and temporal habitat use patterns of Atlantic sturgeon will also assist us when providing project modifications pursuant to ESA section 7 consultations to ensure that projects that are carried-out, authorized or funded by a Federal agency do not jeopardize the existence of the species.

We appreciate and share the concern over vessel strikes in the Delaware River. An endangered listing of Atlantic sturgeon in the NYB DPS will make take (*e.g.,* capture, killing) of the species illegal pursuant to section 9 of the ESA.

Comment 44: Some commenters suggested that critical habitat and other Federal protection for species like shortnose sturgeon and sea turtles may protect Atlantic sturgeon as well. Another commenter felt that designating critical habitat for shortnose sturgeon would be appropriate and would provide ancillary protection for Atlantic sturgeon.

Response: It is true that take prohibitions put in place because of the listing of other species, such as shortnose sturgeon, may in part protect Atlantic sturgeon in areas where their ranges overlap. We have undertaken a number of activities to protect shortnose sturgeon and their habitat, including publishing a recovery plan for the species (63 FR 69613; December 17, 1998), funding research on the species, and consulting with Federal agencies under section 7 of the ESA to ensure shortnose sturgeon are not jeopardized by activities that may harm the fish or their habitat. Some of these efforts also benefit Atlantic sturgeon, as noted in the proposed listing. Because we were petitioned to list Atlantic sturgeon, we were required to evaluate the status of the species and the threats it is facing and make a finding on whether the petitioned action was warranted within 12 months, which resulted in our proposed listing determination of endangered for the NYB and CB DPSs, and threatened for the GOM DPS of Atlantic sturgeon. Additionally, if a species is determined to be threatened or endangered based on any of the five ESA section 4(a)(1) factors, we are required to list it.

Comment 45: Some commenters felt that we have not done enough to support private and state efforts to protect important habitat for Atlantic sturgeon, and that rather than list the species under the ESA, collaborative efforts should be pursued to protect the species from the threats identified in the proposed listing rule. One commenter also suggested expanding the 1965 Anadromous Fish Conservation Act (ACFA) for species like Atlantic sturgeon.

Response: As described in the proposed listing and in the previous response, the best available scientific and commercial information on the status of, and threats to, Atlantic sturgeon is sufficient to warrant listing of the NYB and CB DPSs of Atlantic sturgeon as endangered under the ESA, and the GOM DPS of Atlantic sturgeon as threatened. Therefore, we cannot enter into multi-state, multi-agency partnerships or increase fishery regulations to address Atlantic sturgeon issues in lieu of listing.

We are working with multiple state agencies to expand our knowledge of the species and enhance conservation efforts. In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*), we supported the ASMFC's moratorium on Atlantic sturgeon by closing the EEZ to Atlantic sturgeon retention. In 2003, we sponsored a workshop with the USFWS and ASMFC to discuss the status of sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery. State wildlife agency employees and scientific researchers with sturgeon expertise also contributed to the status review. Also, as described in the example given in the response above, we have entered into multi-state, multi-agency partnerships to conduct research. Section 6 of the ESA provides a mechanism for cooperation with the States in the conservation of threatened, endangered, and candidate species. Under section 6, we are authorized to enter into agreements with any State that establishes and maintains an ''adequate and active'' program for the conservation of endangered and threatened species. Once a State enters into such an agreement, we are authorized to assist in, and provide Federal funding for, implementation of the State's conservation program. Federal funding, provided in the form of grants, can be used to support management, outreach, research, and monitoring projects that have direct conservation benefits for listed species, recently de-listed species, and candidate species that reside within that State. We have provided substantial funding to States and their partners to support Atlantic sturgeon research, monitoring, and outreach projects through section 6 grants.

Multiple Atlantic sturgeon related projects have received funding through the AFCA program, making alteration of the existing AFCA unnecessary. Projects funded under the AFCA are conducted for the conservation, development, and enhancement of anadromous fishery resources and must be approved by the fishery agency of the state in which the work is carried out. Many projects funded under AFCA are critical elements of larger programs to manage, restore, or enhance anadromous resources.

Comment 46: One commenter suggested that monitoring should be increased for Atlantic sturgeon, and that the following research areas be listed as priority concerns in the recovery plan: long term population monitoring, and identification of spawning, overwintering, and nursery habitat.

Response: We agree that monitoring of the species is crucial to recovery efforts, and that the research areas identified are important for monitoring the status of the species and protecting the species from further decline. We also consider that additional research to further evaluate/understand genetic composition of sturgeon aggregations is also a very high priority. We have posted a list of research priorities for Atlantic sturgeon on the NMFS Northeast Regional Office's Web site (*http://www.nero.noaa.gov/prot_res/research/*).

Comment 47: One commenter felt that we should have identified Essential Fish Habitat (EFH) for Atlantic sturgeon in order to support the proposed listing rule. The commenter also noted that EFH and Habitat Areas of Particular Concern (HAPCs) have not been designated for shortnose sturgeon either.

Response: We work with the regional fishery management councils to identify EFH and HAPCs for fish stocks that are federally-managed under the MSA. Atlantic and shortnose sturgeon are not federally-managed under the MSA. Therefore, EFH or HAPCs have not been designated for either species.

Additional Comments

Comment 48: Multiple commenters felt that not enough time was provided for public comment, given that the public hearings were held from November 8–11, 2010, and the initial deadline for public comments was January 4, 2011. Some commenters felt that the comment period should have been extended by 90 days, rather than 30 days. Additionally, one commenter felt that the NYB DPS hearing held in

Stony Brook, NY, on November 8, 2010, was poorly planned because it conflicted with the ASMFC annual meeting. Another commenter felt that the hearing in Virginia was poorly advertised and many people were not aware of the event.

Response: The proposed listing rule published on October 6, 2010 (75 FR 61872), and provided an initial public comment period of 90 days, which is standard for most ESA rulemaking actions. This comment period was later extended by an additional 30 days to allow for additional comment (75 FR 82370; December 30, 2010). The opportunity to provide written public comment was available through February 3, 2011. During the public comment period, we also held four public hearings throughout the Northeast Region. We regret the unintentional conflict of the NYB DPS public hearing with the annual meeting of the ASMFC, and consider public participation as a critical component to the listing process. Those individuals unable to attend this hearing were still able to submit any written comments during the comment period.

The notice and public comment period on the proposed listing for the GOM, NYB, and CB DPSs of Atlantic sturgeon exceeded the requirements established in section 4(b)(5) of the ESA. Section 4(b)(5)(E) of the ESA only requires that one public hearing be held on a proposed listing if it is requested by the public within 45 days after the date of the publication of the proposed listing in the **Federal Register.** Though the NMFS Northeast Region did not receive any requests for a public hearing, we elected to hold four public hearings on the Atlantic sturgeon GOM, NYB and CB DPSs, at least one in each of the areas occupied by these DPSs. Hearings were held in Portland, Maine, on November 3, 2010; Newport News, Virginia, on November 4, 2010; Stony Brook, New York, on November 8, 2010; and Wilmington, Delaware, on November 9, 2010, to accept public comments.

A media advisory released on October 5, 2010, prior to publication of the proposed listing rule, stated that the agency intended to hold public hearings. On October 19, 2010, we released a media advisory on the four scheduled hearings, including the date, time, and location of each public hearing. A notice announcing these hearings was also published in the **Federal Register** (75 FR 64249; October 19, 2010). These announcements with links to the **Federal Register** notices on the proposed rule comment period and public hearings were placed on the Atlantic sturgeon and ''Hot News'' Web pages of the NMFS Northeast Regional Office's Web site. Therefore, we believe that appropriate notification and opportunity to comment was provided for the public.

Comment 49: Some commenters were concerned that a lack of detailed information on abundance of Atlantic sturgeon riverine populations and specific information on the impacts of anthropogenic activities would not allow us to pursue a successful recovery strategy. Commenters felt that additional research was needed to obtain population estimates, determine relationships between anthropogenic activities and the biological response they elicit, and gather information to sufficiently define the important terms ''recovery'' and ''jeopardize'' in relation to implementing the ESA for listed Atlantic sturgeon.

Response: We agree that population abundance information for Atlantic sturgeon is lacking. However, section 4(b)(1)(A) of the ESA stipulates that listing decisions be made using the best available scientific and commercial information after conducting a review of the status of the species and considering the conservation efforts of states and foreign nations. The status review report (ASSRT, 2007), and information on bycatch and water quality that became available after the status review report was completed (ASMFC, 2007, and USEPA, 2008), constitute the best available information. As previously described, we are required to complete listing determinations within a specified timeframe. However, we agree that more information is needed and will continue to support and pursue additional research and monitoring initiatives toward this effort (see response to Comment 46).

Comment 50: One commenter quoted a portion of the ASMFC (2007) bycatch report, which claimed that fish greater than 200 cm are rarely observed, and that the Hudson River DPS has a total population abundance of approximately 870 adults. The commenter cited research conducted by researchers from Delaware State University, who captured 25 fish greater than 200 cm over the course of two sampling seasons (2009–2010).

Response: The ASMFC bycatch report was based on data recorded in the Northeast Fisheries Science Center (NEFSC) Observer Database, which mainly covers fisheries in New England and Middle Atlantic waters. Based on a review of that data for 2001–2006, the authors concluded that Atlantic sturgeon greater than 200 cm in length were rarely observed in coastal sink gillnet gear. This does not necessarily mean, however, that Atlantic sturgeon greater than 200 cm are rare; and we did not interpret this information to mean that Atlantic sturgeon greater than 200 cm are rare. The statement simply reflects the size range of Atlantic sturgeon observed in the coastal sink gillnet fisheries.

Gillnet gear is known to be size selective (Moser *et al.,* 2000). Therefore, the limited observations of Atlantic sturgeon greater than 200 cm in coastal sink gillnet gear likely reflect the particular gear used, which was selected based on its efficiency for catching the targeted commercial fish species (not its efficiency for catching Atlantic sturgeon greater than 200 cm). The NEFSC Observer Program observes fisheries that use a variety of mesh sizes. However, the monkfish fishery typically uses the largest mesh of fisheries observed with a requirement to use a minimum 10-inch mesh.

The research conducted by Delaware State University was fishery-independent, meaning that the gillnet gear used was configured and set to capture Atlantic sturgeon in spawning condition or of spawning age. Therefore, a larger mesh size (12 to 13-inch mesh) was used for gillnet gear in the study than what was used in most fisheries observed by the NEFSC Observer Program as described in the ASMFC 2007 report on Atlantic sturgeon bycatch.

Kahnle *et al.* (2007) reported that there were an estimated 870 spawning adults per year for the Hudson River riverine population based on fishery-dependent data collected from 1985–1995. Since Atlantic sturgeon do not spawn every year, this was not considered to be a total estimate of the number of spawning adults for the Hudson River riverine population. Information was provided in the proposed rule that explained the caveats associated with the Kahnle *et al.* (2007) estimate for the Hudson River (see Comment 3).

Comment 51: One commenter recommended textual edits to the proposed listing rule. This commenter felt that the term ''healthiest'' to describe the status of the Altamaha River, GA, and the Hudson River, NY, riverine populations of Atlantic sturgeon was improper, and suggested that we use a more appropriate term. The commenter also pointed out that ''Gulf of Mexico'' was used as a heading where ''Gulf of Maine'' was intended.

Response: These comments are appreciated and are addressed in this final rule. We have removed the erroneous Gulf of Mexico heading, and

we have referred to the ''robustness'' of Atlantic sturgeon populations rather than referring to a population's ''health'' when discussing the status of any Atlantic sturgeon DPSs or riverine populations.

Comment 52: Numerous comments were received opposing listing of the GOM, NYB, and CB DPSs because listing one or more of the DPSs would: (1) Result in economic hardship; (2) hinder scientific research for Atlantic sturgeon or other species that occur in areas and at times when Atlantic sturgeon are also present; (3) disrupt beach nourishment projects; and, (4) result in navigation restrictions.

Response: Section 4 of the ESA makes clear that the Secretary must make listing decisions based on the best available scientific and commercial information after conducting a review of the status of the species and any existing conservation efforts. The listing is based on the status of the species and the five factors outlined in section 4(a)(1) of the ESA. As noted in the proposed listing rule, the Conference Report on the 1982 amendments to the ESA clearly states that economic impacts cannot be considered when assessing the status of a species. We recognize that there are important research and restoration initiatives being conducted by the states that aid the conservation of the species and, in fact, have provided funding for many of these initiatives. Section 10(a)(1)(A) of the ESA gives the Secretary discretion to authorize research activities that enhance the survival of the species, while prescribing terms and conditions by which the permit recipient must comply.

We do not intend for listing of the Atlantic sturgeon DPSs to hinder completion of on-going research or unnecessarily delay the onset of new research and have taken steps to avoid this to the extent possible. We distributed information to the sturgeon research community after publication of the proposed listing rule that advised researchers to complete a section 10(a)(1) application as soon as possible, in the event that one or more of the DPSs would be listed. We could not issue any section 10(a)(1) permits for Atlantic sturgeon, or deny a section 10(a)(1) permit request for Atlantic sturgeon until the final listing determinations were made. However, the NMFS Office of Protected Resources, Permits Division has frontloaded the permit review process to the extent practicable, including conducting the steps necessary to comply with the National Environmental Policy Act, and with section 7(a)(2) of the ESA. Twelve applications for research permits for Atlantic sturgeon have been received and are undergoing review.

Research of other species will not be affected as a result of listing the Atlantic sturgeon DPSs unless that research results in the capture, harassment or other harm (*i.e.* ''take'') to any Atlantic sturgeon belonging to one of the DPSs. We acknowledge that listing Atlantic sturgeon may affect research studies of other species when the research is expected to result in take of Atlantic sturgeon. However, that is not a legal justification for not listing a species under the ESA. We have provided information on known distribution of Atlantic sturgeon and will continue to support new research to better define the spatial and temporal distribution of the Atlantic sturgeon DPSs. This information will help researchers to plan studies of other species to minimize the likelihood of incidental interactions with Atlantic sturgeon.

Similarly, it is not our intention to hinder or otherwise limit other legal activities such as beach re-nourishment projects or commercial shipping. We will work with our stakeholders to evaluate the best options for minimizing impacts to Atlantic sturgeon without unduly hampering otherwise lawful activities. For example, beach nourishment projects requiring issuance of a Federal permit can be consulted on prior to the start of the action, providing us the opportunity to share the most current information on Atlantic sturgeon presence and or use of the action area, as well as steps that can be taken to minimize impacts of the action to Atlantic sturgeon.

Comment 53: The Department of the Navy expressed concern that the designation of critical habitat for Atlantic sturgeon would impede the U.S. Navy's ability to support mission-essential activities. The Navy requests that we consult with them prior to designating critical habitat.

Response: Critical habitat will be addressed in a separate rulemaking. However, for clarification, section 4(b)(2) of the ESA stipulates that critical habitat be designated for a species based on the best scientific data available, after considering the economic impacts, impacts to national security, and other relevant impacts that a listing might have. A specific area may be excluded from the critical habitat designation if the benefits of exclusion outweigh the benefits of including the specific area in the designation, as long as the exclusion will not result in the extinction of the species. In addition, the Secretary may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation (see section 318(a)(3) of the National Defense Authorization Act, Public Law 108–136).

We appreciate the Navy's commitment to begin discussions over the designation of critical habitat, and fully expect to discuss the scope of the critical habitat designation with the Navy and the other Department of Defense branches as we conduct our critical habitat analyses, in order to determine where the designation overlaps with military lands and where military exclusions may be necessary due to the factors described above.

Summary of Changes From the Proposed Listing Rule

Based on the comments received and our review of the proposed rule, we made the changes listed below.

1. We slightly extended the marine range of the DPSs based on recent tagging and tracking data.
2. We added information on why the listing determinations for the GOM, NYB, and CB DPSs deviated from the conclusions of the ASSRT, and why these determinations are different than the decision made by the agency in 1998 to not list Atlantic sturgeon under the ESA.
3. We made minor revisions to the definitions for the GOM, NYB, and CB DPSs to clarify which sturgeons were included in each DPS.
4. We added information on metapopulations and the importance of multiple viable riverine populations in response to Comment 1.
5. We updated information regarding Atlantic sturgeon fisheries in Canada and the status of Atlantic sturgeon in Canada based on information from Fisheries and Oceans Canada.
6. We revised our interpretation of the reported differences in catch-per-unit-effort for subadult and adult Atlantic sturgeon in the Kennebec River for 1977–1981 and 1998–2000, based on information from Maine, Department of Marine Resources.
7. We added information on the ongoing national consultation between the USEPA and the Services over cyanide national water quality criteria.
8. We updated information regarding the progress for removal of the Veazie Dam on the Penobscot River based on information received from the USFWS.

9. We updated and revised information on the Verdant Power tidal turbine project occurring in the East River, NY.

10. We made minor corrections and updates to information in the listing rule based on recommendations from peer reviewers, commenters, and our own review of the proposed listing rule.

Our listing determination and summary of the data on which it is based, with the incorporated changes, are presented in the remainder of this document.

Identification of Distinct Population Segments

As described above, the ESA's definition of ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The high degree of reproductive isolation of Atlantic sturgeon (*i.e.,* homing to their natal rivers for spawning; ASSRT, 2007; Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002), as well as the ecological uniqueness of those riverine spawning habitats, the genetic differentiation amongst riverine populations, and the differences in life history characteristics, provide evidence that discrete reproducing populations of Atlantic sturgeon exist, which led the Services to evaluate application of the DPS policy in its 2007 status review report. To determine whether any populations qualify as DPSs, we evaluated populations pursuant to the joint DPS policy, and considered: (1) The discreteness of any Atlantic sturgeon population segment in relation to the remainder of the subspecies to which it belongs; and (2) the significance of any Atlantic sturgeon population segment to the remainder of the subspecies to which it belongs.

Discreteness

The joint DPS policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation) or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA.

Atlantic sturgeon throughout their range exhibit ecological separation during spawning that has resulted in multiple, genetically distinct, interbreeding population segments. Tagging studies and genetic analyses provide the evidence of this ecological separation (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002; ASSRT, 2007; Grunwald *et al.,* 2008). As previously discussed, though adult and subadult Atlantic sturgeon originating from different rivers mix in the marine environment (Stein *et al.,* 2004a), the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with some studies showing only one or two individuals per generation spawning outside their natal river system (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). In addition, spawning in the various river systems occurs at different times, with spawning occurring earliest in southern systems and occurring as much as 5 months later in the northernmost river systems (Murawski and Pacheco, 1977; Smith, 1985; Rogers and Weber, 1995; Weber and Jennings, 1996; Bain, 1997; Smith and Clugston, 1997; Moser *et al.,* 1998; Caron *et al.,* 2002). Therefore, the ecological separation of the interbreeding units of Atlantic sturgeon results primarily from spatial separation (*i.e.,* very few fish spawning outside their natal river systems), as well as temporal separation (spawning populations becoming active at different times along a continuum from north to south).

Genetic analyses of mitochondrial DNA (mtDNA), which is maternally inherited, and nuclear DNA (nDNA), which reflects the genetics of both parents, provides evidence of the separation among Atlantic sturgeon populations in different rivers (Bowen and Avise, 1990; Ong *et al.,* 1996; Waldman *et al.,* 1996a; Waldman *et al.,* 1996b; Waldman and Wirgin, 1998; Waldman *et al.,* 2002; King *et al.,* 2001; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Wirgin and King, 2006; Grunwald *et al.,* 2008). New analyses of both mtDNA and nDNA were conducted specifically for the status review. In comparison to previous studies, the genetic analyses for the status review employed greater sample sizes from multiple rivers, and limited the samples analyzed to those collected from YOY and mature adults (>130 cm TL) to ensure that the fish originated from the river in which it was sampled (Wirgin and King supplemental data, 2006; ASSRT, 2007). The results for both the mtDNA haplotype and microsatellite (nDNA) allelic frequencies indicated that all of the Atlantic sturgeon riverine populations for which there are samples available are genetically differentiated (ASSRT, 2007; Tables 4 and 5) from each other. The results of the mtDNA analysis used for the status review report were also subsequently published by Grunwald *et al.* (2008). In comparison to the mtDNA analyses used for the status review report, Grunwald *et al.* (2008) used additional samples, some from fish in the size range (<130 cm TL); these samples were excluded by Wirgin and King (supplemental data, 2006) because they were smaller than those considered to be mature adults. Nevertheless, the results of Grunwald *et al.* (2008) similarly demonstrated that each of the 12 sampled Atlantic sturgeon riverine populations could be genetically differentiated from each other (Grunwald *et al.,* 2008).

Genetic distances and statistical analyses (bootstrap values and assignment test values) were used to investigate significant relationships among, and differences between, Atlantic sturgeon riverine populations (ASSRT, 2007; Table 6 and Figures 16–18). Overall, the genetic markers used in this analysis resulted in an average accuracy of 88 percent (range 60.0–94.8 percent) for determining a sturgeon's natal river origin, but an average accuracy of 94 percent (range 88.1–95.9 percent) for correctly classifying it to one of five groups of populations (Kennebec River, Hudson River, James River, Albemarle Sound, and Savannah/Ogeechee/Altamaha Rivers) when using microsatellite data collected only from YOY and adults (ASSRT, 2007; Table 6). A phylogenetic tree (a neighbor joining tree) was produced from only YOY and adult samples (to reduce the likelihood of including strays from other populations) using the microsatellite analysis (ASSRT, 2007; Figure 17). Bootstrap values (which measure how consistently the data support the tree structure) for this tree were high (the lowest was 87 percent, and all others were over 90 percent) (ASSRT, 2007). Regarding sturgeon from northeast rivers, this analysis resulted in a range of 81 to 89 percent accuracy in determining a sturgeon's natal river of origin and correctly classifying a sturgeon to a population group. To further assess the accuracy of the results, King (supplemental data, 2006) reanalyzed the nDNA using a greater number of loci. His results showed that increasing the number of loci from 7 to 12 improved the classification rates for natal origin and identification of population groupings (*e.g.,* from 84 percent to 95 percent for the James

River), but did not change the conclusion that there are five discrete Atlantic sturgeon population segments in the United States.

In summary, evidence to support the existence of discrete Atlantic sturgeon populations includes temporal and spatial separation during spawning and the results from genetic analyses. Genetic samples for YOY and spawning adults were not available for riverine populations originating from other rivers in the northeast region. However, nDNA from an expanded dataset that included juvenile Atlantic sturgeon was used to produce a neighbor-joining tree with bootstrap values (ASSRT, 2007; Figure 18). This dataset included additional samples from the Delaware River and York River riverine populations in the Northeast. Atlantic sturgeon riverine populations also grouped into five population segments in this analysis (Delaware River riverine population with the Hudson River riverine population, and the York River riverine population with the James River riverine population).

We have considered the information on Atlantic sturgeon population structuring provided in the status review report and Grunwald *et al.* (2008) and have concluded that five discrete Atlantic sturgeon population segments are present in the United States, with three located in the Northeast: (1)—The ''Gulf of Maine (GOM)'' population segment, which includes Atlantic sturgeon that originate from the Kennebec River, (2)—the ''New York Bight (NYB)'' population segment, which includes Atlantic sturgeon originating from the Hudson and Delaware Rivers, and (3)—the ''Chesapeake Bay (CB)'' population segment, which includes Atlantic sturgeon that originate from the James River. Each is markedly separate from the other four population segments as a consequence of physical factors.

With respect to Atlantic sturgeon of Canadian origin, mtDNA analysis has shown that Atlantic sturgeon originating from rivers ranging from the Kennebec River, Maine, to the Saint Lawrence River, Canada, are predominately homogenous (one genotype) (Waldman *et al.,* 2002; Grunwald *et al.,* 2008; ASSRT, 2007). However, nDNA microsatellite analysis has found these same rivers to be genetically diverse (King, supplemental data, 2006). The SRT concluded that the differences in nDNA were sufficient to determine that Atlantic sturgeon which originate in Canada are markedly separate from Atlantic sturgeon of U.S. origin.

The genetic analyses support that at least one, and possibly more, discrete Atlantic sturgeon population groupings occur in Canada. The SRT did not further consider the status of Atlantic sturgeon originating in Canada once it was determined that they were discrete from the five U.S. Atlantic sturgeon population groupings. We did not consider a listing determination for these populations given the lack of information by which to determine whether the Canadian riverine populations represent one or more DPSs, and given the regulatory controls on import and export of Atlantic sturgeon and their parts per the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

Significance

When the discreteness criterion is met for a potential DPS, as it is for the GOM, NYB, and CB population segments in the Northeast identified above, the second element that must be considered under the DPS policy is significance of each DPS to the taxon as a whole. The DPS policy cites examples of potential considerations indicating significance, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We believe that the GOM, NYB, and CB population segments persist in ecological settings unique for the taxon. This is evidenced by the fact that spawning habitat of each population grouping is found in separate and distinct ecoregions that were identified by The Nature Conservancy (TNC) based on the habitat, climate, geology, and physiographic differences for both terrestrial and marine ecosystems throughout the range of the Atlantic sturgeon along the Atlantic coast (Figure 2).

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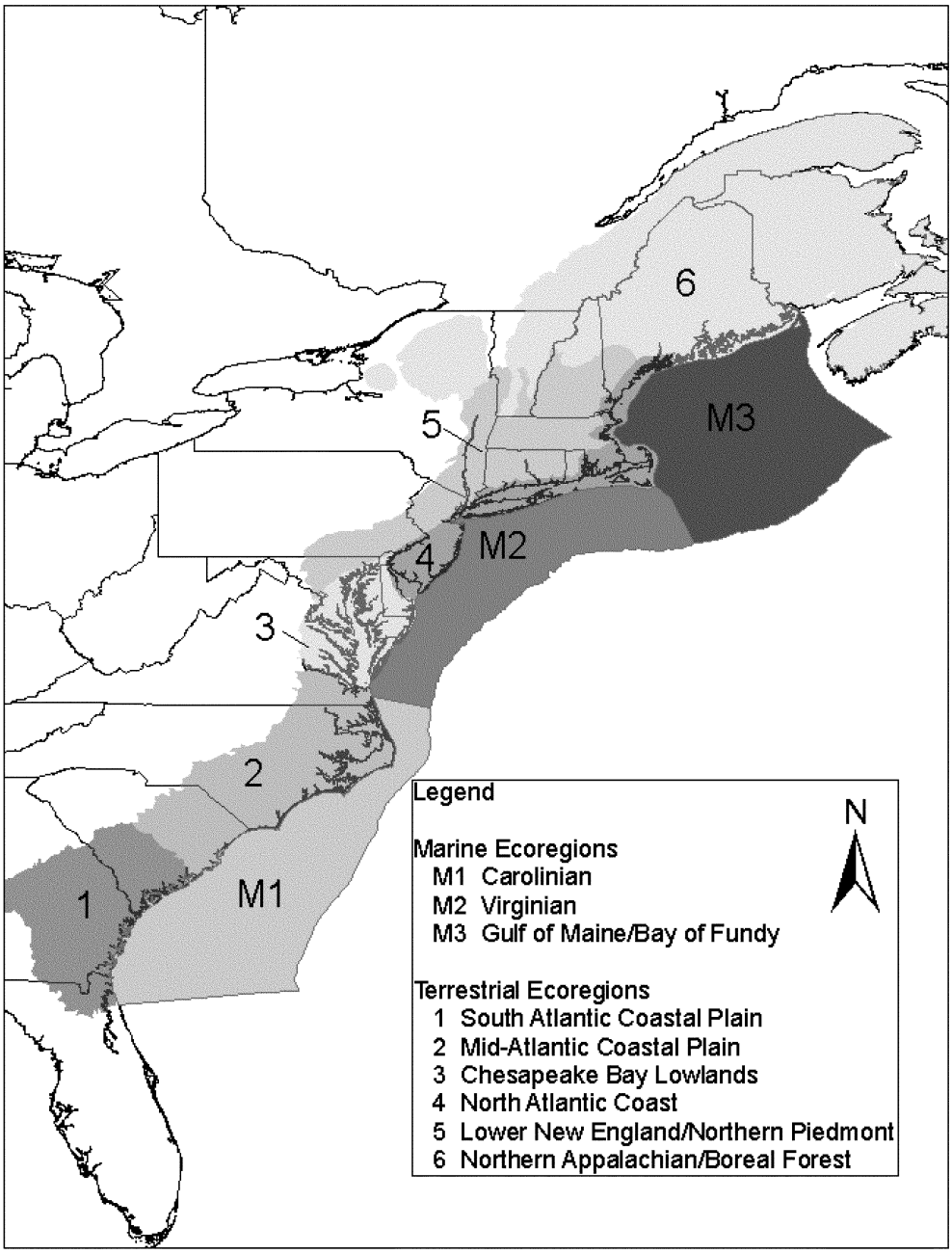

Figure 2: Map of TNC Marine and Terrestrial Ecoregions

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TNC descriptions do not include detailed information on the chemical properties of the rivers within each ecoregion, but include an analysis of bedrock and surficial geology type because it relates to water chemistry, hydrologic regime, and substrate. It is well established that waters have different chemical properties (*i.e.,* identities) depending on the geology of where the waters originate. For example, riverine spawning/nursery habitat of the Kennebec River riverine population occurs within the Northern Appalachian/Boreal Forest ecoregion whose characteristically large expanses of forest, variety of swamps, marshes, bogs, ice scoured riverbanks, salt marshes, and rocky coastal cliffs were influenced by a geological history that includes four glaciation events (TNC, 2008). In contrast, riverine spawning/nursery habitat of Atlantic sturgeon that originate from the Hudson and Delaware Rivers occurs within the Lower New England-Northern Piedmont and North Atlantic Coast ecoregions which are characterized by low mountains, abundant lakes, and limestone valleys inland and generally flat, sandy coastal plains dissected by major tidal river systems near the coast (Barbour, 2000; TNC, 2008). The Chesapeake Bay

Lowlands ecoregion, within which riverine spawning/nursery habitat for the James River riverine population grouping of Atlantic sturgeon occurs, presents yet a different landscape based on its geologic history. As glaciers that extended as far south as present day Pennsylvania began to melt, streams and rivers that flowed toward the coast were carved out of the landscape (Pyzik *et al.,* 2004). These past events are seen today in the characteristic features of the Chesapeake Bay Lowlands ecoregion which includes a broad plain to the west of the Bay with generally low slopes and gentle drainage dissected by a series of major rivers—the Patuxent, Potomac, Rappahannock, York and James—as well as a complex and dynamic patchwork of barrier islands, salt marshes, tidal flats and large coastal bays along the Delmarva Peninsula (TNC, 2002 in draft). Riverine spawning/nursery habitat for the two remaining Atlantic sturgeon groupings in the Southeast likewise occur in separate and distinct ecoregions. Therefore, the ecoregion delineations support that the physical and chemical properties of the Atlantic sturgeon spawning rivers are unique to each population grouping. The five discrete U.S. Atlantic sturgeon population segments are ''significant'' as defined in the DPS policy, given that the spawning rivers for each population segment occur in a unique ecological setting.

Further, because each discrete population segment is genetically distinct and reproduces in a unique ecological setting, the loss of any one of the discrete population segments is likely to create a significant gap in the range of the taxon. Atlantic sturgeon that originate from other discrete population segments are not expected to re-colonize systems except perhaps over a long time frame (*e.g.,* greater than 100 years), given that gene flow is low between the five discrete population segments (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002) and the geographic distances between spawning rivers of different population segments are relatively large (ASSRT, 2007). Therefore, the loss of any of the discrete population segments would result in a significant gap in the range of Atlantic sturgeon and negatively impact the species as a whole.

The information presented above describes: (1) Persistence of the GOM, NYB, and CB population segments in ecological settings that are unique for the Atlantic sturgeon as a whole; and (2) evidence that loss of any of these three population segments would result in a significant gap in the range of the taxon. Based on this information, we conclude that the GOM, NYB, and CB population segments meet the discreteness and significance criteria outlined in the DPS policy.

Summary of Factors Affecting the Three Northeast Region DPSs of Atlantic Sturgeon

The proposed rule (75 FR 61872; October 6, 2010) and the status review report (ASSRT, 2007) provide detailed discussion of status and threats to each DPS. As described in the proposed rule, the primary factors responsible for the decline of the three DPSs are the destruction, modification or curtailment of habitat due to poor water quality, dredging, and the presence of dams; overutilization due to unintended catch of Atlantic sturgeon in fisheries; lack of regulatory mechanisms for protecting the fish; and other natural or manmade factors including loss of fish through vessel strikes.

We conducted a comprehensive assessment of the combined impact of the five ESA section 4(a)(1) factors throughout the range of each DPS to determine extinction risk of each DPS. We focused on evaluating whether the DPSs are presently in danger of extinction, or whether the danger of extinction is likely to develop in the future. In our proposed rule and this final rule to list the GOM, NYB, and CB DPSs of Atlantic sturgeon, we determined that each DPS was at greater risk of extinction relative to their statuses as determined during the status review completed in 2007. Our listing determinations for the GOM, NYB, and CB DPSs and summary of the data on which they are based, including new information received since publication of the proposed rule, are presented below.

The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Barriers (*e.g.,* dams, tidal turbines), dredging, and water quality (*e.g.,* dissolved oxygen levels, water temperature, and contaminants) are threats that affect Atlantic sturgeon habitat or range. In the GOM DPS, access to Atlantic sturgeon spawning habitat is impeded most severely on the Merrimack River, where Atlantic sturgeon are limited to 42 percent of historical spawning habitat (Oakley, 2003; ASSRT, 2007). Dams on the Saco and Piscataqua Rivers have an unknown impact upon Atlantic sturgeon using those rivers. Seventy-nine percent of Atlantic sturgeon habitat is accessible on the Penobscot River, due to the presence of the Veazie Dam at rkm 56; (ASSRT, 2007).

We received additional information from the USFWS during the comment period on the progress for removal of the Veazie Dam on the Penobscot River. Removal of the Veazie Dam is part of a larger project described in the Penobscot River Restoration Plan (PRRP) to enhance fish passage on the Penobscot. The Penobscot River Restoration Trust (Trust) now owns and holds title to the Veazie, Great Works, and Howland Hydroelectric Projects. This completes phase I of the PRRP. Phase II involves decommissioning and removal of the Veazie Dam as well as the Great Works Hydroelectric Projects, including associated dams, and decommissioning and by-passing the Howland Hydroelectric Project. The Trust has secured all necessary State and Federal permits to purchase, remove or by-pass the dams. The Trust also holds substantial financial commitments for accomplishing the removal of Veazie as well as Great Works Dams. Removal of the Veazie is expected to restore access to all historical Atlantic sturgeon habitats in the Penobscot River.

Dredging projects on the Kennebec River in the GOM DPS are known to have captured Atlantic sturgeon. Dredging has also been proposed for the Penobscot Harbor of the Penobscot River (ASSRT, 2007).

Despite the persistence of contaminants in rivers and increasing land development, many rivers and watersheds within the range of the GOM DPS have demonstrated improvement in water quality (USEPA, 2008). In general, the most recent (third edition) USEPA Coastal Condition Report identified that water quality was good to fair for waters north of Cape Cod (USEPA, 2008).

Within the NYB DPS, there is evidence of Atlantic sturgeon spawning in the Hudson and Delaware Rivers (ASSRT, 2007). Access to historical spawning grounds is unimpeded by dams in these rivers; whereas, dams may impede access to some habitat in the Taunton and Connecticut Rivers. Hadley Falls, at the site of the Holyoke Dam, Connecticut River, MA, is considered the upstream limit of sturgeon in this system; however, there is record of an Atlantic sturgeon taken in the fish lift at the Holyoke Dam in 2006 (R. Murray, HG&E, pers. comm., 2006) (ASSRT, 2007).

Within the NYB DPS, maintenance dredging occurs in the Hudson and Delaware Rivers (excluding the Hudson River section between Haverstraw Bay and Catskill which is naturally deep; D. Mann-Klager, USFWS, pers. comm., 1998). Seasonal restrictions for diadromous species on when this work can occur have been imposed by the

Delaware River Fish and Wildlife Management Cooperative (ASSRT, 2007), but dredge gear used in the Delaware is known to injure or kill Atlantic sturgeon (ASSRT, 2007). Additional proposed dredge activities (for a liquefied natural gas (LNG) terminal and a large scale deepening project) in the Delaware River create potential for Atlantic sturgeon takes.

Rivers and watersheds in the NYB DPS have been affected by industrialization, agriculture, and urbanization since European colonization. Continuing known or potential impacts from water quality in the NY Bight DPS include: Low dissolved oxygen concentrations in the summer and high ammonia-nitrogen levels in the Taunton River (Taunton River Journal, 2006; ASSRT, 2007); impacts from coal tar leachate in the Connecticut River (Kocan *et al.,* 1993; 1996); the legacy of PCB pollution in the Hudson River (Sloan *et al.,* 2005); and contamination resulting from the Roebling Steel plant operations in the Delaware River, which resulted in the designation of the Roebling-Trenton stretch of the river as a USEPA Superfund site. However, improvements in the biological status of shortnose sturgeon in several rivers of the NYB DPS (*e.g.,* the Connecticut, Hudson, and Delaware Rivers), suggests that water quality is sufficient for supporting Atlantic sturgeon riverine populations. The most recent (third edition) USEPA Coastal Condition Report identified that water quality was fair overall for waters south of Cape Cod through Delaware (USEPA, 2008).

For the CB DPS, there is evidence that Atlantic sturgeon currently spawn in the James River (ASSRT, 2007), and spawning may be occurring in the York River as well (Musick *et al.,* 1994; K. Place, Commercial Fisherman, pers. comm., 2006; ASSRT, 2007). Access to habitat in these and other CB DPS rivers is not thought to be impeded by dams.

Past removal of granite outcroppings and dredging of the James River likely represented the most significant impacts to spawning habitat in the CB DPS (Holton and Walsh, 1995; Bushnoe *et al.,* 2005). Maintenance dredging and current dredging projects underway to deepen and widen the shipping terminal near Richmond on the James River (C. Hager, VIMS, pers. comm., 2005; S. Powell, USACE, pers. comm., 2009) have the potential to take Atlantic sturgeon in the river. The Commonwealth of Virginia does impose a dredging moratorium during the anadromous spawning season (C. Hager, VIMS, pers. comm., 2005).

The placement of turbine structures to generate power in rivers used by Atlantic sturgeon could directly take fish by blade strike or could, potentially, damage or destroy bottom habitat. Seventeen hydrokinetic projects proposed for both the GOM (9) and NYB (8) DPSs have received preliminary permits from FERC, and two tidal power projects are currently in operation along the range of Atlantic sturgeon. The Annapolis River (Nova Scotia, Canada) tidal power plant impacts Atlantic sturgeon, with a probability of lethal strike from the turbine ranging between 40 and 80 percent (M. Dadswell, Arcadia University, pers. comm., 2006; ASSRT, 2007). One marine turbine project is underway within the United States in the East River, New York (Angelo, 2005; Verdant Power Web page, 2009). However, the slowly rotating blades in the East River project are different than the ducted intake design used in the Annapolis River project in Nova Scotia. Modeling done as part of the project pilot license indicated that blade strike probability for Atlantic sturgeon at one turbine was 0.009 percent at this particular project site. Verdant Power recently completed Phase 2 of the project, which involved installation and operation of six full-scale turbines in an array at the project site in the East River (Verdant Power Web page, 2009). Phase 3 of the project will entail placement of 30 turbines in the East Channel of the East River, as well as environmental monitoring that includes making attempts to detect tagged ESA-listed species in the project area (Verdant Power, pers. comm., 2011).

With respect to the CB DPS, the period of Atlantic sturgeon population decline and low abundance in the Chesapeake Bay corresponds to a period of poor water quality caused by increased nutrient loading and increased frequency of hypoxia (Officer *et al.,* 1984; Mackiernan, 1987; Kemp *et al.,* 1992; Cooper and Brush, 1993). USEPA's Third Coastal Condition Report identified the water quality for the Chesapeake Bay and immediate vicinity (to the Virginia—North Carolina border) as fair to poor (USEPA, 2008). Water quality concerns (especially low dissolved oxygen resulting from nutrient loading) and the availability of clean, hard substrate for attachment of demersal, adhesive eggs (Bushnoe *et al.,* 2005; C. Hager, VIMS, pers. comm., 2005) appear to be limiting habitat requirements in the CB DPS.

Potential changes in water quality as a result of global climate change (temperature, salinity, dissolved oxygen, contaminants, etc.) in rivers and coastal waters inhabited by Atlantic sturgeon will likely affect those riverine populations. Effects are expected to be more severe for those riverine populations that occur at the southern extreme of the sturgeon's range, and in areas that are already subject to poor water quality as a result of eutrophication.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization of Atlantic sturgeon for commercial purposes is considered the primary factor for the historical decline of the GOM, NYB, and CB DPSs. A moratorium on the possession and retention of Atlantic sturgeon for the past 12 years has effectively terminated any directed harvest of Atlantic sturgeon. However, bycatch in Federal and state regulated fisheries continues to occur, and is one of the primary threats to the species (ASSRT, 2007). Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Therefore, adult and subadult age classes of each DPS are at risk of injury or death resulting from entanglement and/or capture in fishing gear wherever they occur.

Canadian fisheries for Atlantic sturgeon occur in the Saint Lawrence and Saint John Rivers. Information received from the Department of Fisheries and Oceans, Canada during the public comment period suggests that Atlantic sturgeon of U.S. origin may be captured in the Saint John fishery since the fishery occurs primarily in the estuary where non-natal sturgeon may be present. Retention of incidentally caught sturgeon in other fisheries is prohibited and sturgeon bycatch is required to be released alive (DFO, pers. comm., 2011). DFO has received an application for the export of wild caught Atlantic sturgeon specimens and product (*i.e.* eggs, meat) captured in the Saint John fishery (DFO, pers. comm., 2011), and is working with U.S. representatives to ensure that the requirements of the Convention on International Trade in Endangered Species are met. Atlantic sturgeon are an Appendix II species under CITES. In Canada, the Species at Risk Act (SARA) is the statute used for the conservation, recovery, and protection of species at risk (DFO, pers. comm., 2011). Atlantic sturgeon was reviewed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in May 2011, and determined to be at risk of extinction. Given the determination, Atlantic sturgeon will be considered for listing under SARA.

Since the publication of the 2007 status review report, additional information on Atlantic sturgeon bycatch in U.S. sink gillnet and otter trawl fisheries has become available (ASMFC, 2007). For sink gillnet gear, Atlantic sturgeon bycatch rates were similar for otter trawl gear and sink gillnet gear. However, bycatch mortality was markedly different between the two gear types, with a mean estimated annual Atlantic sturgeon mortality from gillnets of 649 sturgeon per year, or 13.8 percent of the annual Atlantic sturgeon bycatch in sink gillnet gear (ASMFC, 2007). The total number of Atlantic sturgeon killed in otter trawl gear could not be estimated because of the low number of observed mortalities, indicating a low mortality rate (ASMFC, 2007).

Approximately 15 to 19 percent of observed Atlantic sturgeon bycatch in sink gillnet and otter trawl gear in 2001 to 2006 occurred in coastal marine waters north of Chatham, MA (ASMFC, 2007). Other fisheries occur in the estuaries of the GOM DPS, but Atlantic sturgeon bycatch has not been reported in those fisheries.

Approximately 39 to 55 percent of observed Atlantic sturgeon bycatch in sink gillnet and otter trawl gear for 2001 to 2006 occurred in coastal marine waters south of Chatham, MA and north of the Delaware-Maryland border (ASMFC, 2007). Bycatch is also known to occur in the commercial shad fishery that operates in the lower Connecticut River from April to June in large mesh (14 cm minimum stretched mesh) gill nets (ASSRT, 2007). Several fisheries using gillnet gear occur in the Delaware Bay, including the striped bass, shad, white perch, Atlantic menhaden, and weakfish fisheries (ASSRT, 2007), but bycatch mortality of Atlantic sturgeon is typically low due to the timing of these fisheries (C. Shirey, DNREC, pers. comm., 2005).

With respect to the CB DPS, the NEFSC analysis indicated that coastal waters south of the Chesapeake Bay to Cape Hatteras, NC, had the second highest number of observed Atlantic sturgeon captures in sink gillnet gear for 2001–2006 (ASMFC, 2007). A gillnet fishery for dogfish was known to incidentally catch sturgeon off Chincoteague Island, VA, where more than 30 dead Atlantic sturgeon were found (Virginia Marine Police and Virginia Marine Resources Commission, pers. comm.). Access to the spiny dogfish fishery is not limited, and directed effort in the fishery is expected to increase as stock rebuilding objectives are met (ASMFC, 2009). An increase in effort could result in increased levels of Atlantic sturgeon bycatch.

In addition to fisheries occurring in marine waters, numerous fisheries operate throughout the Chesapeake Bay (ASSRT, 2007). Juvenile and subadult Atlantic sturgeon are routinely taken as bycatch throughout the Chesapeake Bay in a variety of fishing gears (ASSRT, 2007), and the mortality of Atlantic sturgeon bycatch in most of these fisheries is unknown, although low rates of bycatch mortality were reported for the striped bass gill net fishery and the shad fishery within the Bay (Hager, 2006). The available information supports that overutilization of the GOM, NYB, and CB DPSs is not occurring as a result of educational or scientific purposes.

Disease or Predation

Very little is known about natural predators of Atlantic sturgeon. The presence of bony scutes is likely an effective adaptation for minimizing predation of sturgeon greater than 25 mm TL (Gadomski and Parsley, 2005; ASSRT, 2007). Seal predation on shortnose sturgeon in the Penobscot River has been documented (Fernandes, 2008; A. Lictenwalner, UME, pers. comm., 2009) and Atlantic sturgeon that are of comparable size to shortnose (*e.g.,* subadult Atlantic sturgeon) may also be susceptible to seal predation.

The presence of introduced flathead catfish has been confirmed in the Delaware and Susquehanna River systems of the NYB and CB DPSs, respectively (Horwitz *et al.,* 2004; Brown *et al.,* 2005). However, there are no indications that the presence of flathead catfish in the Cape Fear River, NC, and Altamaha River, GA (where flatheads have been present for many years) is negatively impacting Atlantic sturgeon in those rivers (ASSRT, 2007).

A die-off of sturgeon, 13 shortnose and two Atlantic sturgeon, was reported for Sagadahoc Bay, ME, in July 2009, at the same time as a red tide event for the region. The dinoflagellate associated with the red tide event, *Alexandrium fundyense,* is known to produce saxitoxin, which can cause paralytic shellfish poisoning when consumed in sufficient quantity.

There is concern that non-indigenous sturgeon pathogens could be introduced to wild Atlantic sturgeon, most likely through aquaculture operations. The aquarium industry is another possible source for transfer of non-indigenous pathogens or non-indigenous species from one geographic area to another, primarily through release of aquaria fish into public waters. Neither disease nor predation are considered primary factors affecting the continued persistence of any of the three Atlantic sturgeon DPSs in the Northeast.

Inadequacy of Existing Regulatory Mechanisms

As a wide-ranging anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities. These regulatory mechanisms are described in detail in the status review report (see section 3.4), and those that impact Atlantic sturgeon the most are highlighted here. As previously described, the ASMFC manages Atlantic sturgeon through an interstate fisheries management plan that was developed in 1990 (Taub, 1990). The moratorium prohibiting directed catch of Atlantic sturgeon was developed as Amendment 1 to the FMP. Under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), in 1999, NMFS implemented regulations that prohibit the retention and landing of Atlantic sturgeon bycatch from federally regulated fisheries. While there are currently no fishery specific regulations in place that address Atlantic sturgeon bycatch, NMFS has the authority and discretion to implement such measures, and has previously used its authority to implement measures to reduce bycatch of protected species in federally-regulated fisheries.

Some fisheries that occur within state waters are also known or suspected of taking Atlantic sturgeon as bycatch. Maine's regulations prohibit the use of purse, drag, and stop seines, and gill nets with greater than 87.5 mm stretched mesh (ASSRT, 2007). Fixed or anchored nets have to be tended continuously and hauled in and emptied every 2 hours (ASSRT, 2007). As described above, there has been no reported or observed bycatch of Atlantic sturgeon in the limited gill net fisheries for menhaden, alewives, blueback herring, sea herring, and mackerel in the estuarial complex of the Kennebec and Androscoggin Rivers (ASSRT, 2007). However, the level of observer coverage or reporting effort is unknown. Current Connecticut regulations appear to be inadequate for addressing bycatch in the Connecticut River. As mentioned above, the NY DEC closed all shad fisheries in the Hudson River effective March 17, 2010 (NY DEC press release, March 17, 2010).

Gillnet fisheries for numerous fish species occur in the Chesapeake Bay. Low rates of sturgeon bycatch mortality were reported for the striped bass gill net fishery and the shad staked gill net

fishery (Hager, 2006; ASSRT, 2007), although estimates of bycatch in these fisheries as well as other fisheries in the Bay are not available. Since completion of the status review report, Virginia has closed the directed fishery for American shad to allow rebuilding of the stock. Virginia also has various time and gear restrictions for the use of gillnet gear in its tidal waters, including prohibitions on the use of staked or anchored gillnet gear in portions of the James and Rappahannock Rivers from April 1 through May 31 (VA MRC Summary of Regulations, 2009), that are likely to benefit Atlantic sturgeon by reducing the likelihood of sturgeon bycatch. Similarly, regulations implemented by NMFS (69 FR 24997, May 5, 2004; 71 FR 36024, June 23, 2006) to reduce sea turtle interactions with pound net gear in the Bay and portions of the surrounding rivers (*e.g.,* James, York, and Rappahannock Rivers) likely reduce the chance that Atlantic sturgeon will be caught in the gear.

Due to existing state and Federal laws, water quality and other habitat conditions have improved in many rivers (USEPA, 2008). As described above, dredging is a threat for the GOM, NYB, and CB DPSs of Atlantic sturgeon. Currently, there are no specific regulations requiring action(s) to reduce effects of dredging on Atlantic sturgeon. However, we have some authority and discretion to implement such measures or require modification of dredging activities when Atlantic sturgeon are listed under the ESA.

Other Natural or Manmade Factors Affecting the Species Continued Existence

The ASSRT considered several manmade factors that may affect Atlantic sturgeon, including impingement and entrainment, vessel strikes, and artificial propagation. Within the range of Atlantic sturgeon, most, if not all, riverine populations are at risk of possible entrainment or impingement in water withdrawal intakes for commercial uses, municipal water supply facilities, and agricultural irrigation intakes. Based on surveys conducted in the Hudson and Delaware Rivers, entrainment and impingement does not appear to be a primary threat to Atlantic sturgeon. Vessel strikes of Atlantic sturgeon have been documented in particular areas. Atlantic sturgeon that occur in locations that support large ports and have relatively narrow waterways seem to be more prone to vessel strikes (*e.g.,* Delaware and James Rivers). Twenty-nine mortalities believed to be the result of vessel strikes were documented in the Delaware River from 2004 to 2008 (Kahnle *et al.,* 2005; Murphy, 2006; Brown and Murphy, 2010), most likely from larger vessels, although at least one boater reported hitting a large sturgeon with his small craft (C. Shirey, DNREC, pers. comm., 2005). Recreational vessels are known to have struck and killed shortnose sturgeon in the Kennebec River (G. Wipplehauser, ME DMR, pers. comm., 2009). Therefore, it is likely that Atlantic sturgeon can also suffer mortal injuries when struck by recreational vessels. In the James River, 11 Atlantic sturgeon were reported to have been struck by vessels from 2005 through 2007 (A. Spells, USFWS, pers. comm., 2007). The propeller marks present on the six fish examined indicated that the wounds were inflicted by both large and small vessels (A. Spells, USFWS, pers. comm., 2007). Other sources suggest an even higher rate of interaction with at least 16 Atlantic sturgeon mortalities reported for a short reach of the James River during 2007–2008 (Balazik, unpublished, in Richardson *et al.,* 2009).

Artificial propagation of Atlantic sturgeon for use in restoration of extirpated riverine populations or recovery of severely depleted wild riverine populations has the potential to be both a threat to the species and a tool for recovery. In 1991, the USFWS Northeast Fisheries Center (NEFC) in Lamar, Pennsylvania began a program to capture, transport, spawn, and culture Atlantic sturgeon. The work at Lamar resulted in the publication of the Culture Manual for the Atlantic sturgeon (Mohler, 2004). Since NEFC's first successful spawning in 1993, many requests have been made for excess progeny both inside and outside of the Department of the Interior. These requests were filled only under the condition that a study plan, including provisions that escapement of cultured sturgeon into the wild be prevented except where experimental stockings were conducted under Federal and state regulations, be submitted to NEFC for review by the Center Director and biologists.

Summary of Protective Efforts

The PECE (68 FR 15100, March 28, 2003) provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: Establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination. Conservation measures that may apply to listed species include those implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through Federal government or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

As described in detail in the proposed rule, various agencies, groups, and individuals are carrying out a number of efforts aimed at protecting and conserving Atlantic sturgeon belonging to the GOM, NYB, and CB DPSs. These actions are directed at reducing threats faced by Atlantic sturgeon and/or gaining additional knowledge of specific Atlantic sturgeon riverine populations. Such actions could contribute to the recovery of the GOM, NYB, and CB DPSs of Atlantic sturgeon in the future. However, there is still considerable uncertainty regarding the implementation and effectiveness of these efforts, and the extent to which any would reduce the threats to the GOM, NYB, or CB DPSs that are the cause of their listing. Therefore, we have determined that none of these protective efforts currently contribute to making it unnecessary to list of the GOM, NYB, or CB DPSs of Atlantic sturgeon.

We received additional information during the public comment period specifically referring to the Penobscot River Restoration Project (PRRP), indicating that PECE criterion 4 has been satisfied. The PRRP has successfully purchased the Veazie, Great Works, and Howland Hydroelectric Projects, has obtained the necessary state and Federal permits required for removing or bypassing the dams, and has gathered a large amount of funding which can be used for removal of the dams that could impact Atlantic sturgeon.

Final Listing Determination

We determined that the NYB and CB DPSs of Atlantic sturgeon are currently in danger of extinction throughout their range, and the GOM DPS of Atlantic sturgeon is likely to become endangered within the foreseeable future throughout its range, on the basis of low population size and the level of impacts and number of threats such as continued degraded water quality, habitat impacts from dredging, continued bycatch in state and federally-managed fisheries, and vessel strikes to each DPS. Historically, each of the DPSs likely supported more than 10,000 spawning adults (Kennebec River Resource Management Plan 1993; Secor 2002; ASSRT, 2007). The best available data support that current numbers of spawning adults for each DPS are one to two orders of magnitude smaller than historical levels (*e.g.,* hundreds to low thousands (ASSRT, 2007; Kahnle *et al.,* 2007)). A long life-span allows multiple opportunities for Atlantic sturgeon to contribute to future generations, but it increases the timeframe over which exposure to the multitude of threats facing the DPSs can occur. Their late age at maturity also provides more opportunities for individual Atlantic sturgeon to be removed from the population before reproducing.

While there is only one known spawning population within the GOM DPS (*i.e.,* the Kennebec River), there is possible spawning in the Penobscot River. Atlantic sturgeon continue to be present in the Kennebec River; in addition, they are captured in directed research projects in the Penobscot River, and are observed in rivers where they were unknown to occur or had not been observed to occur for many years (*e.g.,* the Saco River and the Presumpscot River). These observations suggest that abundance of the GOM DPS of Atlantic sturgeon is sufficient such that recolonization to rivers historically suitable for spawning may be occurring.

Despite the past impacts of exploitation, industrialization and population expansion, the DPS has persisted and is now showing signs of potential recovery (*e.g.,* increased abundance and/or expansion into its historical range). The level of impact from the threats which facilitated its decline have been removed (*e.g.,* directed fishing) or reduced as a result of improvements in water quality since passage of the CWA; removal of dams (*e.g.,* the Edwards Dam on the Kennebec River in 1999); reductions in fishing effort in state and Federal waters, which may have resulted in a reduction in overall bycatch mortality; and the implementation of strict regulations on the use of fishing gear in Maine state waters that incidentally catch sturgeon. As indicated by the mixed stock analysis results, fish from the Gulf of Maine DPS are not commonly taken as bycatch in areas south of Chatham, MA (Wirgin and King, 2011). Of the 84 observed Atlantic sturgeon interactions with fishing gear in the Mid Atlantic/Carolina region, only 8 percent (*e.g.,* 7 of the 84 fish) were assigned to the GOM DPS (Wirgin and King, 2011). Tagging results also indicate that GOM DPS fish tend to remain within the waters of the Gulf of Maine and only occasionally venture to points south (Eyler, 2006; Eyler, 2011).

Water quality within the Gulf of Maine has improved significantly over time and unlike in areas farther south, it is very rare to have issues with low dissolved oxygen concentrations (that negatively affect Atlantic sturgeon) in the Gulf of Maine. A significant amount of fishing in the Gulf of Maine is conducted using trawl gear, which is known to have a much lower mortality rate for Atlantic sturgeon. Given the reduced level of threat to the GOM DPS, the anticipated distribution of GOM DPS fish predominantly in the Gulf of Maine, and the positive signs regarding distribution and abundance within the DPS, we concluded that the GOM DPS is not currently endangered. However, as noted previously, studies have shown that Atlantic sturgeon can sustain only low levels of bycatch and other anthropogenic mortality (*e.g.,* vessel strikes) (Boreman, 1997; ASMFC, 2007; Kahnle *et al.,* 2007; Brown and Murphy, 2010). We anticipate that sink gillnet fishing effort will increase in the Gulf of Maine as fish stocks are rebuilt. In addition, individual-based assignment and mixed stock analysis of samples collected from sturgeon captured in Canadian fisheries in the Bay of Fundy indicated that approximately 35 percent were from the GOM DPS (Wirgin *et al.,* in draft). There are no current regulatory measures to address the bycatch threat to GOM DPS Atlantic sturgeon posed by U.S. Federal fisheries or fisheries that occur in Canadian waters. Potential changes in water quality as a result of global climate change (temperature, salinity, dissolved oxygen, contaminants, etc.) in rivers and coastal waters inhabited by Atlantic sturgeon will likely affect riverine populations. Therefore, despite some management efforts and improvements, we concluded that the GOM DPS is at risk of becoming endangered in the foreseeable future throughout all of its range (*i.e.,* is a threatened species) given the persistence of threats from bycatch and habitat impacts from continued degraded water quality and dredging in some areas, and the lack of measures to address these threats.

In the NYB DPS, there are two known spawning populations—the Hudson and Delaware River riverine populations. While the Hudson is presumably the largest extant reproducing Atlantic sturgeon population, the Delaware is presumably very small and extremely vulnerable to any sources of anthropogenic mortality. There are no indications of increasing abundance for the NYB DPS (ASSRT, 2009; 2010). There are anecdotal reports of increased sightings and captures of Atlantic sturgeon in the James River, which comprises the only known spawning river for the CB DPS. However, this information has not been comprehensive enough to develop a population estimate for the James River or to provide sufficient evidence to confirm increased abundance.

Some of the impact from the threats that facilitated the decline of these two DPSs have been removed (*e.g.,* directed fishing) or reduced as a result of improvements in water quality since passage of the Clean Water Act (CWA). In addition, there have been reductions in fishing effort in state and Federal waters, which most likely would result in a reduction in bycatch mortality of Atlantic sturgeon. Nevertheless, areas with persistent, degraded water quality, habitat impacts from dredging, continued bycatch in state and federally-managed fisheries, and vessel strikes remain significant threats to both the NYB and CB DPSs.

Based on the mixed stock analysis results, over 40 percent of the Atlantic sturgeon bycatch interactions in the Mid-Atlantic Bight region were with fish from the NYB DPS and 20 percent were with fish from the CB DPS (Wirgin and King, 2011). Atlantic sturgeon belonging to the NYB DPS or CB DPS likely benefited from the effort control measures implemented for rebuilding of fish stocks (*e.g.,* monkfish and spiny dogfish), because the amount of sink gillnets in Mid-Atlantic waters was reduced. However, as fish stocks are rebuilt, we anticipate that sink gillnet fishing effort will increase in the Mid-Atlantic. In addition, individual-based assignment and mixed stock analysis of samples collected from sturgeon captured in Canadian fisheries in the Bay of Fundy indicated that approximately 1–2 percent were from the NYB DPS, and perhaps 1 percent from the CB DPS (Wirgin *et al.,* in draft). A recent study also indicated that the loss of only a few adult female Atlantic

sturgeons from the Delaware River riverine population as a result of vessel strikes would hinder recovery of that riverine population (Brown and Murphy, 2010). There are no current regulatory measures to address the bycatch threat to the NYB and CB DPSs of Atlantic sturgeon posed by U.S. Federal fisheries or fisheries that occur in Canadian waters, or measures to address the threat of vessel strikes. Potential changes in water quality as a result of global climate change (temperature, salinity, dissolved oxygen, contaminants, etc.) in rivers and coastal waters inhabited by Atlantic sturgeon will likely affect riverine populations. We have, therefore, concluded that the NYB and CB DPSs are currently at risk of extinction (*i.e.,* are endangered) given the following: (1) Both the NYB and CB DPSs are at low levels of abundance with a limited number of spawning populations within each DPS; (2) both continue to be significantly affected by threats to habitat from continued degraded water quality and dredging in some areas as well as threats from bycatch and vessel strikes; (3) these threats are considered to be unsustainable at present and the threat posed by bycatch is likely to increase in magnitude in the future; and, (4) there is a lack of existing regulatory mechanisms to adequately address these threats.

Take Prohibitions and Protective Regulations

Section 9 of the ESA prohibits the take of endangered species. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). In the case of threatened species, ESA section 4(d) authorizes NMFS to issue regulations it considers necessary and advisable for the conservation of the species. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts that section 9(a)(1) of the ESA prohibits with respect to endangered species. These 9(a)(1) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We have proposed 4(d) regulations for the threatened GOM DPS in a separate rulemaking (76 FR 34023; June 10, 2011).

Other Protective Measures

Section 7(a)(2) of the ESA requires Federal agencies to confer with us on actions likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. If a Federal action is likely to adversely affect a listed species or destroy or adversely modify its critical habitat, the responsible Federal agency must initiate formal consultation. Examples of Federal actions that may affect the three Northeast DPS include: Fishery management practices; dredging operations; point and nonpoint source discharge of persistent contaminants; contaminated waste disposal; water quality standards.

Sections 10(a)(1)(A) and (B) of the ESA provide us with the authority to grant exceptions to the ESA's section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets Atlantic sturgeon.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species, as long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Service Policies on Endangered and Threatened Fish and Wildlife

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A). Section 4(b) of the ESA states that designation of critical habitat should occur at the same time as the final ruling, unless the Secretary deems that critical habitat is not then determinable, in which case the time to critical habitat designation may be extended by 1 year. We are seeking public input and information to assist in gathering and analyzing the best available scientific data to support a critical habitat designation. The Secretary has determined that critical habitat designation for the three DPSs in the Northeast is not yet determinable. We will continue to meet with co-managers and other stakeholders to review information that will be used in the overall designation process. We will then initiate rulemaking with publication in the **Federal Register** of a proposed designation of critical habitat, followed by a period for public comment and the opportunity for public hearings. In the coming months, we will continue to evaluate the physical and biological features of specific areas (*e.g.,* spawning or feeding site quality or quantity, water quality or quantity, geological formation, vegetation type) that are essential to the conservation of the three DPSs in the Northeast. Features that may be considered essential could 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, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

Information Solicited

To ensure that subsequent rulemaking resulting from this Final Rule will be as accurate and effective as possible, we are soliciting information from the public, other governmental agencies, the Government of Canada, the scientific community, industry, and any other interested parties. Specifically, we are interested in information that will inform the designation of critical habitat for three DPSs in the Northeast, including: (1) Atlantic sturgeon spawning habitat within the range of each of the three DPSs in the Northeast that was present in the past, but may have been lost over time; (2) quantitative evaluations describing the quality and extent of freshwater and marine habitats (occupied currently or occupied in the past, but no longer occupied) for all life stages of Atlantic sturgeon as well as information on areas that may qualify as critical habitat throughout the full range of the taxon; (3) activities that could be affected by a critical habitat designation; and (4) the economic costs and benefits of additional requirements of designation of critical habitat (see **DATES** and **ADDRESSES**).

References Cited

A complete list of the references used in this final rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (See NOAA Administrative Order 216–6.)

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

In addition, this rule is exempt from review under Executive Order 12866. This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Pursuant to the Executive Order on Federalism, E.O. 13132, we provided notice of the proposed action, requested comments from, and addressed the comments received from the appropriate state resource agencies of the states in which the GOM, NYB, and CB DPSs occur.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The listing determination is not expected to have a disproportionately high effect on minority populations or low-income populations.

Coastal Zone Management Act (16 U.S.C. 1451 et seq.)

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of each of the states within the range of the GOM, NYB, and CB DPSs. A list of the specific state contacts and a copy of the letters are available upon request.

List of Subjects

50 CFR Part 223

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

50 CFR Part 224

Endangered and threatened species, Exports, Imports.

Dated: January 24, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

■ 1. The authority citation for parts 223 and 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 2. In § 223.102, paragraph (c)(29) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(c) * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
(29) Atlantic Sturgeon—Gulf of Maine DPS.	*Acipenser oxyrinchus oxyrinchus.*	Gulf of Maine Distinct Population Segment. The GOM DPS includes the following: All anadromous Atlantic sturgeon that are spawned in the watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the following rivers: Penobscot, Kennebec, Androscoggin, Sheepscot, Saco, Piscataqua, Presumpscott, and Merrimack. The marine range of Atlantic sturgeon from the GOM DPS extends from Hamilton Inlet, Labrador, Canada to Cape Canaveral, FL. The GOM DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the GOM DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the GOM DPS, or is the progeny of any fish that originated from a river within the range of the GOM DPS.	[*Insert FR page number where the document begins*]; 2/6/12.	NA.

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. In § 224.101 the table in paragraph (a) is amended by adding entries at the end for Atlantic Sturgeon-New York Bight DPS, and for Atlantic Sturgeon-Chesapeake Bay DPS, to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species

* * * * *

(a) * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
Atlantic Sturgeon—New York Bight DPS.	*Acipenser oxyrinchus oxyrinchus*.	New York Bight Distinct Population Segment. The NYB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island. Within this range, Atlantic sturgeon have been documented from the Hudson and Delaware rivers as well as at the mouth of the Connecticut and Taunton rivers, and throughout Long Island Sound. The marine range of Atlantic sturgeon from the NYB DPS extends from Hamilton Inlet, Labrador, Canada to Cape Canaveral, FL. The NYB DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the NYB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the NYB DPS, or is the progeny of any fish that originated from a river within the range of the NYB DPS.	[*Insert FR page number where the document begins*]; 2/6/12.	NA.
Atlantic Sturgeon—Chesapeake Bay DPS.	*Acipenser oxyrinchus oxyrinchus*.	Chesapeake Bay Distinct Population Segment. The CB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the James, York, Potomac, Rappahannock, Pocomoke, Choptank, Little Choptank, Patapsco, Nanticoke, Honga, and South rivers as well as the Susquehanna Flats. The marine range of Atlantic sturgeon from the CB DPS extends from Labrador Inlet, Labrador, Canada to Cape Canaveral, FL. The CB DPS also includes Atlantic sturgeon held in captivity (*e.g.,* hatcheries, scientific institutions) and which are identified as fish belonging to the CB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the CB DPS, or is the progeny of any fish that originated from a river within the range of the CB DPS.	[*Insert FR page number where the document begins*]; 2/6/12.	NA.

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 224

Endangered and Threatened Wildlife and Plants; Final Listing Determinations for Two Distinct Population Segments of Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) in the Southeast; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 090219208–1762–02]

RIN 0648–XN50

Endangered and Threatened Wildlife and Plants; Final Listing Determinations for Two Distinct Population Segments of Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) in the Southeast

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final determination to list the Carolina and South Atlantic distinct population segments (DPSs) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) as endangered under the Endangered Species Act (ESA) of 1973, as amended. We have reviewed the status of the species and conservation efforts being made to protect the species, considered public and peer review comments, and we have made our determination that the Carolina and South Atlantic DPSs are in danger of extinction throughout their ranges, and should be listed as endangered, based on the best available scientific and commercial data.

DATES: This final rule is effective April 6, 2012.

ADDRESSES: Assistant Regional Administrator for Protected Resources, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

FOR FURTHER INFORMATION CONTACT: Kelly Shotts, NMFS, Southeast Regional Office (727) 824–5312 or Lisa Manning, NMFS, Office of Protected Resources (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

We first identified Atlantic sturgeon as a candidate species in 1991. On June 2, 1997, NMFS and U.S. Fish and Wildlife Service (USFWS; collectively, the Services) received a petition from the Biodiversity Legal Foundation requesting that we list Atlantic sturgeon in the United States, where it continues to exist, as threatened or endangered and designate critical habitat within a reasonable period of time following the listing. A notice was published in the **Federal Register** on October 17, 1997, stating that the Services had determined substantial information existed indicating the petitioned action may be warranted (62 FR 54018). In 1998, after completing a comprehensive status review, the Services published a 12-month determination in the **Federal Register** announcing that listing was not warranted at that time (63 FR 50187; September 21, 1998). We retained Atlantic sturgeon on the candidate species list (and subsequently transferred it to the Species of Concern List (69 FR 19975; April 15, 2004)). Concurrently, the Atlantic States Marine Fisheries Commission (ASMFC) completed Amendment 1 to the 1990 Atlantic Sturgeon Fishery Management Plan (FMP) that imposed a 20- to 40-year moratorium on all Atlantic sturgeon fisheries until the Atlantic Coast spawning stocks could be restored to a level where 20 subsequent year classes of adult females were protected (ASMFC, 1998). In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101 *et seq.*), we followed this action by closing the Exclusive Economic Zone (EEZ) to Atlantic sturgeon retention. In 2003, we sponsored a workshop in Raleigh, North Carolina, with USFWS and ASMFC entitled, ''The Status and Management of Atlantic Sturgeon,'' to discuss the status of sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery. The workshop revealed mixed results in regards to the status of Atlantic sturgeon riverine populations, despite the coastwide fishing moratorium. Some populations seemed to be recovering while others were declining. Bycatch and habitat degradation were noted as possible causes for continued population declines.

Based on the information gathered from the 2003 workshop on Atlantic sturgeon, we decided that a new review of Atlantic sturgeon status was needed to determine if listing as threatened or endangered under the ESA was warranted. The Atlantic sturgeon status review team (ASSRT), consisting of four NMFS, four USFWS, and three U.S. Geological Survey (USGS) biologists prepared a draft status review report. The draft report was then reviewed and supplemented by eight state and regional experts who provided their individual expert opinions on the scientific facts contained in the report and provided additional information to ensure the report provided the best available data. Lastly, the report was peer reviewed by six experts from academia. A Notice of Availability of the final status review report was published in the **Federal Register** on April 3, 2007 (72 FR 15865). On October 6, 2009, we received a petition from the Natural Resources Defense Council to list Atlantic sturgeon as endangered under the ESA. As an alternative, the petitioner requested that the species be delineated and listed as the five DPSs described in the 2007 Atlantic sturgeon status review report (ASSRT, 2007): Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs, with the Gulf of Maine and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. We published a Notice of 90-Day Finding on January 6, 2010 (75 FR 838), stating that the petition presented substantial scientific or commercial information indicating that the petitioned actions may be warranted. On October 6, 2010, we published a proposed rule (75 FR 61904) to list the Carolina and South Atlantic DPSs, the two DPSs that spawn in the NMFS Southeast Region, as endangered. We originally solicited written public comments via email, fax, and letter on the proposed listing rule for 90 days and extended it for an additional 30 days by public request. We also accepted written and verbal comments at two public hearings in Wilmington, North Carolina, and Atlanta, Georgia, in December 2010. A separate proposed rule (75 FR 91872) was published on October 6, 2010, for the three DPSs of Atlantic sturgeon that spawn in the NMFS Northeast Region.

Listing Determinations Under the Endangered Species Act

We are responsible for determining whether Atlantic sturgeon are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, the Services adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it

belongs. As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The statute requires us to determine whether any species is endangered or threatened as a result of any one or a combination of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Accordingly, we have followed a stepwise approach in making our listing determination for Atlantic sturgeon. Considering biological evidence, such as the separation between river populations during spawning and the possibility of multiple distinct interbreeding Atlantic sturgeon populations, we evaluated whether Atlantic sturgeon population segments met the DPS Policy criteria. We then determined the status of each DPS (each ''species'') and identified the factors and threats contributing to their status per section 4(a)(1) of the ESA. Finally, we assessed efforts being made to protect the species, determining if these efforts are adequate to mitigate impacts and threats to the species' statuses. We evaluated ongoing conservation efforts using the criteria outlined in the Policy for Evaluating Conservation Efforts (PECE; 68 FR 15100; March 28, 2003) to determine their certainties of implementation and effectiveness.

Finally, section 4(b)(1)(B) of the ESA requires us to give consideration to species which: (1) Have been designated as requiring protection from unrestricted commerce by any foreign nation or pursuant to an international agreement; or (2) have been identified as in danger of extinction, or likely to become so within the foreseeable future, by any state agency or by any agency of a foreign nation.

Peer Review and Public Comments

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum standards for peer review. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from at least three qualified specialists. We solicited peer review comments on the proposed listing rule from three peer reviewers, two from academia and one from a Federal resource agency, with expertise on Atlantic sturgeon. Written public comments were received from 59 commenters and 7 commenters provided verbal comments at the public hearings. Peer review comments are treated in the next section. In the following sections of the document, the public comments are categorized in the following areas: (1) The delineation of DPSs; (2) abundance and trends; (3) differences between the proposed rule and the conclusions in the 2007 and 1998 status reviews; (4) the need to list Atlantic sturgeon under the ESA and consequences of listing; (5) the analysis of threats (habitat modification and destruction, overutilization, disease and predation, the inadequacy of regulatory mechanisms, other natural and manmade factors); (6) recovery; (7) critical habitat; and (8) adequacy of the public hearing. Many comments were complex and had multiple inferences, and thus individual statements are addressed in multiple comments and responses below. Information and data provided by commenters supported or did not conflict with our findings for the Carolina and South Atlantic DPSs. Some information submitted by commenters as ''new'' information was information already included and evaluated in our proposed listing rule determination. Some commenters asked us to consider information, such as increased compliance responsibilities and economic costs on agencies and the public, that the ESA and its implementing regulations prohibit us from considering in making listing determinations. Many commenters stated that NMFS should postpone a listing determination until the results of recent research are available, further research can be undertaken, state and Federal moratoria on the harvest and possession of Atlantic sturgeon have been in effect for the full planned duration, and/or until non-listing alternatives (*e.g.,* entering into multi-agency partnerships and expanding existing programs) have been explored. Because we were petitioned to list the Atlantic sturgeon, we cannot delay an assessment of the status of Atlantic sturgeon. We were required to evaluate the status of the species and the threats it is currently facing and make a finding on whether the petitioned action was warranted within 12 months, which resulted in our proposed listing determination of endangered for the Carolina and South Atlantic DPSs of Atlantic sturgeon. We believe the current body of information on the declines of Atlantic sturgeon, the failure of their population numbers to rebound despite harvest prohibitions, and the ongoing impacts from bycatch, habitat modification, and the inadequacy of existing regulatory mechanisms or protective efforts to control or mitigate for these impacts, warrant listing the Carolina and South Atlantic DPSs as endangered. The information provided in the peer review and public comments did not provide a basis for revising our evaluation of the status of Atlantic sturgeon, the nature and significance of the threats and impacts they face, or our listing determinations. In the following sections of the document, we summarize the comments pertaining to the proposed listing rule for the Carolina and South Atlantic DPSs and provide our responses to those comments. Complete copies of the peer review comments, the written public comments, and transcripts of the public hearings are available on the Internet at *www.regulations.gov.*

Peer Review Comments

In this section, we refer to peer reviewers 1, 2, and 3, which correspond to the way the peer reviewers are identified on *http://www.regulations.gov.*

Comment 1 (definitions of endangered and threatened): Two of the three peer reviewers disagreed, all or in part, with our proposed listing of the Carolina and South Atlantic DPSs as endangered. Each peer reviewer provided their own definitions of endangered and threatened.

Peer reviewer 1 believed that a DPS warranted an endangered listing only if no single historical spawning river within the DPS sustained an abundant and regularly reproducing Atlantic sturgeon population. Peer reviewer 1 stated that no substantive biological justification or new evidence is presented in the proposed listing of the Carolina and South Atlantic DPSs as endangered to change the conclusions presented in the 2007 status review, which concluded that the Carolina DPS should be listed as threatened and made

no conclusion with regard to the South Atlantic DPS due to lack of information to allow a full assessment of subpopulations within the DPS. Peer reviewer 1 stated that an endangered listing would be appropriate if no single historical spawning river within that DPS appeared to sustain both a relatively abundant and simultaneously regularly-reproducing Atlantic sturgeon population.

Based on the available information on abundance, reproduction, and the presence of early life history stages, the reviewer stated that the Carolina DPS comes closest to conforming to the standard of an endangered species. The reviewer cited data from the proposed listing rule that two of the original three major spawning populations (the Roanoke and Santee-Cooper populations) in the Carolina DPS appear to remain functional, and not particularly vulnerable to extinction. The reviewer also stated the proposed listing of the South Atlantic DPS did not appear to be supported by the best available scientific information, since there is evidence of at least one viable, reproducing, and increasing Atlantic sturgeon population in the South Atlantic DPS, the Altamaha River population (Schueller and Peterson, 2006, 2010). The reviewer further cited both the Savannah River and the ACE (Ashepoo, Combahee, and Edisto Rivers) Basin systems as appearing to support reproducing Atlantic sturgeon populations, and stated Atlantic sturgeon appear to be abundant in the ACE system. The reviewer questioned whether the remaining South Atlantic DPS river populations in the smaller and less well-studied Ogeechee and Satilla rivers together constitute a significant portion of the species' range over which extinction is probable in order to justify an ''endangered'' designation for the entire DPS. The reviewer noted that the 2007 status review report deferred from such a designation and that it appears the South Atlantic DPS does not closely conform to the standard of being endangered. Based on the available scientific evidence concerning population size and reproduction in the historically most important populations, the resilience of sturgeons to extirpation, and their capacity for re-population from small effective population size, the reviewer believed the appropriate ESA designation for both DPSs would seem to be threatened. The reviewer suggested that the threatened status would provide protection for the species from direct take of any kind and a basis for habitat restoration, while providing greater flexibility for scientific sampling, tissue analyses, and experimental manipulation than would endangered status. The reviewer stated the downside is that threatened status would provide a lower level of legal leverage relative to the larger industrial impacts, *e.g.,* dams and bycatch, either of which may represent an insurmountable impasse to sturgeon recovery. The reviewer offered that under existing direct harvest prohibitions, threatened status has worked effectively for Gulf sturgeon recovery in rivers where dams and bycatch are not significant issues. It has not worked effectively where dams and bycatch are significant issues (*e.g.,* the Pearl, Pascagoula, and Apalachicola rivers), although none of those populations seem in danger of extinction.

Peer reviewer 2 stated that implicit in the definition of ''endangered'' is that the species must be on a significant downward trend, or at least there is cause to believe that such a trend is happening now, or will happen soon, and concluded that is not the case on the Altamaha River in Georgia. However, this reviewer also commented that every single Atlantic sturgeon population has been decimated by overfishing and habitat degradation and that we have very little quantified evidence that the species as a whole has recovered, despite 14 years of the protection afforded under the current moratorium on harvest and possession. Peer reviewer 2 recommended that a ''threatened'' listing would seem appropriate for almost every Atlantic coast river, including the St. Marys, Satilla, Ogeechee, and Savannah Rivers in Georgia, with the Altamaha being the one exception, and an endangered listing would be difficult to support.

Response: We must rely on the definition of ''endangered'' and ''threatened'' species provided in section 3 of the ESA, the implementing regulations, and case law in applying the definitions to marine and anadromous species. Section 3 of the ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered within the foreseeable future. Recent case law (*In Re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litigation,* D.D.C. WL 2601604 (June 30, 2011 Order); 748 F.Supp.2d 19 (D.D.C. 2010)) regarding USFWS's listing of the polar bear as threatened provides a thorough discussion of the ESA's definitions and the Services' broad discretion to determine on a case by case basis whether a species is in danger of extinction. Upon listing the polar bear as threatened, USFWS's rule was challenged by a number of parties who claimed that the polar bear was in danger of extinction and should have been listed as endangered, and by others who conversely argued that the bear did not warrant listing even as threatened. The Court determined that neither the ESA nor its legislative history compels the interpretation of ''endangered'' as a species being in ''imminent'' risk of extinction, finding instead that the phrase ''in danger of extinction'' is ambiguous. The Court held that there is a temporal distinction between endangered and threatened species in terms of the proximity of the ''danger'' of extinction, noting that the definition of ''endangered species'' is phrased in the present tense, whereas a threatened species is ''likely to become'' so in the future. Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently at risk of extinction. A ''threatened species,'' on the other hand, is not currently at risk of extinction, but is likely to become so. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened). The Court concluded, however, that the distinction is not based ''solely and unambiguously'' on the imminence of the species' anticipated extinction,'' and that Congress delegated responsibility to the Services to determine whether a species is presently 'in danger of extinction' in light of the five ESA section 4(a)(1) factors and the best available science for that species. The Court ruled that although imminence of harm is clearly one factor that the Services weigh in their decision-making process, it is not necessarily a limiting factor. In many cases, the Services might appropriately find that the imminence of a particular threat is the dispositive factor that warrants listing a species as 'threatened' rather than 'endangered,' or vice versa. The Services have broad discretion to decide that other factors outweigh the imminence of the threat. In conclusion, the Court confirmed that the Services have flexibility to determine ''endangerment'' on a case-by-case basis. Congress did not intend to make any single factor controlling when drawing the distinction between endangered and threatened species, nor did it seek to limit the applicability of the endangered

category to only those species facing imminent extinction.

Thus, contrary to the peer reviewers' comments, there is no per se requirement that a species be experiencing current or imminent significant downward trends, or that there are no single historical spawning river populations within the DPSs that are relatively abundant and simultaneously regularly-reproducing, in order to be listed as endangered (we discuss the status and data on the Altamaha River population in more detail in Comment 2 below). Our determination of endangerment for the Carolina and South Atlantic DPSs is based on the exercise of our expert professional judgment on the basis of the best available information for each DPS. In addition, we agree with the USFWS' judgment, discussed in its supplemental explanation filed in the polar bear litigation, that to be listed as endangered does not require that extinction be certain or probable, and that it is possible for a species validly listed as ''endangered'' to actually persist indefinitely.

We determined that the Carolina and South Atlantic DPSs of Atlantic sturgeon are currently in danger of extinction throughout their ranges, on the basis of precipitous declines to population sizes, the protracted period in which sturgeon populations have been depressed, the limited amount of current spawning, and the impacts and threats that have and will continue to prevent population recovery. Populations of Atlantic sturgeon declined precipitously decades ago due to directed commercial fishing. The failure of Atlantic sturgeon numbers within the Carolina and South Atlantic DPSs to rebound even after the moratorium on directed fishing was established in 1998 indicates that impacts and threats from limits on habitat for spawning and development, habitat alteration, and bycatch are responsible for the risk of extinction faced by both DPSs. In addition, the persistence of these impacts and threats points to the inadequacy of existing regulatory mechanisms to address and reduce habitat alterations and bycatch. As described in the proposed listing rule, the Carolina DPS is estimated to number less than 3 percent of its historical population size; the South Atlantic DPS is estimated to number less than 6 percent of its historical population size, with all river populations except the Altamaha estimated to be less than 1 percent of historical abundance. There are an estimated 343 adults that spawn annually in the Altamaha River and less than 300 adults spawning annually (total of both sexes) in the river systems where spawning still occurs for each DPS (not all of the river systems occupied by the two Southeast DPSs currently support spawning, or effective spawning leading to recruitment).

In light of threats and impacts, the low population numbers of every river population in the Carolina and South Atlantic DPSs suggests that the DPSs are currently in danger of extinction throughout their ranges; none of the populations are large or stable enough to alone or in combination provide any level of certainty for continued existence of either DPS, and thus, the peer reviewer's suggestion that these DPSs may not be endangered rangewide or in a significant portion of their ranges is erroneous. While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon, and they continue to face a variety of other threats that contribute to their risk of extinction. Their late age at maturity (5 to 19 years in the Southeast) provides more opportunities for individual Atlantic sturgeon to be removed from the population before reproducing. While a long life-span also allows multiple opportunities to contribute to future generations, it increases the timeframe over which exposure to the multitude of threats facing the Carolina and South Atlantic DPS can occur.

Based on available information, we determined that to be viable, the Carolina and South Atlantic DPSs require multiple stable riverine populations, and we have added discussion to the final determination to better explain our reasoning. The importance of having multiple stable riverine spawning populations within each DPS and the need to maintain suitable habitat to support the various life functions (spawning, feeding, growth) of Atlantic sturgeon is best understood by looking at the concept of metapopulations. Each DPS, made up of multiple river populations, is analogous to a metapopulation, which is a ''population of populations'' (Levins, 1969), a group of spatially separated populations of the same species which interact at some level. Separation into metapopulations is expected by sturgeon and other anadromous fishes. While recolonization of northern rivers following post-Pleistocene deglaciation likely occurred following a stepping-stone sequential model (Waldman *et al.,* 2002), genetic analyses reveal that currently, there are very low rates of exchange between river populations. The amount and effectiveness of movement separates a metapopulation from a single large, patchy population. Low rates of connectivity through dispersal, with little to no effective movement, allow individual populations to remain distinct as the rate of migration between local populations is low enough not to have an impact on local dynamics or evolutionary lineages and distinguishes a metapopulation from a patchy population (Harrison 1994).

Metapopulation persistence depends on the balance of extinction and colonization in a static environment (Hanski 1996). If habitat remains suitable following local extirpation, recolonization via immigrants into now-empty habitat may replace at least some of those losses (Thomas, 1994). However, if the cause of extinction is a deterministic population response to unsuitable conditions (*e.g.,* lack of suitable spawning habitat, poor water quality, or disturbance of substrates through repeated dredging), the local habitat is likely to remain unsuitable after extinction and be unavailable for effective recolonization (Thomas, 1994). Therefore, recolonization is dependent upon both immigration from adjacent, healthy populations and habitat suitability. Because the DPSs are groups of populations, the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. The loss of any population within a DPS will result in: (1) A long-term gap in the range of the DPS that is unlikely to be recolonized, or recolonized only very slowly; (2) loss of reproducing individuals; (3) loss of genetic biodiversity; (4) potential loss of unique haplotypes; (5) potential loss of adaptive traits; and (6) reduction in total number. The loss of a population will negatively impact the persistence and viability of the DPS as a whole as fewer than two individuals per generation currently spawn outside their natal rivers (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002).

The persistence of individual populations, and in turn the DPS, depends on successful spawning and rearing within the freshwater habitat, the immigration into marine habitats to grow, and then the return of adults to natal rivers to spawn. Information on Atlantic sturgeon spawning within the Carolina and South Carolina DPSs is limited. In the proposed listing rule, we presumed spawning was occurring if young-of-the-year (YOY) were observed or mature adults were present in freshwater portions of the system.

Within the Carolina DPS, we concluded that spawning is occurring, or occurred in the recent past, in the following rivers based on these data:

1. Roanoke River—collection of 15 YOY (1997–1998); single YOY (2005).
2. Tar and Neuse Rivers—one YOY (2005).
3. Cape Fear—upstream migration of adults in the fall, carcass of ripe female upstream in mid-September.
4. Winyah Bay—running ripe male in Great Pee Dee River (2003).

Within the South Atlantic DPS, we concluded that spawning is occurring, or has occurred in the recent past, in the following rivers based on these data:

1. ACE Basin—1,331 YOY (1994–2001); gravid female and running ripe male in the Edisto (1997); 39 spawning adults (1998).
2. Savannah River—22 YOY (1999–2006); running ripe male (1997).
3. Ogeechee River—age-1 captures, but high inter-annual variability (1991–1998); 17 YOY (2003); 9 YOY (2004).
4. Altamaha River—74 captured/308 estimated spawning adults (2004); 139 captured/378 estimated spawning adults (2005).
5. Satilla River—4 YOY and spawning adults (1995–1996).

These data indicate that spawning occurs within the Carolina and South Atlantic DPSs; they do not indicate the frequency of annual spawning events or the degree to which spawning in these systems leads to population growth, persistence, or viability. The extent and effectiveness of spawning events is unknown and likely precarious in many rivers, given ongoing threats that limit population size and spawning success, such as water quality and restricted access to upstream spawning areas (75 FR 61904). Peer reviewer 1 stated that data from the proposed listing rule indicate the spawning populations in the Santee-Cooper system appear to remain functional and not particularly vulnerable to extinction; however, in the proposed listing rule, we noted our determination that spawning may occur in the Santee and/or the Cooper Rivers, but it may not result in successful recruitment. Lack of access to historical spawning habitat due to dams restricts spawning to areas just below the dam. The proximity of these spawning areas to salt water may result in very high mortality to any larvae spawned in those systems.

In addition to spawning success, it is difficult to quantify spawning potential within the two DPSs, given the lack of population estimates. Currently, the number of Atlantic sturgeon in the Carolina DPS is estimated to be 3 percent of historical population size and the South Atlantic DPS is estimated to be 1 percent of historical population size, with the exception of the Altamaha River population, estimated to be at 6 percent of historical population size. Although the largest impact that caused the precipitous decline of the species has been curtailed (directed fishing), the population size has remained relatively constant at these greatly reduced levels for approximately 100 years.

In response to comments about divergence from the status review report's listing conclusions for the Carolina and South Atlantic DPSs, NMFS' Protected Resources Divisions have the responsibility to make listing recommendations to the Assistant Administrator. Status review reports are an important part of the information base for such recommendations, but NMFS must independently review the information in status review reports and apply the ESA's listing determination requirements in accordance with regulations, case law, and agency guidance. The Atlantic Sturgeon Status Review Report states that ''risks of extinction assessments are performed to help summarize the status of the species, and do not represent a decision by the Status Review Team on whether the species should be proposed for listing as endangered or threatened under the ESA'' (page 106; ASSRT, 2007). Subsequent to the status review report, we conducted a comprehensive assessment of the combined impact of the five ESA section 4(a)(1) factors across the Carolina and South Atlantic DPSs in classifying extinction risk for each DPS. We focused on evaluating whether the DPSs are presently in danger of extinction or the danger of extinction is likely to develop in the future. In our proposed rules to list 5 DPSs of Atlantic sturgeon, we determined that each DPS was at greater risk of extinction than determined by the 2007 ASSRT. While the ASSRT did discuss and consider how multiple threats might act in concert on a given subpopulation, they ultimately classified extinction risk using the highest single threat score on an individual population within a DPS, or within what they considered to be a significant portion of a DPS's range (pages 108–109; ASSRT, 2007). We evaluated the overall stability and viability of the DPSs as a whole based on the combined statuses of the component river populations and the impacts of threats and impacts across the DPS, when determining extinction risk of each DPS, because, as discussed above, the Carolina and South Atlantic DPSs require multiple stable river populations. In addition, because of the lapse in time between the development of the status review report (ASSRT, 2007) and the publication of the proposed listing rule (75 FR 61904, October 6, 2010), new information on bycatch (ASMFC, 2007) and water quality (USEPA, 2008), as well as climate change (IPCC, 2008) and drought (*e.g.,* USGS, 2007), became available to us, and we incorporated this information into our listing determinations.

Since publication of the proposed rules, a Federal District Court has thoroughly reviewed and considered the distinction between the definitions of threatened and endangered species in the ESA, explained by the USFWS in litigation challenging their determination to list the polar bear as threatened and not endangered, as discussed above (*In re. Polar Bear Endangered Species Act Litigation*). Prompted by this decision and the comments received by the Services requesting further explanation of the divergence of our proposed listing statuses and the conclusions of the ASSRT, we have reviewed our determinations and concluded that all the proposed listings of specific DPSs as ''threatened species'' or ''endangered species,'' respectively, satisfy the requirements of the relevant ESA definition. Thus, we have not changed these classifications in the final rules. We found that the Carolina and South Atlantic DPSs are presently in danger of extinction, and thus, listing them as endangered is warranted.

As discussed above, because a DPS is a group of populations (a metapopulation), the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. The persistence of individual populations, and in turn the DPS, depends on successful spawning and rearing within the freshwater habitat, the immigration into marine habitats to grow, and then the return of adults to natal rivers to spawn. While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, modification and curtailment of Atlantic sturgeon habitat resulting from dams, dredging, and degraded water quality are inhibiting spawning and population rebounding throughout both DPSs, and contributing to their endangered statuses. Existing water allocation issues will likely be compounded by human population growth and potentially by climate change as well. Climate change is predicted to elevate water temperatures and exacerbate nutrient-loading,

pollution inputs, and lower dissolved oxygen (DO), all of which are currently negatively impacting the Carolina and South Atlantic DPSs. Continued overutilization of Atlantic sturgeon from bycatch in multiple commercial fisheries in both their marine and freshwater habitats is another ongoing impact to the Carolina and South Atlantic DPSs that is contributing to their endangered status. Atlantic sturgeon taken as bycatch may suffer immediate mortality. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (*e.g.,* exposure to toxins and low DO). This may result in reduced ability to perform major life functions, such as foraging and spawning, or may even result in post-capture mortality. Several of the river populations in the South Atlantic DPS (*e.g.,* the Ogeechee and the Satilla) are stressed to the degree that any level of bycatch could have an adverse impact on the status of the DPS (ASSRT, 2007).

The Carolina and South Atlantic DPSs are in danger of extinction now, due to precipitous declines from historical abundances to population sizes that are low and potentially unstable throughout the DPSs. As discussed above, both DPSs exhibit sporadic spawning with uncertain effectiveness. Population rebuilding and recovery in both DPSs is being inhibited by impacts due to habitat curtailment and degradation, and due to capture as bycatch in commercial fisheries. The current low levels of abundance noted previously in combination with the high degree of threat to the two Southeast DPSs put them in danger of extinction throughout their ranges; none of the populations making up the DPSs are large or stable enough to provide any level of certainty for continued existence of either DPS.

Regarding the conclusion that the Carolina and South Atlantic DPSs should be listed as threatened, peer reviewer 1 incorrectly stated that listing as threatened provides protection from direct take of any kind. The ESA's prohibition against take contained in section 9 only applies to endangered species, unless a section 4(d) rule is in place to extend the take prohibition to a threatened species. If we determine that the Carolina and South Carolina DPSs meet the ESA's definition of endangered, then we cannot list the species as threatened for the purposes of providing flexibility for scientific sampling, tissue analyses, and experimental manipulation. We also cannot list the DPSs as endangered to obtain legal leverage relative to the larger industrial impacts, *e.g.,* dams and bycatch, as suggested by the reviewer. Rather, we must make our listing determination based on application of the statutory factors.

Comment 2 (new information on Altamaha River population): Peer reviewer 2 presented data on the estimated abundance of age-1, river resident Atlantic sturgeon in the Altamaha River from 2004 to 2010, which showed large estimated increases in this age group in 2009 and 2010. The peer reviewer also stated that he and other researchers are beginning to detect slower growth in age-1 Atlantic sturgeon in the Altamaha and he attributed this to density-dependent factors that are beginning to limit available resources. The reviewer stated that a few more years of data are needed to determine if the increasing trend is real, but none of the other variables tested (*e.g.,* river flows or temperature) explain the trend. The peer reviewer attributed the apparent increases in juveniles in the Altamaha to the moratorium on the harvest of adults. The peer reviewer stated that data are not available to determine whether this trend is occurring in other spawning populations. The reviewer stated that catch per unit effort (CPUE) data are worthless without calibration or validation and we do not have historical abundance data to know what abundance should be on any of the river systems, though there is general agreement that populations are a fraction (less than 1 to 10 percent) of historical abundance. The reviewer recommended that long-term monitoring of recruitment using mark-recapture of age-1 juveniles be implemented on key river systems.

Response: We are encouraged by the apparent increases in juvenile Atlantic sturgeon estimated by the peer reviewer's research in the Altamaha River and appreciate the contribution of this information for our consideration in our listing determination. We revised the relevant discussion in the text from the proposed listing rule to include this information. We agree that additional years of data are necessary to confirm this trend in the Altamaha and that we cannot determine whether similar trends may be occurring in other river populations. This information is consistent with information we provided in the proposed listing rule, which refers to the Altamaha River as having a larger and healthier Atlantic sturgeon population than any other river in the Southeast. The proposed listing rule also stated that juvenile Atlantic sturgeon from the Altamaha are relatively more abundant in comparison to other rivers in the region.

Peer reviewer 2 noted that density-dependent factors may be starting to limit available resources. We are interested in working with the reviewer and other researchers to determine whether habitat modification, which we describe in detail in the proposed listing rule, is a contributing factor to the limitation of resources in addition to the increase in numbers of juvenile Atlantic sturgeon utilizing the resources. While water quality in the Altamaha River is good at this time, the drainage basin is dominated by silviculture and agriculture, with two paper mills and over two dozen other industries or municipalities discharging effluent into the river. Nitrogen and phosphorus concentrations are increasing, and eutrophication and loss of thermal refugia are growing concerns for this and other rivers in the South Atlantic DPS. The Altamaha is one of the rivers with current and pending water allocation issues. We are currently funding a project through the ESA section 6 program to map habitats in four Georgia rivers, including the Altamaha, and this may be a valuable step in answering this question.

We agree that CPUE data should be used in the proper context and that historical abundance data, other than data from commercial fisheries in the late 19th century, are not available. However, as required by section 4(b)(1)(A) of the ESA, we must make our listing determination based on the best scientific and commercial data available. When only CPUE and other fishery-dependent data were available to us, we clarified and acknowledged the constraints of the data, and we conclude that we used them in a valid manner. This is further addressed in our responses to several public comments on specific sections of the proposed listing rule (*e.g.,* comments 19, 23, 24, 25, and 29).

Comment 3 (import of the 2003 workshop): Peer reviewer 1 stated the proposed listing rule appeared to dismiss any evidence of an increase in Carolina DPS populations of Atlantic sturgeon, citing a statement in the proposed listing rule (page 61904–61905) that ''the [NMFS-sponsored 2003] workshop revealed mixed results in regards to the status of Atlantic sturgeon populations, despite the coast-wide fishing moratorium. Some populations seemed to be recovering while others were declining.'' The reviewer stated that at the time of the 2003 workshop, the moratorium on direct harvest and possession of Atlantic sturgeon had only been in effect for 4 years and this was not sufficient time for populations to increase in response

to the protective measures. The reviewer concluded the observations available at the time of the 2003 workshop do not provide a scientific basis for listing the Carolina DPS as endangered.

Response: The information we evaluated in making our proposed listing determination of endangered for the Carolina and South Atlantic DPSs of Atlantic sturgeon was not confined to the results of the 2003 workshop. As stated in the proposed listing rule, the information gathered at the 2003 workshop, including the equivocal evidence that some populations appeared to be recovering while others were declining, prompted us to complete a new review of Atlantic sturgeon status, which was published in 2007. Since the ASSRT's completion of its status review, we obtained and evaluated additional information on threats to Atlantic sturgeon (see our response to comment 1). Our evaluation of this information indicates that the moratorium on directed fisheries has not and will not be sufficient to address the impacts that are preventing sturgeon populations from recovering (including lack of access to required habitat, and habitat quality issues). Section 4(b)(1)(A) of the ESA stipulates that listing decisions be made using the best available scientific and commercial information, therefore we used information from the 2007 status review report (which incorporated information from the 2003 workshop) and new information in forming our determination. Our responses to comments from the public further detail our use of information available at the time of the proposed listing rule, as well as our consideration of new information submitted during the public comment period.

Comment 4 (viability of small Atlantic sturgeon populations): The estimated 343 spawning adult Atlantic sturgeon in the Altamaha River exceeds the number of spawning adults in the ''very viable'' Yellow River Gulf sturgeon population, according to peer reviewer 1. Peer reviewer 1 stated that information presented in Schueller and Peterson (2010) suggests a very robust reproductive response to protection of adult spawners under the Atlantic sturgeon moratorium. From these data, the reviewer stated that it seems highly improbable that the Altamaha River population is at risk of extinction and a listing of endangered does not seem applicable to the Altamaha population within the South Atlantic DPS. The reviewer stated that if the Altamaha population follows the model of the Suwannee River Gulf sturgeon population after harvest was banned, then overall population growth in the next decade will be exponential until density-dependent population controls come into play. Peer reviewer 1 also stated that the ''less than 300 spawning adults'' criterion in the proposed listing rule for classifying a river population as vulnerable to extinction sets a ''very high, probably unrealistic, bar,'' and one not conforming to scientific literature documenting sturgeon population recovery from much smaller effective breeding population sizes (20–80 spawning females, based on examples provided by the reviewer). Peer reviewer 1 stated that sturgeon species have the documented ability to establish/re-establish viable populations over a short timeframe (10 to 20 years), starting from ''a few tens'' of spawning adults without negative fitness impacts from low genetic diversity.

Response: As explained above, NMFS does not agree with peer reviewer 1's premise that an endangered listing would only be appropriate if no single historical spawning river within that DPS appeared to sustain both a relatively abundant and simultaneously regularly-reproducing Atlantic sturgeon population. We note that the Yellow River population of Gulf sturgeon referred to as ''very viable'' by the reviewer is listed as threatened under the ESA. While the number of spawning adult Atlantic sturgeon in the Altamaha River may be larger than that of Gulf sturgeon in the Yellow River, the peer reviewer noted that the Yellow River population is one that has rebounded since it was listed. The Altamaha River population of Atlantic sturgeon is estimated to be at only 6 percent of its historical abundance. While there is a moratorium on harvest and possession of Atlantic sturgeon, the species is not currently afforded the protections of section 9 of the ESA, nor do they benefit from the consultation and permitting responsibilities of ESA sections 7 and 10, that apply to the listed Gulf sturgeon. Information provided by peer reviewers 1 and 2 indicated recent (2009–2010) increases in the estimated number of juveniles in the Altamaha River. We are encouraged by this and hope that the Altamaha River population does exhibit exponential growth, as the Suwannee River Gulf sturgeon population did following listing. However, our listing determination is based on the best information currently available to us, and we do not feel that the information provided on increases in juvenile Atlantic sturgeon in the Altamaha River or the comparison to Gulf sturgeon populations in the Suwannee and Yellow Rivers provides a basis for revising our proposed determination that the South Atlantic DPS be listed as endangered.

In response to the reviewer's comment that the ''less than 300 spawning adults criterion'' sets a ''very high, probably unrealistic, bar'', we clarify that the 300 spawning adults per year was an estimate of the relative sizes of Atlantic sturgeon river spawning populations, based on the available information on the annual spawning adult abundance measured in the Altamaha River (343 spawning adults) and the fact that it is the largest population in the Southeast, combined with qualitative and quantitative anecdotal information from the other river systems. The 300 spawning adults per year estimate does not constitute a criterion or a bar for listing and/or recovery as a general matter. Rather, the estimate is evaluated in the specific context of the Atlantic sturgeon river populations and the impacts and threats they face. These populations likely have the capacity to recover, as the reviewer suggested, if existing and future impacts and threats are alleviated. The low estimated population numbers in each of the river systems within the DPSs (1–6 percent of historical abundance), combined with the ongoing impacts and threats from habitat modification and bycatch, indicate that the populations are small and vulnerable, and the DPSs they comprise are in danger of extinction.

Comment 5 (sturgeon ability to recolonize systems; genetic exchange): Peer reviewer 1 stated that sturgeon species are resilient and capable of repopulating an extirpated river, or colonizing a new river, if habitat remains available, dams do not block spawning ground access, water quality is satisfactory, and a competing sturgeon population is not already established. A natal river population, well-established over a long span of geological time and highly adapted to its respective natal river, would not realize success in colonizing another river already populated by a second population better adapted to its respective natal river than a potential colonist. The reviewer stated that the low rate of genetic exchange displayed among adjacent sturgeon populations does not reflect the incapacity of the species to colonize, but the competitive advantage held by a pre-established natal river population facing migrant individuals. The reviewer provided examples of recolonization by Atlantic sturgeon in bays and rivers from New England to Labrador and Newfoundland within a span of 10,000 years following deglaciation. The

reviewer stated the northernmost and most genetically conservative Atlantic sturgeon population re-colonized over 1,500 miles of coastline within 40 generations (and probably much fewer) in addition to undertaking a successful, essentially instantaneous, 3,300 mile migration to colonize the Baltic Sea 1,200 years ago. The reviewer also provided an example of Gulf sturgeon rebounding in Gulf Coast river systems. Peer reviewer 1 stated that following state harvest prohibitions on the Gulf sturgeon and its listing as threatened under the ESA, some river populations have rebounded (the Yellow, Choctawhatchee, and Suwannee river populations). The reviewer concluded the logic in the proposed listing rule is not compelling that if one of the DPSs were to be completely extirpated, it would remain so over a long span of time. Peer reviewer 3 stated, in reference to the genetic analyses showing fewer than two individuals per generation spawn outside their natal rivers, that this reflects the average number of individuals and noted it would be useful to compare this to straying determined from tagging data.

Response: We agree with the peer reviewer's comment that the low rate of genetic exchange displayed between Atlantic sturgeon river populations may reflect the competitive advantage held by pre-established natal river populations facing migrant individuals. We revised the relevant discussion in the text from the proposed listing rule to include this information. However, as stated in the proposed listing rule, we do not expect Atlantic sturgeon that originate from other river systems to recolonize extirpated systems and establish new spawning populations, except perhaps over a long time frame (*i.e.,* many Atlantic sturgeon generations). Though the reviewer provided an example of Atlantic sturgeon colonizing the Baltic Sea 1,200 years ago after a single migration, other examples of recolonization provided took 40 generations (approximately 1,000 years, based on a 25-year generation period) to 10,000 years, which is consistent with our statement in the proposed listing rule. Further, recolonization occurred in the absence of present-day human impacts, such as habitat modifications and mechanized fishing.

We noted the reviewer's comment that sturgeon species are resilient and capable of repopulating an extirpated river or colonizing a new river if habitat remains available, dams do not block spawning ground access, and water quality is satisfactory. As discussed extensively in the proposed listing rule and in our responses to comments in this document, Atlantic sturgeon in the Carolina and South Atlantic DPSs and the rivers within their ranges are affected by habitat modification and destruction, blocked access to spawning grounds, downstream habitat impacts caused by dams, and water quality (and quantity) issues. Thus, the commenter's stated conditions for expecting recolonization by Atlantic sturgeon are not met. Atlantic sturgeon from the Carolina and South Atlantic DPSs are also taken as bycatch in fisheries. Regarding the statement that following state harvest prohibitions on the Gulf sturgeon and its listing as threatened under the ESA, some river populations have rebounded (the Yellow, Choctawhatchee, and Suwannee river populations), the rivers that have rebounded have two factors in common versus those which have not rebounded (*e.g.,* the Apalachicola, Pascagoula, and Pearl river populations): (1) No mainstem dam on the natal river limiting Gulf sturgeon access to upriver spawning grounds or YOY access to riverine feeding habitat; and, (2) no major commercial fishery causing Gulf sturgeon bycatch mortality in the natal river, natal river estuary, or adjacent marine waters. Assessing the impacts of these two factors may be equally as important to sturgeon population recovery as is protection from all other impacts, now that direct harvest has been stopped. We agree with these comments by the peer reviewer and also believe that these threats associated with dams, habitat, water quality, and bycatch would hamper and slow recolonization of extirpated river systems. One reviewer acknowledged that rivers, watersheds, and coastal habitats inhabited by Atlantic sturgeon have been drastically modified and impacted by human activities (dammed, channelized, de-watered, diverted, dredged, mined, sedimented, polluted, deforested, developed, populated by introduced species, *etc.*) and that it would be remarkable to achieve recovery to even 10–30 percent of the 1890 carrying capacity of individual sturgeon rivers.

In reference to peer reviewer 3's suggestion about comparing the degree of straying from tagging studies to the estimate of straying from the genetic studies, we agree this could be a valuable exercise in the future when we have the necessary information on river of origin (based on genetic analyses) and the degree of straying (from tagging and relocation studies). While the estimate of less than 2 individuals spawning in rivers outside their natal system is a measure of successful transfer of genetic information from a fish originating from another system, the analysis suggested by the peer reviewer would provide us with knowledge of how many fish actually stray into another system and potentially attempt to spawn. This could also provide insight into the comments by the first peer reviewer that lack of gene flow between river populations is due to reduced success from competition and not from lack of attempts at migrant spawning.

Comment 6 (issues with estimating sturgeon abundance): According to one peer reviewer, targeted Atlantic sturgeon population studies in the Roanoke River and Santee-Cooper system, as well as most other river systems, have been limited in duration, intensity, and continuity such that population estimates may be substantially underestimated. Peer reviewer 1 noted that sturgeon species are cryptic fish found in deep, mainstem rivers. They are rarely observed visually, not typically sampled in many commercial river fisheries targeting other fish species (with the exception of the shad gill net fishery), and are rarely caught by recreational anglers. The reviewer stated that this illustrates that presence and abundance of sturgeon cannot be based on incidental catches from commercial fisheries or scientific sampling not specifically targeting sturgeon. The reviewer stated that in the past, sturgeon abundance has often been vastly underestimated until an appropriate and dedicated reporting or sampling program was undertaken. The reviewer recommended that only continuous, standardized mark-recapture efforts spanning sufficient time (a minimum of 3 years, but realistically greater than 5 years) can provide reliable preliminary abundance estimates.

Response: The majority of the data presented in the proposed listing rule came from studies targeting Atlantic sturgeon or from fisheries that are known to have a high incidence of interaction with Atlantic sturgeon (*i.e.,* gillnet fisheries). As much as possible, we clarified the data collection methods and constraints, and any assumptions we made. This is also discussed in our response to comment 2. We have used the best available commercial and scientific information to evaluate the status of the Carolina and South Atlantic DPSs, but we agree with the reviewer that long-term, continuous, standardized studies of Atlantic sturgeon abundance are needed.

Comment 7 (viable population sizes and sturgeon genetics): Peer reviewer 1 stated the minimum viable population

sizes of several hundreds to several thousands of individuals advanced in the literature are not particularly instructive with respect to sturgeon species based on new genetic information (Kreiger *et al.,* 2006). The reviewer commented that sturgeon are polyploid and the significance of polyploidy upon genetic diversity has just emerged. Most fishes are diploid with 40–50 chromosomes, a number similar to most vertebrates. However, all sturgeons are polyploid, having approximately 120 chromosomes (tetraploid, 4N), 240 chromosomes (octoploid, 8N) or more, including species with 12N or 16N ploidy. Polyploidy allows for multiple alleles (not just two as in diploid species) at a given gene locus, allowing for intra-individual genetic variation (Kreiger *et al.* 2006). The reviewer suggested that this might explain the high degree of plasticity displayed by sturgeon populations and the documented ability of sturgeons to repopulate from very few spawning adults without apparent inbreeding depression. He concluded that until we gain a deeper understanding of the genetics of polyploidy and the implications regarding sturgeon population dynamics, any discussion of minimum viable population size for sturgeon populations cannot be phrased in terms of what we know about inbreeding depression in diploid mammal populations. Thus, the 50/500 rule of thumb cited in the proposed listing rule may be an inappropriate criterion by which to assess viability of sturgeon populations, and we do not know how few polyploid sturgeons are too few to sustain a viable population.

Response: We appreciate the peer reviewer's input on the polyploid nature of Atlantic sturgeon and how this genetic characteristic may affect our evaluation of minimum viable population sizes in our listing determination. We revised the relevant discussion in the text from the proposed listing rule to include this information. As noted by the reviewer, we need a deeper understanding of the genetics of polyploidy and the implications regarding sturgeon population dynamics. We are not sure how polyploidy in Atlantic sturgeon will affect their recovery, but even if it allows the species to repopulate from relatively fewer individuals without inbreeding depression, there is no assurance that this will occur. Other polyploid Acipenser species have required listing under the ESA, such as shortnose sturgeon (listed as endangered in 1967), Gulf sturgeon (listed as threatened in 1991), and green sturgeon (listed as threatened in 2006). In the case of the shortnose sturgeon, recovery has not been achieved even though it has been protected for almost 45 years. Further, the polyploid nature of Atlantic sturgeon may further support the need for protection under the ESA. Southern populations of Atlantic sturgeon exhibit high diversity and many low frequency (and sometimes private) haplotypes (Grunwald *et al.,* 2008). Allendorf and Leary (1988) noted that in polyploid cutthroat trout, alleles constituting the majority of the variation in the species are found in only one or two local populations, but they often occur at high frequencies in those populations. They concluded preserving the genetic variation in cutthroat trout entails preserving as many local populations as possible. Finally, a polyploid nature may not be sufficient to promote recovery in Atlantic sturgeon populations, even if it is indicative of smaller viable population sizes, given the nature and number of ongoing impacts and threats to sturgeon and their habitats.

Comment 8 (ACE Basin populations): Peer reviewer 1 commented that the statement in the proposed listing rule that ''the low population numbers of every river population in the Carolina and South Atlantic DPSs put them in danger of extinction throughout their ranges; none of the populations are large or stable enough to provide with any level of certainty for continued existence of Atlantic sturgeon in this part of its range,'' seems contrary to the data from recent Atlantic sturgeon sampling results for the Altamaha, Savannah, and ACE Basin. This reviewer asserts that collection of 3,000 juvenile Atlantic sturgeon from the ACE Basin in seven years of sampling is not a low number.

Response: The proposed listing rule stated that 3,000 juvenile Atlantic sturgeon were collected in the ACE Basin (consisting of the Ashepoo, Combahee, and Edisto Rivers) between 1994 and 2001. While the reviewer did not believe this is a low number, we disagree. The ACE Basin and every system in the South Atlantic DPS, with the exception of the Altamaha River, is estimated to be at 1 percent of its historical abundance and to have less than 300 adult Atlantic sturgeon spawning per year (the Altamaha is estimated to be at 6 percent of its historical abundance and have 343 spawning adults per year). However, the statement from the proposed listing rule referred to by the peer reviewer was not referring strictly to population size, but rather to the restrictive effects of low population numbers in all component river populations on the DPSs' ability to respond to threats. This statement was taken from a section of the proposed listing rule addressing viable population size, and the statement was meant to be taken in the context of the statements that preceded it: ''The concept of a viable population able to adapt to changing environmental conditions is critical to Atlantic sturgeon, and the low population numbers of every river population in the Carolina and South Atlantic DPSs put them in danger of extinction throughout their ranges.'' Low population numbers hamper recovery by making the populations less resilient to the dangers they continue to face from being taken as bycatch and from the loss, reduction, and degradation of habitat resulting from dams, dredging, and changes in water quality parameters (such as depth, temperature, velocity, and dissolved oxygen). Because these DPSs are groups of populations, the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. In the example of the ACE Basin, the capture of 3,000 juvenile Atlantic sturgeon between 1994 and 2001 (an average of 375 Atlantic sturgeon juveniles per year) alone is not sufficient to indicate that the DPS can persist, given the low population numbers in each of the river systems in the DPS and the existing threats to the species (*e.g.,* bycatch, habitat degradation), some of which may worsen as a result of water allocation issues and climate change.

Comment 9 (relevance of historical abundance estimates): Peer reviewer 1 commented on the statements in the proposed listing rule that the Carolina DPS is estimated to number less than 3 percent of its historical population size; the Altamaha River is suspected to be less than 6 percent of its historical abundance; and the abundances of the remaining river populations within the South Atlantic DPS are estimated to be less than 1 percent of what they were historically. This describes the depleted status of these populations, and provides a reference point from which to gauge re-population. Peer reviewer 1 commented that caution should be exercised in using 1890s fisheries abundance as the recovery target, and similarly as a metric against which population recovery can be measured. Rivers, watersheds, and coastal habitats inhabited by Atlantic sturgeon have been drastically modified and impacted by human activities (dammed, channelized, de-watered, diverted, dredged, mined, sedimented, polluted,

deforested, developed, populated by introduced species, *etc.*) and it would be remarkable to achieve recovery to even 10–30 percent of the 1890 carrying capacity of individual sturgeon rivers. The reviewer believed the remaining 1–6 percent of the historical population numbers represents a good foundation for population recovery at the beginning of an unprecedented era of harvest prohibition, habitat restoration, and conservation awareness.

Response: The discussion in the proposed listing rule of current population size relative to historical levels was not meant to imply those levels would be recovery targets. Relative population size was intended as a metric of the depth of the DPS' decline over time. The reviewer's observation that permanent habitat modifications have reduced potential population levels by 70–90 percent underscores the significance of the multiple habitat threats facing Atlantic sturgeon.

Comment 10: Peer reviewer 1 took issue with the statement in the proposed listing rule that ''recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon.'' This reviewer stated this thesis is fundamentally faulty for sturgeon and other species. Late maturity in a species has little to do with speed of population increase beyond the initial lag period of one generation span or less, after which reproduction is continuous. As per the theory of Malthus, the reviewer stated that any population of any species in nature, whether of mice or elephants, will increase geometrically, as long as resources are not limiting. For a sturgeon population depleted by overfishing, once subadults are permitted to mature and spawn without being harvested first, recovery can be quite rapid if other human impacts have not removed or severely restricted essential resources.

Response: We have considered the peer reviewer's comment. However, we continue to find that the Atlantic sturgeon's life history traits are hindering its recovery in several ways, as supported by scientific literature. For example, Meyers and Worm (2005) state, ''from the land it is well known that large species with high ages at maturity are particularly vulnerable to extinction (Purvis *et al.,* 2000). There is no reason to believe that this may be different in the ocean (Myers & Mertz, 1998; Hutchings, 2001; Dulvy and Reynolds, 2002; Dulvy *et al.,* 2003).'' Specifically regarding the Atlantic sturgeon, Balazik *et al.* (2010) state that ''the Atlantic sturgeon's life history (high age of maturation and 2–5 years between female broods) probably inhibits population recovery (Boreman, 1997; Smith and Clugston, 1997).'' Gardmark *et al.* (2003) states that ''small populations are sensitive to stochastic effects, especially so if not all mature individuals reproduce,'' and as noted in the proposed listing rule (as well as Balazik *et al.,* 2010, above), adult Atlantic sturgeon do not reproduce every year.

There are several ways the Atlantic sturgeon's life history traits may be hampering recovery. The species' late age at maturity provides more opportunities for individuals to be removed from the population before reproducing. The limited ability of small populations with non-annual spawning adults to respond to stochastic effects could greatly affect Atlantic sturgeon recovery, and human population increases and climate change are likely to exacerbate existing water quality and quantity problems. Based on their life history, Atlantic sturgeon populations are more sensitive to fishing (bycatch) mortality than other coastal fish species. Like other K-selected species (which have large body size, long *life expectancy*, and produce fewer offspring, versus r-selected species, which are characterized as having high fecundity, small body size, early maturity onset, short generation time, and the ability to disperse offspring widely), Atlantic sturgeon are long-lived, have an older age at maturity, and have lower maximum fecundity values, with 50 percent of the lifetime egg production for Atlantic sturgeon occurring later in life (Boreman, 1997). That species with K-selected life history traits, such as Atlantic sturgeon, exhibit greater sensitivity to bycatch mortality is also supported by Baskett *et al.* (2006): ''fisheries have a greater long-term negative impact on species with lower population growth rates, later maturation, larger organism size, and greater longevity than on species with faster production (Jennings *et al.,* 1998; Heino and Godø, 2002).''

We agree with the peer reviewer's comments that any species with discrete generations or distinct breeding seasons will increase geometrically, ''as long as resources are not limiting.'' We also agree that Atlantic sturgeon can recover if fisheries mortality is reduced, allowing sub-adults to recruit to the spawning population, and ''if other human impacts have not removed or severely restricted essential resources.'' We stated in the proposed listing rule that the species' ''long life-span also allows multiple opportunities to contribute to future generations provided the appropriate spawning habitat and conditions are available.'' However, we believe that even though prohibitions on direct harvest and possession of Atlantic sturgeon have been in place for years, their life history characteristics, small population sizes, and the continued threats associated with bycatch and habitat modification are hampering the recovery of Atlantic sturgeon.

Comment 11: Peer reviewer 3 questioned why the use of samples from YOY and mature adult Atlantic sturgeon in the genetic analysis by Wirgin and King (2006) ensured that the samples came from fish originating in the sampled river system. The reviewer stated this implies that intermediate size fish stray more than adults. The reviewer also asked if the adults sampled were running ripe adults.

Response: Whether all of the adults utilized in the study were running ripe (*i.e.,* were making a spawning run) is unclear. However, adults generally only enter freshwater to spawn and the vast majority of Atlantic sturgeon spawn in their natal river (with estimates of less than 2 individuals per generation spawning outside their natal system). Therefore, the use of genetic samples in this study from adults captured in the freshwater portion of a river would indicate that the fish originated from that river and had returned to spawn. Similarly, Atlantic sturgeon spend the first year of their life in their natal river. Therefore, using genetic samples from YOY in a river system ensures that the fish originated in that river. Subadult (fish older than 1 to 2 years old) Atlantic sturgeon, as well as non-spawning adults, are known to make extensive coastal migrations. Subadults may use multiple estuarine or riverine areas for refuge, foraging, and nursery habitat, while non-spawning adults make extensive marine migrations. These life stages were excluded from the study because the river of origin cannot be determined from the location the fish are captured.

Comment 12: Peer reviewer 3 noted that 88 percent average accuracy in determining a sturgeon's natal river of origin was high and questioned whether the 94 percent average accuracy in assigning a sturgeon to one of the 5 DPSs was significantly better. The reviewer asked if the variance around the 88 and 94 percent figures is known. The proposed listing rule stated that the loss of either the Carolina or the South Atlantic DPS would constitute an important loss of genetic diversity for the Atlantic sturgeon. The reviewer commented that additional context on

the amount of genetic diversity within river populations, among river populations within a DPS, and between the 5 DPSs would better support that the loss of a DPS would represent a significant loss of diversity.

Response: The overall accuracy in assigning an Atlantic sturgeon to its natal river ranged from 60 to 94.8 percent (60 to 91.7 percent for southeastern rivers), while the overall accuracy in identifying a sturgeon to one of the 5 DPSs ranged between 88.1 and 95.9 percent (91.7 to 95.9 percent for the two southeastern DPSs). The peer reviewer's point is well-taken that, while there is higher accuracy in identifying a sturgeon to its DPS because of clearer genetic differences between the DPSs, the accuracy in identifying a sturgeon to its natal river is also quite high. We also agree with the peer reviewer that the broader context of the amount of genetic diversity exhibited by Atlantic sturgeon, within a DPS as well as among DPSs, provides additional support for our conclusion that the loss of a DPS would constitute a significant loss of genetic diversity. The high accuracy (60 to 92 percent) in utilizing genetic differences to assign Atlantic sturgeon in the Southeast to their natal rivers indicates that there is a significant amount of genetic diversity among rivers within a DPS, as well as between the two Southeast DPSs. Grunwald *et al.* (2008) reports that southern Atlantic sturgeon river populations have high diversity and many low frequency (and sometimes private) haplotypes. The information from Grunwald *et al.* (2008) indicates that each river population within a DPS makes unique contributions to the genetic diversity of the DPS as a whole and lends greater support to our determination that the loss of a DPS represents a significant loss of genetic diversity.

Comment 13: Peer reviewer 3 asked if the statement in the proposed listing rule that ''with the exception of the Waccamaw River population, all river populations sampled within each population segment along the entire East Coast were geographically adjacent'' was intended to mean that, with one exception, the genetic results are consistent with geography. In reference to the statement that the sample size from the Waccamaw River population was small (21 fish), the reviewer asked what the sample size was for the remaining river populations utilized in the genetic analysis.

Response: The peer reviewer interpreted the statement in the proposed listing rule correctly. In reference to the genetic sample sizes for rivers other than the Waccamaw, they ranged from 35 to 115. However, it is also important to note that genetic samples used in the analysis for the other river populations were taken from YOY and adult Atlantic sturgeon only to ensure that the fish were spawned in the river they were captured in. The genetic samples from Atlantic sturgeon captured in the Waccamaw River, in addition to being small in number, were taken from only juvenile Atlantic sturgeon, as those were the only samples available. As stated previously, juveniles may utilize multiple systems for foraging and nursery habitat, therefore the fish captured in the Waccamaw River and used in the genetic analysis were not necessarily spawned in that system. We are revising information in this final rule to indicate that the genetic samples from the Waccamaw River all came from juvenile Atlantic sturgeon.

Public Comments

Comments on the Delineation of the DPSs

Comment 14: Multiple comments were received either disagreeing with the listing of DPSs or disagreeing with the way populations were grouped into DPSs. One commenter stated that DPS is not a scientific term and that the DPS policy is arbitrary. The commenter also stated that the decision to list five DPSs results from the lack of NMFS' scientific ability to support the listing of the species as a whole. Several comments were received, some citing Grunwald *et al.* (2008), that all riverine populations of Atlantic sturgeon are genetically distinct. Another commenter stated that populations should either be evaluated on a drainage-specific basis or as a single unit south of Cape Hatteras because current DPS delineations combine high abundance rivers with rivers that have low abundance or unknown population status, are extirpated, or exist at the margins of the historical range. Comments were received that the entire Carolina DPS does not warrant listing as a unit and that only populations from river systems that would be afforded further protection by an ESA listing should be listed. Multiple commenters were concerned that incorrect delineation of DPSs could result in negative impacts to Atlantic sturgeon.

Response: The ESA, as amended in 1978, included in the definition of ''species'' ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, the USFWS and NMFS adopted a joint policy (61 FR 4722) regarding the recognition of distinct population segments (DPSs) under the ESA. We agree with the commenter that this is not a scientific term, which is acknowledged in the policy itself: ''the authority to list a 'species' as endangered or threatened is thus not restricted to species recognized in formal taxonomic terms, but extends to subspecies, and for vertebrate taxa, to distinct population segments (DPSs)'' and ''the term is not commonly used in scientific discourse, although 'population' is an important term in a variety of contexts.'' The DPS policy is not arbitrary, and has been upheld by numerous courts as a rational and permissible interpretation of the statute by the Services. The policy formalizes the criteria that must be met in order to consider a subset of a species a DPS, and those criteria are based on scientific principles. The Services determined that the listing, delisting, and reclassification of DPSs of vertebrate species would consider the discreteness and significance of the population segment in relation to the remainder of the species to which it belongs.

We did not delineate the DPSs based on population abundance information and lumping high and low abundance rivers. We do not agree that the best available scientific information supports listing other population segments in the Southeast, such as on a drainage-specific basis or as a single DPS south of Cape Hatteras. In accordance with the DPS policy, we determined that two DPSs of Atlantic sturgeon exist in the Southeast based on genetic information that indicates the DPSs as delineated constitute cohesive ecological and evolutionary units, on each DPS' persistence in unique ecological settings, and on the conclusion that the loss of either population segment would result in a significant gap in the range of the species as a whole. In the proposed rule, we stated that Atlantic sturgeon studies consistently demonstrated the species to be genetically diverse and that between seven and ten Atlantic sturgeon population groupings can be statistically differentiated range-wide (*e.g.,* King *et al.,* 2001; Waldman *et al.,* 2002; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Grunwald *et al.,* 2008).

Given a number of key differences among the studies (*e.g.,* the analytical and/or statistical methods used, the number of rivers sampled, and whether samples from subadults were included), it is not unexpected that each reached a somewhat different conclusion. In the proposed listing rule, we specifically evaluated and discussed the information

presented by Grunwald *et al.* (2008) and concluded that, though they used additional samples, some from fish in the size range (less than 130 cm) excluded in the analysis we relied on because they were smaller than fish considered to be mature adults, the results of the genetic analyses in Grunwald *et al.* (2008) and in the proposed listing were qualitatively the same and did not invalidate our DPS structure. We agree that Atlantic sturgeon from different riverine spawning populations can be distinguished genetically. However, genetic distances and statistical analyses (bootstrap values and assignment test values) used to investigate significant relationships among, and differences between, Atlantic sturgeon river populations, formed the basis of our judgment that the DPSs as proposed constitute cohesive ecological and evolutionary units that are appropriate for listing under the ESA and the DPS policy. In our judgment, the groupings of river populations into the DPSs as proposed, incorporates likely patterns of Atlantic sturgeon dispersal between drainages.

We believe all river populations within the DPSs will be afforded greater protection by an ESA listing, and listing the DPSs as proposed will not result in negative impacts to Atlantic sturgeon. Any action funded, authorized, or undertaken by a Federal agency that may affect Atlantic sturgeon from either DPS would require consultation with NMFS under section 7 of the ESA. Those analyses will focus initially on the impact of an action on the spawning population(s) to which affected sturgeon belong and then consider the significance of those impacts to the DPS(s).

Comment 15: Several commenters said use of the genetic data that are available for the designation of DPSs may be unreliable due to limited sample sizes, spatial, temporal, and ontogenetic differences in collection, and lack of samples from all river systems. Commenters also said our review of the literature was based on techniques used rather than the samples used to derive the conclusions. A commenter stated (citing Grunwald *et al.,* 2008) that genetic analyses should have been restricted to samples from spawning adults. The commenter cited several studies (Grunwald *et al.,* 2008; Wirgin and King, 2006; Wirgin *et al.,* 2005; Wirgin *et al.,* 2000) as indicating that the north-to-south clustering of Atlantic sturgeon river populations into DPSs is not valid. The commenter believed NMFS relied on genetic studies to say that there are genetic differences among populations but then ignored the actual results of the studies. The commenter stated that the Wirgin and King data were not peer reviewed and should be given less consideration. The commenter also stated that genetic information needs to be integrated with ecological and behavioral data in order to draw appropriate conclusions. Commenters stated that more data are needed to list DPSs and that although the peer reviewed studies have described a high degree of genetic separation with good classification success, there are problems when the papers are reviewed and considered for management. Several commenters noted that genetic samples for adult sturgeon will be collected in upcoming years through federally funded projects along the Atlantic Coast.

Response: We agree with commenters that sample sizes, spatial, temporal, and ontogenetic differences in collection, and lack of samples from all river systems create uncertainty in the Atlantic sturgeon genetic data. However, in our judgment the available data show genetic separation of the Carolina and South Atlantic DPSs from northern populations and from each other. Results showed 92 and 96 percent accuracy in correctly classifying a sturgeon from four sampled river populations (the Albemarle Sound, Savannah, Ogeechee, and Altamaha River populations) to two groupings of river populations (Albemarle Sound and Savannah/Ogeechee/Altamaha Rivers). Contrary to the commenters' assertion, in reviewing the literature and evaluating the available genetics data in our consideration of DPSs we looked at both technique and the samples used. As stated in Grunwald *et al.* (2008), due to the potential for subadult and adult Atlantic sturgeon to undertake extensive migration between systems, specimens certain to be spawned within a system (and candidates for use in genetic studies of spawning populations) include spawning adults or juveniles less than two-years-of-age. When possible, the genetic analyses we relied on in the 2007 status review report and in the proposed listing rule limited the samples utilized to those collected from spawning adults and YOY, which is consistent with (and more restrictive than) what Grunwald *et al* (2008) described. Where genetic samples from adult and YOY were missing, we reported the results of other analyses utilizing juvenile Atlantic sturgeon and clarified this in the proposed listing rule.

The commenter presented a comparison of river groupings (UPGMA trees) derived from genetic cluster analyses from the cited studies and asserted that the various groupings conflicted with the DPS structure proposed in the listing, stating that a north-to-south clustering of river populations is not valid. However, there is no difference in the river groupings resulting from the genetic analyses presented in Grunwald *et al.* (2008; Figure 3) and the river groupings resulting from genetic analyses presented in the 2007 status review report (Wirgin and King, 2006; Figure 16) for the southern populations. The river groupings presented in Wirgin *et al.* (2000) differ from our results, likely due to the inclusion of samples from subadults which may have originated from a system other than where they were collected. Wirgin *et al.* (2000) did find a pronounced latitudinal cline in the number of composite mtDNA haplotypes and in haplotypic diversity, which increased from north to south. The researchers ascribed the greater genetic diversity within and among southern populations to the persistence of these populations through the Pleistocene and to the faster mutation rates associated with their shorter generation times. The genetic results referred to by the commenter in Wirgin *et al.* (2005) were for shortnose sturgeon, not Atlantic sturgeon.

While the genetic analysis by Wirgin and King presented in the 2007 status review report was not previously published, it was peer reviewed as part of the status review and as part of the proposed rule. The status review report was peer reviewed by six experts from academia, and the proposed listing rule was peer reviewed by three experts, two from academia (including an Atlantic sturgeon genetics expert) and one from a Federal resource agency.

We agree with the comment that genetic information needs to be integrated with ecological and behavioral data in order to draw appropriate conclusions. We relied on behavioral information (*i.e.,* the migratory nature of subadults and non-spawning adults) to determine the appropriate life stages (*i.e.,* YOY and spawning adults) to use for the genetic analysis. We also used behavioral and ecological information in conducting our DPS analysis per the Services' joint DPS policy. We considered the species' behavior in that the majority of Atlantic sturgeon return to their natal rivers to spawn. We also considered ecological issues, such as the fact that the DPSs persist in unique ecological settings and that the loss of a DPS would represent a significant gap in the range of the species.

Additional genetic analyses will improve our understanding of Atlantic sturgeon and their population structure, and we eagerly await the results of upcoming and ongoing genetic analyses, some of which we are funding through our Species Recovery Grant Program under section 6 of the ESA. However, we believe that the currently available data support the discreteness and significance of the Carolina and South Atlantic DPSs. Because we have integrated the genetic data with other sources of Atlantic sturgeon information, such as the behavioral and ecological information noted above, we do not believe listing DPSs will create management problems.

Comment 16: One commenter disagreed that the DPSs persist in unique ecological settings, citing a study by the Institute for Ocean Conservation (2010) that Atlantic sturgeon tagged in the Hudson traveled from Nova Scotia to Georgia. The commenter also disagreed that the loss of a DPS would result in the loss of important genetic diversity, citing Quattro *et al.* (2002) that dispersal is sufficient to prevent deep divergence over long evolutionary scales and Peterson *et al.* (2008) that Atlantic sturgeon are resilient to genetic bottlenecks.

Response: The proposed listing rule states multiple times that Atlantic sturgeon mix extensively in the marine environment, which is consistent with the citation provided by the commenter. However, we disagree with the commenter that the Carolina and South Atlantic DPSs do not persist in unique ecological settings. The vast majority of Atlantic sturgeon return to their natal river to spawn, and the spawning habitat of each DPS is found in a separate and distinct ecoregion as identified by The Nature Conservancy (TNC) based on the habitat, climate, geology, and physiographic differences for terrestrial and marine ecosystems throughout the range of the Atlantic sturgeon.. The unique ecological characteristics of the ecoregions the Carolina and South Atlantic DPSs originate from are described in detail in the proposed listing rule.

We disagree with the comment that the loss of a DPS would not result in the loss of important genetic diversity. Grunwald *et al.* (2008) note that, while northern populations of Atlantic sturgeon have low genetic diversity, southern populations exhibit high genetic diversity with many low frequency haplotypes. The loss of genetic diversity associated with the loss of either the Carolina or South Atlantic DPS would reduce the ability of Atlantic sturgeon as a subspecies to adapt to new selective pressures, such as climate change or shifts in available resources. We also disagree with the commenter's assertion that Peterson *et al.* (2008) supports a conclusion that Atlantic sturgeon populations are resilient to bottlenecks. Peterson *et al.* (2008) reported ''pronounced cropping'' of genetic diversity in the Altamaha River Atlantic sturgeon population. The researchers expressed surprise over this result ''given the resiliency to genetic bottlenecks previously reported in other studies of remnant Atlantic and shortnose sturgeon populations (Quattro *et al.,* 2002; Waldman *et al.,* 2002).'' Grunwald *et al.* (2008) also stated that ''current populations from the Hudson River northward represent step-wise recolonizations with a bottlenecking effect.''

Comment 17: One commenter stated that the proposed listing rule suggested the number of Atlantic sturgeon spawning in locations other than their natal rivers (''outmigrants'') is not dependent on population size. The commenter believed the rate of outmigration is much higher than stated and should be presented as a percentage, but that some level of mixing should be considered. Another commenter stated that recolonization of a basin would be slow regardless of whether adjacent populations are low or robust due to the low rate of outmigration and genetic transfer between basins. The commenter noted that there are greater distances between rivers within the Carolina DPS than between the Carolina and South Atlantic DPSs. This commenter stated that if outmigration is limited and most likely occurs between adjacent populations, this refutes the DPS structure.

Response: The number of Atlantic sturgeon outmigrants (less than 2 per generation) included in the proposed listing rule was estimated from genetic analyses by the studies we cited. We did not relate outmigration of Atlantic sturgeon to population size in the proposed listing rule, and we do not have available data to present outmigration as a percentage of population size; however, we agree with the commenter that rates of outmigration may increase with increasing population size. We agree that recolonization of a system from adjacent populations would be slow, which is consistent with statements in the 2007 status review report (page 97) and in the proposed listing rule (page 61912). The distances separating rivers within and between the Carolina and South Atlantic DPSs do not account for the extremely low level of outmigration in Atlantic sturgeon spawning populations. Adult (and subadult) Atlantic sturgeon are known to make extensive movements between systems along the East Coast range of the species. Though the exact cues are not known, it is a life history characteristic of Atlantic sturgeon that the vast majority spawn in their natal river system. The low level of outmigration does not refute the DPS structure; as we stated above, the groupings of river populations into the DPSs as proposed, incorporates patterns of Atlantic sturgeon dispersal among drainages. The evidence supporting the structure of the Carolina and South Atlantic DPSs is presented in the proposed listing rule and in our responses to comments 14–16 above.

Comment 18: Several commenters stated that there were no specific geographic boundaries or coordinates listed to delineate the five DPSs and believed this should be addressed in the final rule, since conservation and other management measures will likely be implemented based on the delineation of the DPSs. The commenters also had concerns that the rivers and tributaries listed in each DPS are not all-inclusive and could potentially create loopholes for management and conservation measures. Another commenter stated that the extensive mixing of Atlantic sturgeon in the marine environment will make conservation and management of the DPSs difficult to impossible.

Response: We do not believe additional geographic boundaries or coordinates delineating the DPSs are necessary or that there are any loopholes for management or conservation. As stated in the proposed rule text, each of the DPSs is defined to include fish that spawn in the range of watersheds encompassed by the DPS. Our intent was that all fish spawned in such watersheds would also be included in the listing throughout their life cycles. Thus, fish spawned in one river, but using an adjacent river as nursery or subadult feeding habitat, are included in the listing. We have refined the text descriptions of the Carolina and South Atlantic DPSs in the final listing rule to more clearly reflect this issue. The modifications to the text clarify the riverine ranges of the DPSs but do not change the populations making up each of the Southeast DPSs.

As noted by commenters, Atlantic sturgeon from each riverine watershed and DPS may be found in multiple riverine, estuarine, and marine environments at various life stages. We agree that the extensive mixing of Atlantic sturgeon will make conservation and management of the

DPSs challenging. As we stated in the proposed listing rule, this extensive mixing of Atlantic sturgeon in the marine environment, as well as in multiple riverine and estuarine systems, can expose Atlantic sturgeon of a given DPS to a variety of threats at various life stages and in multiple locations. We discuss management challenges and potential strategies for dealing with them in the sections of the proposed and final listing rules entitled ''Identifying the DPS(s) Potentially Affected by an Action During Section 7 Consultation.''

Species Data and Information Supplied by Commenters

Comment 19: Commenters from North and South Carolina state agencies and other commenters supplied data and information for the Carolina DPS. One comment stated that there was an observed increase in abundance of Atlantic sturgeon in Albemarle Sound between 2005 and 2008. The commenter also stated there was a slight increase in abundance of juveniles and subadults in Pamlico Sound, while river surveys showed a slight decrease in abundance. Commenters also included data from late 2010 indicating there is a fall spawning run in the Roanoke River. Based on anecdotal angler reports from North Carolina, some commenters asserted that Atlantic sturgeon are persisting, though there has been little improvement in the size and age distributions of the Carolina DPS relative to historical levels. They also noted sampling efforts directed toward sturgeon have been sparse and limit ability to accurately characterize existing populations. Comments from South Carolina noted that Atlantic sturgeon were captured in most nets set in Winyah Bay from April to July in 2007 to 2009, including sites far upriver, and that sonar sampling indicated several hundred Atlantic sturgeon at the confluence of the Sampit River and Winyah Bay in 2009. A commenter stated that fishery surveys conducted as a requirement of the Federal Energy Regulatory Commission (FERC) license for the Yadkin-Pee Dee Hydroelectric Project resulted in the capture of a running ripe male in the Pee Dee River in October of 2003, indicating spawning activity. Large fish believed to be Atlantic sturgeon were sighted during electrofishing from 2002 to 2003. The commenter stated that this and other research (Collins and Smith, 1997; Collins *et al.,* 2003; Gibbons and Post, 2009) suggest that there may be a sizeable Atlantic sturgeon population present in the Pee Dee River and the Winyah Bay system. State agency comments noted that there have been few encounters with Atlantic sturgeon in the Santee River and there are anecdotal reports of breaching sturgeon in the Cooper River.

Response: We reviewed the specific information supplied for Atlantic sturgeon from the Carolina DPS and have added it to the ''Distribution and Abundance'' section of the final listing rule; however, this information does not require a change in our listing determination. The Independent Gill Net Survey (IGNS) data supplied by the North Carolina Department of Environment and Natural Resources (NCDENR) does show an increase in CPUE between 2005 and 2008 in Albemarle Sound. Based on Table 1 and Figure 2 included in NCDENR's comments, the CPUE in 2005 was 0.012, and increased in each successive year until 2008, when it reached 0.031. However, the data supplied by NCDENR for Albemarle Sound dates back to 1990 and continues to 2009. The 1990–2009 CPUE data as a whole shows a great deal of fluctuation, with no increasing trend, but rather periodic increases and decreases. In 2009, the CPUE dropped back down to 0.015, the level recorded in 2006. While 2008 was the highest CPUE observed since 2002, the CPUEs recorded for 1990 (0.081), as well as for 2000 and 2001 (0.032 both years), were actually the highest recorded in the 1990–2009 dataset for Albemarle Sound provided by NCDENR. The lowest CPUE levels recorded in the 1990s (0.005 to 0.010 in 1992, 1993, 1995, and 1996) were observed again in 2002, 2003, and 2004 (0.005 to 0.007). The commenter stated that there has been an increase in juveniles and subadults in Pamlico Sound since 2001. Based on IGNS data provided by NCDENR (Table 4, Figure 8), the CPUE for Pamlico Sound was 0 in 2001, and greater than 0 for 2002 through 2009. While all CPUEs for Pamlico Sound are greater than that recorded in 2001, there is no apparent increasing trend in the data. While the highest CPUEs were observed between 2004 and 2007 (0.016 to 0.066), the highest being recorded in 2005, the CPUE has decreased since 2005. The level observed in 2009 (0.003), the lowest CPUE in this dataset, was also observed in 2002 and 2003. Similarly, the river surveys of the Pamlico, Pungo, and Neuse Rivers showed a peak CPUE in 2005, with very low numbers observed in the other years within the survey period of 2000 to 2009. The information provided by the commenter on spawning in the Roanoke River supports information included in the proposed listing rule. While the Roanoke was determined to be an active spawning river within the Carolina DPS in the proposed listing rule, information supporting that a fall spawning run occurs there will greatly aid in the conservation and management of the species. We agree with the commenters' statement that Atlantic sturgeon are persisting, though there has been little improvement in the size and age distributions of the Carolina DPS relative to historical levels. The failure of Atlantic sturgeon populations to rebound, even with the moratorium on harvest and possession and other efforts to recover the species, is the primary reason we are proposing to list the species as endangered. In 1901, the Atlantic sturgeon fishery collapsed when less than 10 percent of the U.S. 1890 peak landings were reported. The landings continued to decline coastwide, reaching about 5 percent of the peak in 1920. Coastwide landings remained between 1 and 5 percent of the 1890 peak levels until the Atlantic sturgeon fishery was closed by ASMFC in 1998. Atlantic sturgeon populations, estimated to be 1 to 6 percent of their historical levels, have remained relatively unchanged since the initial collapse caused by the Atlantic sturgeon fishery of the late 19th century. We agree that sampling efforts need to be increased to effectively characterize populations and we are making efforts to see that it happens.

The South Carolina Department of Natural Resources provided information (SCDNR) for Winyah Bay that Atlantic sturgeon were encountered in most nets set from April to July (2007 to 2009) and that a researcher using sonar observed several hundred Atlantic sturgeon in Winyah Bay near the confluence of the Sampit River in 2009. We contacted Dr. Hightower, the researcher conducting the sonar work in Winyah Bay, to get further information on his observations. Dr. Hightower provided additional information via email on July 7, 2011, that he and fellow researchers were conducting ''pilot trials without a specific survey protocol, so we have not tried to generate density estimates. One of the issues that must be resolved before using the side-scan files in a quantitative way is to estimate the probability of identifying (detecting) a sturgeon, given that it is present in the area surveyed by the side-scan sonar. We are still working on that question, but results to date suggest that the detection probability depends on fish size, position in the water column, and possibly orientation relative to the sonar. Thus, we could come up with a density estimate for fish above some

size threshold, but we would not be able to reliably estimate how many of those were Atlantic sturgeon. Some of the large fish on those images are clearly Atlantic sturgeon and many others are likely to be sturgeon. The statement that several hundred were in that area is a reasonable description of what the side-scan data show but we are not at the point of being able to estimate the density with confidence.'' Dr. Hightower also remarked that ''we have done pilot survey work in the Roanoke, Neuse, Cape Fear, and Pee Dee river systems. The side-scan images from the Pee Dee (Winyah Bay) suggest markedly higher densities than in the other rivers.'' If all fish detected by Dr. Hightower were Atlantic sturgeon, the possibility that there were hundreds in Winyah Bay does not conflict with our estimate of less than 300 spawning adults per year in each spawning river. The sonar study was conducted in August 2009. Due to the time of year and location, it is unlikely this was a spawning aggregation and there is no way of knowing what age classes were present. It is possible that some of these fish were juvenile Atlantic sturgeon, which are known to utilize multiple riverine and estuarine systems other than their natal system. The information provided regarding the surveys conducted on the Yadkin-Pee Dee as a requirement of a FERC license is not new information, as it was included in the proposed listing rule. The information on the Santee-Cooper system is noted, and it is consistent with the proposed listing rule. The information for Atlantic sturgeon in the Carolina DPS presented by commenters, when considered as part of our listing determination, does not change our determination that the Carolina DPS warrants listing as endangered. In our judgment, none of the river populations in the DPS are large or stable enough to provide with any level of certainty for the continued existence of the DPS in the face of threats currently acting on the species. In our judgment, the Carolina and South Atlantic DPSs require multiple stable spawning populations.

Comment 20: Commenters from state agencies supplied data and information for the South Atlantic DPS. South Carolina Department of Natural Resources (SCDNR) supplied data from the Edisto, where 3,661 Atlantic sturgeon were captured between 1994 and the present; their population models estimate between 20,000 to 70,000 sturgeon. Between 1997 and 1999, SCDNR captured 118 adults in the Edisto River during spring and fall spawning runs, but netting ceased once that number was reached. They believed if they had continued netting activities, they would have captured more than 300 spawning adults. SCDNR also noted approximately 20 adults were captured in one to two months during surveys targeting other species. In 2010, four adults tagged in the 1990's as age 0+ were recaptured, which they believe indicates the moratorium is having the desired effect of allowing fish to recruit to the broodstock population. In the Savannah River, the SCDNR captured 369 Atlantic sturgeon between 1997 and 2010. SCDNR commented that there is not enough data to support the contention that the Altamaha has the largest population in the southeast and that other rivers have less than 300 spawning adults per year. The Georgia Department of Natural Resources (GADNR) commented that there is new information on the potential increase of Atlantic sturgeon in the Altamaha, and additionally, the Satilla River has been found to contain a substantial number of fish, where few to none were thought to exist in the past. Citing Peterson *et al.* (2008), GADNR stated the Altamaha may be recovering, though absence of adults older than age 17 suggests the effects of overfishing are still evident. According to Georgia's recent compliance reports to the ASMFC, the 2009 and 2010 estimates of age-1 Atlantic sturgeon in the Altamaha River were two and five times the estimates from the 2004–2008 period, respectively. In the most recent compliance report to ASMFC, University of Georgia (UGA) researchers collected more than 200 Atlantic sturgeon in the Satilla River in less than 2 years of sampling. They concluded that the presence of juvenile fish measuring less than 50 cm indicates this is likely a self-sustaining, spawning population.

Response: We reviewed the specific information supplied by the states for Atlantic sturgeon from the South Atlantic DPS and have added it to the ''Distribution and Abundance'' section of the final listing rule. However, the additional information does not require a change in our listing determination. SCDNR stated that in the 16-year period since 1994, they captured 3,661 juvenile (one- to three-year-old) Atlantic sturgeon in the Edisto River. This updates information we included in the proposed listing rule that over 3,000 juvenile Atlantic sturgeon were collected in the ACE Basin between 1994 and 2001, including 1,331 YOY. SCDNR used Lincoln-Peterson and Schnabel models to derive Atlantic sturgeon population estimates from these data, which resulted in estimates of 70,000 and 20,000 Atlantic sturgeon in the Edisto River, respectively. SCDNR commented that the models' results suggest increasing trends in abundance. Both models rely on mark-recapture data and assume a closed population (there are no births, deaths, or immigration/emigration between the initial capture and the recapture period) and that all individuals have an equal chance of being captured (Nichols, 1992; Lindeman, 1990; Chao, 1987). We note that there is great uncertainty in the population estimates resulting from the two models, as evident in the great disparity between the two results (20,000 versus 70,000). The reliability of the population models used depends on the validity of the assumptions of those models. The primary assumption of these two models, that each individual has an equal probability of capture, is likely unattainable in natural populations (Chao, 1987; Carothers, 1973). The assumption of a closed population is probably violated for any estimate calculated using the Schnabel or Lincoln-Petersen method on data collected over several weeks or months, and it is surely violated when data from one or more active seasons are used (Lindeman, 1990). SCDNR indicated they are currently completing an open system model (which is based on survival probabilities, as well as capture probabilities) to better assess the Atlantic sturgeon population in the Edisto River. Because the closed system models used by SCDNR provide estimates of juvenile abundance only and do not account for other population dynamics (birth, mortality, immigration/emigration), the estimates provided by the models likely represent an overestimate of juvenile abundance, do not provide an estimate of how many juveniles likely mature into spawning adults, and do not provide any information that undermines our use of the estimate of less than 300 spawning adults per year in the system. Atlantic sturgeon do not reproduce every year; females reproduce on the order of once every 2 to 5 years, males every 1 to 5 years. Small numbers of fish spawning can reduce the likelihood of successful spawning and the amount of genetic variation introduced into the next generation.

SCDNR commented that we do not have enough data to support the belief that the Altamaha River has the largest spawning population in the Southeast and that all other rivers have less than that. However, we relied on the best available information in arriving at the

estimate, and the information supplied by commenters, including the data provided by SCDNR, actually supports the estimate. The Altamaha is believed to have the largest Atlantic sturgeon spawning population in the Southeast, based on the absence of dams impeding access to appropriate spawning habitat, the lack of heavy development in the watershed, and relatively good water quality. The information supplied by GADNR showed an increase in age-1 Atlantic sturgeon from the Altamaha River in 2009 and 2010 over 2004 to 2008 levels. This was also reported by peer reviewer 2 and discussed in our response to comment 2. The information provided for the Satilla River is consistent with information in the proposed listing rule that the Satilla River has a resident spawning population of Atlantic sturgeon. The information for Atlantic sturgeon in the South Atlantic DPS presented by commenters, when considered as part of our listing determination, does not change our determination that the South Atlantic DPS warrants listing as endangered. In our judgment all river populations in the DPS are too small to be stable and self-sustaining.

Comment 21: In response to our request in the proposed listing rule for information on the mixing of Atlantic sturgeon populations, the petitioner cited Erickson *et al.* (2011) stating that out of 15 Atlantic sturgeon tagged in the Hudson River, one was relocated in Georgia, which supports extensive, long range mixing of sturgeon. The petitioner also cited Laney *et al.* (2007) that Atlantic sturgeon from the Hudson River represent approximately 44 percent of those in North Carolina overwintering habitat.

Response: We appreciate the information provided by the petitioner. These studies support our assertion in the proposed listing rule that extensive mixing of the DPSs outside their natal rivers occurs during non-spawning phases. We are continuing to seek information on the degree of mixing of the different river populations, including through our funding of the project to determine seasonal and spawning migration patterns and incidences of inter-basin transfer for adult Atlantic (and shortnose) sturgeon in southeastern rivers in North Carolina, South Carolina, and Georgia.

Comments on Abundance and Trends

Comment 22: Many comments were received stating that the abundance estimate of 300 spawning adults per year is not supported by data. Many of these comments stated that the proposed listing rule is not valid without stock assessments of Atlantic sturgeon populations. One commenter stated that the estimate of 300 spawning adults per year is misleading in regards to total population abundance since Atlantic sturgeon do not spawn every year and the total population abundance is likely much higher. Another commenter, citing Schueller and Peterson (2010), stated that we should consider juveniles rather than spawning adults. A comment was received that the statements on page 61920 of the proposed listing rule about spawning populations being less than the 500 recommended by Thompson (1991) conflict with the statement that total population abundances for the Carolina and South Atlantic DPSs are not available. Additionally, a comment was received that based on modeling, populations in the Winyah Bay system and the ACE Basin have more individuals than Thompson (1991) recommended as minimum viable population sizes for short-term and long-term population fitness.

Response: In response to comments on lack of stock assessments being a bar to listing determinations, we note that section 4(b)(1)(A) of the ESA provides that the Secretary shall make required listing determinations solely on the basis of the best scientific and commercial data available to him at the time of the determination, after conducting a review of the status of the species and taking into account efforts to protect the species. Even if a formal stock assessment of the species has not been conducted, if the best available information indicates the species warrants listing, as it does for Atlantic sturgeon, then we are required to list the species. Lack of formal stock assessments is not an unusual circumstance for species that have drastically declined, are at very low population numbers, or whose ranges have constricted, such that they are the subject of petitions to list them as threatened or endangered. Though we do not have stock assessments, we believe the current body of information on the declines of Atlantic sturgeon, the failure of their population numbers to rebound despite harvest prohibitions, the small relative magnitude of riverine spawning populations, and the ongoing impacts and threats from bycatch and habitat modification, warrant listing the Carolina and South Atlantic DPSs as endangered.

In the Southeast, the Altamaha is the only river where abundance has been directly surveyed. While traditional stock assessments from other Southeast rivers in the species' U.S. range are not available, we nevertheless relied on the best available data to produce a relative estimate of the number of Atlantic sturgeon in the remaining spawning populations. Based on a comprehensive review of the available data, the literature, and information provided by local, state, and Federal fishery management personnel (both documented in the 2007 status review report and in comments received on this rule), it is our judgment that the Altamaha River has the largest Atlantic sturgeon spawning population in the Southeast. The larger size of this population relative to the other river populations in the Southeast is likely due to the absence of dams that impede access to appropriate spawning habitat, the lack of heavy development in the watershed, and relatively good water quality, as Atlantic sturgeon populations in the other rivers in the Southeast have been affected by one or more of these factors. Though abundance estimates from stock assessments are not available for the other river populations, because the Altamaha spawning population is the largest, we believe it is reliable to estimate the size of other spawning populations in the Southeast Region as no more than 300 adults spawning per year. Further, data supplied by managers and researchers (and discussed in the previous section of responses to comments), support an estimate of less than 300 spawning adults per year in the other Southeast rivers.

The use of annually spawning adults is not intended to be misleading. We agree with the commenter that total riverine population numbers of Atlantic sturgeon are higher than the number of annually spawning adults. However, the only quantitative abundance estimate available to us when the proposed rule published was the number of annually spawning adults in the Altamaha River, not total population numbers or the total number of juveniles, as suggested by another commenter citing Schueller and Peterson (2010).

Schueller and Peterson (2010) stated that quantified methods of assessing sturgeon recruitment are essential for evaluating population trends, but that early life stages of most sturgeon species are notoriously difficult to sample, and their study on the Altamaha River provides the first quantified recruitment data describing a juvenile Atlantic sturgeon population in a southern river. They conducted their research during the summers of 2004 to 2007 and estimated that juvenile abundance ranges from 1,072 to 2,033 individuals in the Altamaha River, with age-1 and age-2 individuals comprising greater

than 87 percent of the population. Based on modeling, estimated apparent survival and per capita recruitment indicate that the juvenile population experiences high annual turnover: Apparent survival rates are low (less than 33 percent), and per capita recruitment is high (0.82–1.38). However, the authors noted that their mark–recapture methods were not capable of providing separate estimates of annual survival and out-migration, yet these rates are critical in understanding recruitment processes for the species. They noted future studies are needed to obtain quantified recruitment data using alternative methods, such as biotelemetry and known-fates modeling approaches. Schueller and Peterson (2010) concluded that future studies of subadult and adult life stages are needed, but quantified assessment of river resident juveniles can provide fisheries managers with the data necessary for evaluating population trends.

The statement in the proposed listing rule that spawning populations are less than the 500 recommended by Thompson (1991) as a minimum viable population size for long-term population fitness does not conflict with the statement that total population abundances for the Carolina and South Atlantic DPSs are not available. As we stated in this response, we do not have direct estimates of total population numbers for any of the Southeast spawning populations. Based on data from Schueller and Peterson (2006), we were able to present an estimate of the number of annually spawning adults in the Altamaha River. Although survey/stock assessment data on total population numbers or annually spawning adults are not available for the remaining Southeast river populations, based on information that the Altamaha is the largest population in the Southeast and data from the remaining rivers, we estimate in comparison that the other spawning populations have no more than 300 spawning adults per year.

In response to the comment that based on observations and modeling, the Winyah Bay system and ACE Basin have more individuals than Thomas (1990) recommended as minimum viable population sizes for short-term and long-term population fitness, we note that Thomas (1990) offered a population size of 5,500 as ''a useful goal,'' but suggested that where uncertainty regarding a species' population dynamics, changing environmental conditions, and the species' reaction to the changing environmental conditions is extreme (as it is for Atlantic sturgeon) ''we should usually aim for population sizes from several thousand to ten thousand.'' Information provided for the Winyah Bay and ACE Basin does not provide an estimate of total population size in either system. Because annual spawning adults was the only quantitative population metric we had for any southern river population at the time of the proposed listing, we looked at estimated annual spawning adult population sizes in comparison to various viable population sizes suggested in the literature. We now have additional information on juvenile abundance in the Altamaha River and some preliminary modeling of juvenile abundance in the Edisto River; however, this information is lacking for most river systems, and the population trends are not certain from the data we have. Although the Carolina and South Atlantic DPSs, made up of multiple river populations of Atlantic sturgeon, were determined to be interbreeding population units, the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with fewer than two migrants per generation spawning outside their natal system. We looked at the number and size of each riverine spawning population within each DPS when considering the effects of a small population size on the extinction risk for the DPS as a whole. We do not believe that information presented by the commenters provides a basis to revise our evaluation of the status of the Carolina and South Atlantic DPSs of Atlantic sturgeon.

Comment 23: Several commenters stated that historical commercial landings do not accurately reflect abundance and are not a good indicator of status. One commenter stated that Secor (2002) should not be used as the basis for estimating historical abundances of Atlantic sturgeon. The commenter stated that due to the nearshore location of the fisheries in the latter part of the 19th century, the data would include Atlantic sturgeon from multiple populations and represent a gross overestimate of historical abundance. A comment was received that population modeling should have been used to analyze the trajectory of the species.

Response: Section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations solely on the basis of the best scientific and commercial data available. Historical abundance data is not available. However, we believe that the historical landings data and the sharp downward decline observed in landings throughout the 20th century are a valid indicator of the declines in abundance experienced by Atlantic sturgeon. Secor (2002) represents the best available data on the estimated historical abundances of Atlantic sturgeon, as does the U.S. Fish Commission data on historical landings, which the Secor (2002) publication was based on and which we reviewed ourselves for clarification in preparing the making our listing determinations. We agree that it is impossible to conclusively determine whether historical landings data potentially represents Atlantic sturgeon from multiple river systems and multiple DPSs. In the proposed listing rule, we reported historical abundances of Atlantic sturgeon from Secor (2002) as state-wide estimates of spawning females for North Carolina, South Carolina, and Georgia. Though not stated directly in the proposed listing rule, this infers that multiple river populations and DPSs are represented in these estimates, since each state contains multiple river systems, both of the DPSs in the Southeast encompass multiple states, and in the case of South Carolina, both DPSs include river populations originating in that state. Therefore, our use and presentation of the data in the proposed listing rule was appropriate and not inconsistent with the commenter's statement. Due to the lack of data (*e.g.,* abundance, recruitment, natural mortality, bycatch mortality) on Atlantic sturgeon throughout most of the species' range, reliable population modeling at the species/DPS level is not possible. However, as detailed in the proposed listing rule, we believe that the trajectory observed in the commercial landings from the late 19th century through the 20th century, combined with information from recent and ongoing surveys of Atlantic sturgeon populations and information on threats to the species from habitat modification (*e.g.,* dams, dredging, water quality and quantity) and bycatch clearly demonstrates that Atlantic sturgeon population abundances have shown little improvement since their initial declines and continue to face a degree of threat that warrants listing the Carolina and South Atlantic DPSs of Atlantic sturgeon as endangered.

Comment 24: A commenter stated that the 1990–2003 increasing trend in Atlantic sturgeon abundance in the Cape Fear River should not have been discounted in the status review.

Response: We did not discount information in the proposed listing rule on trends in Atlantic sturgeon abundance in the Cape Fear River between 1990 and 2003, as reported by Moser *et al.* (1998) and Williams and

Lankford (2003). We presented different interpretations of the data that the researchers noted themselves in their research publications. In the proposed listing rule, we stated ''abundance of Atlantic sturgeon below Lock and Dam #1 in the Cape Fear River seemed to have increased dramatically during the 1990–1997 surveys (Moser *et al.,* 1998), as the CPUE of Atlantic sturgeon was up to eight times greater during 1997 than in the earlier survey years. Since 1997, Atlantic sturgeon CPUE doubled between the years of 1997 and 2003 (Williams and Lankford, 2003). However, it is unknown whether this is an actual population increase reflecting the effects of North Carolina's ban on Atlantic sturgeon fishing that began in 1991, or whether the results were skewed by one outlier year. There was a large increase observed in 2002, though the estimates were similar among all other years of the 1997 to 2003 study.'' The commenter stated that the 2007 status review report should not have discounted the increase in sturgeon abundance in 2002 as an outlier year for the reason that it was a flood year. Williams and Lankford (2003) stated that CPUE is used to indicate a population size, but if environmental conditions affect the susceptibility of fish to being captured in gillnets, then the data may show a change in population size when environmental conditions actually caused the change in CPUE. Williams and Lankford (2003) further stated that, ''although previous years have documented relatively similar catch-per-unit-efforts, the summer of 2002 yielded twice the CPUE of any season since 1997. This also happens to be the lowest flow conditions experienced during this survey. Although catch-per-unit-effort increased greatly during these low flow conditions, previous years with low flow summers did not have the same resulting increases in CPUE. Future surveys should investigate river flow and other environmental conditions that may impact the Atlantic sturgeon's use of the Lower Cape Fear River.'' The researchers acknowledged ambiguity in whether these results represent increases in Atlantic sturgeon abundance or whether environmental conditions affected CPUE. Therefore, the information we presented in the proposed listing rule on trends in the Cape Fear River is consistent with what the researchers presented. Further, even if the data in the Cape Fear River do represent an actual increase in Atlantic sturgeon, data provided by NCDENR during the public comment period on the proposed listing rule did not show increasing trends in Atlantic sturgeon populations in other North Carolina rivers.

Comment 25: A commenter asked if the historical data on pounds of Atlantic sturgeon landed in South Carolina (page 61907 of the proposed listing rule) can be converted to CPUE.

Response: The majority of the landings data for South Carolina referred to by the commenter cannot be converted into CPUE. However, the data were taken from Smith *et al.* (1984), which did provide CPUE for the time period 1973 to 1982, and provided anecdotal data about the level of fishing effort for earlier time periods. The objective of the research conducted by Smith *et al.* (1984) was to obtain baseline information on the Atlantic sturgeon fishery in South Carolina. At the time their research commenced, South Carolina accounted for 55 percent of the total U.S. landings of Atlantic sturgeon, but little information on the characteristics of the fishery was available. Figure 2 in Smith *et al.* (1984) shows license data for the Atlantic sturgeon fishery in South Carolina. From 1960 to 1982, the number of fishermen licensed for sturgeon remained relatively constant, averaging 21 individuals (ranging between 15 and 30) per year. Smith *et al.* (1984) noted that fishermen possessing certain other types of fishing licenses (*e.g.,* a shrimp fishing license) were permitted to fish for Atlantic sturgeon without having a specific sturgeon license. Based on field observations, they estimated that there were two to three times the number of recorded licensed sturgeon fishermen active in these fisheries. No data on the amount of gear fished were available for the period of most active exploitation of the fishery (pre 1910), but from 1925 to 1970, the number of licensed units of fishing gear was also relatively constant and averaged 17.8 (ranging between 11 and 26). This suggests that landings data are representative of relative abundance, since fishing pressure remained constant.

There was a dramatic increase in fishing effort in the 1970 to 1982 time period, with the number of licensed nets at record levels for the time. The number of licensed nets in 1970 was less than 30, but by 1982, it was around 140. Smith *et al.* (1984) calculated CPUE data for 1973 to 1982 based on reported total landings and number of net licenses, as well as field observations and verbal information provided by fisherman. They noted several limitations of the license and landings data for calculating CPUE: (1) Though individual gear were required to be licensed, the license was not based on type or length; (2) the license data included gear fished in the northern (Winyah Bay) and southern (Edisto, Coosawhatchie, and Combahee Rivers) fisheries, whereas the landings data only included fish from the northern fisheries; (3) field observations indicated that not all nets were licensed, nor landings reported; and, (4) pre-1973 data included landings of shortnose sturgeon in addition to Atlantic sturgeon. Figures 6 and 7 in Smith *et al.* (1984) show landings, effort, and CPUE. Landings rose from about 20,000 to 42,000 kilograms (kg) between 1973 and 1982, while the number of licensed nets increased from 36 to 133 during the same time period, resulting in a slight declining trend in CPUE (Figure 6). Observations of fishermen on the Winyah Bay jetties between 1978 and 1982 (Figure 7) also showed a decline in CPUE during the time period, with Atlantic sturgeon landings declining even with effort increasing. Smith *et al.* (1984) concluded that a definitive analysis of the fishery was not possible because of the limitations of the data, but they stated that ''fishing effort has substantially increased without a concomitant increase in landings'', and though ''the fate of this fishery in South Carolina is not clear, it appears likely that intensive fishing effort will adversely affect local populations of these long-lived fish.''

Comments on the 2007 Status Review, the 1998 Status Review, and Difference Between the Status Reviews and the Proposed Listing Rule

Comment 26: Commenters disagreed with NMFS' proposal to list both of the DPSs in the Southeast as endangered, when the 2007 status review report concluded that the Carolina DPS should be listed as threatened and did not make a listing conclusion for the South Atlantic DPS due to lack of information to allow a full assessment of subpopulations within the DPS. Several of these commenters stated that there was no new scientific information presented justifying the proposed listing of the Carolina and South Atlantic DPSs differently from the conclusions reached in the 2007 status review report. Similar comments were received that no new data has been collected, and no changes in the level of threats have been documented, since the 1998 status review, which concluded that listing was not warranted at that time. One commenter said the proposed listing rule does not sufficiently explain why the conclusion in the 1998 status review report that the existing moratorium on fishing for Atlantic sturgeon and the

listing of the shortnose sturgeon was adequate to protect Atlantic sturgeon is no longer valid.

Response: Regarding comments about divergence from the 2007 status review report's listing conclusions for the Carolina and South Atlantic DPSs, see our response to peer reviewer comment 1 above.

In 1998, NMFS and USFWS (Services) determined that an ESA listing of Atlantic sturgeon throughout its range was not warranted at that time (63 FR 50187, September 21, 1998). The Services cited eight reasons for the negative determination: (1) Evidence that the historical range of the species has not been substantially reduced and that its current range is not likely to be significantly reduced in the foreseeable future; (2) persistence of at least 14 spawning populations; (3) the expected efficacy of existing prohibitions on harvest and possession in all 15 states comprising the species' U.S. range; (4) detailed evaluation of current habitat conditions and threats to habitat showing that conditions are adequate to sustain the species and are likely to remain so in the foreseeable future; (5) lack of substantial information indicating that overutilization for commercial, recreational, scientific or educational purposes is currently significantly affecting the species; (6) lack of information indicating that disease or predation are causing significant losses of individuals of the species; (7) existing regulatory mechanisms which provide adequate protection and further the conservation of the species; and, (8) lack of information indicating that artificial propagation is currently posing a threat to the species.

Section 4(b)(1)(A) of the ESA requires that listing decisions be made using the best available scientific and commercial information at the time of the decision, after conducting a review of the status of the species and considering the conservation efforts of states and foreign nations.

Information provided in the 2007 status review report and the 2010 proposed listing rule explain why we no longer believe all of the eight conclusions in the 1998 status review report are valid, particularly as applied to DPSs of Atlantic sturgeon. Specifically: (1) Reductions in the historical range of Atlantic sturgeon have occurred, as evidenced by extirpations of several spawning populations in both Southeast DPSs and limited access to historical river reaches and habitats above dams (detailed in the ''Distribution and Abundance'' and ''Conservation Status'' sections of the proposed and final listing rules); (2) no spawning populations in the DPSs are large or stable enough to provide with any level of certainty for the continued existence of the DPS in the face of threats currently acting on the species; (3) existing prohibitions on harvest and possession of Atlantic sturgeon in all East Coast states do not alleviate other significant threats to Atlantic sturgeon (*i.e.,* bycatch and habitat destruction/modification, a point discussed in further detail in the discussion on those threats); (4) habitat destruction and modification (from dams, dredging, degraded water quality and quantity, *etc.*) is a significant threat to Atlantic sturgeon river populations and DPSs, as discussed below and in our responses to comments 39–45; (5) information on overutilization of Atlantic sturgeon as bycatch suggests that this is also a significant threat to Atlantic sturgeon populations, as discussed below and in our responses to comments 46 and 47; and, (7) existing regulatory mechanisms have proven inadequate at controlling the threats to Atlantic sturgeon from habitat modification/destruction and bycatch, as discussed in our responses to comments 49 and 50. Evidence for these conclusions and detailed responses to the comments received on these conclusions is presented in the following text.

Comments stated that no new data has been collected and no changes in the level of threats have been documented since the 1998 status review. However, studies not available at the time of the 1998 status review report on bycatch (discussed here) and habitat quality (discussed later in this section) have been reviewed by NMFS as part of our current listing determination. The 1998 status review report determined that estimated levels of mortality associated with bycatch on the Delaware and Hudson Rivers indicated that bycatch was not a significant threat to the species survival but could impede recovery, and recommended that efforts be made to better quantify data on bycatch levels, fishing effort, and river population levels to ensure that assumptions made using Hudson and Delaware River information are valid for other river populations. Since 1998, the ASMFC (2007) produced a bycatch report providing estimates of Atlantic sturgeon bycatch, as did Stein *et al.* (2004), a bycatch report used by the 2007 ASSRT. The reports documented mean bycatch mortality rates of 13.8 percent and 22 percent, respectively. However, the ASMFC (2007) report noted that the estimates of bycatch utilized in the analysis are likely to be underestimates of true bycatch and mortality levels, since they rely only on reported bycatch from the observer program (there is limited observer coverage in fisheries potentially capturing Atlantic sturgeon in Federal waters from North Carolina to Florida), and delayed mortality is not accounted for in their estimates. Further, the 1998 status review report did not consider the effects of bycatch and degraded habitat working in combination on greatly reduced Atlantic sturgeon populations, which are at 1 to 6 percent of historical levels.

In response to the comments that the proposed listing rule does not sufficiently explain why the conclusion in the 1998 status review report that the existing moratorium on fishing was adequate to protect Atlantic sturgeon is no longer valid, at the time of the 1998 determination, we note that the ASMFC moratorium on retention of Atlantic sturgeon had recently gone into effect. Because this eliminated directed fishing for Atlantic sturgeon (NMFS followed this with a 1999 closure of the EEZ to fishing for Atlantic sturgeon), which was considered the primary threat to the continued existence of the species at the time, the moratorium factored heavily in the Services' decision not to list the species at the time. However, since implementation of the moratorium, additional bycatch information (Stein *et al.,* 2004; ASMFC, 2007) has become available and indicates that Atlantic sturgeon are vulnerable to bycatch in commercial fisheries, and that the current rate of bycatch is unsustainable in the long term (ASMFC, 2007). Further, the proposed listing rule described in detail why the existing moratorium on directed capture of Atlantic sturgeon has not eliminated the incidence of sturgeon bycatch in other fisheries and also does not address threats associated with the destruction and modification of their habitat. Comments were also received that the proposed listing rule does not sufficiently explain why the conclusion in the 1998 status review report that the listing of the shortnose sturgeon was adequate to protect Atlantic sturgeon is no longer valid. While Atlantic sturgeon have benefited from some of the protections afforded the endangered shortnose sturgeon due to their shared presence in some rivers, shortnose sturgeon do not coexist in all rivers within the Atlantic sturgeon's range and shortnose sturgeon do not use the coastal and marine environments used extensively by Atlantic sturgeon. Additionally, there is often spatial and temporal separation of riverine habitat

use by the Atlantic and shortnose sturgeon. Adults of both species use similar habitats for spawning in the riverine environment, but they are known to use them at slightly different times of the year. As stated in the 1998 recovery plan for the shortnose sturgeon, spawning begins in freshwater from late winter/early spring in southern rivers. The 2007 Atlantic sturgeon status review report stated that spawning adults generally migrate upriver in the spring/early summer (February to March in southern systems). Further, the 2007 Atlantic sturgeon status review report noted that other life stages of Atlantic and shortnose sturgeon may use different sections and/or different depths within the same river system. Therefore, the threats facing each species are not identical and protections for shortnose sturgeon cannot be expected to fully alleviate threats to Atlantic sturgeon.

Comment 27: Several comments were received on differences in the 1998 and 2007 status reviews in the evaluations of the threat to Atlantic sturgeon from habitat modification. A commenter noted that the 1998 status review report denied the petitioner's claims that dam blockages, degraded water quality, and dredging significantly contributed to low Atlantic sturgeon abundances, but NMFS has not provided any evidence supporting a reversal of this conclusion. Another commenter specifically asked what changed between the 1998 and 2007 status reviews to warrant the ''moderately high (4)'' ranking of threats from dams on the Cape Fear River in the 2007 status review. The commenter also asked if the recommendations on page 91 of the 1998 status review report have been followed. The commenter requested we provide the baseline data on spawning and nursery habitat, including locations, depths, flows, substrates, carrying capacity or optimal population, that was recommended as ''contributing to and accelerating the ongoing recovery or enhancement of Atlantic sturgeon'' in the 1998 status review. Several commenters also cited the 1998 status review's statements that water quality has been improving since the 1970s, dredging activities are increasingly rare and have minimal effects on sturgeon, and successful shortnose restoration is indicative of future rebounding of Atlantic sturgeon stocks. One of the commenters referenced Table 9 in the 2007 Status Review, which shows a 2004 U.S. Environmental Protection Agency (USEPA) water quality grade in the Southeast as ''B'', then questioned the extinction risk ratings in Table 13 of the 2007 Status Review, which rates water quality in most of the Southeast rivers as having a moderate risk of causing extinction.

Response: In reaching our 1998 not warranted determination, we did not consider the loss of habitat due to dams to be a significant threat. Page 31 of the status review report states, ''In the southern region of the U.S. Atlantic coast, the fall line is commonly much farther inland (322 river kilometers or rkm on the Savannah River, South Carolina-Georgia border) or almost nonexistent (St. Johns River, Florida). This potentially provided more freshwater (spawning) habitat than in many northern rivers. However, historical records of the amount of habitat actually used by Atlantic sturgeon are lacking. Thus, for most rivers, it is not possible to determine how much habitat was lost due to dam construction for southern rivers.'' As stated above, the 1998 analysis included the amount of spawning habitat available to the species across its range. Since that time, we have determined the amount of habitat lost on each of the rivers due to dams (see Table 7 of the 2007 status review). We also have additional information on spawning locations for some rivers. The 1998 status review report cited the Savannah River as an example of a river with a fall line far inland and the 2007 status review report also stated that 92 percent of the habitat on the Savannah is unimpeded by dams. While both of these facts are true, the historical primary spawning habitat for Atlantic sturgeon (and only shoal habitat on the Savannah River), the Augusta Shoals, is not accessible to Atlantic sturgeon because it lies above the New Savannah Bluff Lock and Dam (Wrona *et al.,* 2007; Marcy *et al.,* 2005; Duncan *et al.,* 2003; USFWS, 2003). Regarding the comment on the ranking for the Cape Fear River, the 1998 status review report did not have an estimate for how much spawning habitat was blocked by Lock and Dam #1. The 2007 status review report included the following information and provides insight into the ''moderately high'' ranking for the threat of dams on that river (page 51): ''Historical spawning locations are unknown in the Cape Fear River; therefore, it is assumed that the fall line is the upper limit of spawning habitat. Using the fall line as guide, only 33 percent of the historical habitat is available to Atlantic sturgeon (96 km of 292 km). In some years, the salt water interface reaches the first lock and dam; therefore, spawning adults in the Cape Fear River either do not spawn in such years or spawn in the major tributaries of the Cape Fear River (*i.e.,* Black River or Northeast Cape Fear rivers) that are not obstructed by dams.''

Dredging activities are far from rare. NMFS routinely conducts section 7 consultations on listed species for dredging projects within the range of Atlantic sturgeon. Statistics on hopper dredging, the form of dredging most likely to take aquatic species (such as sea turtles and Atlantic sturgeon), can be found on the U.S. Army Corps of Engineers' (USACE) ''Sea Turtle Data Warehouse'' Web site (*http://el.erdc.usace.army.mil/seaturtles/index.cfm*). The Charleston, Jacksonville, Savannah, and Wilmington Districts have completed 307 hopper dredging projects, removing over 220 million cubic yards of material from federally maintained navigation channels in 307 projects since 1991. The number of private dredging projects permitted by USACE would increase that number considerably. Further, these numbers do not include other dredging methods (*e.g.,* cutterhead and mechanical) used by Federal and private entities that are less likely to directly interact with sturgeon species, but can modify and degrade sturgeon habitat.

While water quality has generally improved since the 1970s due to numerous Federal, state, and local laws, including the Clean Water Act of 1972, water quality continues to be an issue for Atlantic sturgeon due to human population expansion and a variety of agricultural, industrial, and commercial activities in the coastal zone. Table 9 in the 2007 status review report cites the USEPA's National Coastal Condition Report (NCCR) II (2005) in grading the Southeast water quality as a B. The NCCR II also assigned water quality a numerical score of 4 (where 1 is poor and 5 is good), ranking it as ''good to fair.'' It is important to note that the water quality index in the NCCR II was based on a combination of several parameters, the most important of which to Atlantic sturgeon is dissolved oxygen (DO). The DO range considered ''good'' in the NCCR II was greater than 5 mg/L while a DO range of 2 to 5 mg/L was considered ''fair.'' As stated in the proposed listing rule, sturgeon are more highly sensitive to low DO than other fish species and ''low'' DO was defined as less than 5 mg/L (Niklitschek and Secor, 2009a, 2009b). A DO of 2 mg/L (the lower end of the ''fair'' scale in the NCCR II report) would be considered very poor for an Atlantic sturgeon, likely lethal to early life stages (Niklitschek and Secor, 2009a, 2009b; Niklitschek and Secor, 2005; Secor and Gunderson, 1998). The USEPA

published the NCCR III in 2008 and downgraded water quality in the Southeast from a 4 to a 3, ranking it as ''fair'' rather than ''good to fair.'' It also showed that the portion of the Southeast that had a ''poor'' water quality index ranking increased slightly from 5 percent to 6 percent. While other condition indicators for the Southeast in the NCCR III showed improvement over the NCCR II levels (the benthic index was upgraded from a 3 to a 5 in the Southeast) or remained the same (the coastal habitat index remained a 3), the sediment quality index was downgraded from a 4 to a 3, and the fish tissue contaminant index was downgraded from a 5 to a 4. This resulted in a decrease from 3.8 to 3.6 in the overall condition of the Southeast. The results of the NCCR III report do not support the commenters' assertion that water quality has continually improved since the 1970's. Water quality was downgraded to ''fair'', and DO levels included under a ''fair'' rating may be less than adequate for Atlantic sturgeon, particularly early life stages. Further, the percentage of geographic areas in the Southeast with ''poor'' water quality increased between NCCR II and III.

NMFS and other partners involved in the conservation of Atlantic sturgeon (such as the ASMFC, USFWS, and state agencies) continue to work on monitoring, research, and other activities, including those outlined in the 1998 status review, to recover Atlantic sturgeon. However, these are long-term, ongoing efforts, and the objectives outlined in the 1998 status review report are not complete. We do not have all of the data requested by the commenter, but what is available is included in the 2007 status review, the proposed listing rule, and the references cited therein. Once Atlantic sturgeon are listed, NMFS will have a greater opportunity to prioritize and standardize Atlantic sturgeon research, as recommended for recovery and conservation of Atlantic sturgeon in the 1998 status review.

Comment 28: Several comments stated that the 2007 status review report was developed with little or no input from state agency experts and that state agency comments should be weighed heavily. One commenter stated that the results of the 2003 workshop that preceded the 2007 status review report were not publicly available.

Response: Eight state and regional experts from six state agencies provided their individual expert opinions on the information contained in the 2007 status review report and provided additional data to ensure the status review report included the best available. Many of the comments, data, and information presented in this document originated from state agencies. As stated in the status review report and the proposed listing rule, information obtained at the 2003 workshop prompted the initiation of the status review. Information from the workshop was incorporated into the 2007 status review. In addition, the 2003 workshop was held in conjunction with a meeting of the ASMFC Atlantic Sturgeon Technical Committee and some of the proceedings of the workshop are published in various meeting summaries, reports, and documents on the ASMFC's Atlantic sturgeon Web site (*http://www.asmfc.org*).

Comments on the Need To List Atlantic Sturgeon Under the ESA

Comment 29: Comments were received stating that Atlantic sturgeon should not be listed because their populations are stable, sufficiently large, and/or increasing. Commenters cited to Grunwald *et al.* (2008) for statements that the Altamaha and Edisto appear to have large, multiple year class populations that exhibit high annual reproductive success. The State of Georgia commented that, in order to list as threatened or endangered under the ESA, the condition must exist in ''all or a significant portion of its range.'' The commenter stated the Altamaha River represents a significant portion of the South Atlantic DPS's range due to the large population of Atlantic sturgeon in that river and the area of the watershed. They also stated populations are persisting in other systems, and therefore, they do not believe Atlantic sturgeon are threatened or endangered throughout a significant portion of their range. Other commenters stated that Atlantic sturgeon have been observed in most South Carolina coastal rivers during the last two decades, although it is not known if all rivers support a spawning population. Currently, the only long term data set available for Atlantic sturgeon in South Carolina is on the Edisto River, where the Atlantic sturgeon population seem to be relatively stable based on fishery independent sampling efforts by the South Carolina Department of Natural Resources. A commenter stated that abundance and distribution presented in the proposed listing rule is inconclusive, citing increasing incidental take in Albemarle Sound gill nets, increases in average length of Atlantic sturgeon captured off North Carolina between 1986 and 2003, suspected spawning activity on the Pee Dee River during the Fall of 2003, and the doubling of CPUE of Atlantic sturgeon from annual surveys conducted in the Cape Fear River between 1997 and 2003. One commenter stated that for the Savannah River, conclusions were incorrectly drawn in the proposed listing rule that the greater catch of shortnose sturgeon than Atlantic sturgeon, as cited in Collins *et al.* (1996), was not a reflection of lower than expected catch of Atlantic sturgeon, but rather that they were fishing in areas/habitat not preferred by juvenile Atlantic sturgeon.

Response: The information presented by commenters stating that Atlantic sturgeon should not be listed does not provide a basis for revising our proposed listing rule determination of endangered for the Carolina and South Atlantic DPSs of Atlantic sturgeon. Grunwald *et al.* (2008) stated that ''among southeastern populations, those in the Altamaha (Peterson *et al.* in press) and Edisto appear to be large, with multiple year classes and high annual reproductive success.'' Grunwald *et al.* (2008) continued that ''others range from small (Ogeechee and Savannah) to possibly extirpated (Satilla).'' This is consistent with information we presented in the proposed listing rule that, at the 2003 workshop, we determined some populations seemed to be recovering while others were declining, prompting our initiation of the 2007 status review. This comment is also consistent with our description in proposed listing rule of the Altamaha population as larger and more robust than other populations in the Southeast. We received information from SCDNR (presented in the previous section of comments) that they have captured 3,661 Atlantic sturgeon in the Edisto since 1994. If all of these were spawning adults, then this represents an average of approximately 230 spawning adults per year since 1994, which is consistent with our estimate of less than 300 spawning adults per year for this system. The low number of annually spawning adults estimated for Atlantic sturgeon in the Southeast (343 for the Altamaha River and less than 300 for the remaining spawning populations) factored heavily in our determination that the Carolina and South Atlantic DPSs warranted listing as endangered. In the proposed listing rule, we did not define which rivers constitute a significant portion of the species' range because we concluded that the Carolina and South Atlantic DPSs are endangered throughout their entire ranges. The presence of multiple spawning populations does not negate the need for listing. As discussed above, we do not believe that any of the riverine

populations within either DPS, alone or in combination, are viable and stable enough to constitute a significant portion of either DPS's range.

We acknowledged uncertainty in the abundance and distribution information we presented. However, we believe that a conservative evaluation of the information the commenter referred to as ''inconclusive'' supports our endangered listing determination. As the commenter noted, we stated that catch records for Albemarle Sound, as well as the Roanoke River, indicate that this population seemed to be increasing until 2000, when recruitment began to decline. We also indicated the existence of catch records and observations from other river systems in North Carolina (*e.g.,* the Tar, Neuse, and Cape Fear Rivers), but, based on the relatively low numbers of fish caught, we stated it was difficult to determine whether the populations in those systems are declining, rebounding, or remaining static. However, the fact alone that low numbers of fish were caught does not logically lead to a conclusion that populations are increasing. The commenter's interpretation of data on increases in average length of Atlantic sturgeon caught off North Carolina between 1986 and 2003 (from Laney *et al.,* 2007) is incorrect. While Figure 5 in Laney *et al.* (2007) showed an increase in average length of fish caught from 1988 to 2006, the commenter suggested this is due to a reduction in commercial harvest of larger sturgeon. Commercial harvest of Atlantic sturgeon was completely prohibited in 1999. The trend of increasing size was linear over the full time period and the rate of increase showed no association with the time period during which the moratorium was active. Laney *et al.* (2007) did not draw any conclusions about the increase in average size over the study period. However, they did conclude from the length data that all but five of the Atlantic sturgeon captured were juveniles. They attributed the low numbers of adults to either the age distribution of the population (*i.e.,* low numbers of adults in the population because of pre-moratorium fishing) or the ability of adults to more successfully evade capture in nets. As we discussed in our response to a previous comment, it is possible that the increases in Atlantic sturgeon observed in the Cape Fear River surveys were due to environmental conditions rather than actual population increases. As we also stated above, the same data the commenter states shows an increased population in the Cape Fear River would have to be interpreted to show no increase in Atlantic sturgeon in other North Carolina Rivers, and as previously stated, neither DPS can be judged not in danger of extinction based on any single river population within the DPS.

We do not agree that we incorrectly interpreted the lower catch of Atlantic versus shortnose sturgeon in the Savannah River, as reported in Collins *et al.* (1996). Researchers conducted surveys in both the lower river (rkm 45–75) and upper river (rkm 160–299). No Atlantic sturgeon were captured in the upper river, while 14 Atlantic sturgeon (and 189 shortnose) were captured in the lower Savannah River. As stated in Collins *et al.* (1996), juvenile Atlantic sturgeon in the size range likely to be captured in the shad fishery (and the size range observed in this study) occur in estuarine and tidally influenced portions of the river. According to the New Georgia Encyclopedia, the Savannah River is tidally influenced up to Clyo, Georgia, 61 miles (98 rkm) upriver. Therefore, the lower river study area was within the area Collins *et al.* (1996) expects juvenile Atlantic sturgeon to occur.

Comment 30: Several commenters recommended that NMFS implement alternative actions instead of listing Atlantic sturgeon. One commenter suggested that NMFS designate Atlantic sturgeon as a Species of Concern and conduct another status review in 2017. Some commenters believed that, in lieu of listing Atlantic sturgeon, NMFS should enter into multi-state, multi-agency partnerships to obtain the information they believe is necessary to support management actions. A commenter specifically requested that we provide information on any cooperative efforts NMFS is engaged in. One commenter suggested that increased fishing regulations, including the development of habitat reserves, as well as area and seasonal closures, are warranted instead of listing. Another commenter stated that NMFS should expand the 1965 Anadromous Fish Conservation Act in order to protect Atlantic sturgeon and said that imposing a listing is a poor substitute for restoring habitat and water quality.

Response: We made our proposed listing determinations for the Carolina and South Atlantic DPSs of Atlantic sturgeon by carefully analyzing the declines in population abundance, available information on the current status of riverine spawning populations, and the threats facing the species, and whether their status or the threats are adequately addressed by existing regulatory mechanisms or protective or conservation mechanisms. Though moratoria on harvest and possession of Atlantic sturgeon were enacted by the ASMFC, NMFS, and several states, populations have not rebounded and the moratoria do not control bycatch. We believe continued overutilization of Atlantic sturgeon from bycatch in commercial fisheries is an ongoing impact to the Carolina and South Atlantic DPSs that is contributing to their endangered status. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. While some of the threats to the Carolina and South Atlantic DPSs have been reduced through the existing regulatory mechanisms, such as the moratoria on directed fisheries for Atlantic sturgeon, bycatch is currently not being addressed through existing mechanisms. Further, water quality continues to be a problem even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even with the Federal Power Act. Since our evaluation of the Carolina and South Atlantic DPSs resulted in our determining that both DPSs are in danger of extinction throughout their ranges (*i.e.,* meet the definition of endangered), we cannot list the DPSs as threatened or continue to designate Atlantic sturgeon as a species of concern.

Section 4(b)(3)(B) of the ESA requires us to make a finding within 12 months of receiving a petition as to whether the petitioned action is warranted. Section 4(b)(6)(A) of the ESA requires that a final listing determination be made within 12 months of publication of the proposed listing rule. Because we received a petition to list Atlantic sturgeon from the Natural Resources Defense Council (NRDC) on October 6, 2009, that established mandatory deadlines under the ESA for determining whether listing of the species is warranted, and for associated rules. As described above, the best available scientific and commercial information on the status of, and threats to, Atlantic sturgeon is sufficient to warrant listing of the Carolina and South Atlantic DPSs of Atlantic sturgeon as endangered under the ESA. Therefore, listing cannot be postponed, and we cannot enter into multi-state, multi-agency partnerships or increase fishery regulations to address Atlantic sturgeon conservation issues in lieu of listing. However, once listed, fishery regulations, such as the development of habitat reserves or seasonal/area closures, could be considered as a means to reduce threats to Atlantic

sturgeon from being taken as bycatch. If this was determined to be necessary for the conservation of Atlantic sturgeon, it would be done in collaboration with all the stakeholders, including the affected fishing community.

We currently work with multiple agencies in multiple states to improve our knowledge of the species and to enhance conservation efforts. In fact, our efforts and exchange of knowledge with our multi-agency, multi-state partners factored into our decision that listing the Carolina and South Atlantic DPSs of Atlantic sturgeon as endangered is warranted. In 1999, pursuant to section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*), we supported the ASMFC's moratorium on Atlantic sturgeon by closing the Exclusive Economic Zone (EEZ) to Atlantic sturgeon retention. In 2003, we sponsored a workshop with the USFWS and ASMFC to discuss the status of sturgeon along the Atlantic Coast and determine what obstacles, if any, were impeding their recovery. Based on the information gathered from the 2003 workshop, we decided that a new review of Atlantic sturgeon status was needed to determine if listing as threatened or endangered under the ESA was warranted. The ASSRT was a multi-agency team consisting of NMFS, USFWS, and USGS biologists. Also, as described in the example given in the response above, we have entered into multi-state, multi-agency partnerships to conduct research.

The projects described in the previous response to document seasonal and spawning migrations of sturgeon, identify interbasin migrations, develop genetic aging techniques, and map habitat were all funded through the Species Recovery Grants Program (''section 6 program'') in 2010. Section 6 of the ESA provides a mechanism for cooperation between NMFS and states in the conservation of threatened, endangered, and candidate species. Under section 6, NMFS is authorized to enter into agreements with any state that establishes and maintains an ''adequate and active'' program for the conservation of endangered and threatened species. Once a state enters into such an agreement, NMFS is authorized to assist in, and provide Federal funding for, implementation of the state's conservation program. Federal funding, provided in the form of grants, can be used to support management, outreach, research, and monitoring projects that have direct conservation benefits for listed species, recently delisted species, and candidate species that reside within that State. Each of the states occupied by the Carolina and South Atlantic DPSs has a section 6 agreement with NMFS. In addition to the multi-year, multi-state, multi-agency projects funded in 2010, various research projects by multiple agencies involving the Carolina and South Atlantic DPSs were funded through the section 6 program in prior years (NMFS, 2009), including evaluations by GADNR of Atlantic sturgeon populations and habitat in the Altamaha River (2003, 2004, and 2006) and the St. Mary's and Satilla Rivers (2008), and studies by SCDNR of Atlantic sturgeon growth, diet, and genetics (2003, 2005).

The Anadromous Fish Conservation Act (AFCA) of 1965 is another source of collaboration between Federal and state partners. Projects funded under this act are conducted for the conservation, development, and enhancement of anadromous fishery resources and must be cleared with the fishery agency of the state that the work is carried out in. Many projects funded under AFCA are critical elements of larger programs to manage, restore, or enhance anadromous resources. In 1998, SCDNR was awarded $176,837 for a 3-year project to collect life history data on juvenile Atlantic sturgeon and determine seasonal habitat utilization, movements, and growth. SCDNR was also awarded $116,926 in 2001 for a 3-year period to continue work on the previous project funded through the AFCA, as well as look at the effects of fisheries, such as shad gillnet fisheries, on sturgeon. Research publications resulting from these projects were evaluated in the proposed listing. AFCA funding for research in the Southeast Region is generally around $104,000 per year, though the program has not received funding for the past 3 years.

We do not believe the listing of the Carolina and South Atlantic DPSs is a substitute for restoring habitat and water quality. Rather, the need to list the two DPSs of Atlantic sturgeon in the Southeast as endangered highlights the need to restore water quality and their habitat, because as we outlined in the proposed listing, habitat modification and poor water quality are significantly contributing to the endangered status of Atlantic sturgeon.

Comment 31: Commenters both supporting and opposed to the proposed listing believed that additional information on Atlantic sturgeon, such as abundance, movement, life history information, habitat usage, response to threats, *etc.,* is necessary. Commenters supporting the proposed listing believed this information is important to address threats to the species and determine recovery actions. Fisheries and Oceans Canada provided information on current Atlantic sturgeon studies planned or underway and expressed their interest in exploring potential areas of collaboration to enhance our mutual understanding of Atlantic sturgeon. Commenters opposed to the proposed listing believed that NMFS should not pursue listing before more information on abundance, movement, genetics, threats, *etc.,* is obtained. A comment was received that NMFS is proposing listing the Atlantic sturgeon without dedicating funding to collecting necessary information on the species. Some commenters believed that a final listing determination should be postponed until the results of recently commenced studies on Atlantic sturgeon are available. Several commenters also stated that NMFS should implement the measures listed in the 1998 amendment to the ASMFC's FMP for Atlantic sturgeon and address the monitoring and data needs in it before making a listing determination.

Response: As described in the proposed listing rule and in the previous response, section 4(b)(3)(B) of the ESA requires us to make a finding within 12 months of receiving a petition as to whether the petitioned action is warranted, on the basis of the best data available at the time of the determination. Because we determined the Carolina and South Atlantic DPSs of Atlantic sturgeon warranted listing as ''endangered,'' we published a proposed listing rule in the **Federal Register**. The ESA requires that we publish final listing rules within one year from the date that we publish proposed rules to list species. The best available scientific and commercial data on the historical declines of Atlantic sturgeon, the species' failure to rebound even with the prohibition on directed captured and possession, the information on the status of current spawning populations, the information on the level of threats to the species from bycatch, habitat modification and curtailment, and the failure of existing regulatory mechanisms to protect the species indicate that listing of the Carolina and South Atlantic DPSs of Atlantic sturgeon as endangered under the ESA is warranted. Therefore, we cannot postpone a listing determination until the results of recently commenced studies are available. However, we agree with commenters that additional information on Atlantic sturgeon concerning abundance, movement, life history information, habitat usage, and response to threats is critical to fully recovering the species.

Section 4(b)(1)(A) of the ESA requires us to make listing determinations solely on the basis of the best scientific and commercial data available, whether research funding for the species is available or not. However, while Atlantic sturgeon were considered a ''species of concern'' and a candidate species, NMFS dedicated funding to Atlantic sturgeon in order to gain knowledge necessary for conservation and recovery of the species. NMFS is currently funding a multi-year, multi-state, multi-agency project to document, through telemetry, seasonal and spawning migration patterns and incidences of inter-basin transfer for adult Atlantic (and shortnose) sturgeon in southeastern rivers in North Carolina, South Carolina, and Georgia, as well as develop, test, and implement a genetic aging technique. We are also funding research to map habitat in four Georgia rivers that will complement this study, as it overlaps with the area where the telemetry work is being conducted. These studies also address components of the monitoring and data needs outlined in the ASMFC's Atlantic sturgeon FMP. We will continue to conduct and fund Atlantic sturgeon research as funds become available in the future. We look forward to working with the ASMFC, Fisheries and Oceans Canada, our state partners, and other stakeholders in the conservation and recovery of Atlantic sturgeon, including obtaining the necessary research to fill in the gaps in our knowledge.

Comment 32: One commenter stated that NMFS relied on non-peer reviewed, agency-based opinion rather than scientific fact and stated that future management steps would also be driven by conjecture rather than science. Another commenter stated that the proposed listing rule was politically motivated instead of scientifically warranted. A comment was received that NMFS is rushing to list Atlantic sturgeon to gain leverage in FERC relicensing activities underway, such as the Santee-Cooper Hydroelectric Project.

Response: Section 4(b)(1)(A) of the ESA requires us to make listing determinations solely on the basis of the best scientific and commercial data available, not conjecture or political motivation. However, the ESA's best available data standard does not require us to limit the information we consider to published, peer-reviewed scientific literature. Our listing determination is consistent with the Services' Interagency Cooperative Policy on Information Standards (59 FR 24271; July 1, 1994). The majority of the literature cited in the status reviews and the proposed listing rule consists of peer-reviewed publications. As required by the regulations and agency policy for implementing the ESA and by the Information Quality Act, status reviews and listing decisions themselves are peer reviewed. The proposed listing rule for the Carolina and South Atlantic DPS was peer reviewed by three experts. The list of peer reviewers, with their affiliations, and the peer review comments in their entirety, are posted at *www.regulations.gov* and *http://www.cio.noaa.gov/Policy_Programs/prplans/ID184.html.* Our responses to the peer review comments are stated in this document. NMFS is not rushing to list Atlantic sturgeon to gain leverage in FERC relicensing activities; as discussed previously, section 4(b) of the ESA dictates strict timelines for making determinations and publishing rules in response to a petition to list a species as threatened or endangered.

Comments on the Consequences of the Proposed Listing Rule

Comment 33: Several comments were received stating that listing will not eliminate the impacts to Atlantic sturgeon (*e.g.,* it will not result in the removal of locks and dams).

Response: The commenters are correct that listing will not eliminate all impacts to Atlantic sturgeon. However, section 4(b)(1)(A) of the ESA states that the Secretary shall make listing determinations solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and taking into account efforts to protect the species. Based on our review of the best available information on the status of the Carolina and South Atlantic DPSs of Atlantic sturgeon and the efforts currently in place to protect the DPSs, we concluded that both DPSs should be listed as endangered. Our reasoning is outlined in the proposed listing rule and supplemented by our responses to the public comments in this document.

While listing a species does not automatically remove all threats, the ESA does provide tools for greater protection of listed species. When this final rule takes effect, the prohibition on ''take'' in section 9 of the ESA will apply. Also, any action funded, authorized, or undertaken by a Federal agency that may affect Atlantic sturgeon from either DPS will require consultation between that Federal agency and NMFS under section 7 of the ESA. Once listed, section 4 of the ESA also requires that we develop and implement a recovery plan that must, in part, identify objective, measurable criteria which, when met, would result in a determination that the species may be removed from the list; this standard inherently requires that recovery plans propose methods to address impacts and threats to the species. In the example given by the commenter for locks and dams, during section 7 consultation, NMFS would work with the operating and/or authorizing agency (*e.g.,* USACE or FERC) to minimize the effects on Atlantic sturgeon and their habitat. This could result in a variety of conservation measures to allow passage of Atlantic sturgeon upstream of the lock or dam and to control any downstream effects from the structures. The installation of fish passage, dam breaching, and even lock/dam removal have been undertaken in the past to restore natural flows and allow access to habitat for anadromous species.

Comment 34: Comments were received stating there will be negative consequences to various stakeholders associated with the listing. One commenter stated the Federal listing would increase regulations and potentially affect parties that do not have significant impacts on Atlantic sturgeon survival. Several commenters stated that there will be impacts to fisheries if additional restrictions are placed on them due to the listing, even if the interactions with Atlantic sturgeon do not cause significant mortality. Several comments were received that the listing process will hold up the issuance of new FERC licenses in the range of the two DPSs, which contain measures that they believe would benefit sturgeon. Commenters were concerned that there will be impacts to commerce if ship strikes result in speed restrictions and could be more far-reaching than the right whale protection zone. Commenters also believed there will be further restrictions on dredging, such as at large ports, that could have economic consequences for ports and commercial shipping interests. Commenters suggested that the cost to Federal and state entities associated with increased permitting needs should be considered in the listing. Another commenter stated that NMFS is using the listing to force regulators to impose requirements on third parties (*e.g.,* hydropower licensees) through the ESA consultation process, and the impact will affect society for decades. The commenter said that the costs of recovery should be leveled equitably among all parties, including NMFS, by allocating funding to collecting data needed for management. One commenter stated that economics should not be considered in the listing.

Response: As explained in the response above, section 4(b)(1)(A) of the

ESA states that the Secretary shall make listing determinations based solely on the best scientific and commercial data available to him after conducting a review of the status of the species and taking into account efforts to protect the species. The regulations implementing the ESA at 50 CFR 424.11(b), consistent with case law interpreting the ESA and its legislative history, state that the listing determination will be made without reference to possible economic or other impacts of such determination. We cannot consider the potential consequences (*e.g.,* increased economic costs or regulatory responsibilities) to the various stakeholders in our listing determination. Through the ESA section 7 consultation process, measures to reduce the effect of impacts on Atlantic sturgeon may be required for federally funded or permitted projects that adversely affect fish from the Carolina or South Atlantic DPS, but the listing will not affect entities or activities that do not affect Atlantic sturgeon. NMFS is not using the listing to force regulators to impose requirements on third parties (*e.g.,* hydropower facility licensees) and we are working with FERC to ensure that the listing of Atlantic sturgeon does not hold up the issuance of new licenses. For example, where we had already been engaged in section 7 consultation regarding a proposed relicensing's effects on the endangered shortnose sturgeon, we began ''conference consultations'' on the effects of such projects on Atlantic sturgeon once the species was proposed to be listed. Such ''conference opinions'' can be promptly adopted without reinitiating consultation on a project, if a species' listing is finalized as proposed. The listing determination, prompted by the 2007 status review report and the 2010 NRDC petition, is based solely on the status of the species and its current level of protection from impacts and threats.

NMFS currently dedicates funding to the recovery of listed species (and species of concern) through a variety of channels; we provide funds to the NMFS Science Centers, to academic institutions, and our state partners doing research. We currently have a multi-state effort to tag and track Atlantic sturgeon, and a simultaneous habitat mapping project in a portion of the area where the tagging/tracking is occurring, funded through our ESA section 6 grant program (Species Recovery Grants). However, successful recovery of the species will require the actions of entities other than NMFS. Section 4(f)(2) of the ESA states that the Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Section 7(a)(1) of the ESA charges all Federal agencies to utilize their authorities in furthering the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species. Recovery may also be facilitated through incorporating conservation measures into activities that potentially affect Atlantic sturgeon, for example, through section 7(a)(2) consultation and section 10(a)(1)(B) permitting. Those processes provide a means to tailor the required conservation measures to the severity of an activity's impacts.

Comment 35: Many commenters had concerns over the time lag in getting research permits to study Atlantic sturgeon if they are listed as endangered. Other commenters said that in addition to creating a lengthy research permitting process, listing will lead to sampling constraints that would invalidate long established sampling protocols and will terminate long-term indices of abundance, as a change in the survey protocol is essentially the initiation of a new survey. Several commenters stated that the listing will abolish all efforts presently being undertaken to study the Atlantic sturgeon, including research on captive Atlantic sturgeon and studies conducted by other Federal agencies, such as USACE. One commenter suggested that these issues be taken into account in deciding whether to proceed with listing as endangered versus threatened. In addition to concerns over Atlantic sturgeon research, commenters also expressed concerns over impacts to other fishery survey and sampling programs that may encounter Atlantic sturgeon, as these would also require permitting. Commenters also expressed concern over the ability to opportunistically collect data from incidental captures of Atlantic sturgeon if they are listed as endangered. Several commenters expressed concern that the increased permitting workload associated with an Atlantic sturgeon listing would also cause a greater delay in obtaining permits to conduct research on other species, such as the shortnose sturgeon.

Response: As explained in the responses above, we cannot consider the potential consequences to stakeholders, including those conducting research on Atlantic sturgeon that aids in the management and conservation of the species, in making listing determinations. However, NMFS is making every effort to ensure that Atlantic sturgeon research, including ongoing care and study of captive fish, can continue uninterrupted once they are listed. Section 10(a)(1)(A) of the ESA allows NMFS to issue permits authorizing activities otherwise prohibited by section 9 of the ESA for the purpose of scientific research on listed species. The NMFS Office of Protected Resources, Permits Division contacted known Atlantic sturgeon researchers, at the time the proposed listing rule published in the **Federal Register**, requesting information on planned research activities so that an expedited permitting process could be put in place. Twelve applications for research permits for Atlantic sturgeon have been received and are undergoing review, and the steps necessary to comply with the National Environmental Policy Act and section 7(a)(2) of the ESA are already underway. Section 10(a)(1)(B) of the ESA allows NMFS to issue permits authorizing incidental take of listed species during the course of otherwise legal activities, such as fishery survey and sampling programs targeting species other than Atlantic sturgeon. If the activities are Federal actions, section 7 consultations can also provide incidental take authorization.

In March 2010, NMFS published ''A Protocol for Use of Shortnose, Atlantic, Gulf, and Green Sturgeons'' (Kahn and Mohead, 2010; available at *http://www.nmfs.noaa.gov/pr/pdfs/species/kahn_mohead_2010.pdf*). Section 10 permits will likely require that the protocol be followed during Atlantic sturgeon research. The goal of the protocol is standardization of research practices to benefit the recovery of sturgeon species, including the Atlantic sturgeon, while also minimizing potentially negative impacts of research.

These protocols were developed from a comprehensive review of the best available scientific information at the time of publication, including peer reviewed journals, technical memoranda, interviews with researchers, and empirical evidence provided by researchers. Some researchers expressed concern that sampling constraints associated with such a protocol would invalidate long-established sampling protocols and will terminate long-term indices of abundance. However, the protocol was developed with input from researchers and will serve to standardize research in the future. Any variation from previous research methods can likely be accounted for when comparing results. It is common in research, including Atlantic sturgeon research, for methods and equipment to evolve as experience

and technology in the field of research grows. Further, there is flexibility built into the protocol. For example, the introduction to the document states, ''When researchers or managers have reason to exceed recommendations in this document using less known or riskier techniques, NMFS recommends first using surrogate Acipenserids or hatchery-reared sturgeon. When researchers or managers feel non-recommended methods must be conducted on wild listed or candidate species, the researchers should consult with the appropriate permitting agency in order to justify why their methodology is necessary to provide information for the recovery of these species.''

Comment 36: Flagler County, Florida, commented that they do not believe Atlantic sturgeon or habitat supporting sturgeon exists in their county and requested that they be excluded from regulatory jurisdiction. Oconee County, Georgia, requested an exemption for previously permitted public water supply projects.

Response: Section 4(b)(5)(a)(ii) of the ESA requires that we notify each county where Atlantic sturgeon are believed to occur and invite their comment. Because we do not know all of the exact locations where Atlantic sturgeon may occur, and to ensure all counties potentially affected by the proposed listing were contacted, we used a GIS database to generate a list of all counties within the watersheds of rivers with current or historical spawning populations of Atlantic sturgeon. This resulted in over 200 counties for the Carolina and South Atlantic DPSs. Flagler County, Florida, is part of the St. Johns River watershed. The St. Johns River is used by Atlantic sturgeon as nursery habitat. We realize that not all of the counties we contacted have Atlantic sturgeon present; however, upstream projects can have effects on Atlantic sturgeon downstream, and we chose to be more inclusive to give adequate opportunity for communication between NMFS and potentially affected counties. Moreover, Atlantic sturgeon may reoccupy areas of their former ranges once their populations begin to recover, or when impediments to their migration are removed. Areas where Atlantic sturgeon do not exist and where activities that could potentially affect Atlantic sturgeon, directly or indirectly, are not occurring, will not be affected by the listing of Atlantic sturgeon. We cannot grant exemptions for projects that may affect Atlantic sturgeon once they are listed as endangered. Oconee County did not state whether they believe their permitted water supply projects will have effects on Atlantic sturgeon. Once listed as endangered, we will work with such entities to protect Atlantic sturgeon while still carrying out the purpose of their projects, such as providing water to the public.

Comments on Our Analysis of Threats

Comment 37: One commenter stated that the extinction risk analysis assigns arbitrary risk values to the level of threat an activity poses for Atlantic sturgeon populations in each river on a scale of 1 to 5. The commenter believed statistically sound information would be difficult to derive from this analysis when used to determine the status of a species under the ESA.

Response: We believe this comment misinterprets the purpose and utility of the extinction risk analysis contained in the Atlantic sturgeon status review. However, that risk analysis was not determinative to our proposed listing because we did our own independent extinction risk analysis, which we determined was required to be consistent with the ESA. The ASSRT characterized their extinction risk analysis as a ''semi-quantitative'' approach. It is not possible, nor did the ASSRT or NMFS ever intend, to conduct statistical analyses on the results of the extinction risk analysis contained in the status review. Further, the status review report clarifies that the intent of the extinction risk assessment was to help summarize the status of the species, and did not represent a decision by the ASSRT on whether the species should be proposed for listing as endangered or threatened under the ESA. In our proposed listing rule, we considered the information contained in the ASSRT's extinction risk analysis as part of our listing determination. However, we also considered additional threats (*e.g.,* drought, water allocation issues, and climate change) not considered by the ASSRT. In addition to evaluating the threats to the species, we considered the effects of small population size on the risk of extinction of Atlantic sturgeon DPSs. We compared estimated Atlantic sturgeon abundances with minimum viable population sizes discussed in relevant literature (see ''Conservation Status'' section in the proposed listing rule).

Comments on Habitat Threats

Comment 38: Commenters supporting the proposed listing rule emphasized that Atlantic sturgeon are vulnerable to habitat destruction, noting sensitivity to low DO, pollution, and river-specific threats from dams, dredging, and development, and a summary of their comments are included here. Several commenters noted that the Cape Fear River is above permissible mercury limits and all 13,123 waters in North Carolina are in Category 5 (waters impaired for one or more designated uses by a pollutant(s)) on the state's 2010 303(d) list (the list of impaired and threatened waters that section 303(d) of the Clean Water Act requires all states to submit to the USEPA) for mercury due to statewide fish consumption advisories. Several commenters also provided NMFS with information that a proposed cement plant on the Cape Fear River is requesting authorization to emit 263 pounds (119 kg) per year of mercury and discharge 10–15 million gallons of water a day (mgd). One commenter cited an analysis by a marine chemist that conditions are favorable in the Cape Fear estuary to convert the mercury to more dangerous forms. The chairman of the North Carolina Marine Fisheries Commission identified the proposed site of the plant as a spawning area for Atlantic sturgeon and five other diadromous species. Commenters also provided information on habitat threats from other proposed projects, such as the Cape Fear Skyway and the North Carolina International Container Terminal. A commenter encouraged further studies on the effect of toxins on all Atlantic sturgeon life stages. Comments were also received supplementing information in the proposed listing rule on concentrated animal feeding operations (CAFOs). While there is a moratorium in North Carolina limiting hog operations, a commenter noted this does not apply to the poultry industry, which is greatly expanding in the state and poses a significant water quality threat. The commenter listed two processing plants, one in the Neuse River basin and one undergoing permitting in the Tar-Pamlico basin, that are driving the establishment of poultry CAFOs and will result in increased nitrogen and phosphorus loading in coastal waters. Another commenter, citing NCDENR Department of Water Quality (DWQ) as the source of information, reported the decline of 1,600 freshwater miles (50 percent of the total freshwater miles) in the Neuse River basin and indicated that runoff is a contributing factor. They further cited NCDENR DWQ that this is likely an underestimate of the true number of miles affected by nonpoint-source runoff. The commenter also noted the ecological and water quality benefits from undisturbed riparian buffers and noted many instances in the coastal counties where construction of bulkheads and other shoreline

stabilization activities has resulted in the partial or complete loss of riparian buffers. Comments were received that in 1999, 60 percent of surface water tested in Georgia was too polluted for fishing, swimming, or drinking compared to national average of 40 percent. The Savannah River was reported to be the fourth most toxic river in the U.S., with 48 industrial outfalls over a 200 mile stretch from Augusta to Savannah. Comments included that the river has high levels of mercury, low DO is likely to worsen if the harbor deepening project is approved, and temperature is also a challenge, as cold water from the J. Strom Thurmond Dam is discharged 75 feet below the lake surface, disrupting the natural temperature regime. Though the proposed listing rule noted that water quality in the Altamaha is relatively good, a commenter provided information that 19 rivers and streams making up 192 miles of the Altamaha basin were on the 2002 303(d) list as not meeting their designated uses. This is an area dominated by silviculture and agriculture, two paper mills, and numerous other dischargers. Information provided included that a Federal Superfund site is contributing chemicals (including mercury). A May 2009 report noted lesions on fish in the river, linked to poor water quality and bacteria present in floodwaters. A commenter also noted the St. Mary's River is much warmer than the 70–75 degrees Fahrenheit ideal for sturgeon (it reaches the 90s), DO levels drop to less than 2 parts per million at times, and of the coal power plants on the river, half report releasing water in the summer months (when high temperature and low DO already a problem) at peak temperatures of 100 degrees Fahrenheit or more. The commenter concluded thermal pollution can stress or kill any fish present, and will be exacerbated by poor water quality conditions in these rivers.

Response: Additional information provided by commenters on the threats posed by the destruction, modification, or curtailment of Atlantic sturgeon habitat is consistent with our finding that it poses a significant threat to the Carolina and South Atlantic DPSs. We will continue to work with our partners and stakeholders through our existing authorities to reduce or eliminate the adverse effects of anthropogenic activities on sturgeon and their habitat.

Comment 39: Comments stated that water quality information presented in the proposed listing rule was overly generalized and should receive a more comprehensive review. Some commenters stated that water quality is good and/or improving, and disagreed that water quality is affecting Atlantic sturgeon. A commenter stated that after more than 30 years of water quality improvements associated with the Clean Water Act, it is unreasonable to think habitat is not of good quality. Another commenter stated that water quality has been improved through existing Federal and state regulations and programs, such as the mandate to implement water quality improvement programs that are consistent with Total Maximum Daily Load (TMDL) plans. The Cape Fear River was used as an example; the comments maintained that while certain areas are impaired, other areas used by Atlantic sturgeon are in excellent condition and fully support sturgeon life functions, and the NCDENR DWQ's water quality data should be used. NCDENR DWQ also submitted comments on the proposed listing rule, providing benthic macroinvertebrate data for 1983 to 2010 and stated that data from 12 river segments are fair to excellent. Commenters also said fish kills are not a good indicator of water quality, as reporting varies by year and location. One commenter stated that NMFS failed to identify water quality issues in the Cooper River, the Santee River meets state DO standards greater than 96 percent of the time, and NMFS did not acknowledge increased minimum flows associated with the new Santee-Cooper license. One commenter stated that NMFS did not present a substantive analysis concerning the sensitivity of sturgeon to water quality parameters relative to water quality conditions that currently exist in ''critical habitat areas.'' The commenter provided a literature summary on Atlantic sturgeon sensitivity to DO, temperature, and salinity in the Cape Fear River and a water quality database from the Cape Fear River Estuary Program and stated that an assessment of these data would provide information on the spatial and temporal distribution of various sturgeon life stages, sensitivities, and the likelihood of exposure to potentially adverse water quality conditions.

Response: As stated in our response to comment 27 on the 1998 and 2007 status reviews, while water quality has generally improved since the 1970s due to numerous Federal, state, and local laws, including the Clean Water Act of 1972, water quality continues to be an issue for Atlantic sturgeon due to human population expansion and a variety of agricultural, industrial, and commercial activities in the coastal zone. The USEPA publishes the National Coastal Condition Report and the NCCR II, published in 2005, graded the Southeast's water quality as a B. The NCCR II also assigned water quality a numerical score of 4 (where 1 is poor and 5 is good), ranking it as ''good to fair.'' The USEPA published the NCCR III in 2008. It downgraded water quality in the Southeast from a 4 to a 3, ranking it as ''fair'' rather than ''good to fair.'' It also showed that the portion of the Southeast that had a ''poor'' water quality index ranking increased slightly from 5 percent to 6 percent. While other condition indicators for the Southeast in the NCCR III showed improvement over the NCCR II levels (the benthic index was upgraded from a 3 to a 5 in the Southeast) or remained the same (the coastal habitat index remained a 3), the sediment quality index was downgraded from a 4 to a 3, and the fish tissue contaminant index was downgraded from a 5 to a 4. This resulted in a decrease from 3.8 to 3.6 in the overall condition of the Southeast. It is also important to note that the water quality index in the NCCR is based on several parameters, the most important of which to Atlantic sturgeon is DO. The DO level included within the ''good'' rating in the NCCR II was greater than 5 mg/L, while a DO range of 2 to 5 mg/L is included in the ''fair'' rating. As stated in the proposed listing rule, sturgeon are more highly sensitive to low DO than other fish species and ''low'' DO for sturgeon has been defined as less than 5 mg/L (Niklitschek and Secor, 2009a, 2009b). A DO of 2 mg/L (the lower end of the ''fair'' scale in the NCCR II report) would be considered very poor for an Atlantic sturgeon and is likely lethal to early life stages. The USEPA also monitors TMDLs, a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. Based on 2006 to 2010 data, each of the states in the range of the Carolina and South Atlantic DPSs had impaired waters under section 303(d) of the Clean Water Act: Florida (828 waterbodies), Georgia (215 waterbodies), South Carolina (1,060 waterbodies), North Carolina (902 waterbodies), and Virginia (2,534 waterbodies). Of the rivers and streams assessed, 51 to 66 percent of these waters were impaired in each of the southeastern states. Between 24 and 84 percent of the lakes, reservoirs, and

ponds assessed in each southeastern state were listed as impaired, as were 22 to 95 percent of bays and estuaries assessed. In the Cape Fear River basin, the example used by the commenter, 205 sections of the river are listed as impaired on the 303(d) list. As suggested by the commenter, we reviewed water quality information from NCDENR DWQ. We reviewed the most recent Water Quality Plan (October 2005) available for the Cape Fear River basin (publicly available at *http://h2o.enr.state.nc.us/basinwide/draftCPFApril2005.htm*), which supplements the TMDL data provided by the USEPA. The plan (Chapter 27, Figure 31) indicates ''habitat degradation'' and low DO occur in over 140 miles of impaired streams. Low DO is also estimated to occur in approximately 6,500 acres of impaired estuarine waters (Chapter 27, Figure 32). Figures 37 and 38 note various sources of stressors to streams and estuarine waters, respectively. While wastewater treatment, municipal stormwater, agriculture, land clearing, development, and impervious surfaces are listed as potential sources, the largest source affecting water quality in impaired streams and estuarine waters in the Cape Fear River basin is ''unknown.''

NCDENR DWQ commented on the proposed listing rule, as well. They stated that a review of benthic macroinvertebrate data from the Cape Fear mainstem demonstrates that the river is supporting robust benthic invertebrate communities. Benthic invertebrate communities serve as prey for foraging Atlantic sturgeon. NCDENR DWQ stated that 6.2 percent of the samples received ''excellent'' bioclassifications, and 31.2 percent each received ''good'', ''good to fair'', and ''fair'' bioclassifications. There were no samples receiving ''poor'' bioclassifications. However, with the exception of one sample collected in 2003, the remaining samples were collected in the 1980's and 1990's. Also, benthic invertebrate communities are only one of the many factors affecting the quality and suitability of habitat for Atlantic sturgeon. Regarding NCDENR DWQ's comment that fish kills were not a good indicator of water quality and that some of the fish kills on the Cape Fear River are likely due to naturally occurring low DO from blackwater swamps, we also reported this in the proposed listing rule. The comment that fish kill reporting varies by year and location, and is not a good indicator of water quality, is also consistent with our treatment of fish kill information in the proposed listing rule. We did not compare fish kill information across river systems with varying degrees of monitoring and reporting effort, rather we only included fish kill data as anecdotal evidence of naturally occurring low DO in the lower Cape Fear River.

With regard to habitat modification and curtailment in the Santee-Cooper system, the majority of the discussion in the proposed rule focused on the threats to Atlantic sturgeon from dams. The Clean Water Act 303(d) list of impaired waters includes 21 waterbodies within the Santee River basin and 34 waterbodies within the Cooper River basin. The commenter stated that the Santee River meets state DO standards greater than 96 percent of the time but did not provide data or a reference we could evaluate. The list of 303(d) waters in the Santee River basin lists 19 waterbodies that are listed as a result of low DO. We also reviewed the South Carolina State Water Assessment of the Santee River Basin, prepared by SCDNR (2009), which lists 9 waterbodies that are partially supporting of aquatic life and 19 waterbodies that are non-supporting of aquatic life, based on DO. The new license for the Santee-Cooper Hydroelectric project has not yet been issued, therefore the magnitude and timing of implementation of required increased minimum flows is unknown at this time. Significant concerns still exist over the inability of Atlantic sturgeon to access over 60 percent of historical habitat in the Santee-Cooper system due to the presence of the dams, though this would be partially ameliorated by fish passage for sturgeon that was prescribed in 2007 by NMFS for the Santee and Cooper Rivers pursuant to the Federal Power Act, if these prescriptions are implemented.

A commenter stated that we did not present an analysis of water quality in critical habitat areas. NMFS has not designated critical habitat, but the proposed listing rule and responses supplied in this document detail water quality conditions and potential effects of reduced water quality in habitat used by the Carolina and South Atlantic DPSs of Atlantic sturgeon. The literature summary on Atlantic sturgeon sensitivity to DO, temperature, and salinity in the Cape Fear River and a water quality database from the Cape Fear River Estuary Program is consistent with information in the proposed listing rule. The literature reviewed by the commenter was also cited in the 2007 status review report and/or the proposed listing rule.

Comment 40: A commenter stated that silviculture and forest manufacturing facilities do not appear to have significant implications for sturgeon or their habitat, particularly when compared to other land uses like agriculture or development. The commenter supplied information on forestry best management practices, sedimentation, the use of herbicides, and urged NMFS to reconsider its assertion that forest management practices pose a significant threat to biological diversity or to habitat for the Atlantic sturgeon. The commenter asserted that water quality has improved and will continue to improve through existing Federal and state regulations and program. The commenter also stated that implementation rates for forestry best management practices (BMPs) are high nationally, and there is an extensive body of scientific literature that confirms that forestry BMPs are effective. The commenter also indicated that state agencies and sustainable forestry certification programs are effective at educating the forest management community about forestry BMPs and encouraging their implementation, and providing reasonable assurance that forestry BMPs are being implemented effectively. The commenter concluded that sustainable forest management that adheres to BMPs does not pose a threat to terrestrial or aquatic organisms, including Atlantic sturgeon.

Response: The proposed listing rule included silviculture and forestry practices as potential threats to Atlantic sturgeon. The proposed listing rule stated that the spawning habitat of the Carolina DPS occurs within the Mid-Atlantic Coastal Plain ecoregion. The Nature Conservancy lists land conversion (*e.g.,* forests converted to timber plantations) as one of several significant threats in the ecoregion. The South Atlantic DPS occurs within the South Atlantic Coastal Plain ecoregion. The Nature Conservancy described the primary threats to biological diversity in this ecoregion as silvicultural practices, including conversion of natural forests to highly managed pine monocultures and the clear-cutting of bottomland hardwood forests. The proposed listing rule also noted that in the Altamaha River, which has the largest spawning population of Atlantic sturgeon in the Southeast, water quality is good at this time, but the drainage basin is dominated by silviculture and agriculture, with two paper mills and over two dozen other industries or municipalities discharging effluent into the river. While we agree that some existing programs are effective, degraded water quality continues to pose a threat to Atlantic sturgeon in

many systems despite existing regulatory mechanisms.

We appreciate the information provided by the commenter on the degree of threat to Atlantic sturgeon from forestry activities, as well as forestry BMPs and the efforts of the industry to ensure successful BMP implementation, including education and monitoring. However, we do not believe that our characterization of the potential threat of forestry practices to Atlantic sturgeon was overemphasized or overstated in the proposed listing rule, or was inconsistent with information provided by the commenter. While we do not disagree with the comments regarding the effective implementation of forestry BMPs, we note that implementation of the BMPs is voluntary in some cases, and that while BMP implementation nationally is high (89 percent), it is not 100 percent. The commenter also stated that implementation rates for BMPs can be used to understand trends and identify areas where improvement is necessary; however, BMP evaluations are detailed reports of many on-site practices, are designed to highlight potential problems for post-harvest monitoring, and are not a direct measure of water quality impact. We look forward to working with the commenter and other industry representatives to proactively evaluate and address forestry impacts on Atlantic sturgeon.

Comment 41: We received multiple comments supporting our evaluation of the effects of dams on Atlantic sturgeon and their habitat; some commenters provided additional information on the nature of the threat of dams to Atlantic sturgeon. A commenter concerned about the effects of dams on Atlantic sturgeon recommended continued investigation into ways to provide fish passage in areas where barriers obstruct access to essential habitat or where passage is otherwise obstructed in a manner that can injure and/or kill Atlantic sturgeon and noted that effective sturgeon passage does not exist. Another commenter provided NMFS with additional information on threats from dams. For example, the commenter detailed the effects of bed coarsening, which can reduce the ability of Atlantic sturgeon to forage for food, impair nutrient and waste assimilation through altered flow regimes and greater evaporation from the presence of reservoirs, and effect biodiversity as a result of habitat loss. The commenter also provided data on the presence of dams in Georgia, which has the highest density of dams in the Southeast. The commenter provided information that the number of dams listed in the National Dam Inventory (NDI) shows 4,423 reservoirs in Georgia but the actual number is believed to be higher based on studies conducted by UGA, which estimates 68,000 reservoirs in Georgia. The commenter stated that American Rivers named the Altamaha the 7th most endangered river in the country based on its importance to fisheries and multiple threats from five proposed dams that would have severe effects on fish species, including loss of habitat and increased pollutant concentrations, and noted that the governor of Georgia urged legislative action to build new reservoirs. The commenter also noted that the Savannah River is impacted by New Savannah Bluff Lock and Dam and J. Strom Thurmond Dam. The latter is the largest reservoir east of the Mississippi and Atlantic sturgeon are blocked from habitat above Augusta where data shows they previously occurred. The commenter also noted loss of habitat from dams in the St. Johns.

Response: Additional information provided by commenters on the threats posed by dams to Atlantic sturgeon and their habitat is consistent with our finding that dams pose a significant threat to the Carolina and South Atlantic DPSs.

Comment 42: We received multiple comments disagreeing with our evaluation of the effects of dams on Atlantic sturgeon and their habitat. A commenter stated that the proposed listing rule failed to indicate the extent to which Atlantic sturgeon access to habitat has been lost on the Roanoke, Tar-Pamlico, and Neuse River systems, all of which have dams. Other commenters disagreed with the evaluation of dams in the proposed listing rule. One stated that the majority of Atlantic sturgeon habitat is available, as 91 percent of historical spawning habitat is unimpeded by dams, 27 of 35 rivers contain 100 percent of their historical habitat (*e.g.,* Pee Dee River), and 32 have over 75 percent of the historical range available. Another commenter stated that NMFS has not evaluated the quality of the remaining 91 percent of habitat available to Atlantic sturgeon. One commenter questioned whether the estimated 64 percent of historical habitat impeded by Lock and Dam #1 on the Cape Fear was accurate and provided his own estimate of 30 percent. A comment was received that the use of watershed miles as the measure of habitat loss due to dams suggests that the entire river system is critical habitat and any reduction is a reduction in sturgeon habitat. The commenter contended that since critical habitat has not been determined or designated, it is presumptuous to assume every portion of the river is appropriate habitat without an analysis or evaluation. The commenter also believed that the proposed listing rule gave undue weight to restoration of these habitats rather than prioritizing actions that would have significant and immediate benefits to Atlantic sturgeon (*e.g.* reducing bycatch). A similar comment was received that NMFS has placed too much emphasis on restoring historical habitat, which is poorly defined and may be of questionable importance to Atlantic sturgeon. The commenter believed that there are lower costs and larger near-term gains in protecting, mitigating, and enhancing currently accessible habitat than trying to reconnect historical habitat in highly developed and substantially modified watersheds. Another commenter said future habitat availability will increase through fish passage efforts on the lower Cape Fear River and through hydropower flow enhancements on the Pee Dee River, and similar flow enhancements will occur on other rivers through FERC relicensing projects. A commenter stated that there is a lack of knowledge about the exact location of historical spawning habitat on the Roanoke River. A commenter stated that both the Gaston and Roanoke Rapids hydroelectric facilities are located above the fall line. Given that the Carolina DPS is estimated to be less than 3 percent of the historical abundance and lack of documentation of significant spawning historically occurring upstream of the fall line, it seemed unlikely to this commenter that restricted spawning habitat is limiting restoration efforts. The commenter stated that these hydroelectric facilities have been modified to simulate more natural flow during spawning season and during the FERC relicensing, measures to limit peaking operations and enhance flows were put in place. The commenter also said the facilities adhere to North Carolina state water quality standards for temperature and DO except when flood control flows from upstream at the Kerr Dam overwhelm their ability to maintain the water quality standards. A commenter stated that the Cape Fear Lock and Dam #1 has been in place since 1915 and Atlantic sturgeon have obviously adapted to it since they are still spawning.

Response: In regard to the comment that the proposed listing rule failed to indicate the extent to which Atlantic sturgeon access to habitat has been lost on the Roanoke, Tar-Pamlico, and Neuse River systems, Table 7 of the 2007 status

review report estimates the percentage of riverine habitat, in river kilometers, available to Atlantic sturgeon in each river system shows that access to 18 percent of the habitat on the Roanoke River is blocked by the Roanoke Rapids Dam. Table 7 shows no loss on the other two rivers. The percentages of historical habitat unimpeded by dams presented by another commenter are mostly consistent with Table 7 of the status review. As documented in Table 7, the 91 percent of historical habitat available to Atlantic sturgeon includes 36 rivers (not 35), 2 of which are in Canada and not included in the proposed U.S. listings. Coast-wide, 25 U.S. rivers, plus the 2 Canadian rivers, are listed as having 100 percent of their historical habitat accessible. As noted by the commenter, an additional 5 rivers have greater than 75 percent of their river miles unimpeded by dams. However, three rivers in the Southeast have 62 to 64 percent of their length inaccessible to sturgeon due to the presence of dams. Moreover, rivers without dams but without spawning populations present, may not provide habitat to sturgeon for decades; because the vast majority of Atlantic sturgeon spawn in their natal river, they are not likely to seek out spawning habitat in other rivers and reduced spawning success due to lack of appropriate habitat can greatly affect the recovery potential of a spawning population. In addition to preventing or reducing the ability to spawn, dams can have effects far downstream that reduce the suitability of river habitat for other sturgeon life functions. As identified in the 2007 status review report and the proposed listing rule, in addition to blocking habitat upstream, dams also degrade habitat downstream by altering DO concentrations and temperature; artificially destratifying the water column; changing sediment load and channel morphology; accelerating eutrophication and changing nutrient cycling; and contaminating water and sediment. The suitability of riverine habitat for Atlantic sturgeon spawning and rearing also likely depends on annual fluctuations in flow, which can be greatly altered or reduced by the presence of dams, as has been shown for sturgeon species (Richter and Thomas, 2007; Pringle *et al.,* 2000; Beamesderfer and Farr, 1997). Activities associated with dam maintenance, such as dredging and minor excavations along the shore, can release silt and other fine river sediments that can be deposited in nearby spawning habitat.

The estimate of 64 percent of historical habitat on the Cape Fear River blocked by Lock and Dam #1 was questioned by a commenter, who provided his own estimate of 30 percent of historical habitat blocked on the Cape Fear River. The estimate for the Cape Fear River included in Table 7 of the status review report is accurate, and potentially even an underestimate of the amount of habitat blocked to Atlantic sturgeon by Lock and Dam #1. The estimate came from thesis research (Oakley, 2003) that used regression models based on river characteristics, including total river length and distance to the first dam, to help predict presence of shortnose sturgeon within a river system. BASINS 3.0, a GIS-based program developed by the USEPA, was used to estimate these physical characteristics for each river modeled in the study, including the Cape Fear. Information from the thesis, presented in Table 7, lists rkm 95 as the location of Lock and Dam #1 and rkm 267 as the fall line, which indicates 172 rkm (or 64.4 percent of the Cape Fear River) are inaccessible to Atlantic sturgeon. However, in ''Rivers of North America'' (Benke and Cushing, 2005) it is stated that the fall line on the Cape Fear is located at the confluence of the Deep and Haw Rivers at rkm 313, which would indicate 218 rkm (or 69.7 percent of the Cape Fear River) are inaccessible to Atlantic sturgeon due to Lock and Dam #1. In addition, NCDENR's Office of Environmental and Public Affairs notes that access to 160 miles (257 rkm) of habitat has been blocked to anadromous species on the Cape Fear River (*http://www.eenorthcarolina.org/public/ecoaddress/riverbasins/capefear2.pdf*).

In response to comments about the use of river miles/kilometers as a measure of habitat loss and availability rather than habitat quality, we note that Table 7 of the status review report states ''river kilometers is only an estimate of habitat availability and should not be confused as a reference to habitat suitability, as many factors can reduce the quality of this available habitat (*e.g.,* impeded by water flow, dredging, water quality and other similar factors).'' The commenter is correct that we have not designated critical habitat, and we are not suggesting that the entire river is necessary for spawning or other life functions. Because we have little historical or current information about the exact locations of Atlantic sturgeon habitat, the best available information was the amount of habitat inaccessible to sturgeon above dams. We agree that habitat quality and its suitability for different sturgeon life functions is a necessary consideration in evaluating the extent of accessible habitat. In fact, the use of river kilometers below dams as a measure of habitat availability is potentially an overestimate of the amount of spawning habitat available to Atlantic sturgeon. For instance, Table 7 indicates that only 8 percent of historical habitat on the Savannah River is impeded by dams, based on the location of the New Savannah Bluff Lock and Dam (NSBL&D) at rkm 317 and the fall line at rkm 343. However, the Augusta Shoals, the only rocky shoal habitat on the Savannah River and the former primary spawning habitat for Atlantic sturgeon in the river (Wrona *et al.,* 2007; Marcy *et al.,* 2005; Duncan *et al.,* 2003; USFWS, 2003), is located above NSBL&D, and is inaccessible to Atlantic sturgeon. While the status review report states that 92 percent of the historical habitat on the Savannah River is still accessible (based on river kilometers below NSBL&D), in actuality, the remaining available spawning habitat is likely far less. Additionally, while spawning habitat may exist downstream of many dams, the quality of that habitat is often degraded, due to fluctuations in water level, velocity, and DO resulting from discharges from the dam, as well as upstream migration of the salt wedge, resulting from reduced freshwater discharge from upstream and/or channel modifications downstream. Because Atlantic sturgeon must spawn in freshwater and the resulting offspring must have adequate freshwater exposure for growth before entering saltwater, the encroachment of the salt wedge can reduce the availability of spawning habitat and even reduce the survival of YOY even if spawning is successful.

One commenter felt that we did not evaluate the quality of the 91 percent of total undammed habitat available to Atlantic sturgeon; however, the proposed rule went into great detail about dredging and water quality and quantity issues existing below dams that affect the suitability of spawning habitat for the Carolina and South Atlantic DPSs. While we have little historical or current information about the exact locations of Atlantic sturgeon habitat, we are currently funding research to document habitat utilization of Atlantic sturgeon. We do not believe the proposed listing rule gave undue weight to the loss of access to habitat due to dams or underestimated other threats, such as Atlantic sturgeon bycatch. We did not do a cost-benefit analysis on potential conservation and recovery efforts, as the ESA and its implementing regulations prohibit this type of consideration in listing determinations. We are hopeful about pending efforts on

the Cape Fear and Pee Dee Rivers, and we will continue to work with FERC and other stakeholders to improve habitat quality and access during relicensing activities. However, in our listing determinations, we had to evaluate the current status of, and threats to, Atlantic sturgeon, and how those are affected by existing regulatory mechanisms and protective efforts.

Contrary to comments about the Roanoke River, we do have information suggesting spawning historically occurred above the fall line in that system (Kahnle *et al.,* 1998; Armstrong and Hightower, 2002). However, in the proposed listing rule, we focused primarily on downstream effects associated with flow, water temperature, and DO levels in the Roanoke River from the Kerr Dam and the Gaston Dam/Roanoke Rapids facilities. Consistent with the comments received, we acknowledged in the proposed listing rule that there have been modifications to facilities operations on the river to simulate natural flows and that this has likely benefited Atlantic sturgeon. However, we also detailed the continuing threat to Atlantic sturgeon from hypoxic waters released from the Kerr Dam on the Roanoke in the summer, and the sensitivity of Atlantic sturgeon to hypoxia coupled with high temperature. Consistent with the comments, the proposed listing rule states that spawning populations occur in the Roanoke and Cape Fear Rivers. However, the failure of populations to rebound does not signify their adaptation to these conditions, but rather suggests the threat posed by dams to the Carolina and South Atlantic DPSs is contributing to their status.

Comment 43: Several comments were received on the effects of water withdrawals on Atlantic sturgeon habitat. A commenter supplemented information included in the proposed listing rule that demand for water for consumption purposes in the Southeast is not only going to increase with increasing population, but also due to increasing energy demands. The commenter stated that power plants withdraw an average of 40 billion gallons of water every day, representing 65 percent of total water withdrawals. The commenter also noted that there are currently 25 interbasin transfers in Georgia, involving 6 out of 14 of the state's river basins. One commenter noted that there is substantial information for water withdrawals in North Carolina and permits are required to some extent for agricultural withdrawals. Another commenter stated that the proposed listing rule discussed permitted water quantities but did not provide data on the available volume of water at each source or cite studies that link permitted interbasin transfers to the degradation of surface waters. A commenter stated that conservation and recovery decisions should not be based on the assumption that most, possibly all, subpopulations of Atlantic sturgeon are at risk of entrainment and impingement and that the impact from water intakes should be further evaluated according to the relationship between the activity, river, and sturgeon population.

Response: Additional information provided by commenters on the threats posed by water withdrawals to Atlantic sturgeon and their habitat is consistent with our finding that these activities pose a significant threat to the Carolina and South Atlantic DPSs. A commenter noted that there is substantial information on water withdrawals in North Carolina and permits are required to some extent for agricultural withdrawals. This is consistent with information we presented in the proposed listing rule on permitted water withdrawals. A commenter stated that we did not provide data on the available volume of water at each source or cite studies linking permitted interbasin transfers to the degradation of surface waters. Real-time water data for the United States is publicly available on the USGS Web site (*http://waterdata.usgs.gov/usa/nwis/rt*). However, as we stated in the proposed listing rule, categories of potentially large water withdrawals in several states do not require permits and are therefore not easily quantifiable. While river and stream flow data is monitored and recorded, we do not know how much non-permitted water withdrawals account for reductions in flow, and often we do not have data on the historical (*i.e.,* unimpaired) flow regimes in most rivers to quantify the degree to which flow volumes are currently reduced (Fisher *et al.,* 2003). The proposed listing rule included citations from studies describing the impacts of water withdrawals, permitted and non-permitted, on water quantity and quality parameters important to Atlantic sturgeon (*e.g.,* UGA, 2002; CBO, 2006; Georgia Water Coalition, 2006). The Congressional Budget Office (CBO, 2006) directly quantified the effects of water withdrawal on other ESA-listed species. CBO stated that among the 663 species listed as ''threatened'' or ''endangered'' in 1995, 141 were affected by the diversion or drawdown of surface water, 82 by water-level fluctuation, 26 by water-level stabilization, 61 by water temperature alteration, 103 by reservoirs, 71 by the drawdown of groundwater, and 14 by alteration of water's salinity. In addition to the citations included in the section on water allocation, many of the citations in the remainder of the ''Water Quality'' section of the proposed listing rule specifically address the effects of alteration of DO, temperature, and pollutant assimilation (potential effects associated with water withdrawals) on Atlantic sturgeon (*e.g.,* Niklitschek and Secor, 2005, 2009a, 2009b; Secor and Gunderson, 1998; Secor, 1995).

The proposed listing rule stated that the withdrawal of water from rivers that support Atlantic sturgeon populations was considered to pose a threat as a result of impingement and entrainment of eggs, larvae, and small juvenile sturgeon; however, data are lacking to determine the overall impact of this threat on sturgeon populations, as impacts are dependent on a variety of factors (*e.g.,* the species, time of year, location of the intake structure, and strength of the intake current). Of the three extant studies on direct impacts to Atlantic sturgeon from water withdrawals, only one was conducted in the Southeast at the Edwin I. Hatch Nuclear power plant, which withdraws from, and discharges to, the Altamaha River. Pre-operational drift surveys were conducted and only two Acipenser larvae were collected. Entrainment samples were collected for the years 1975, 1976, and 1980, and no Acipenser species were observed in the samples (Sumner, 2004). As stated in the proposed listing rule, the migratory behavior of larval sturgeon may allow them to avoid intake structures, since migration is active and occurs in deep water (Kynard and Horgan, 2002). The 2007 status review report ranked the threats from impingement and entrainment as low for both DPSs, and we concurred. If additional information becomes available on impingement and entrainment of Atlantic sturgeon, that information will be evaluated on a level appropriate to the activity, the river, and the sturgeon population.

Comment 44: Comments were received about the effects of dredging on Atlantic sturgeon and their habitat. One commenter pointed to a 2007 study that Atlantic sturgeon in the St. Lawrence River avoided areas created by displaced sediments from dredging activities and that those sites have lower value as juvenile benthic feeding habitat as compared to control sites. In contrast, USACE commented that a 2009 study showed dredging operations did not impede movement or utilization of habitat by Atlantic sturgeon, and that direct take of sturgeon by hopper

dredging between 1990 and 2005 was observed to be 0.6 fish per year. A commenter noted the 1998 status review report listed dredging on spawning grounds as a stressor, but that all dredging in the Cape Fear River occurs in saltwater, so the commenter believed the only habitat being affected is nursery habitat. The commenter requested NMFS provide information on dredging in the freshwater portion of the Cape Fear River and whether there are any known effects to shortnose sturgeon from dredging by the Corps in the past 10 years. Another commenter noted frequent maintenance dredging occurs in the Savannah and St. Johns Rivers. One commenter was concerned that different types of dredging (new, maintenance, marine mining, *etc.*) in different environments (small portion of river versus entire navigation channel; narrow, shallow sections versus wide, deep sections) were treated the same in the proposed rule and that a listing could inappropriately curtail or eliminate all maintenance dredging. Several commenters believed that additional research on the effects of dredging on Atlantic sturgeon habitat should be undertaken. One commenter recommended that the identification of spawning, nursery, foraging, and overwintering habitats be given top priority in rivers with existing Atlantic sturgeon populations where there is significant current or proposed dredging or port expansion activity.

Response: Additional information provided by commenters on the threats posed by dredging to Atlantic sturgeon and their habitat is consistent with our finding that these activities pose a significant threat to the Carolina and South Atlantic DPSs. A commenter questioned the level of threat to sturgeon from dredging in the Cape Fear River, and requested information on effects to shortnose sturgeon from dredging. As cited in the 2007 status review, Dickerson (2005) reported observed takings of sturgeon from dredging activities conducted by USACE between 1990 and 2005. Overall, 24 sturgeon (2 Gulf, 11 shortnose, and 11 Atlantic sturgeon) were taken by dredges during those years. Of the 24 sturgeon captured, 15 (62.5%) were reported as dead. In 2006–2008, the South Atlantic Division (North Carolina to Florida) of USACE reported a single take of a 125 cm Atlantic sturgeon (categorized in the incidental take report as ''fresh dead'') during dredging of the Savannah Harbor entrance channel. Relocation trawling for the same project captured and moved eight Atlantic sturgeon. Though dredging is a source of mortality, and therefore a concern to NMFS, we believe the most significant potential threats to Atlantic sturgeon from dredging are associated with effects to their habitat. In response to the commenter requesting information on dredging in freshwater on the Cape Fear River, we do not know of specific examples. However, we have significant concerns over dredging in the portions of the river Atlantic sturgeon can access (*i.e.,* habitat below Lock and Dam #1), which includes both spawning and nursery habitat. As noted in the proposed listing rule, dredging operations (including the blasting of rock) on the lower Cape Fear River, Brunswick River, and port facilities at the U.S. Army's Sunny Point Military Ocean Terminal and Port of Wilmington are extensive. Moser and Ross (1995) found that some of the winter holding sites favored by sturgeon in the lower Cape Fear River estuary also support very high levels of benthic infauna and may be important feeding stations. The Shortnose Sturgeon Recovery Plan also notes that, in addition to direct effects, dredging operations may also impact shortnose sturgeon by destroying benthic feeding areas, disrupting spawning migrations, and filling spawning habitat with resuspended fine sediments. A commenter noted that frequent maintenance dredging occurs in the Savannah and St. Johns River, which was also noted in the proposed listing rule.

The proposed listing rule did not include a detailed evaluation of the different forms and locations of dredging. Rather, we focused on the effects of dredging that pose the greatest threat to Atlantic sturgeon and their habitat, including the disturbance or removal of benthic fauna, elimination of deep holes, and alteration of rock substrates, as well as the creation of turbidity/siltation, contaminant resuspension, noise/disturbance, and alterations to hydrodynamic regime and physical habitat. We have a large body of knowledge on potential effects to habitat from our ESA section 7 consultations with USACE on dredging in Gulf sturgeon habitat, as well as in habitat on the East Coast for shortnose sturgeon. It is unlikely that listing Atlantic sturgeon would inappropriately curtail or eliminate all maintenance dredging, as maintenance dredging is a common occurrence in areas inhabited by ESA-listed Gulf and shortnose sturgeon. However, through our ESA consultations with USACE and other action agencies, we may recommend or require conservation measures that reduce or eliminate potential impacts to Atlantic sturgeon and their habitat. We agree that additional research on the effects of dredging on Atlantic sturgeon habitat and on the locations of spawning, nursery, foraging, and overwintering habitat in relation to potential dredging activities would be useful. We are constantly working to expand our knowledge on the effects of dredging on ESA-listed (and candidate) species and their habitat, which includes Atlantic sturgeon.

Comment 45: A commenter concerned about the effects of climate change recommended additional research and monitoring with respect to the impacts and synergistic effects of climate change on Atlantic sturgeon subpopulations. Another commenter stated that climate change will be the single largest driver of changes in biodiversity by the end of the 21st century and that disproportionate effects will be experienced in the Southeast, which is the most vulnerable region due to its long low-lying coastline and high biodiversity. The commenter noted that the South will be drier, with climate models predicting decreases in precipitation in the summer combined with higher temperatures, resulting in increased evaporation. The commenter also noted the Carolinas and Georgia have already shown significant trends of increasing drought from 1958 to 2007. A commenter noted that drought occurred in North Carolina during the same time frame drought occurred in South Carolina and Georgia, which further supports the threat to Atlantic sturgeon from such occurrences. In addition to habitat threats from climate change outlined in the proposed listing rule, a commenter provided information and a presentation from a NCDENR climate change symposium that included potential effects to the North Carolina coast and noted that habitat for the Carolina DPS is almost exclusively in this area. The presentation discussed threats of sea level rise, increasing storms, and resultant property protection activities, such as beach renourishment and installation of hard structures. The presentation stated there will be detrimental effects to sounds, rivers, and estuaries utilized by the Carolina DPS. In contrast, a commenter stated that even with gradual climate change and warming, it is likely that Atlantic sturgeon populations will continue to increase over most of their range, as the species has survived more significant climate and temperature regimes in its evolutionary past. However, the commenter acknowledged that genetic diversity of the species may be important to assure its survival.

Several commenters cautioned that climate change models do not provide information appropriate for making management decisions regarding Atlantic sturgeon. One commenter cautioned against using the most extreme scenarios modeled by the International Panel on Climate Change (IPCC) and also noted that climate change may negatively impact species in one area, but benefit the species in others, and both positive and negative impacts should be considered. Two commenters noted that the proposed listing rule incorrectly stated the two Southeast DPSs are in a region the IPCC predicts will experience decreases in precipitation, which could exacerbate low oxygen, and that increases in precipitation are actually predicted.

Response: Additional information provided by commenters on the threats posed by climate change to Atlantic sturgeon and their habitat is consistent with our finding that it poses a significant threat to the Carolina and South Atlantic DPSs. We agree that additional research and monitoring of impacts and synergistic effects on Atlantic sturgeon are necessary. As we noted in the proposed listing rule, we are particularly concerned about the exacerbation through climate change of existing water quality issues and increasing water demands due to human population increases in the Southeast. While Atlantic sturgeon may have experienced different climate and temperature regimes over their evolutionary history, they have not had to persist with the combination of threats they face now, and we do not agree with the commenter that Atlantic sturgeon populations will increase without addressing these threats. Their populations were rapidly depleted by 1901 as a result of fishing. Even though directed fishing was abolished, Atlantic sturgeon continue to be taken as bycatch in various fisheries. Dams block access to habitat and affect downstream habitat quality, as does dredging. Water quantity and quality is affected by a variety of watershed activities. These threats are predicted to increase as population in the Southeast increases, and climate change is expected to further exacerbate water quality and quantity issues. We agree with the commenter that genetic diversity (and larger population sizes) will be necessary for Atlantic sturgeon to recover in the face of these increasing threats.

We agree with the comment that the most extreme scenarios modeled by the IPCC are not appropriate for making management decisions associated with our listing of the Carolina and South Atlantic DPSs. While the IPCC modeled many scenarios and reported results with varying degrees of certainty, we only reported the most conservative results, the scenarios that were ''very likely'' to occur and which the IPCC projected with ''high confidence.'' In addition, our discussion of climate change focused on the ways in which it was likely to exacerbate existing threats, which we do feel warranted consideration in our listing determination. We did not use the IPCC's most extreme climate change model scenarios to make predictions about potential future threats to Atlantic sturgeon or factor those scenarios into our proposed listing determination. While we agree in theory that climate change could have both positive and negative effects, our review of the IPCC information did not reveal any aspects of climate change that would have positive effects on the Carolina and South Atlantic DPSs in the Southeast and the comment did not include specific examples of positive effects for our consideration.

We appreciate the commenters noting that we incorrectly stated the two Southeast DPSs are in a region that the IPCC predicts will experience decreases in precipitation, exacerbating low DO. Overall, the Southeast is predicted to experience increases in precipitation. However, evaporation is also predicted to increase with increasing temperatures and the net effect for the Southeast is predicted to be overall drying. Further, conservative seasonal predictions for the summer show either a slight increase in precipitation or a slight decrease. Decreased precipitation or even a slight increase, offset by increased summer temperatures and evaporation, would exacerbate low DO when temperatures are highest. As discussed in the proposed listing rule, Atlantic sturgeon are particularly vulnerable to low DO when combined with high temperatures. Also, overall decreased water availability due to increased temperature and longer periods of time between rainfall events is predicted for the Southeast, even though individual rainfall events are predicted to be more extreme, leading to the increased precipitation estimates. We have corrected this information in the section of the final rule that addresses climate change.

Comments on Bycatch

Comment 46: Many comments were received from parties concerned about the impacts of Atlantic sturgeon bycatch in both commercial fisheries and scientific surveys, and several commenters provided suggested solutions. One commenter stated that over 1,000 Atlantic sturgeon are taken annually as bycatch. Another commenter cited Munro *et al.* (2007) that bycatch likely has more detrimental effects in habitats that are limited in area and where certain life stages of Atlantic sturgeon tend to congregate, such as early juvenile habitats in the estuarine transition zone and the subadult/adult habitat in the nearshore oceanic zone. The commenter also stated that protecting juvenile marine stage Atlantic sturgeon from bycatch mortality in aggregation areas is likely the key to restoring Atlantic sturgeon populations given that the intrinsic rate of population increase for long-lived species like Atlantic sturgeon is most sensitive to changes in juvenile survival. The commenter noted that while little direct mortality is reported for trawl fisheries, within aggregation areas it is not uncommon to catch ten or more Atlantic sturgeon in a single 20 minute tow, and that with longer trawl times in commercial fisheries, fish released alive may die days after. A commenter was concerned that bycatch of Atlantic and shortnose sturgeon has been occurring, citing data from the Santee River. A comment was received recommending research to determine the impacts of bycatch and bycatch mortality on Atlantic sturgeon populations, identification of the spatial and temporal distribution of bycatch throughout the species range, and development of measures that could be implemented to reduce bycatch and/or bycatch mortality. Several commenters stated that NMFS has not taken adequate steps to reduce or stop the use of gillnets and other gears to protect sturgeon. Comments were received that the moratorium has not prevented bycatch, and gill nets should be banned in order to recover Atlantic sturgeon. One commenter asked if NMFS had solicited or received advice from commercial fishermen on limiting bycatch mortality in gillnets. Citing Dunton *et al.* (2010), a commenter stated that because previous Atlantic sturgeon management has not resulted in significant improvements to populations, recovery efforts should now focus on establishing marine reserves or implementing area closures to protect essential habitat and to reduce fishing mortality on juveniles (Collins *et al.,* 2000). The commenter stated that the primary juvenile habitat and juvenile migrations are limited to narrow corridors in waters less than 20 meters deep and this is conducive to a seasonal or permanent closure to gillnet and trawl fisheries. The commenter

believed that by focusing immediate efforts on the protection of these hotspots and corridor pathways, bycatch mortality will be reduced effectively through protection of habitat. One commenter was concerned about mortality levels in scientific surveys and recommended that scientific sampling be banned in the Cape Fear River.

Response: Additional information provided by commenters on the impacts of Atlantic sturgeon bycatch is consistent with our finding that it poses a significant threat to the Carolina and South Atlantic DPSs. As we continue to work to reduce Atlantic sturgeon bycatch, we will consider suggestions provided by commenters, such as the importance of protecting juvenile marine stage Atlantic sturgeon, identifying hotspots and migratory corridors, investigating the establishment of marine reserves or closed areas, and working with gillnet fisheries to reduce the level of Atlantic sturgeon bycatch. We do not feel that banning scientific sampling in the Cape Fear River would benefit Atlantic sturgeon, and we recently published ''A Protocol for Use of Shortnose, Atlantic, Gulf, and Green Sturgeons'' (Kahn and Mohead, 2010; available at *http://www.nmfs.noaa.gov/pr/pdfs/species/kahn_mohead_2010.pdf*) that can be followed to better ensure the safety of sturgeon during research, including during capture using gillnets. We will continue to work with our partners and stakeholders through our existing authorities to reduce or eliminate the effects of bycatch on Atlantic sturgeon.

Comment 47: Several commenters questioned how listing Atlantic sturgeon will result in a greater reduction in bycatch than is already being realized by closing the commercial fishery for Atlantic sturgeon. A commenter stated that there has been a significant reduction in vessels and effort in the shad gillnet and shrimp trawling fisheries over the last 10 years. Other commenters listed a number of commercial fishery regulations (*i.e.,* harvest seasons, gill net mesh size, and quantity restrictions), some associated with other fisheries (*e.g.,* striped bass, American shad) that also reduce the potential for gill net interactions with Atlantic sturgeon. Commenters also noted significant reductions in pound net and haul seine use have occurred during recent decades in the Albemarle Sound area, further reducing potential interactions between sturgeon and commercial fisheries. Two North Carolina state agencies reported that out of more than 3,000,000 yards of large and small mesh gill nets observed since 2001, overall bycatch mortality was 6 percent (with an annual range of 0 to 12 percent), which is lower than the 13.8 percent estimated by the ASMFC and cited in the proposed listing rule. The agencies also reported that mortality in the Albemarle and Pamlico Sound IGNS had overall Atlantic sturgeon mortalities of 3 and 10 percent, respectively, and mortality in the Pamlico, Pungo, and Neuse Rivers IGNS was 12 percent. The agencies commented that mortalities were high in the Cape Fear River IGNS (35 percent), and that mortality was less than 13.8 percent in Cape Fear River and near shore Atlantic Ocean Fishery Independent Assessment Program. In reference to the 35 percent mortality in the Cape Fear IGNS, commenters (including NCDENR) said that these results cannot be extrapolated to commercial fisheries because of gear and seasonal restrictions in place for those fisheries that do not allow them to be operated in the same time, place, or with the same gear. These agencies also noted that bycatch has been documented for over 958 tows conducted by commercial shrimp trawlers working in North Carolina with no Atlantic sturgeon reported and that no Atlantic sturgeon have been captured in the 528 blue crab trawl tows examined since 1990. They also stated that the White and Armstrong Fishery Resource Grant study (2000) conducted in the Albemarle Sound was used in the listing documents because of a high collection rate; however, targeting of Atlantic sturgeon may have occurred since the design of the study was to estimate survival of sturgeon captured in commercial flounder nets. White and Armstrong (2000) also noted no mortality of Atlantic sturgeon collected. GADNR commented that less than 10 fish per year were estimated to have been captured in the Altamaha River anchored gillnet fishery during a 3-year study. All fish were juveniles and no injury or mortality was documented. Georgia also noted the season for gillnetting shad occurs while adults are at sea and juveniles are in the lower parts of the estuary. Since the 2007 status review, which ranked bycatch as a moderate threat in the Altamaha, the State of Georgia commented that recent action by the Board of Natural Resources has prohibited the use of gillnets for shad fishing in a large portion of the Altamaha. Two commenters disagreed with the use of Stein *et al.* (2004) in relation to bycatch in the Southeast, stating that offshore fisheries with long soak times should not be used as a proxy for inshore fisheries, and though mixing of sturgeon populations occurs in marine areas, most of the fish captured as bycatch would be fish from northern DPSs. A comment was received that listing Atlantic sturgeon could require changes to gear design or fishery regulations for fisheries that encounter Atlantic sturgeon as bycatch, and that while bycatch mortality estimates are unknown for many species, they are believed to be low with the exception of sink gillnet fisheries with long soak times. One commenter suggested that the South Atlantic DPS was not subject to the same level of bycatch as the Carolina DPS.

Response: Listing the Carolina and South Atlantic DPSs as endangered could result in a further reduction in fishing mortality, beyond the commercial harvest moratoria, if conservation measures implemented pursuant to the ESA lead to reductions in bycatch, for example through section 10 permits or section 7 biological opinions. While the moratoria on harvest and possession have greatly reduced the effects of fisheries on Atlantic sturgeon, fish from these DPSs are still being taken as bycatch in many fisheries. Once listed as endangered, bycatch of Atlantic sturgeon would be considered ''take'', defined in section 3 of the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' Section 7 consultation would be required for federally authorized fisheries that take Atlantic sturgeon as bycatch. During consultation, NMFS would evaluate the anticipated level of take associated with the fishery, evaluate whether it would jeopardize the continued existence of the species, and determine reasonable and prudent measures that would reduce the anticipated effects of the incidental take on the species. A section 10(a)(1)(B) permit would be required for fisheries authorized by states that result in Atlantic sturgeon bycatch. A section 10(a)(1)(B) would require the development of a conservation plan that details the impact to the species, the steps that will be taken to minimize and mitigate the impacts, alternative actions considered and why they were not implemented, and any other measures required by NMFS to benefit the species.

Even with reductions in gillnet and trawl vessels and fishing effort, and the implementation of other seasonal and gear restrictions, there are still large numbers of participants in fisheries using these gears. Every year, NMFS publishes a list of commercial fisheries and classifies them into categories according to the level of interactions

with marine mammals. Based on the latest list, published on November 8, 2010 (75 FR 68468), fisheries using gillnet and trawl gear and the number of participants in those fisheries in the range of the Carolina and South Atlantic DPSs include the following: Mid-Atlantic gillnet fishery, 5,495 participants; the North Carolina inshore gillnet fishery, 2,250 participants; the Southeast Atlantic gillnet fishery, 779 participants; the Southeastern U.S. Atlantic shark gillnet fishery, 30 participants; the Mid-Atlantic bottom trawl fishery, 1,182 participants; and, the Southeast U.S. Atlantic, Gulf of Mexico shrimp trawl fishery, 4,950 participants (though this includes Gulf of Mexico participants). However, we note that the number of participants listed here is potentially an overestimate of the number of participants interacting with Atlantic sturgeon. For example, in the gillnet fisheries, the number of participants includes fishermen using non-sink gillnets, which have fewer interactions with Atlantic sturgeon. In addition, all fishery participants may not be operating at times or in areas where they are likely to encounter Atlantic sturgeon. Further, based on available bycatch data, which suggests sturgeon are primarily caught in waters less than 50 meters deep, commercial and recreational fisheries using trawl and gillnet gear in waters greater than 50 meters deep may not have Atlantic sturgeon bycatch. Estimates for Atlantic sturgeon bycatch in these fisheries is largely unavailable, as bycatch is underreported in state waters and there is limited observer coverage in fisheries potentially capturing Atlantic sturgeon in the South Atlantic (North Carolina to Florida) Federal waters.

We have added information on bycatch provided by North Carolina and Georgia to section ''B. Overtutilization for Commercial, Recreational, Scientific, or Educational Purposes'' of the final listing determination. Regarding bycatch data supplied by the State of North Carolina, the lack of recorded Atlantic sturgeon bycatch in commercial shrimp trawls and blue crab trawls in North Carolina is consistent with information presented in the proposed listing rule that trawl gear is not believed to be a significant threat to Atlantic sturgeon. Data reported for the Albemarle and Pamlico Sound IGNS, as well as IGNS in the Pamlico, Pungo, Neuse, and Cape Fear Rivers, show overall (*i.e.,* mortality over all survey years combined) Atlantic sturgeon capture mortality in gillnets ranging from 3 to 35 percent. With the exception of the highest morality rate, which was observed in the Cape Fear River IGNS, North Carolina commented that all of the observed mortality rates were less than the 13.8 mortality cited in the proposed listing rule, but that the majority of the results cannot be extrapolated to commercial fisheries due to gear and seasonal harvest restrictions under which they operate. Based on the data supplied by the state, capture mortality of Atlantic sturgeon varied greatly by year, by month, and by the gillnet mesh size used during the survey. For instance, mortality during individual survey years in the Albemarle Sound IGNS ranged from 0 to 19 percent during 1990 to 2009. Mortality by month ranged from 0 to 7 percent, with the highest mortalities recorded in April (3 percent), May (7 percent), and November (5 percent). Mortality ranged from 0 to 100 percent in mesh sizes ranging from 2.5- to 10-inch stretched mesh (ISM), with fairly consistent levels: 2 to 4 percent for mesh sizes 2.5 to 5.5 ISM, 9 percent for 6.5 ISM, and 100 for 10 ISM (representing 1 Atlantic sturgeon). Similar variability was seen in the Pamlico Sound IGNS data. During 2001 to 2008, 0 to 17 percent mortality was observed in the Pamlico Sound IGNS, with 100 percent in 2009, based on 1 Atlantic sturgeon. Mortality ranged from 0 to 25 percent by month, with peak mortalities occurring in June (25 percent), August (17 percent), and November (17 percent). The Pamlico Sound IGNS used mesh sizes ranging from 3 to 6.5 ISM. Mortality by mesh size ranged from 0 to 25 percent, with the highest mortalities observed in the 3 ISM (25 percent), 3.5 ISM (20 percent), and 6.5 ISM (20 percent). While the State of North Carolina commented that the IGNS data should not be extrapolated to estimate a mortality rate for commercial fisheries, it does show that time of year and gear type factor heavily into Atlantic sturgeon bycatch mortality. As stated by North Carolina, as well as in the proposed listing rule, other factors, such as gillnet soak time, affect mortality rates. Overall mortality rates in all North Carolina surveys (with the exception of the Cape Fear River IGNS) may be below the 13.8 percent estimate reported in the proposed listing rule; however, mortality rates during individual survey years, during certain survey months, and for specific gillnet mesh sizes used often exceeded 13.8 percent. While North Carolina provided fishery-dependent survey data from their observer program, observer coverage in fisheries potentially capturing Atlantic sturgeon is very limited for the remainder of the Southeast range occupied by the Carolina and South Atlantic DPSs. High levels of bycatch underreporting are suspected. Further, even if bycatch mortality is lower than the 13.8 percent estimate reported in the proposed listing rule, total population abundances for the Carolina and South Atlantic DPSs are not available and we do not know what portion of the Carolina and South Atlantic DPSs are subject to being taken as bycatch. As cited in the proposed listing rule, Boreman (1997) calculated a sustainable fishing (bycatch) mortality rate of 5 percent per year for adult Atlantic sturgeon, indicating they can only tolerate relatively low levels of bycatch mortality.

Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. Atlantic sturgeon taken as bycatch may suffer immediate mortality. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (*e.g.,* exposure to toxins and low DO). This may result in reduced ability to perform major life functions, such as foraging and spawning, or may even result in post-capture mortality. Several of the river populations in the South Atlantic DPS (*e.g.,* the Ogeechee and the Satilla) are stressed to the degree that any level of bycatch could have an adverse impact on the status of the DPS (ASSRT, 2007). Therefore, the information supplied by the State of North Carolina does not provide a basis for revising our evaluation of the threat of bycatch to Atlantic sturgeon populations or our determination that the Carolina and South Atlantic DPSs warrant listing as endangered. For the same reasons, the information supplied by the State of Georgia does not provide a basis for revising our evaluation of the threat of bycatch to Atlantic sturgeon. The state documented less than 10 fish per year taken as bycatch in the Altamaha River gillnet fishery, with no observed mortality during a 3-year study. Georgia also commented that the shad gillnet season occurs while adults are at sea and juveniles are in the lower part of the estuary and that the state now prohibits shad gillnetting in a large portion of the Altamaha. However, the Altamaha River has the largest and healthiest population of Atlantic sturgeon in the Southeast and bycatch occurring in systems with smaller, more greatly stressed

populations (such as the Ogeechee and Satilla; ASSRT, 2007) may have adverse impacts. We commend the state for their efforts in reducing the threat of bycatch in the Altamaha River, but we believe bycatch still represents a significant threat to the Carolina and South Atlantic DPSs of Atlantic sturgeon. The bycatch information for Atlantic sturgeon in the Carolina and South Atlantic DPSs provided by North Carolina and Georgia, when considered as part of our listing determination, does not change our determination that the two DPSs warrant listing as endangered.

The White and Armstrong (2000) study was not considered in the proposed listing rule for the reason suggested by the commenter, *i.e.,* due to the high collection rate of Atlantic sturgeon. We cited this study as one of the only fishery-dependent bycatch surveys of Atlantic sturgeon from either the Carolina or South Atlantic DPSs available to us. Contrary to the commenters' assertion that targeting of Atlantic sturgeon may have occurred, the research publication states in the ''Methods'' section that ''southern flounder (not Atlantic sturgeon) were the target species, and the incidence of Atlantic sturgeon captures in the catch was expected to be representative of normal bycatch rates.'' The publication also stated that ''survival rates were inestimable, the apparently healthy condition of incidentally captured Atlantic sturgeon is consistent with low release mortality.''

While commenters disagreed with our use of offshore fisheries data in relation to bycatch in the Southeast (*e.g.,* Stein *et al.,* 2004; ASMFC, 2007), we used the best data available to us in the proposed listing rule and clarified its utility. We noted in the proposed listing rule that any estimate of bycatch from the NMFS ocean observer dataset will be an underestimate, because bycatch is underreported in state waters and there is no observer coverage in the South Atlantic (North Carolina to Florida) Federal waters. We are updating information in this section of the final rule to reflect that there is limited observer coverage in Federal waters in the Southeast for gear types that potentially capture Atlantic sturgeon. The shark drift gillnet program, which operates primarily off the southern Atlantic Coast of Florida and North Carolina, observes a relatively small fishery (25–30 vessels) targeting coastal shark species, as well as king and Spanish mackerel, little tunny, bluefish, and Atlantic croaker. There is also an observer program for the Southeastern shrimp trawl fishery, which covers approximately 1 percent of the fishery in the South Atlantic. This information does not change our conclusion that bycatch is underreported in state and Federal waters. In addition to immediate mortality, bycatch mortality estimates do not account for post-capture mortality and may further underestimate the mortality rate in sink gillnets in the Carolina and South Atlantic DPSs because bycatch survival is greater in colder water temperatures of the north compared to warmer southern waters occupied by these DPSs.

Comments on Disease and Predation

Comment 48: One commenter stated that the need and ability to regulate the aquarium trade should not have been discounted in the proposed listing rule. The commenter believed importation of non-native sturgeon is a greater threat to native sturgeon than any other factor because non-natives potentially out-compete native fish and introduce disease.

Response: We agree that the ability to regulate the aquarium trade should not have been discounted in the proposed listing rule, and we are removing that text in the final rule. However, we do not have information that suggests the aquarium trade is a current threat to Atlantic sturgeon. We disagree that the importation of non-native sturgeon is a greater threat to native sturgeon than any other threat. We included information in the proposed listing rule that there were only five known Atlantic sturgeon commercial aquaculture operations in the Southeast, one in North Carolina and four in Florida. These operations all cultured Atlantic sturgeon originating from Canadian stock, with the exception of the North Carolina operation that acquired Siberian sturgeon (*A. baerii*) in 2006 after obtaining an addendum to their permit from the ASMFC. Additionally, we obtained information on the culture of other sturgeon species. Commercial U.S. culture of meat and caviar is currently taking place in three states: California, Idaho, and Florida (Monterey Bay Aquarium, 2007). Four facilities (Evans Farm, Mote Marine Laboratory, Rokaviar, and Sturgeon AquaFarms, LLC) in Florida, the only state in the range of Atlantic sturgeon culturing non-native species, conduct tank culture of the following species: Siberian sturgeon (*A. baerii*), Russian sturgeon (*A. gueldenstaedti*), Stellate sturgeon (*A. stellatus*), Sterlet sturgeon (*A. ruthenus*), Adriatic sturgeon (*A. naccarii*), beluga sturgeon (*Huso huso*), and the hybrid Bester sturgeon (*H. huso* x *A. rutheni*)(M. Berrigan, FDACS, pers. comm.). The nature of current containment practices and the reported record of total escape prevention for the Florida facilities that presently culture non-native sturgeons suggest currently low exposure for wild sturgeon stocks to the ecological risks of farmed fish escapes (Monterey Bay Aquarium, 2007). We acknowledged in the proposed listing rule that introduction of non-native species could impact native sturgeon populations. However, we did not believe that this was a significant threat based on the very low occurrence of non-native Atlantic sturgeon culture operations and the fact that stock enhancement programs follow culture and stocking protocols approved by the ASMFC, which includes, ''if non-native or hybrid sturgeon are permitted within a state, they should be restricted to culture operations where escapement and reproduction can and will be controlled.'' We also noted that mechanisms are in place at all facilities to prevent escapement of sturgeon; facilities are all land based, and most are not located in close proximity to any Atlantic sturgeon rivers. All of the facilities in Florida are periodically screened for disease by University of Florida Institute for Food and Agricultural Science (IFAS) veterinarian. None have reported diseases. All facilities are above the 100-year flood plain and have zero discharge.

We received information during the public comment period that indicates a further reduction in the potential threat of non-native sturgeon to the Carolina and South Atlantic DPSs. The Florida Department of Agriculture and Commerce (FDACS), which certifies aquaculture facilities and inspects those facilities twice a year for compliance, informed us that only one commercial facility with Atlantic sturgeon is currently operating in Florida, and they only have one surviving fish. All other Atlantic sturgeon held in Florida aquaculture facilities died in captivity. Additional information supplied by FDACS on Florida aquaculture facilities is included in our response to comment 53.

Comments on the Inadequacy of Existing Regulatory Mechanisms

Comment 49: Several commenters provided us with additional examples of the inadequacy of regulatory mechanisms. One commenter believed the ASMFC's failure to end the harvest of overfished stocks (*e.g.,* winter flounder and weakfish) and North Carolina's request for an exemption to the law that fishery management plans have a 50 percent probability of recovering depleted stocks exemplify

inadequacies of existing regulatory mechanisms to protect species and highlight the need for ESA listing. Several commenters noted the lack of permitting programs in southeastern states for water withdrawals, including interbasin transfers, and the lack of regulation of instream flows. One commenter noted that while there is a blanket prohibition against water transfers into metro Atlanta, adjacent counties are joining the district where Atlanta is incorporated in order to avoid the prohibition. Another commenter stated that North Carolina coastal counties currently seeking interbasin transfers have been exempted from 2007 amendments regulating interbasin transfer and the North Carolina Department of Water Quality is seeking to create regulatory changes to the current buffer rules. The commenter also stated that, for the second year in a row, North Carolina passed legislation allowing any existing permit or finding to extend until after 2011 without having to reapply or renew as a way to mitigate the economic downturn. The extension is applicable to several types of permits and applications that could affect the Carolina DPS, including: Findings of no significant impact; approvals of an erosion and sedimentation control plan; permits for major developments or minor developments under the State's Coastal Area Management Act; water or wastewater permits; building permits; stream origination certifications; water quality certifications; air quality permits; and city and county site specific development plans. A comment was also received regarding Senate Bill 778, which became law in North Carolina in August of 2010. The bill was drafted as a response to litigation regarding the proposed Titan Cement plant and created a loophole that any project such as Titan, which may have a significant environmental impact, can bypass the State Environmental Policy Act (SEPA) by structuring a contract on the basis of incentives. While the legislation does not retroactively exempt Titan Cement from SEPA, it ensures that a roadmap exists for any similar projects in the future to avoid the environmental review process established in SEPA.

Response: In the proposed listing rule, we concluded that the inadequacy of regulatory mechanisms to fully address the threats of bycatch and habitat modification are contributing to the endangered status of the Carolina and South Atlantic DPSs of Atlantic sturgeon. The information provided by these commenters supports this conclusion. We will continue to investigate these issues and ways to ameliorate any effects they are having on Atlantic sturgeon.

Comment 50: Several commenters disagreed with NMFS' finding in the proposed listing rule that existing regulatory mechanisms protecting Atlantic sturgeon and their habitat are inadequate. Numerous commenters believed the proposed listing rule is unnecessary because directed fishing and retention of Atlantic sturgeon has been prohibited by the moratoria implemented by the ASMFC and NMFS, as well as various prohibitions enacted by individual states. A commenter noted that South Carolina and North Carolina initiated moratoria on harvest and possession of Atlantic sturgeon in 1985 and 1991, respectively. Another commenter noted that special concern designations have been given to Atlantic sturgeon by the states of Virginia and Florida. Many commenters believe the prohibitions are working and that no listing action should be taken until the moratoria have had sufficient time to work. A commenter stated that protections already in place for co-occurring endangered species are sufficient to protect Atlantic sturgeon and their habitat. Comments were received that NMFS did not thoroughly consider the benefits of existing regulatory mechanisms addressing bycatch and activities affecting Atlantic sturgeon habitat (*e.g.,* regulations associated with construction, demolition, and dredging), and that existing regulations should be used to protect Atlantic sturgeon populations. The State of North Carolina commented that the North Carolina Coastal Habitat Protection Plan (NCCHPP) and moratoria on construction, dredging, and other habitat altering activities are already managing habitat issues, observer programs are expanding to include more fisheries, gear configurations and regulations have been updated to reduce bycatch and limit interactions with protected species, and research is being funded that will allow North Carolina and other states to gain a better understanding of the migratory patterns, spawning areas, and distribution of Atlantic sturgeon within the next few years. The NCCHPP was adopted in 2005 and its stated goals are: (1) Improving effectiveness of existing rules and programs protecting coastal fish habitats; (2) identifying, designating, and protecting strategic habitat areas (SHAs); (3) enhancing habitat and protecting it from physical impacts; and, (4) enhancing and protecting water quality. The North Carolina Marine Fisheries Commission (NCMFC) approved SHAs for Region 1 in North Carolina in January 2009, and is currently evaluating SHAs for other regions in North Carolina. According to the commenter, SHAs represent priority habitat areas for protection due to their exceptional condition or imminent threat to their ecological functions supporting estuarine and coastal fish and shellfish species and will be incorporated into conservation and restoration efforts. One SHA (Bellows Bay to Knotts Island Bay) was identified in part due to the nearshore ocean areas that are important for Atlantic sturgeon and striped bass and another SHA (Chowan and Roanoke Rivers and western Albemarle Sound) may include one of the few Atlantic sturgeon spawning habitats in North Carolina. The State also commented that the North Carolina Department of Marine Fisheries (NCDMF) provides input to federal and state regulatory agencies of the location of habitats used by Atlantic sturgeon. NCDMF and the North Carolina Wildlife Resources Commission have designated Anadromous Fish Spawning Areas (AFSA) through rules for their respective jurisdictions.

Response: Though moratoria on harvest and possession of Atlantic sturgeon were enacted by the ASMFC, NMFS, and several states, populations have not rebounded and the moratoria do not control bycatch. We believe continued bycatch of Atlantic sturgeon in commercial fisheries has an ongoing impact upon the Carolina and South Atlantic DPSs that is not adequately addressed through existing regulatory mechanisms and is contributing to their endangered status. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. Poor water quality also continues to result in adverse effects to Atlantic sturgeon even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even given the provisions for establishing fishways under the Federal Power Act.

As noted in the comments, Florida has designated the Atlantic sturgeon as a species of special concern. This designation stipulates that no person shall take, possess, transport, or sell any species of special concern without a permit. The comments also noted Atlantic sturgeon was designated as a species of special concern by Virginia, which is described as a ''watchlist'' of wildlife species with no other regulatory or statutory requirements. Currently, the state's Wildlife Action Plan identifies

Virginia's Species of Greatest Conservation Need (SGCN) and has made the ''special concern'' designation obsolete. The SGCN also has no regulatory requirements, but requires that Comprehensive Wildlife Conservation Strategies be developed that include 8 essential elements, including key information on distribution, abundance, threats, descriptions of conservation actions, and plans for species monitoring. While states should be commended for recognizing the need for conservation of Atlantic sturgeon, these designations are not enough to alleviate the threats to the Carolina and South Atlantic DPSs of Atlantic sturgeon or change our evaluation of the species as meeting the definition of endangered from section 3 of the ESA.

While there are a variety of other Federal, state, and local laws and programs (*e.g.,* regulations governing construction activities and gear configurations that reduce bycatch) that benefit Atlantic sturgeon, we believe that threats from habitat modification and bycatch are not sufficiently managed through current regulatory mechanisms in place. For instance, seasonal restrictions governing construction and dredging in North Carolina may benefit Atlantic sturgeon during critical time periods, as stated by the commenter, but construction and dredging during other times of the year can still impact Atlantic sturgeon and their habitat. Required gear configurations may reduce Atlantic sturgeon bycatch, but bycatch still occurs. Further, the lack of bycatch data does not allow us to evaluate the degree to which bycatch is potentially reduced by these measures. We reviewed the information provided by the State of North Carolina on the NCCHPP, SHAs, and AFSAs, as well as additional information on these programs on NCDENR's Web sites. While these programs have excellent goals of increasing enforcement of existing regulations, identifying and protecting habitat important to the species, and monitoring these habitats, many of these actions are still in the early stages and it is not clear exactly what protections will be given to areas designated as SHAs or AFSAs. We are also including an evaluation of these programs in the section of the final listing rule evaluating current protective efforts.

Comments on Other Natural and Manmade Factors

Comment 51: The ASMFC commented that states and jurisdictions where ship strikes are an issue are currently monitoring and working to minimize these impacts. Another commenter was concerned that if ship strikes increase, regulation may be required, and the commenter requested clarification on the ''large number of mortalities'' cited in the proposed listing rule. The commenter suggested that if ship strikes have increased over time, it could indicate the population of Atlantic sturgeon in these areas has increased.

Response: The ASMFC's comment on monitoring of ship strikes on Atlantic sturgeon is noted. In response to the commenter requesting clarification on ''a large number of mortalities'' cited in the proposed listing rule, the full statement on page 61924 is ''a large number of mortalities observed in these rivers from potential ship strikes have been of large adult Atlantic sturgeon.'' The sentence is not indicating that there are a large number of ship strike mortalities, but rather a large percentage of the mortalities resulting from ship strikes are large adult fish. On the following page (61925), we quantified ship strikes in the one river in the Southeast where they have been documented (''one ship strike per 5 years is reported for the Cape Fear River within the Carolina DPS.''). This section of the proposed listing rule further noted that, while it is possible that ship strikes may have occurred and have gone unreported or unobserved, the lack of large ship traffic on narrow waterways within the range of the DPS may limit potential interactions. We concurred with the ASSRT's assessment of the threat from ship strikes as low for both the Carolina and South Atlantic DPS and concluded that it was not contributing to the endangered status of the DPSs. An increase in ship strikes on Atlantic sturgeon could result from a variety of factors, including an increase in Atlantic sturgeon populations, an increase in shipping traffic, changes to shipping channel characteristics (*e.g.,* channel shallowing or narrowing), and transit of larger vessels. If NMFS receives new data showing that ship strikes pose a significant threat to the Carolina or South Atlantic DPS, we will work with stakeholders, including the shipping industry, to evaluate the best options for minimizing impacts to Atlantic sturgeon without unduly hampering shipping activities.

Comment 52: A commenter agreed with concerns expressed in the proposed listing rule about the effects of aquaculture and stock enhancement on Atlantic sturgeon populations from disease, escape, and out-breeding depression, but believes these can be minimized and that a responsible stocking program using native broodstock is the best option for reestablishing a population in extirpated systems. The commenter stated that there is evident disdain by the ASSRT for stocking and enhancement activities based on the discussion of the dangers of stocking and categorizing the release of cultured fish as a section 9 violation. The commenter believed listing would result in currently captive fish being destroyed rather than used for commercial or stocking purposes and would provide no incentive for the private sector to maintain the fish they currently have. The commenter also believed aquaculture and stock enhancement afford research opportunities and would afford a level of protection for wild stocks from poaching by providing a legal product to the market. FDACS, which certifies aquaculture facilities and inspects those facilities twice a year for compliance, commented on the proposed listing rule. They stated that NOAA participated in a cultured sturgeon risk analysis in 2000 that governs Florida sturgeon farming and that the disposition of the Atlantic sturgeon in aquaculture facilities is known, contrary to information reported in the proposed listing rule. FDACS indicated that captive Atlantic sturgeon in Florida are from a genetically distinct population that is not being considered for listing and were cultured in waters outside those being defined as within the South Atlantic DPS. The commenter stated that sturgeon products sold by Florida farms possess an Aquaculture Certificate of Registration and are exempt from the provisions of the ESA.

Response: Both the proposed listing rule and the 2007 status review report presented an objective discussion of stocking and enhancement and did not reflect disdain on the part of the agency or the ASSRT for those activities. Both documents state that artificial propagation has the potential to be a tool for recovery of the species, as well as a threat. While collecting, handling, releasing, and harming captive Atlantic sturgeon were identified in the proposed listing rule as potential violations of the take prohibitions in section 9 of the ESA, we also stated that permits are available to lawfully conduct these activities for purposes of scientific research or to enhance the propagation of the or survival of Atlantic sturgeon DPSs. As stated in our response to other comments above, we must base listing determinations solely on the best scientific and commercial data available on the status of and threats to the species. We cannot consider the potential economic consequences (or lack of economic

incentives) to entities currently in possession of captive Atlantic sturgeon. However, in our response to comment 35, we describe the types of authorizations available to conduct activities such as artificial propagation in full compliance with the ESA and we encourage the affected parties to utilize this option.

In response to comments from FDACS that the disposition of all Atlantic sturgeon acquired by Florida aquaculture facilities is known, we contacted FDACS to confirm current holdings. FDACS informed us that Evan's Fish Farm is currently the only facility in Florida with Atlantic sturgeon, and they only have one surviving fish. All other Atlantic sturgeon held in Florida aquaculture facilities died in captivity. We are updating the final listing rule with this information. As stated in the proposed listing rule and confirmed by the commenter, Atlantic sturgeon in possession of Florida aquaculture facilities originated from Canadian populations and not from any of the U.S. DPSs currently being proposed for listing under the ESA. Therefore, the remaining Atlantic sturgeon held by Evan's Fish Farm is not affected by the listing.

Comment 53: A commenter provided information on impingement of juvenile Atlantic sturgeon at the Brunswick Nuclear Power Plant on the lower Cape Fear River. Plant modifications were implemented in the early 1980s as part of the NPDES permit. An average of 55 juvenile Atlantic sturgeon were impinged per year from 1975 to 1981. A fish diversion was installed in 1981 and a fish return system was installed in 1983. Only 2 impinged juveniles were observed between 1982 and 2010 and were returned alive to the river.

Response: We appreciate the information provided by the commenter and we added this information to the section of the final listing rule on impingement and entrainment. As we noted in the proposed listing rule, the withdrawal of water from rivers that support Atlantic sturgeon populations was considered to pose a potential threat of impingement and entrainment; however, data are lacking to determine the overall impact of this threat on sturgeon populations, as impacts are dependent on a variety of factors (*e.g.,* the species, time of year, location of the intake structure, and strength of the intake current). Prior to receiving the above information, we only had one survey showing the direct impact of water withdrawal on Atlantic sturgeon in the Southeast. As stated in the proposed listing rule, the Edwin I. Hatch Nuclear power plant, located 11 miles north of Baxley, Georgia, withdraws water from, and discharges to, the Altamaha River. Pre-operational drift surveys were conducted and only two *Acipenser* larvae were collected. Entrainment samples at the plant were collected for the years 1975, 1976, and 1980, and no *Acipenser* species were observed in the samples (Sumner, 2004). We concurred with the ASSRT's assessment of the threat from impingement and entrainment as low for both the Carolina and South Atlantic DPS and concluded that it was not contributing to the endangered status of the DPSs. The information provided by the commenter that two juvenile Atlantic sturgeon were impinged at the Brunswick Nuclear Power Plant between 1982 and 2010, and both were returned to the Cape Fear River alive, does not change our conclusion.

Comment on Recovery

Comment 54: A comment was received that a recovery plan for Atlantic sturgeon should place a high priority on research and gathering sufficient information to define what it means to both jeopardize and recover Atlantic sturgeon and define the allowable take authorized by the ESA. Ecosystem dynamics and level of anthropogenic activity vary in each river, and recovery tasks should be prioritized based on research into potential impacts of the activities on Atlantic sturgeon. The commenter recommended an accelerated and concentrated research effort prior to development of a targeted restoration strategy.

Response: Section 4(f) of the ESA directs NMFS to develop and implement recovery plans for threatened and endangered species, unless such a plan would not promote conservation of the species. According to the statute, these plans must incorporate, at a minimum: (1) A description of site-specific management actions necessary to achieve recovery of the species, (2) objective, measurable criteria which, when met, would result in a determination that the species be removed from the list; and (3) estimates of the time and costs required to achieve the plan's goal. NMFS agrees with the commenter that research to fill knowledge gaps in areas important to recovery should be a priority. NMFS is currently undertaking and funding a variety of projects, including research on abundance and to determine movement and habitat utilization by Atlantic sturgeon. In addition, through years of section 7 consultations on shortnose sturgeon, which share many of the same rivers as Atlantic sturgeon, we have much information on anthropogenic activities occurring in those rivers. We will continue to seek information on Atlantic sturgeon, their habitat, and the threats they are facing and use this information to prioritize recovery actions. Once a draft recovery plan is developed, we will submit it for public review and comment before finalizing it.

Comments on Critical Habitat

Comment 55: A commenter recommended that confirmed and potential nursery and spawning locations in each river should be designated as critical habitat for Atlantic sturgeon, as well as known marine migration corridors and aggregation areas. The commenter provided information and literature citations identifying some of these areas and the habitat characteristics potentially preferred by Atlantic sturgeon.

Response: We appreciate the information provided by the commenter. Section 4(a)(3)(A) of the ESA requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrently with a determination that a species is endangered or threatened. When such a designation is not determinable at the time of final listing of a species, section 4(b)(6)(C)(ii) of the ESA provides for an additional year to promulgate a critical habitat designation. We have concluded that critical habitat for the Carolina and South Atlantic DPSs is not determinable at this time. Through the status review and public comment process on the proposed listing rule, we have begun to collect information on the location of biological and physical and biological features essential to the conservation of the two DPSs. Throughout the next year, we intend to gather and review current and ongoing studies on the habitat use and requirements of Atlantic sturgeon from the two DPSs in the Southeast, including an ongoing study with USGS to compare sturgeon location data with a variety of habitat parameters and a study to map riverine habitat in four Georgia rivers known to support the South Atlantic DPS funded through NMFS Section 6 program. We will also gather and analyze information on the benefits and impacts of a critical habitat designation.

Comment 56: A comment stated that critical habitat for the South Atlantic DPS should be accurately defined. The commenter noted that Figure 2 in the proposed listing rule depicts habitat well above the fall line and stated that accurate delineation of critical habitat is necessary so undue compliance costs

are not placed on communities outside the actual habitat utilized by the DPS.

Response: NMFS has not yet designated critical habitat for the Carolina and South Atlantic DPSs. The shaded areas in Figure 2 in the proposed listing rule encompass the rivers where Atlantic sturgeon belonging to the Carolina and South Atlantic DPSs may occur. The shaded areas were made sufficiently large so that no rivers or tributaries potentially inhabited by fish from the Carolina and South Atlantic DPSs were excluded. The shaded areas were meant to be a visual reference, rather than a definitive indication of the presence of Atlantic sturgeon, though any sturgeon encountered in a location within a shaded area would be from a DPS being listed through this final rule (as all Atlantic sturgeon on the East Coast of the U.S. are from a DPS currently proposed for listing as threatened or endangered). We have modified Figure 2, now Figures 2 and 3, to more accurately reflect the text descriptions of the Carolina and South Atlantic DPSs. Because Atlantic sturgeon are included in a DPS based on the watershed in which they spawn or were spawned, we have redrawn Figures 2 and 3 using HUC 8 watershed boundaries obtained from USGS. Because this is only a visual representation of where fish from the Carolina and South Atlantic DPSs may be encountered, it does not change the entities being listed and does not indicate that critical habitat may be designated in a certain location. We agree that critical habitat for the Carolina and South Atlantic DPSs should be accurately defined at the time of designation to ensure compliance with the ESA's mandate at section 7(a)(2) that any activity authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of critical habitat. Though activities occurring outside designated critical habitat can still affect critical habitat in some instances, NMFS does not have the authority or the intent to place compliance burdens on entities engaged in activities that would not adversely affect Atlantic sturgeon or their designated critical habitat.

Comment 57: A commenter stated that NMFS has not designated critical habitat for the endangered shortnose sturgeon, which would improve habitat protection for the Atlantic sturgeon due to the substantial overlap in habitat utilization between the two species. The commenter stated NMFS should meet the management objectives of the ESA for shortnose sturgeon before taking on the substantial administrative burden of a listing for Atlantic sturgeon and said that species with critical habitat designated are twice as likely to be recovered as species without critical habitat. Another commenter questioned why NOAA failed to identify Essential Fish Habitat (EFH) for Atlantic sturgeon to support the proposed listing rule and noted that EFH and Habitat Areas of Particular Concern (HAPCs) have not been designated for shortnose sturgeon either.

Response: The shortnose sturgeon was listed as endangered on March 11, 1967, under the Endangered Species Preservation Act of 1966, a predecessor to the Endangered Species Act of 1973. Shortnose sturgeon continued to meet the listing criteria for endangered under subsequent definitions specified in the 1969 Endangered Species Conservation Act and remained on the list with the inauguration of the ESA in 1973. NMFS later assumed jurisdiction for shortnose sturgeon under a 1974 government reorganization plan (38 FR 41370). Because the shortnose sturgeon was listed prior to the amendments to the ESA that made critical habitat designations mandatory for newly listed species, NMFS is not required to designate critical habitat for the species (designation is discretionary). However, NMFS has undertaken a number of activities to protect shortnose sturgeon and their habitat, including publishing a recovery plan for the species (63 FR 69613; December 17, 1998), funding research on the species, and consulting with Federal agencies under section 7 of the ESA to ensure shortnose sturgeon are not jeopardized by activities that may harm the fish or their habitat. Some of these efforts also benefit Atlantic sturgeon, as noted in the proposed listing rule. However, NMFS cannot delay a listing determination or a critical habitat designation for Atlantic sturgeon until the recovery objectives for shortnose sturgeon are met. Because NMFS was petitioned to list the Atlantic sturgeon, we were required to evaluate the status of the species and the threats it is facing and make a finding on whether the petitioned action was warranted within 12 months, which resulted in our proposed listing rule determination of endangered for the Carolina and South Atlantic DPSs of Atlantic sturgeon. NMFS works with the regional fishery management councils to identify EFH and HAPCs for federally managed fishery species. Atlantic and shortnose sturgeon are not federally managed fishery species, therefore NMFS did not identify EFH or HAPCs for either species.

Comments on the Public Hearings

Comment 58: A commenter asked if the ''limited advertising'' and one public hearing met the minimum statutory requirements for receiving public comments on the proposed listing rule, since it affects a large geographic area, numerous counties, cities, states, industries, *etc.* The commenter stated the meeting was not on the Southeast Region's or the Office of Protected Resources' Web site. The commenter noted that a legal notice was placed in the local newspaper, but he asked the paper to enlarge the notice and to also include a separate article about the public hearing.

Response: The notice and public comment period on the proposed listing rule for the Carolina and South Atlantic DPSs of Atlantic sturgeon exceeded the requirements established in section 4(b)(5) of the ESA. The proposed listing rule established a 90-day comment period (October 6, 2010, through January 4, 2011), during which comments were accepted electronically via the Federal eRulemaking Portal (*http://www.regulations.gov*), as well as by mail, hand delivery, and facsimile. We extended the comment period an additional 30 days at the request of the public and accepted comments through February 4, 2011. In compliance with section 4(b)(5)(A)(ii), we sent over 200 letters with a complete copy of the proposed rule to each relevant state and county agency where the Carolina and South Atlantic DPS potentially occur, inviting them to comment on the proposed listing rule. Section 4(b)(5)(E) of the ESA only requires that one public hearing be held on a proposed listing rule if it is requested by the public within 45 days after the date of the publication of the proposed listing rule in the **Federal Register**. Though the Southeast Region did not receive any requests for a public hearing, we elected to hold two public hearings, one each in the areas occupied by the Carolina and South Atlantic DPSs of Atlantic sturgeon. Hearings were held in Wilmington, North Carolina, on December 6, 2010, and Atlanta, Georgia, on December 7, 2010, to accept public comments. In addition to publishing a notice in the **Federal Register** (75 FR 69049; November, 10, 2010) announcing the hearings, a notice was placed in the legal section of a major newspaper in each of the five states occupied by the Carolina and South Atlantic DPSs on November 15, 2010: the Florida Times-Union (Florida), the Atlanta Journal Constitution (Georgia), The State (South Carolina), The Charlotte Observer (North Carolina), and the Richmond

Times-Dispatch (Virginia). As the commenter noted, we also placed a notice in the local paper, The Star-News, for Wilmington, North Carolina, where the first hearing was held. An announcement with a link to the **Federal Register** notice for the hearings was placed on the Southeast Regional Office's Web site on December 2, 2010.

Summary of Changes From the Proposed Listing Rule

Based on the comments received and our review of the proposed rule, we made the changes listed below.

1. We refined the text descriptions of the watersheds making up the ranges of the Carolina and South Atlantic DPSs and the individual fish that are included in the DPSs. The modifications to the text only clarify the riverine ranges of the DPSs and do not change the spawning populations making up each of the Southeast DPSs.

2. We slightly extended the marine range of the DPSs based on recent tagging data. We also provided refined maps showing the riverine ranges of the Carolina and South Atlantic DPSs using HUC 8 watershed boundaries.

3. We added information on metapopulations and the importance of multiple viable riverine populations to the ''Conservation Status'' section, per our response to comment 1 from peer reviewers 1 and 2.

4. We added information on the role of adaptation and competition in the observed low rate of genetic exchange between Atlantic sturgeon river populations, per comment 5 submitted by peer reviewer 1.

5. We added information on polyploidy in Atlantic sturgeon and potential effects on the evaluation of minimum viable population size, per comment 7 submitted by a peer reviewer 1.

6. We added information on recent estimated increases in juvenile Atlantic sturgeon abundance in the Altamaha River, Georgia, per comment 2 submitted by peer reviewer 2.

7. We added information about the nature of the samples used in the genetic analysis for the Waccamaw River population, per comment 13 submitted by peer reviewer 3.

8. We added Atlantic sturgeon location and abundance data provided by the states (North Carolina, South Carolina, and Georgia) for the Carolina and South DPS to the ''Distribution and Abundance'' section, per comments 19 and 20.

9. We revised the erroneous statement in the section on climate change that the Carolina and South Atlantic DPSs are within a region the IPCC predicts will experience decreases in precipitation. As noted in our response to comment 45, the Southeast is predicted to experience increases in precipitation; however, evaporation is also predicted to increase with increasing temperatures and the net effect for the Southeast is predicted to be overall drying.

10. We added and updated Atlantic sturgeon bycatch information in Section B ''Overutilization for Commercial, Recreational, Scientific, or Educational Purposes'' with information provided by the states of North Carolina and Georgia, per comment 47.

11. We removed the statement that it is unlikely the aquarium industry could ever be effectively regulated, per comment 48.

12. We updated information on the current holdings of Atlantic sturgeon in Florida aquaculture facilities.

13. We corrected the location of the Bears Bluff National Fish Hatchery.

14. We added information on impingement and entrainment of juvenile Atlantic sturgeon at the Brunswick Nuclear Power Plant on the lower Cape Fear River.

15. We added an evaluation of North Carolina's NCCHPP and designation of AFSAs to our evaluation of current protective efforts.

16. We made minor corrections and updates to information in the listing rule based on recommendations from peer reviewers, commenters, and our own review of the proposed listing rule.

Our listing determination and summary of the data on which it is based, with the incorporated changes, are presented in the remainder of this document.

Taxonomy and Life History

There are two subspecies of Atlantic sturgeon—the Gulf sturgeon *(Acipenser oxyrinchus desotoi*) and the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*). Historically, the Gulf sturgeon occurred from the Mississippi River east to Tampa Bay. Its present range extends from Lake Pontchartrain and the Pearl River system in Louisiana and Mississippi east to the Suwannee River in Florida. The Gulf sturgeon was listed as threatened under the ESA in 1991. The finding in this final rule addresses the subspecies *Acipenser oxyrinchus oxyrinchus* (referred to as Atlantic sturgeon), which is distributed along the eastern coast of North America. Historically, sightings have been reported from Hamilton Inlet, Labrador, south to the St. Johns River, Florida. Recently, a tagged Atlantic sturgeon was tracked off Cape Canaveral, Florida. Occurrences south of the St. Johns River, Florida, and in Labrador may have always been rare.

Atlantic sturgeon is a long-lived, late-maturing, estuarine-dependent, anadromous species. Atlantic sturgeon may live up to 60 years, reach lengths up to 14 feet (ft; 4.27 meters (m)), and weigh over 800 pounds (lbs; 363 kg). They are distinguished by armor-like plates and a long protruding snout that is ventrally located, with four barbels crossing in front. Sturgeon are omnivorous benthic (bottom) feeders and filter quantities of mud along with their food. Adult sturgeon diets include mollusks, gastropods, amphipods, isopods, and fish. Juvenile sturgeon feed on aquatic insects and other invertebrates (ASSRT, 2007).

Vital parameters of Atlantic sturgeon populations show clinal variation with faster growth and earlier age at maturation in more southern systems, though not all data sets conform to this trend. Atlantic sturgeon mature between the ages of 5 and 19 years in South Carolina (Smith *et al.,* 1982), between 11 and 21 years in the Hudson River (Young *et al.,* 1988), and between 22 and 34 years in the St. Lawrence River (Scott and Crossman, 1973). Atlantic sturgeon likely do not spawn every year. Multiple studies have shown that spawning intervals range from 1 to 5 years for males (Smith, 1985; Collins *et al.,* 2000; Caron *et al.* 2002) and 2 to 5 years for females (Vladykov and Greeley, 1963; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999). Fecundity of Atlantic sturgeon has been correlated with age and body size, with egg production ranging from 400,000 to 8 million eggs per year (Smith *et al.,* 1982; Van Eenennaam and Doroshov, 1998; Dadswell, 2006). The average age at which 50 percent of maximum lifetime egg production is achieved is estimated to be 29 years, approximately 3 to 10 times longer than for other bony fish species examined (Boreman, 1997).

Spawning adults migrate upriver in the spring, which occurs during February and March in southern systems, April and May in mid-Atlantic systems, and May and July in Canadian systems (Murawski and Pacheco, 1977; Smith, 1985; Bain, 1997; Smith and Clugston, 1997; Caron *et al.,* 2002). In some southern rivers, a fall spawning migration may also occur (Rogers and Weber, 1995; Weber and Jennings, 1996; Moser *et al.,* 1998). Spawning typically occurs in flowing water between the salt front and fall line of large rivers, where optimal flows are 18 to 30 inches (in) per second (46 to 76 centimeters (cm) per second) and depths are 36 to 89 ft (11 to 27 m) (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance,

1987; Bain *et al.,* 2000). The fall line is the boundary between an upland region of continental bedrock and an alluvial coastal plain, sometimes characterized by waterfalls or rapids. Sturgeon eggs are highly adhesive and are deposited on the bottom substrate, usually on hard surfaces (*e.g.,* cobble) (Gilbert, 1989; Smith and Clugston, 1997). Hatching occurs approximately 94 to 140 hours after egg deposition at corresponding temperatures of 68.0 to 64.4 degrees Fahrenheit (20 to 18 degrees Celsius). The newly emerged larvae assume a demersal existence (Smith *et al.,* 1980). The yolksac larval stage is completed in about 8 to 12 days, during which time the larvae move downstream to rearing grounds (Kynard and Horgan, 2002). During the first half of their migration downstream, movement is limited to night. During the day, larvae use benthic structure (*e.g.,* gravel matrix) as refugia (Kynard and Horgan, 2002). During the latter half of migration, when larvae are more fully developed, movement to rearing grounds occurs both day and night. Juvenile sturgeon continue to move further downstream into brackish waters and eventually become residents in estuarine waters for months to years.

Recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon. Their late age at maturity provides more opportunities for individuals to be removed from the population before reproducing. However, a long life-span also allows multiple opportunities to contribute to future generations provided the appropriate spawning habitat and conditions are available.

Distribution and Abundance

Historically, Atlantic sturgeon were present in approximately 38 river systems throughout their range, of which 35 systems have been confirmed to have had a historical spawning population. More recently, presence has been documented in 35 river systems with spawning taking place in at least 18 rivers. Spawning has been confirmed in the St. Lawrence, Annapolis, St. John, Kennebec, Hudson, Delaware, James, Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, Great Pee Dee, Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla rivers. Rivers with possible, but unconfirmed, spawning populations include the St. Croix, Penobscot, Androscoggin, Sheepscot, York, Neuse, Santee and Cooper Rivers.

Historical records from the 1700s and 1800s document large numbers of sturgeon in many rivers along the Atlantic Coast. Atlantic sturgeon underwent significant range-wide declines from historical abundance levels due to overfishing in the late 1800s, as discussed more fully below. Sturgeon stocks were further impacted through environmental degradation, especially due to loss of access to habitat and reduced water quality from the construction of dams in the early to mid-1900s. The species persisted in many rivers, though at greatly reduced levels (1 to 5 percent of their earliest recorded numbers), and commercial fisheries were active in many rivers during all or some of the years 1962 to 1997 (Waldman and Wirgin, 1998; Smith and Clugston, 1997). Many of these contemporary fisheries resulted in continued overfishing, which prompted ASMFC to impose the Atlantic sturgeon fishing moratorium in 1998 and NMFS to close the EEZ to Atlantic sturgeon retention in 1999.

Quantified abundance estimates of Atlantic sturgeon obtained through sampling surveys are currently only available for the Hudson (NY) and Altamaha (GA) rivers, where adult spawning populations are estimated to be approximately 870 and 343 fish per year, respectively (Kahnle *et al.,* 2007; Schueller and Peterson, 2006). Surveys from other rivers in the species' U.S. range are more qualitative, primarily focusing on documentation of multiple year classes and reproduction, as well as the presence of very large adults and gravid females, in the river systems. In the Southeast Region, spawning has been confirmed in 11 rivers (Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, Great Pee Dee, Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla rivers), with possible spawning occurring in 3 additional rivers (the Neuse, Santee and Cooper Rivers). Based on a comprehensive review of the available data, the literature, and information provided by local, state, and Federal fishery management personnel, the Altamaha River is believed to have the largest population in the Southeast (ASSRT, 2007). The larger size of this population relative to the other river populations in the Southeast is likely due to the absence of dams, the lack of heavy development in the watershed, and relatively good water quality, as Atlantic sturgeon populations in the other rivers in the Southeast have been affected by one or more of these factors. Trammel net surveys, as well as independent monitoring of incidental take in the American shad fishery, suggested that the Altamaha population was neither increasing nor decreasing. However, recent studies by Schueller and Peterson (2010) and Peterson (2011; UGA, pers. comm.) estimated large increases in abundance of Atlantic sturgeon juveniles from 2004–2010, particularly during the 2009–2010 period. Schueller and Peterson (2010) conducted their research during the summers of 2004 to 2007 and estimated that juvenile abundance ranged from 1,072 to 2,033 individuals in the Altamaha River, with age-1 and age-2 individuals comprising greater than 87 percent of the population. Based on modeling, estimated apparent survival and per capita recruitment indicated that the juvenile population experienced high annual turnover: apparent survival rates were low (less than 33 percent), and per capita recruitment was high (0.82–1.38). The numbers of juvenile Atlantic sturgeon in the Altamaha River in 2009 and 2010 were between approximately 3,500 and 6,500. However, the authors noted that their mark–recapture methods were not capable of providing separate estimates of annual survival and out-migration, yet these rates are critical in understanding recruitment processes for the species. Though quantitative abundance estimates obtained through sampling surveys are not available for the other river populations, because the Altamaha spawning population is the largest, we believe a conservative estimate of the other spawning populations in the Southeast Region is no more than 300 adults spawning per year.

Historically, Atlantic sturgeon were abundant in most North Carolina coastal rivers and estuaries, with the largest fisheries occurring in the Roanoke River/Albemarle Sound system and in the Cape Fear River (Kahnle *et al.,* 1998). Historical landings records from the late 1800s indicated that Atlantic sturgeon were very abundant within Albemarle Sound (approximately 135,600 lbs or 61,500 kg landed per year). Abundance estimates derived from these historical landings records indicated that between 7,200 and 10,500 adult females were present within North Carolina prior to 1890 (Armstrong and Hightower, 2002; Secor 2002). NCDMF has conducted the Albemarle Sound IGNS, initially designed to target striped bass, since 1990. During that time, 842 YOY and subadult sturgeon have been captured. Incidental take of Atlantic sturgeon in the IGNS, as well as multiple observations of YOY from the Albemarle Sound and Roanoke River, provide evidence that spawning continues. Three adult Atlantic sturgeon (2 males, 1 unknown) were tagged in the Roanoke River during September 2010 and the fish were tracked out of the river several weeks later, potentially

suggesting a fall spawning run of Atlantic sturgeon in the Roanoke River. Catch records indicate that the Roanoke River Atlantic sturgeon population seemed to be increasing until 2000, when recruitment began to decline. The Albemarle IGNS data for 2006–2009 showed higher Atlantic sturgeon CPUEs (0.015 to 0.031) than the 2002–2005 period, though they were still lower than the 2000–2001 level (0.032) and there is no overall trend in the overall 1990–2009 CPUE dataset. Catch records and observations from other river systems in North Carolina exist (*e.g.,* Hoff, 1980, Oakley, 2003, in the Tar and Neuse rivers; Moser *et al.,* 1998, and Williams and Lankford, 2003, in the Cape Fear River) and provide evidence for spawning, but based on the relatively low numbers of fish caught, it is difficult to determine whether the populations in those systems are declining, rebounding, or remaining static. The Pamlico IGNS survey data from 2001–2009 shows peak CPUE of Atlantic sturgeon in 2005 (0.095), but no decreasing or increasing trends are apparent. River surveys in the Pamlico, Pungo, and Neuse Rivers since 2000 have shown a slight decrease in Atlantic sturgeon abundance. Also, large survey captures during a single year are difficult to interpret. For instance, abundance of Atlantic sturgeon below Lock and Dam #1 in the Cape Fear River seemed to have increased dramatically during the 1990–1997 surveys (Moser *et al.,* 1998) as the CPUE of Atlantic sturgeon was up to eight times greater during 1997 than in the earlier survey years. Since 1997, Atlantic sturgeon CPUE doubled between the years of 1997 and 2003 (Williams and Lankford, 2003). However, it is unknown whether this is an actual population increase reflecting the effects of North Carolina's ban on Atlantic sturgeon fishing that began in 1991, or whether the results were skewed by one outlier year. There was a large increase observed in 2002, though the estimates were similar among all other years of the 1997 to 2003 study.

Atlantic sturgeon were likely present in many South Carolina river/estuary systems historically, but it is not known where spawning occurred. Secor (2002) estimated that 8,000 spawning females were likely present prior to 1890, based on U.S. Fish Commission landing records. Since the 1800s, however, populations have declined dramatically (Collins and Smith, 1997). Recorded landings of Atlantic sturgeon in South Carolina peaked at 481,050 lbs (218,200 kg) in 1897, but 5 years later, only 93,920 lbs (42,600 kg) were reported landed (Smith *et al.,* 1984). Landings remained depressed throughout the 1900s, with between 4,410 and 99,210 lbs (2,000 and 45,000 kg) of Atlantic sturgeon reported annually between 1958 and 1982 (Smith *et al.,* 1984). During the last two decades, Atlantic sturgeon have been observed in most South Carolina coastal rivers, although it is not known if all rivers support a spawning population (Collins and Smith, 1997). Sampling for shortnose sturgeon (*Acipenser brevirostrum*) conducted in Winyah Bay captured two subadult Atlantic sturgeon in 2004. SCDNR noted in comments on the proposed listing rule that Atlantic sturgeon were captured in most nets set in Winyah Bay from April to July in 2007 to 2009, including sites far upriver. Further, a researcher conducting pilot sonar survey trials in Winyah Bay potentially detected several hundred fish, many of which could be Atlantic sturgeon. The researcher has conducted pilot sonar trials in the Roanoke, Neuse, Cape Fear, and Pee Dee River systems and believes the initial results suggest Atlantic sturgeon densities in the Pee Dee River (Winyah Bay) system are higher than the other systems surveyed (J. Hightower, pers. comm.) Captures of age-1 juveniles from the Waccamaw River during the early 1980s suggest that a reproducing population of Atlantic sturgeon may persist in that river, although the fish could have been from the nearby Great Pee Dee River (Collins and Smith, 1997). Until recently, there was no evidence that Atlantic sturgeon spawned in the Great Pee Dee River, although subadults were frequently captured and large adults were often observed by fishers. However, a fishery survey conducted by Progress Energy Carolinas Incorporated captured a running ripe male in October 2003 and observed other large sturgeon, perhaps revealing a fall spawning run (ASSRT, 2007). There are no data available regarding the presence of YOY or spawning adult Atlantic sturgeon in the Sampit River, although it did historically support a population and is thought to serve as a nursery ground for local stocks (ASMFC, 2009).

The Santee-Cooper system had some of the highest historical landings of Atlantic sturgeon in the Southeast. Data from the U.S. Fish Commission shows that greater than 220,460 lbs (100,000 kg) of Atlantic sturgeon were landed in 1890 (Secor, 2002). The capture of 151 subadults, including age-1 juveniles, in the Santee River in 1997 suggests that an Atlantic sturgeon population still exists in this river (Collins and Smith, 1997). The status review report documents that three adult Atlantic sturgeon carcasses were found above the Wilson and Pinopolis dams in Lake Moultrie (a Santee-Cooper reservoir) during the 1990s, and also states that there is little information regarding a land-locked population existing above the dams. There is no effective fish passage for sturgeon on the Santee and Cooper Rivers, and the lowest dams on these rivers are well below the fall line, thus limiting the amount of freshwater spawning and developmental habitat for fish below the dams. In 2007, an Atlantic sturgeon entered the fish lift (a lock designed specifically for fish passage) at the St. Stephen dam; it was physically removed and translocated downstream into the Santee River (A. Crosby, SCDNR, pers. comm.) In 2004, 15 subadult Atlantic sturgeon were captured in shortnose sturgeon surveys in the Santee River estuary. The previous winter, four juvenile (YOY and subadults) Atlantic sturgeon were captured from the Santee (one fish) and Cooper (three fish) rivers. These data support previous hypotheses that a fall spawning run occurs within this system, similar to that observed in other southern river systems. However, the status review report notes that SCDNR biologists have some doubt whether smaller sturgeon from the Santee-Cooper are resident YOY, as flood waters from the Pee-Dee or Waccamaw Rivers could have transported these YOY to the Santee-Cooper system via Winyah Bay and the Intracoastal Waterway (McCord, 2004). Resident YOY could, however, be evidence of a spawning population above the dams, as is the case with shortnose sturgeon (Collins *et al.,* 2003)

From 1994 to 2001, over 3,000 juveniles have been collected in the Ashepoo-Combahee-Edisto Rivers (ACE) Basin, including 1,331 YOY sturgeon (Collins and Smith, 1997; ASSRT, 2007). Specifically, SCDNR reports that 3,661 juvenile (one- to three-year-old) Atlantic sturgeon were collected in the Edisto River during the 16-year period since 1994. Utilizing this data, SCDNR used Lincoln-Peterson and Schnabel models to derive Atlantic sturgeon population estimates, which resulted in estimates of 70,000 and 20,000 juvenile Atlantic sturgeon in the Edisto River, respectively. SCDNR commented that the model results suggest increasing trends in abundance. Both models rely on mark-recapture data and assume a closed population (there are no births, deaths, or immigration/emigration between the initial capture and the recapture period) and that all individuals have an equal chance of

being captured (Nichols, 1992; Lindeman, 1990; Chao, 1987). We note that there is great uncertainty in the population estimates resulting from the two models, as evident in the great disparity between the two numbers. The reliability of the population models depends on the validity of the assumptions, and the primary assumption of equal capture probability is likely unattainable in natural populations (Chao, 1987; Carothers, 1973). SCDNR indicated they are currently completing an open system model (which is based on survival probabilities, as well as capture probabilities) to better assess the Atlantic sturgeon population in the Edisto River. Sampling for adults began in 1997, with two adult sturgeon captured in the first year of the survey, including one gravid female captured in the Edisto River and one running ripe male captured in the Combahee River. The running ripe male in the Combahee River was recaptured one week later in the Edisto River, which suggests that the three rivers that make up the ACE Basin may support a single population that spawns in at least two of the rivers. Between 1997 and 1999, SCDNR captured 118 adults in the Edisto River during spring and fall spawning runs, but netting ceased once that number was reached, so the entire spawning run was not sampled and more Atlantic sturgeon may have been captured if netting continued. SCDNR also noted approximately 20 adults were captured in the Edisto River over one to two months during surveys targeting other species. In 2010, four adults tagged in the 1990's as age 0+ were recaptured. These captures show that a current spawning population exists in the ACE Basin, as both YOY and spawning adults are regularly captured.

The Ashley River, along with the Cooper River, drains into Charleston Bay; only shortnose sturgeon have been studied in these rivers. While the Ashley River historically supported an Atlantic sturgeon spawning population, it is unknown whether the population still exists. There has been little or no scientific sampling for Atlantic sturgeon in the Broad/Coosawatchie River. One fish of unknown size was reported from a small directed fishery during 1981 to 1982 (Smith and Dingley, 1984).

Prior to the collapse of the fishery in the late 1800s, the sturgeon fishery was the third largest fishery in Georgia. Secor (2002) estimated from U.S. Fish Commission landing reports that approximately 11,000 spawning females were likely present prior to 1890. The sturgeon fishery was mainly centered on the Altamaha River, and in more recent years, peak landings were recorded in 1982 (13,000 lbs, 5,900 kg). In Georgia, Atlantic sturgeon are believed to spawn in the Savannah, Ogeechee, Altamaha, and Satilla rivers. Based on juvenile presence and abundance, the Altamaha River currently supports one of the healthier Atlantic sturgeon populations in the southeast (ASSRT, 2007). Atlantic sturgeon are also present in the Ogeechee River; however, the absence of age-1 fish during some years and the unbalanced age structure suggests that the population is highly stressed (Rogers and Weber, 1995). Sampling results from the mid-1990s indicated that the Atlantic sturgeon population in the Satilla River was also highly stressed (Rogers and Weber, 1995). Only four spawning adults or YOY, which were used for genetic analysis (Ong *et al.,* 1996), had been collected from this river since 1995. In the most recent compliance report to ASMFC, University of Georgia (UGA) researchers collected more than 200 Atlantic sturgeon in the Satilla River in less than 2 years of sampling. The presence of juvenile fish measuring less than 50 cm supports this is likely a self-sustaining, spawning population. The Savannah River supports a reproducing population of Atlantic sturgeon (Collins and Smith, 1997). According to NOAA's National Ocean Service, 70 Atlantic sturgeon have been captured since 1999 (ASSRT, 2007). Twenty-two of these fish have been YOY. A running ripe male was captured at the base of the dam at Augusta during the late summer of 1997, which supports the hypothesis that spawning occurs there in the fall. In the Savannah River, the SCDNR captured 369 Atlantic sturgeon between 1997 and 2010.

Reproducing Atlantic sturgeon populations are no longer believed to exist south of the Satilla River in Georgia. Sampling of the St. Marys River in the early 1990s failed to locate any sturgeon, which suggests that the spawning population may be extirpated (Rogers *et al.,* 1994). In January 2010, 12 sturgeon, believed to be Atlantic sturgeon, were captured at the mouth of the St. Marys during relocation trawling associated with a dredging project (J. Wilcox, Florida Fish and Wildlife Conservation Commission, pers. comm.), the first capture of Atlantic sturgeon in the St. Marys in decades. However, because they were not YOY or adults captured upstream, these trawl-captured sturgeon do not provide new evidence of a spawning population in the St. Marys. Researchers captured a total of 9 Atlantic sturgeon in the St. Marys River in March and June of 2010, based on a final report submitted to NMFS on a project funded through our Species Recovery Grant Program under section 6 of the ESA. The report stated that, based on the sizes of these individuals, the researchers concluded that none of these individuals were ''river-residents''. Though there was no definitive proof that these individuals had immigrated from other rivers, the report stated that the absence of small, river-resident juveniles suggests that Atlantic sturgeon in the St. Marys experienced complete recruitment failure from 2007–2010. There have been reports of Atlantic sturgeon tagged in the Edisto River (South Carolina) being recaptured in the St. Johns River, indicating this river may serve as a nursery ground; however, there are no data to support the existence of a current spawning population (*i.e.,* YOY or running ripe adults) in the St. Johns (Rogers and Weber, 1995; Kahnle *et al.,* 1998). In response to the proposed listing rule, Florida Fish and Wildlife Commission reported that 30 subadults (1 meter in length) were captured in the St. Marys River in 20 months and two juveniles (approximately 50 centimeters, age-1 or 2) were captured in the St. Johns River in February 2011, though these captures do not provide new evidence of spawning based on the size/age classes of sturgeon caught.

Identification of Distinct Population Segments

The ESA's definition of ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The high degree of reproductive isolation of Atlantic sturgeon (*i.e.,* homing to their natal rivers for spawning; ASSRT, 2007; Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002), as well as the ecological uniqueness of those riverine spawning habitats, the genetic differentiation amongst subpopulations, and the differences in life history characteristics, provide evidence that discrete reproducing populations of Atlantic sturgeon exist, which led the Services to evaluate application of the DPS policy in its 2007 status review. To determine whether any populations qualify as DPSs, we evaluated populations pursuant to the joint DPS policy, and considered: (1) The discreteness of any Atlantic sturgeon population segment in relation to the remainder of the subspecies to which it belongs; and (2) the significance of any Atlantic sturgeon population segment to the remainder of the subspecies to which it belongs.

Discreteness

The joint DPS policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation) or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA.

Atlantic sturgeon throughout their range exhibit ecological separation during spawning that has resulted in multiple, genetically distinct, interbreeding population segments. Tagging studies and genetic analyses provide the evidence of this ecological separation (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002; ASSRT, 2007; Grunwald *et al.,* 2008). As previously discussed, though adult and subadult Atlantic sturgeon originating from different rivers mix in the marine environment (Stein *et al.,* 2004a), the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with some studies showing only one or two individuals per generation spawning outside their natal river system (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). In addition, spawning in the various river systems occurs at different times, with spawning occurring earliest in southern systems and occurring as much as 5 months later in the northernmost river systems (Murawski and Pacheco, 1977; Smith, 1985; Rogers and Weber, 1995; Weber and Jennings, 1996; Bain, 1997; Smith and Clugston, 1997; Moser *et al.,* 1998; Caron *et al.,* 2002). Therefore, the ecological separation of the interbreeding units of Atlantic sturgeon results primarily from spatial separation (*i.e.,* very few fish spawning outside their natal river systems), as well as temporal separation (spawning populations becoming active at different times along a continuum from north to south).

Genetic analyses of mitochondrial DNA (mtDNA), which is maternally inherited, and nuclear DNA (nDNA), which reflects the genetics of both parents, provides evidence of the separation among Atlantic sturgeon populations in different rivers (Bowen and Avise, 1990; Ong *et al.,* 1996; Waldman *et al.,* 1996a; Waldman *et al.,* 1996b; Waldman and Wirgin, 1998; Waldman *et al.,* 2002; King *et al.,* 2001; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; Wirgin and King, 2006; Grunwald *et al.,* 2008). Overall, these studies consistently found Atlantic sturgeon to be genetically diverse, and offered that between seven and ten Atlantic sturgeon population groupings can be statistically differentiated range-wide (King *et al.,* 2001; Waldman *et al.,* 2002; Wirgin *et al.,* 2002; Wirgin *et al.,* 2005; ASSRT, 2007 (Tables 4 and 5); Grunwald *et al.,* 2008).

Given a number of key differences among the studies (*e.g.,* the analytical and/or statistical methods used, the number of rivers sampled, and whether samples from subadults were included), it is not unexpected that each reached a different conclusion regarding the number of Atlantic sturgeon population groupings. Wirgin and King (2006) refined the genetic analyses for Atlantic sturgeon to address such differences in prior studies. Most notably, they increased sample sizes from multiple rivers and limited the samples analyzed to those collected from YOY and mature adults (greater than 130 cm total length) to ensure that the fish originated from the river in which it was sampled. The results of the refined analysis by Wirgin and King (2006) are presented in the status review report (ASSRT, 2007; *e.g.,* Table 6 and Figure 17); both the mtDNA haplotype and nDNA allelic frequencies analyzed by Wirgin and King (2006) indicated that Atlantic sturgeon river populations are genetically differentiated. The results of the mtDNA analysis used for the status review report were also subsequently published by Grunwald *et al.* (2008). In comparison to the mtDNA analyses of the status review report, Grunwald *et al.* (2008) used additional samples, some from fish in the size range (less than 130 cm) excluded by Wirgin and King because they were smaller than those considered to be mature adults. Nevertheless, the results were qualitatively the same and demonstrated that each of the 12 sampled Atlantic sturgeon populations could be genetically differentiated (Grunwald *et al.,* 2008).

Genetic distances and statistical analyses (bootstrap values and assignment test values) were used to investigate significant relationships among, and differences between, Atlantic sturgeon river populations (ASSRT, 2007; Table 6 and Figures 16–18). Overall, the genetic markers used in this analysis resulted in an average accuracy of 88 percent for determining a sturgeon's natal river origin, but an average accuracy of 94 percent for correctly classifying it to one of five groups of populations (Kennebec River, Hudson River, James River, Albemarle Sound, and Savannah/Ogeechee/Altamaha Rivers) when using microsatellite data collected only from YOY and adults (ASSRT, 2007; Table 6). The overall accuracy in assigning an Atlantic sturgeon to its natal river ranged from 60 to 94.8 percent (60 to 91.7 percent for southeastern rivers), while the overall accuracy in identifying a sturgeon to one of the 5 DPSs ranged between 88.1 and 95.9 percent (91.7 to 95.9 percent for the two southeastern DPSs). A phylogenetic tree (a neighbor joining tree) was produced from only YOY and adult samples (to reduce the likelihood of including strays from other populations) using the microsatellite analysis (ASSRT, 2007; Figure 17). Bootstrap values (which measure how consistently the data support the tree structure) for this tree were high (the lowest was 87 percent, and all others were over 90 percent) (ASSRT, 2007). Regarding sturgeon from southeast rivers, this analysis resulted in a range of 60 to 92 percent accuracy in determining a sturgeon's natal river origin, but 92 and 96 percent accuracy in correctly classifying a sturgeon from four sampled river populations (the Albemarle Sound, Savannah, Ogeechee, and Altamaha River populations) to two groupings of river populations (Albemarle Sound and Savannah/Ogeechee/Altamaha Rivers). These two groupings exhibited clear separation from northern populations and from each other.

Genetic samples for YOY and spawning adults were not available for river populations originating between the Albemarle Sound and the other three rivers. However, nDNA from an expanded dataset that included juvenile Atlantic sturgeon was used to produce a neighbor-joining tree with bootstrap values (ASSRT, 2007; Figure 18). This dataset included additional samples from the Santee-Cooper, Waccamaw, and Edisto populations in the Southeast. Atlantic sturgeon river populations also grouped into five population segments along the U.S. East Coast in this analysis. In the Southeast, Atlantic sturgeon from the Santee-Cooper system grouped with the Albemarle Sound population, while the other two river populations grouped with the Savannah/Ogeechee/Altamaha River population segment. With the exception of the Waccamaw River population, all river populations sampled within each population segment along the entire East Coast were geographically adjacent. The Waccamaw River population

grouped with the Edisto/Savannah/Ogeechee/Altamaha River population segment, even though it is geographically located between Albemarle Sound and the Santee and Cooper Rivers. However, we attributed this to the small sample size (21 fish) from the Waccamaw River and the fact that all samples came from juveniles, which may be migrants from other systems. From the seven Southeast river populations included in the analysis, we determined based on genetic information that river populations from the ACE Basin southward are a genetically distinct, interbreeding population segment and that river populations between the Santee-Cooper system and Albemarle Sound (Roanoke River) are a genetically distinct, interbreeding population segment.

The higher accuracy in identifying Atlantic sturgeon to one of two population groupings (Albemarle Sound/Santee-Cooper Rivers and Ogeechee/Savannah/Altamaha/Edisto Rivers) compared to their natal rivers supports the fact that these multiple-river population segments are discrete from each other.

We have considered the information on Atlantic sturgeon population structuring provided in the status review report and Grunwald *et al.* (2008). The nDNA analyses described in the status review report provide additional genetic information and include chord distances and bootstrap values to support the findings for population structuring of Atlantic sturgeon within the United States. Therefore, based on genetic differences observed among certain river populations and the assumption that adjacent river populations are more likely to breed with one another than river populations from rivers that are not adjacent to each other, five discrete Atlantic sturgeon population segments in the United States meet the DPS Policy's discreteness criterion, with two located in the Southeast: (1) The ''Carolina'' population segment, which includes Atlantic sturgeon originating from the Roanoke, Tar/Pamlico, Cape Fear, Waccamaw, Pee Dee, and Santee-Cooper Rivers, and (2) the ''South Atlantic'' population segment, which includes Atlantic sturgeon originating from the ACE Basin (Ashepoo, Combahee, and Edisto rivers), Savannah, Ogeechee, Altamaha, and Satilla Rivers.

Significance

When the discreteness criterion is met for a potential DPS, as it is for the Carolina and South Atlantic population segments in the Southeast identified above, the second element that must be considered under the DPS policy is significance of each DPS to the taxon as a whole. The DPS policy cites examples of potential considerations indicating significance, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We believe that the Carolina and South Atlantic population segments persist in ecological settings unique for the taxon. This is evidenced by the fact that spawning habitat of each population grouping is found in separate and distinct ecoregions that were identified by TNC based on the habitat, climate, geology, and physiographic differences for both terrestrial and marine ecosystems throughout the range of the Atlantic sturgeon along the Atlantic coast (Figure 1). TNC descriptions do not include detailed information on the chemical properties of the rivers within each ecoregion, but include an analysis of bedrock and surficial geology type because it relates to water chemistry, hydrologic regime, and substrate. It is well established that waters have different chemical properties (*i.e.,* identities) depending on the geology of where the waters originate.

Riverine spawning habitat of the Carolina population segment occurs within the Mid-Atlantic Coastal Plain ecoregion, which is described as consisting of bottomland hardwood forests, swamps, and some of the world's most active coastal dunes, sounds, and estuaries. Natural fires, floods, and storms are so dominant in this region that the landscape changes very quickly. Rivers routinely change their courses and emerge from their banks. The TNC lists the most significant threats (sources of biological and ecological stress) in the region as: Global climate change and rising sea-level; altered surface hydrology and landform alteration (*e.g.,* flood-control and hydroelectric dams, inter-basin transfers of water, drainage ditches, breached levees, artificial levees, dredged inlets and river channels, beach renourishment, and spoil deposition banks and piles); a regionally receding water table, probably resulting from both over-use and inadequate recharge; fire suppression; land fragmentation, mainly by highway development; land-use conversion (*e.g.,* from forests to timber plantations, farms, golf courses, housing developments, and resorts); the invasion of exotic plants and animals; air and water pollution, mainly from agricultural activities including concentrated animal feed operations; and over-harvesting and poaching of species. Many of the Carolina population segment's spawning rivers, located in the Mid-Coastal Plain, originate in areas of marl. Waters draining calcareous, impervious surface materials such as marl are likely to be alkaline, dominated by surface run-off, have little groundwater connection, and be seasonally ephemeral.

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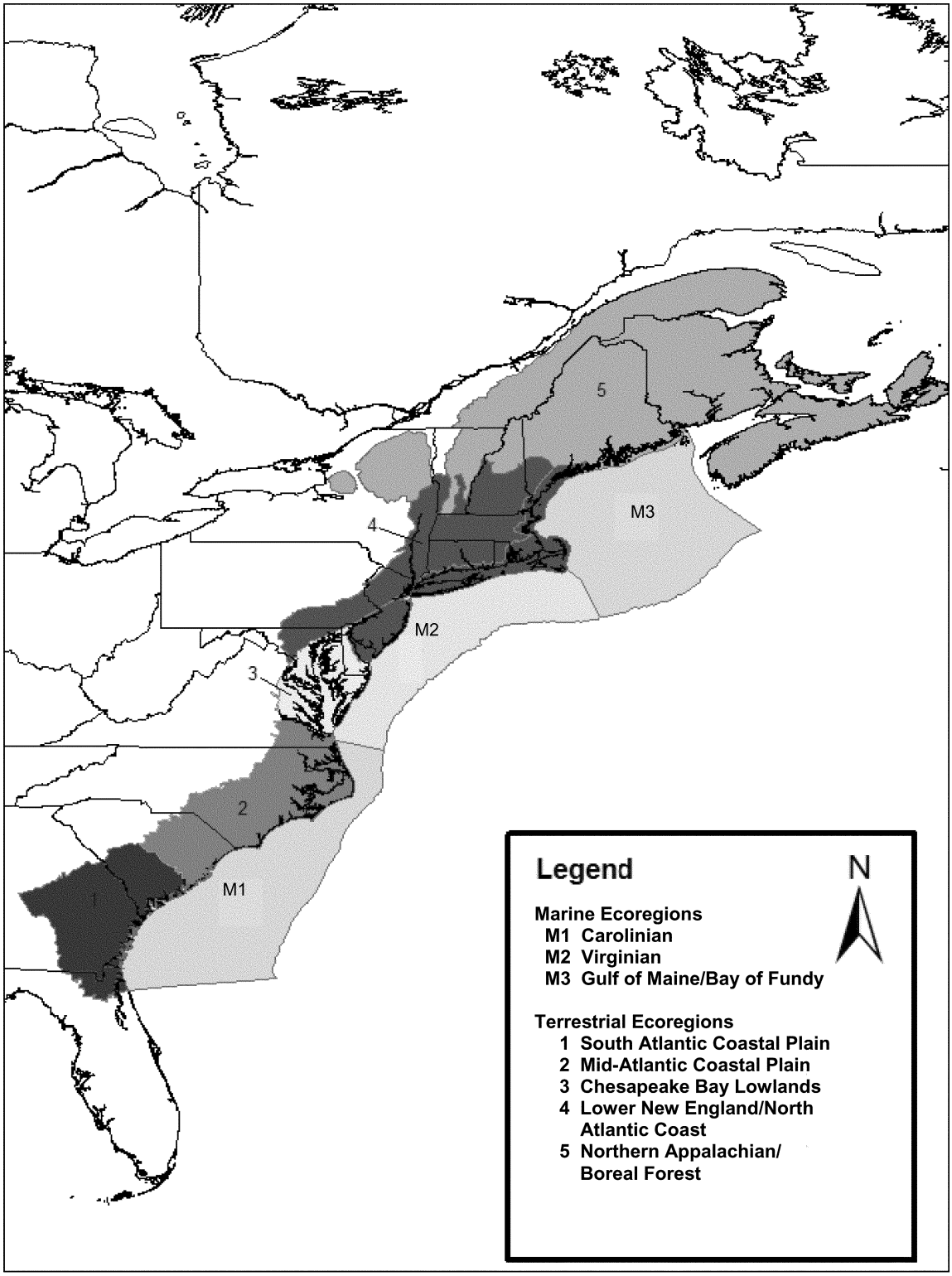

Figure 1: Map of TNC Marine and Terrestrial Ecoregions

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The riverine spawning habitat of the South Atlantic population segment occurs within the South Atlantic Coastal Plain ecoregion. TNC describes the South Atlantic Coastal Plain ecoregion as fall-line sandhills to rolling longleaf pine uplands to wet pine flatwoods; from small streams to large river systems to rich estuaries; from isolated depression wetlands to Carolina bays to the Okefenokee Swamp. Other ecological systems in the ecoregion include maritime forests on barrier islands, pitcher plant seepage bogs and Altamaha grit (sandstone) outcrops. The primary threats to biological diversity in the South Atlantic Coastal Plain listed by TNC are intensive silvicultural practices, including conversion of natural forests to highly managed pine monocultures and the clear-cutting of bottomland hardwood forests. Changes in water quality and quantity, caused by hydrologic alterations (impoundments, groundwater withdrawal, and ditching), and point and nonpoint pollution, are threatening the aquatic systems. Development is a growing threat, especially in coastal areas. Agricultural conversion, fire regime alteration, and the introduction of nonnative species are additional threats to the ecoregion's diversity. The South Atlantic DPS's spawning rivers, located in the South Atlantic Coastal Plain, are primarily of two types: brown-water (with headwaters north of the Fall Line, silt-laden) and black-water (with headwaters in the coastal plain, stained by tannic acids).

Therefore, the ecoregion delineations support that the physical and chemical properties of the Atlantic sturgeon spawning rivers utilized by the Carolina and South Atlantic DPSs are unique to each population segment. Since reproductive isolation accounts for the discreteness of each population segment, the Carolina and South Atlantic population segments of Atlantic sturgeon are ''significant'' as defined in the DPS policy given that the spawning rivers for each population segment occur in a unique ecological setting.

The loss of either the Carolina or the South Atlantic population segments of Atlantic sturgeon would create a significant gap in the range of the taxon. The loss of the Carolina population segment would result in a 475-mile (764-kilometer (km)) gap between the northern population segments and the South Atlantic population segment. The loss of the South Atlantic population segment would truncate the southern range of Atlantic sturgeon by greater than 150 miles (241 km). Though Atlantic sturgeon travel great distances in the marine environment and may use multiple river systems for foraging and nursery habitat, the range occupied by the Carolina and South Atlantic population segments would likely not be recolonized by a new, viable spawning population if either population segment was lost, except over a long time frame. Genetic analyses show that fewer than two individuals per generation spawn outside their natal rivers (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). However, a caveat to this information is that a natal river population, well-established over a long span of geological time and highly adapted to its respective natal river, may not realize success in colonizing another river already populated by a second population better adapted to its respective natal river than a potential colonist. The low rate of genetic exchange displayed among adjacent sturgeon populations may not reflect the incapacity of the species to colonize, but the competitive advantage held by a pre-established natal river population facing migrant individuals. However, we do not expect Atlantic sturgeon that originate from other population segments to re-colonize extirpated systems and establish new spawning populations, except perhaps over a long time frame (*i.e.,* many Atlantic sturgeon generations). Therefore, the loss of either the Carolina or South Atlantic population segments would result in a significant gap in the range of Atlantic sturgeon over a long time frame, and negatively impact the species as a whole because the loss of either population segment would constitute an important loss of genetic diversity for the Atlantic sturgeon.

The information presented above describes: (1) Persistence of the Carolina and South Atlantic population segments in ecological settings that are unique for the Atlantic sturgeon as a whole; and (2) evidence that loss of either population segment would result in a significant gap in the range of the taxon. Based on this information, we conclude that the Carolina and South Atlantic population segments meet the discreteness and significance criteria outlined in the DPS policy. We hereafter refer to these DPSs as the Carolina and South Atlantic DPSs. Figures 2 and 3 show the Carolina and South Atlantic DPSs. While the entire marine range of both the Carolina and South Atlantic DPSs extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida, figures 2 and 3 only depict the portion of the marine range directly adjacent to the riverine portions of each DPS.

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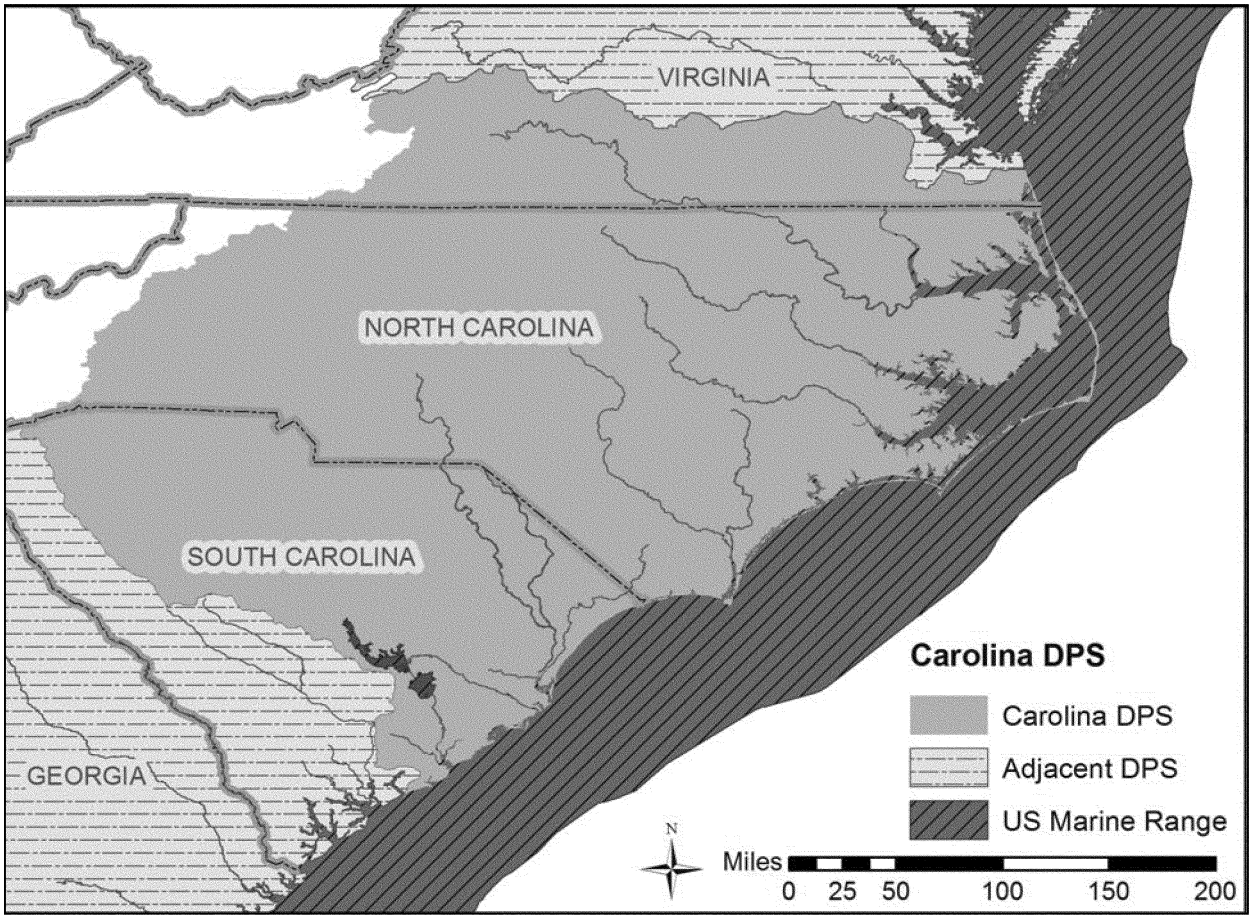

Figure 2: The Carolina DPS, including the adjacent portion of the marine range.

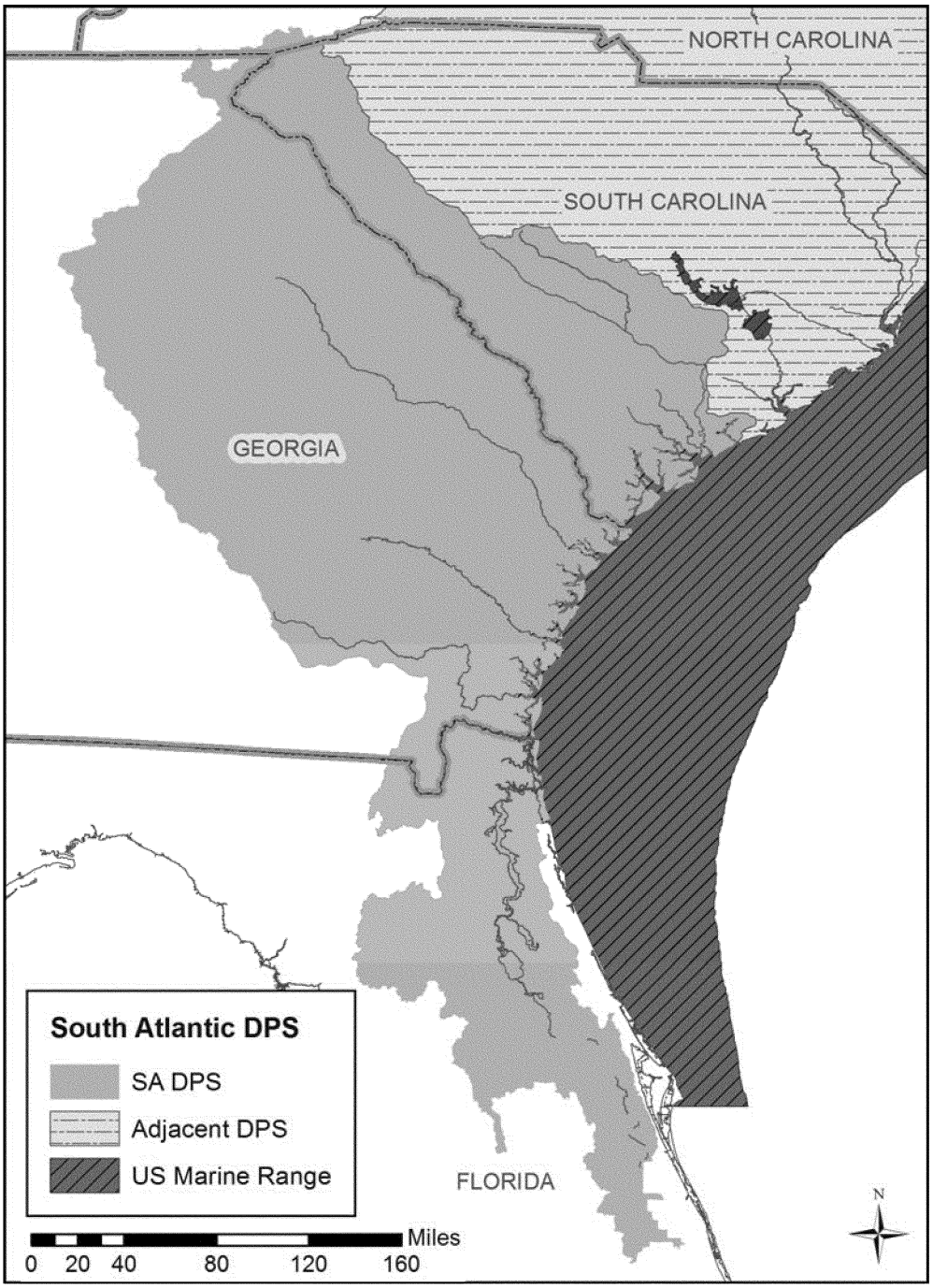

Figure 3: The South Atlantic DPS, including the adjacent portion of the marine range.

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Conservation Status

To determine the conservation status of the two DPSs in the Southeast Region's jurisdiction, the Carolina and South Atlantic DPSs, in relation to the ESA's standards for listing, we evaluated whether each DPS meets the definition of ''endangered'' or ''threatened'' as defined in section 3 of the ESA, and whether that status is a result of one or a combination of the factors listed under section 4(a)(1) of the ESA. An endangered species is ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species is one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

The abundance of Atlantic sturgeon has decreased dramatically within the last 150 years. A major fishery for Atlantic sturgeon developed in 1870 when a caviar market was established (Smith and Clugston, 1997). Record landings in the United States were reported in 1890, with over 7,385,000

lbs (3,350,000 kg) of Atlantic sturgeon landed from coastal rivers along the entire Atlantic Coast (Smith and Clugston, 1997; Secor and Waldman, 1999). Ten years after peak landings, the fishery collapsed in 1901, when less than 10 percent (650,365 lbs, 295,000 kg) of the U.S. 1890 peak landings were reported. The landings continued to decline coastwide, reaching about 5 percent of the peak in 1920. During the 1950s, the remaining U.S. fishery switched to targeting sturgeon for flesh, rather than caviar, and coastwide landings remained between 1 and 5 percent of the 1890 peak levels until the Atlantic sturgeon fishery was closed by ASMFC in 1998. None of the riverine spawning populations in either DPS have rebounded from the population crashes to be large or stable enough to provide with any level of certainty for continued existence of Atlantic sturgeon in this part of its range. All of the spawning populations in each DPS are subjected to threats and impacts that have and will continue to prevent population increases and recovery. We must look at the status of river populations across the whole of the DPSs in making our listing determinations.

The importance of having multiple self-sustaining riverine spawning populations within each DPS and the need to maintain suitable habitat to support the various life functions (spawning, feeding, growth) of Atlantic sturgeon is further highlighted by looking at the concept of metapopulations. Each DPS, made up of multiple river populations, is analogous to a metapopulation, which is a ''population of populations'' (Levins, 1969), a group of spatially separated populations of the same species that interact at some level. The metapopulation concept is closely linked with the processes of population turnover, extinction, and establishment of new populations, and the study of metapopulation dynamics is essentially the study of the conditions under which these two processes are in balance and the consequences of that balance to associated processes (Hanski and Gilpin, 1991). Separation into metapopulations is expected by sturgeon and other anadromous fishes, given their likely stepping-stone sequential model of recolonization of northern rivers following post-Pleistocene deglaciation (Waldman *et al.* 2002).

Metapopulation persistence depends on the balance of extinction and colonization in a static environment (Hanski 1996). Models and empirical observations suggest that very small populations are relatively likely to become extinct (Soulé, 1986; Lande, 1988; Simberloff, 1988; Thomas, 1990; Kindvall and Alhlen, 1992), and many local populations in remnant habitat fragments will remain small. Under the assumption that the environment does not change greatly, many empirical studies have shown that the expected lifetime of a population increases with its current size (Williamson 1981, Diamond 1984, Schoener and Spiller 1987). However, for rare and declining species, Thomas (1994) argues that: (1) Extinction is usually the deterministic consequence of the local environment becoming unsuitable (through habitat loss or modification, introduction of a predator, *etc.*); (2) that the local environment usually remains unsuitable following local extinction, so extinctions only rarely generate empty patches of suitable habitat; and 3) that colonization usually follows improvement of the local environment for a particular species. Therefore, if habitat remains suitable following local extirpation, recolonization via immigrants into now-empty habitat may replace at least some of those losses (Thomas 1994). However, if the cause of extinction is a deterministic population response to unsuitable conditions (*e.g.,* lack of suitable spawning habitat, poor water quality, or disturbance of substrates through repeated dredging), the local habitat is likely to remain unsuitable after extinction and be unavailable for recolonization (Thomas 1994). Therefore, recolonization is dependent upon both immigration from adjacent, healthy populations and habitat suitability. Because a DPS is a group of populations, the stability, viability, and persistence of individual populations affects the persistence and viability of the larger DPS. The loss of any population within a DPS will result in: (1) A long-term gap in the range of the DPS that is unlikely to be recolonized, or recolonized only very slowly; (2) loss of reproducing individuals; (3) loss of genetic biodiversity; (4) potential loss of unique haplotypes; (5) potential loss of adaptive traits; and (6) reduction in total number. The loss of a population will negatively impact the persistence and viability of the DPS as a whole as fewer than two individuals per generation currently spawn outside their natal rivers.

The persistence of individual populations, and in turn the DPS, depends on successful spawning and rearing within the freshwater habitat, the immigration into marine habitats to grow, and then the return of adults to natal rivers to spawn. Information on Atlantic sturgeon spawning within the Carolina and South Carolina DPSs is extremely limited. In the proposed listing rule, we presumed spawning was occurring if young-of-the-year (YOY) were observed or mature adults were present in freshwater portions of the system. Within the Carolina DPS, we concluded that spawning is occurring in the following rivers based on these data:

1. Roanoke River—collection of 15 YOY (1997–1998); single YOY (2005).
2. Tar and Neuse Rivers—one YOY (2005).
3. Cape Fear—upstream migration of adults in the fall, carcass of ripe female upstream in mid-September.
4. Winyah Bay—running ripe male in Great Pee De River (2003).

Within the South Atlantic DPS, we concluded that spawning is occurring in the following rivers based on these data:

1. ACE (Ashepoo, Combahee, and Edisto Rivers) Basin—1,331 YOY (1994–2001); gravid female and running ripe male in the Edisto (1997); 39 spawning adults (1998).
2. Savannah River—22 YOY (1999–2006); running ripe male (1997).
3. Ogeechee River—age-1 captures, but high inter-annual variability (1991–1998); 17 YOY (2003); 9 YOY (2004).
4. Altamaha River—74 captured/308 estimated spawning adults (2004); 139 captured/378 estimated spawning adults (2005).
5. Satilla River—4 YOY and spawning adults (1995–1996).

These data indicate that spawning occurs within the Carolina and South Atlantic DPSs; they do not indicate the frequency of annual spawning events or the degree to which spawning in these systems leads to population growth, persistence, or viability. The extent and effectiveness of spawning events is unknown and likely precarious in many rivers given ongoing threats such as water quality and restricted access to upstream spawning areas (75 FR 61904). In addition to spawning success, it is difficult to quantify spawning potential within the two DPSs given the lack of population estimates. Currently, the number of Atlantic sturgeon in the Carolina DPS is estimated as at 3 percent of historical population size and the South Atlantic DPS is estimated to be at 1 percent of historical population size, with the exception of the Altamaha River population, estimated to be at 6 percent of historical population size. Although the largest impact that caused the precipitous decline of the species has been curtailed (directed fishing), the population size has remained relatively constant at these greatly reduced levels for approximately 100 years.

The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. While Atlantic sturgeon exhibit a high degree of spawning fidelity to their natal rivers, multiple riverine, estuarine, and marine habitats may serve various life (*e.g.,* nursery, foraging, and migration) functions. Rivers known to have current spawning populations within the range of this DPS include the Roanoke, Tar-Pamlico, Cape Fear, Waccamaw, and Pee Dee Rivers. However, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and other stressors on juvenile survival and development. There may also be spawning populations in the Neuse, Santee and Cooper Rivers, though it is uncertain. Historically, both the Sampit and Ashley Rivers were documented to have spawning populations at one time. However, the spawning population in the Sampit River is believed to be extirpated and the current status of the spawning population in the Ashley River is unknown. Both rivers may be used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. This represents our current knowledge of the river systems utilized by the Carolina DPS for specific life functions, such as spawning, nursery habitat, and foraging. However, fish from the Carolina DPS likely use other river systems than those listed here for their specific life functions. The Carolina DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS. NMFS has no records of Atlantic sturgeon from the Carolina DPS being held in captivity.

Historical landings data indicate that between 7,000 and 10,500 adult female Atlantic sturgeon were present in North Carolina prior to 1890 (Armstrong and Hightower, 2002; Secor, 2002). Secor (2002) estimates that 8,000 adult females were present in South Carolina during that same timeframe. Prior reductions from the commercial fishery and ongoing threats have drastically reduced the numbers of Atlantic sturgeon within the Carolina DPS. Currently, the Atlantic sturgeon spawning population in at least one river system within the Carolina DPS has been extirpated, with a potential extirpation in an additional system. The abundance of the remaining river populations within the DPS, each estimated to have fewer than 300 spawning adults, is estimated to be less than 3 percent of what it was historically (ASSRT, 2007). Though directed fishing and possession of Atlantic sturgeon is no longer legal, the Carolina DPS continues to face threats such as habitat alteration and bycatch. The presence of dams has resulted in the loss of access to over 60 percent of the historical sturgeon habitat on the Cape Fear River and in the Santee-Cooper system. This has resulted in the loss of important spawning and juvenile developmental habitat and has reduced the quality of the remaining habitat by affecting water quality parameters (such as depth, temperature, velocity, and DO) that are important to sturgeon.

The South Atlantic DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the ACE Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. While Atlantic sturgeon exhibit a high degree of spawning fidelity to their natal rivers, multiple riverine, estuarine, and marine habitats may serve various life (*e.g.,* nursery, foraging, and migration) functions. Rivers known to have current spawning populations within this DPS include the Combahee, Edisto, Savannah, Ogeechee, Altamaha, and Satilla Rivers. However, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and other stressors on juvenile survival and development. Historically, both the Broad-Coosawatchie and St. Marys Rivers were documented to have spawning populations at one time; there is also evidence that spawning may have occurred in the St. Johns River or one of its tributaries. However, the spawning population in the St. Marys River, as well as any historical spawning population present in the St. Johns, is believed to be extirpated, and the status of the spawning population in the Broad-Coosawatchie is unknown. Both the St. Marys and St. Johns Rivers are used as nursery habitat by young Atlantic sturgeon originating from other spawning populations. The use of the Broad-Coosawatchie by sturgeon from other spawning populations is unknown at this time. The presence of historical and current spawning populations in the Ashepoo River has not been documented; however, this river may currently be used for nursery habitat by young Atlantic sturgeon originating from other spawning populations. This represents our current knowledge of the river systems utilized by the South Atlantic DPS for specific life functions, such as spawning, nursery habitat, and foraging. However, fish from the South Atlantic DPS likely use other river systems than those listed here for their specific life functions. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS. Ten Atlantic sturgeon taken from the Altamaha River are currently being held at the Bears Bluff National Fish Hatchery on Wadmalaw Island, South Carolina, though it is not certain whether those fish were spawned in the Altamaha or were migrants from another river system. NMFS has no other records of Atlantic sturgeon from the South Atlantic DPS being held in captivity.

Secor (2002) estimated that 8,000 spawning female Atlantic sturgeon were present in South Carolina. Historically, the population of spawning female Atlantic sturgeon in Georgia was estimated at 11,000 fish per year prior to 1890 (Secor, 2002). Prior reductions from the commercial fishery and ongoing threats have drastically reduced the numbers of Atlantic sturgeon within the South Atlantic DPS. Currently, the Atlantic sturgeon spawning population in one (possibly two) river systems within the South Atlantic DPS have been extirpated. The Altamaha River, with an estimated 343 spawning adults per year, is suspected to be less than 6 percent of its historical abundance, extrapolated from the 1890s commercial landings; the abundance of the remaining river populations within the

DPS, each estimated to have fewer than 300 spawning adults, is estimated to be less than 1 percent of what it was historically (ASSRT, 2007). While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, other impacts have contributed to their low population numbers, may have contributed to the extirpation of some spawning populations, and are likely inhibiting recovery of extant river populations. Historically, Atlantic sturgeon likely accessed all parts of the St. Johns River, as American shad were reported as far upstream as Lake Poinsett (reviewed in McBride, 2000). However, the construction of Kirkpatrick Dam (originally Rodman Dam) at river mile (rm) 95 (rkm 153) restricted migration to potential spawning and juvenile developmental habitat upstream. Approximately 63 percent of historical sturgeon habitat is believed to be blocked due to the dam (ASSRT, 2007), and there is no longer a spawning population in the St. Johns River.

Small numbers of individuals resulting from drastic reductions in populations, such as occurred with Atlantic sturgeon due to the commercial fishery, can remove the buffer against natural demographic and environmental variability provided by large populations (Berry, 1971; Shaffer, 1981; Soulé, 1980). Though the Carolina and South Atlantic DPSs, made up of multiple river populations of Atlantic sturgeon, were determined to be genetically discrete, interbreeding population units, the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with fewer than two migrants per generation spawning outside their natal system (Wirgin *et al.,* 2000; King *et al.,* 2001; Waldman *et al.,* 2002). Therefore, it is important to look at each riverine spawning population within each DPS when considering the effects of a small population size on the extinction risk for the DPS. Though there is no absolute population size above which populations are ''safe'' and below which they face an unacceptable risk of extinction (Gilpin and Soulé, 1986; Soulé and Simberloff, 1986; Ewens *et al.,* 1987; Goodman, 1987; Simberloff, 1988; Thomas, 1990), some have argued that ''rules of thumb'' can and should be applied (Soulé, 1987; Thompson, 1991). Salwasser *et al.* (1984) prescribe a minimum viable population size of at least 1,000 reproducing adults. Belovsky (1987) indicates that a minimum viable population in the range of 1,000 to 10,000 reproducing adults should be sufficient for a mid-sized vertebrate species. Soulé (1987) suggests that minimum viable population sizes for vertebrate species should be in the ''low thousands'' or higher. Thomas (1990) offers a population size of 5,500 as ''a useful goal,'' but suggests that where uncertainty regarding a species' population dynamics, changing environmental conditions, and the species' reaction to the changing environmental conditions is extreme ''we should usually aim for population sizes from several thousand to ten thousand.'' In a NOAA Technical Memorandum entitled ''Determining Minimum Viable Populations under the ESA,'' Thompson (1991) states the ''50/500'' rule of thumb initially advanced by Franklin (1980) and Soulé (1980) comes the closest of any to attaining ''magic number'' status. Franklin (1980) has suggested that, simply to maintain short-term fitness (*i.e.,* prevent serious inbreeding and its deleterious effects), the minimum effective population size should be around 50. He further recommended that, to maintain sufficient genetic variability for adaptation to changing environmental conditions, the minimum effective population size should be around 500. Soulé (1980) has pointed out that, above and beyond preserving short-term fitness and genetic adaptability, long-term evolutionary potential (at the species level) may well require a number of substantially larger populations. It is important to note that the 50/500 rule is cast in terms of effective population size, a concept introduced by Wright (1931). The effective population size refers to an ideal population of breeding individuals produced each generation by random union of an equal number of male and female gametes randomly drawn from the previous generation. To the extent that this ideal is violated in nature, the effective population size is generally smaller than the overall number of mature individuals in the population. Multiple studies have shown that Atlantic sturgeon do not spawn every year, with spawning intervals ranging from 1 to 5 years for males (Smith, 1985; Collins *et al.,* 2000; Caron *et al.* 2002) and 2 to 5 years for females (Vladykov and Greeley, 1963; Van Eenennaam *et al.,* 1996; Stevenson and Secor, 1999). Therefore, the effective population size (the number of adults in a population that contribute offspring to the next generation) for Atlantic sturgeon is more closely related to the number of annually spawning adults, rather than total number of reproductively mature adults. In the Southeast, even the spawning population in the Altamaha River, believed to be the largest spawning population of either the Carolina or South Atlantic DPS, is estimated to be smaller than the 500 recommended by Thompson (1991) to maintain sufficient genetic variability for adaptation to changing environmental conditions. Total adult population sizes are not known for any of the rivers in the Carolina or South Atlantic DPS. However, using the upper end of our estimated range of abundance (*i.e.,* no more than 300 spawning adults per year per river) and the fact that Atlantic sturgeon only spawn every 1 to 5 years (*i.e.,* 20 to 100 percent of the total adult population is spawning every year), then a conservative estimate of the total reproductively mature adult population in Southeastern rivers is 300 to 1,500. The Altamaha River would be slightly higher than this, and many rivers may be much lower, since we don't know how many fewer annual adult spawners than the estimated 300 are in each river. But these ranges are either below or on the lower end of the 1,000 to 10,000 individuals recommended by other authors. It is not known if certain riverine populations are at abundances smaller than the minimum effective population size of 50 that would prevent serious inbreeding (Thompson, 1991). Moreover, in some rivers, spawning by Atlantic sturgeon may not be contributing to population growth because of lack of suitable habitat and other stressors on juvenile survival and development.

Another factor potentially affecting the size of a viable population of Atlantic sturgeon is that they are polyploid. Polyploid is a term used to describe cells and organisms containing more than two paired (homologous) sets of chromosomes. The polyploidy of Atlantic sturgeon might explain the high degree of plasticity displayed by sturgeon populations and may provide them with the ability to repopulate from very few spawning adults without apparent inbreeding depression. However, we have no certainty at this time that this genetic characteristic will allow the Atlantic sturgeon to recover from such low population numbers, as other listed polyploid Acipenser species, such as the Gulf and shortnose sturgeon, have not recovered sufficiently to be delisted even after being protected for 20 to 45 years.

The concept of a viable population able to adapt to changing environmental conditions is critical to Atlantic sturgeon, and the low population numbers of every river population in the Carolina and South Atlantic DPSs put them in danger of extinction throughout

their ranges; none of the populations are large or stable enough to provide with any level of certainty for continued existence of Atlantic sturgeon in this part of its range. While the directed fishery that originally drastically reduced the numbers of Atlantic sturgeon has been closed, recovery of depleted populations is an inherently slow process for a late-maturing species such as Atlantic sturgeon, and they continue to face a variety of other threats that contribute to their risk of extinction. Their late age at maturity provides more opportunities for individual Atlantic sturgeon to be removed from the population before reproducing. While a long life-span also allows multiple opportunities to contribute to future generations, it also results increases the timeframe over which exposure to the multitude of threats facing the Carolina and South Atlantic DPS can occur. These threats include the loss, reduction, and degradation of habitat resulting from dams, dredging, and changes in water quality parameters (such as depth, temperature, velocity, and DO). Even with a moratorium on directed fisheries, bycatch is a threat to both the Carolina and South Atlantic DPSs. Fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may use multiple river systems for spawning, foraging, and other life functions, they are subject to being caught in multiple fisheries throughout their range. In addition to direct mortality, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (*e.g.,* exposure to toxins). This may result in reduced ability to perform major life functions, such as foraging and spawning, or may even result in post-capture mortality. While some of the threats to the Carolina and South Atlantic DPS have been ameliorated or reduced due to the existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch is currently not being addressed through existing mechanisms. Further, water quality continues to be a problem even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even with the Federal Power Act's provisions regarding anadromous fish passage.

We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with Atlantic sturgeon in the Carolina and South Atlantic DPSs. After reviewing the best scientific and commercial information available, we find that both the Carolina and South Atlantic DPSs are in danger of extinction throughout their ranges and thus meet the ESA's definition of an endangered species. Atlantic sturgeon populations declined precipitously decades ago due to directed commercial fishing. The failure of Atlantic sturgeon numbers within the Carolina and South Atlantic DPSs to rebound even after the moratorium on directed fishing was established in 1998 indicates that impacts and threats from limits on habitat for spawning and development, habitat alteration, and bycatch are responsible for the risk of extinction faced by both DPSs. In addition, the persistence of these impacts and threats points to the inadequacy of existing regulatory mechanisms to address and reduce habitat alterations and bycatch. We will address the threats of habitat alteration, bycatch, and the inadequacy of regulatory mechanisms and their contributions to the endangered statuses of the Carolina and South Atlantic DPSs in detail in the following sections of this final rule.

Analysis of Section 4(a)(1) Factors' Effects on the Species

The ESA requires us to determine whether any species is endangered or threatened because of any of the following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available and after taking into account any efforts being made by any state or foreign nation to protect the species. The ASSRT examined each of the aforementioned five factors for their impacts on the Atlantic sturgeon: DPSs. The following is a summary of its relevant findings, any additional information that has become available since the status review report was published, and the conclusions that we have made based on the available information.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Habitat alterations considered by the ASSRT that affect the status of sturgeon populations include: Dam and tidal turbine construction and operation; dredging, disposal, and blasting; and water quality modifications, such as changes in levels of DO, water temperature, and contaminants. Atlantic sturgeon, like all anadromous fish, are vulnerable to a host of habitat impacts because they use rivers, estuaries, bays, and the ocean at various points of their life. In addition to the habitat alterations considered by the ASSRT, other emerging threats to habitat considered in this section are drought, intra- and inter-state water allocation issues, and climate change. These threats have the potential to further exacerbate habitat modifications evaluated by the ASSRT. Because they were not evaluated in the status review report, they are considered in more detail in this section. In this section, we summarize the threats for each DPS that we believe represent a present or threatened destruction, modification or curtailment of the DPS's habitat or range and are contributing to the endangered status of both DPSs.

Dams

Dams are a threat to the Carolina and South Atlantic DPS that contributes to their endangered status by the curtailment of the extent of available habitat, as well as modifying sturgeon habitat downstream through a reduction in water quality. As noted in the status review report, dams for hydropower generation, flood control, and navigation adversely affect Atlantic sturgeon habitat by impeding access to spawning, developmental and foraging habitat, modifying free-flowing rivers to reservoirs, physically damaging fish on upstream and downstream migrations, and altering water quality in the remaining downstream portions of spawning and nursery habitat. Attempts to minimize the impacts of dams using measures such as fish passage have not proven beneficial to Atlantic sturgeon, as they do not regularly use existing fish passage devices, which are generally designed to pass pelagic fish. To date, only four Atlantic sturgeon have been documented to have passed via a fish lift (three at the St. Stephens fish lift in South Carolina and one at the Holyoke Dam in Massachusetts), as these passage facilities are not designed to accommodate adult-sized sturgeon. While there has not been a large loss of Atlantic sturgeon habitat throughout the entire species' range due to the presence

of dams, individual riverine systems have been severely impacted by dams, as access to large portions of historical sturgeon spawning and juvenile developmental habitat has been eliminated or restricted. The ASSRT used GIS tools and dam location data collected by Oakley (2003) as reference points for river kilometer measurements to map historical rivers in which Atlantic sturgeon spawned. This information was then used to determine the number of kilometers of available habitat. Within the Carolina and South Atlantic DPSs, the Cape Fear, Santee-Cooper, and St. Johns River systems have lost greater than 60 percent of the habitat historically used for spawning and juvenile development.

The Cape Fear River has three locks and dams (constructed from 1915 to 1935) between Wilmington and Fayetteville that are located below the fall line; two additional dams, Buckhorn and B. Everette Jordan, are located above the fall line. Atlantic sturgeon movement is blocked at the first lock and dam located in Riegelwood, North Carolina, which was constructed in 1915. Pelagic species can pass over the three locks and dams during high water, but the benthic Atlantic sturgeon is not known to pass over these three locks/dams. No Atlantic sturgeon have been captured upstream of Lock and Dam #1 despite extensive sampling efforts (Moser *et al.,* 1998). Exact historical spawning locations are unknown in the Cape Fear River, but Atlantic sturgeon spawning is generally believed to occur in flowing water between the salt front and fall line of large rivers (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance, 1987; Bain *et al.,* 2000). Therefore, sturgeon researchers judge the fall line to be the likely upper limit of spawning habitat. Using the fall line as a guide, only 36 percent of the historical habitat is available to Atlantic sturgeon. In some years, the salt water interface reaches the first lock and dam; therefore, spawning adults in the Cape Fear River either do not spawn in such years or spawn in the major tributaries of the Cape Fear River (*i.e.,* Black River or Northeast Cape Fear Rivers) that are not obstructed by dams.

The Santee-Cooper Hydroelectric Project is located in the coastal plain of the Santee Basin on the Santee and Cooper Rivers, South Carolina. The project was finished in 1942 and includes Lake Marion, which is impounded by the Santee Dam (Wilson Dam) on the Santee River at rm 87 (rkm 140), and Lake Moultrie, which is impounded by the Pinopolis Dam on the Cooper River at rm 48 (rkm 77). Using the fall line as the upper region of spawning habitat, it is estimated that only 38 percent of the historical habitat is available to Atlantic sturgeon today. Although a lock and a fish lift operate during the spring at the Pinopolis and St. Stephen Dams, respectively, observations of sturgeon in the lock and lift are extremely rare (traditional fish passage designs are not typically successful for sturgeon). There is no record of an adult Atlantic sturgeon being lifted, although three dead Atlantic sturgeon were observed in Lake Marion between 1995 and 1997, and in 2007, an Atlantic sturgeon entered the St. Stephen fish lift and was physically removed and translocated downstream into the Santee River (A. Crosby, SCDNR, pers. comm.)

In addition to blocking access to habitat, dams can degrade spawning, nursery, and foraging habitat downstream by reducing water quality. Flow, water temperature, and oxygen levels in the Roanoke River are affected by the Kerr Dam and the Gaston Dam/Roanoke Rapids facilities, which engage in peaking operations. Riverine water flow has already been modified by the dam operators during the striped bass spawning season to simulate natural flow patterns; these modifications undoubtedly benefit Atlantic sturgeon. Regardless of the temporary modifications, lower water temperatures resulting from the hypolimnetic discharge from Kerr Dam have caused temporal shifts in the spawning peaks for both American shad and striped bass and likely have had the same impact for other diadromous species, including Atlantic sturgeon (ASSRT, 2007). High flows from Kerr Dam during the summer are coupled with high ambient temperatures and an influx of swamp water with low DO, creating a large, hypoxic plume within the river. Fish kills have been documented to occur during this time (ASSRT, 2007), and sturgeon are more highly sensitive to low DO (less than 5 milligrams per liter (mg/L)) than other fish species (Niklitschek and Secor, 2009a, 2009b). Low DO in combination with high temperature is particularly problematic for Atlantic sturgeon, and studies have shown that juvenile Atlantic sturgeon experience lethal and sublethal (metabolic, growth, feeding) effects as DO drops and temperatures rise (Niklitschek and Secor, 2009a, 2009b; Niklitschek and Secor, 2005; Secor and Gunderson, 1998). Therefore, it is likely that dam operations are negatively affecting Atlantic sturgeon nursery habitat in the lower Roanoke River.

Dredging

Dredging is a present threat to both the Carolina and South Atlantic DPSs and is contributing to their endangered status by modifying the quality and availability of Atlantic sturgeon habitat. Riverine, nearshore, and offshore areas are often dredged to support commercial shipping and recreational boating, construction of infrastructure, and marine mining. Environmental impacts of dredging include the direct removal/burial of organisms; turbidity/siltation effects; contaminant resuspension; noise/disturbance; alterations to hydrodynamic regime and physical habitat; and actual loss of riparian habitat (Chytalo, 1996; Winger *et al.,* 2000). According to Smith and Clugston (1997), dredging and filling impact important habitat features of Atlantic sturgeon as they disturb benthic fauna, eliminate deep holes, and alter rock substrates. To reduce the impacts of dredging on anadromous fish species, most of the Atlantic states impose work restrictions during sensitive time periods (spawning, migration, feeding) when anadromous fish are present. NMFS also imposes seasonal restrictions to protect shortnose sturgeon populations (where present) through Section 7 consultations that may have the added benefit of protecting Atlantic sturgeon where the two species co-occur. Within the Carolina DPS, dredging operations (including the blasting of rock) on the lower Cape Fear River, Brunswick River, and port facilities at the U.S. Army's Sunny Point Military Ocean Terminal and Port of Wilmington are extensive. To protect diadromous fish, restrictions are placed on dredging to avoid sensitive seasons and locations, such as potential spawning habitat (February 1 through June 30) and suspected nursery grounds (April 1 through September 30). However, while the restrictions prevent dredging from occurring when Atlantic sturgeon are expected to be present, the effects of dredging on Atlantic sturgeon habitat remain long after the dredging has been completed. Moser and Ross (1995) found that some of the winter holding sites favored by sturgeon in the lower Cape Fear River estuary also support very high levels of benthic infauna and may be important feeding stations. Repeated dredging in the Cape Fear River can modify sturgeon habitat through the removal or burial of benthic infauna in feeding grounds and creation of unsuitable substrate in spawning grounds (ASSRT, 2007). Similar habitat modifications are occurring in the Cooper River, which flows into Charleston Harbor, one of the busiest

ports on the Atlantic Coast, and is dredged regularly. The river channel is maintained by dredging all the way to the Pinopolis Dam. No seasonal restrictions are placed on dredging in the Cooper River, potentially interrupting spawning activities (ASSRT, 2007). In August 2011, the USACE published a notice of intent to prepare an EIS to study the impacts of potential deepening of Charleston Harbor to accommodate much larger container vessels; the project would entail extensive dredging (76 FR 50187).

In the South Atlantic DPS, maintenance dredging in Atlantic sturgeon nursery habitat in the Savannah River is frequent, and substantial channel deepening took place in 1994. The Georgia Ports Authority is seeking to expand its port facility on the Savannah River. Within the 1999 Water Resources Development Act, Congress authorized the deepening of the Savannah Navigation Channel from the current depth of −42 to −48 ft (−12.8 to −14.6 m) mean low water. Hydrodynamic and water quality models have been developed to predict changes in water quality across depth and throughout the channel. The channel deepening is predicted to alter overall water quality (*e.g.,* salinity and DO), creating inhospitable foraging/resting habitat in the lower Savannah River for sturgeon. The lower Savannah River is heavily industrialized and serves as a major shipping port. Nursery habitat in the lower river has been heavily impacted by diminished water quality and channelization. Reduced DO levels and upriver movement of the salt wedge are predicted to result from channel deepening. Currently, USACE has entered into formal consultation with NMFS regarding the Savannah Harbor Expansion Project, which includes a conference consultation on Atlantic sturgeon. Though not yet finalized, the conference consultation on Atlantic sturgeon will evaluate whether the adverse effects on sturgeon from the expansion will result in jeopardy, and consider potential benefits to Atlantic sturgeon from the proposed fish passage at NSBL&D that could provide access to 20 miles of potential spawning habitat. Sturgeon are highly sensitive to low DO, more so than other fish species (Niklitschek and Secor, 2009a, 2009b). Because Atlantic sturgeon spawn above the interface between fresh water and salt water, the upriver movement of the salt wedge will curtail the extent of Atlantic sturgeon habitat in the Savannah River. Dredging also commonly occurs within the St. Johns River and has been linked to the reduction in submerged aquatic vegetation where Atlantic sturgeon likely forage (Jordan, 2002). Though there is currently no resident spawning population in the St. Johns, it still provides nursery habitat for juvenile Atlantic sturgeon in the South Atlantic DPS (NMFS and USFWS, 1998). Access to over 60 percent of the historical sturgeon habitat in the St. Johns River has already been curtailed by the presence of a dam, and dredging modifies the quality of the remaining nursery habitat in the river.

Water Quality

Degraded water quality is a present threat to the Carolina and South Atlantic DPSs and is contributing to their endangered status by modifying and curtailing the extent of available habitat for spawning and nursery areas. Atlantic sturgeon rely on a variety of water quality parameters to successfully carry out their life functions. Low DO and the presence of contaminants modify the quality of Atlantic sturgeon habitat and in some cases, curtail the extent of suitable habitat for life functions. Secor (1995) noted a correlation between low abundances of sturgeon during this century and decreasing water quality caused by increased nutrient loading and increased spatial and temporal frequency of hypoxic conditions. Of particular concern is the high occurrence of low DO coupled with high temperatures in the river systems throughout the range of the Carolina and South Atlantic DPSs. Sturgeon are more highly sensitive to low DO than other fish species (Niklitschek and Secor, 2009a, 2009b) and low DO in combination with high temperature is particularly problematic for Atlantic sturgeon. Studies have shown that juvenile Atlantic sturgeon experience lethal and sublethal (metabolic, growth, feeding) effects as DO drops and temperatures rise (Niklitschek and Secor, 2009a, 2009b; Niklitschek and Secor, 2005; Secor and Gunderson, 1998). Water quality within the river systems in the range of the Carolina and South Atlantic DPSs is also negatively impacted by contaminants and large water withdrawals.

For the Carolina DPS, water quality in the Pamlico system, especially in the lower Neuse River, is highly degraded (Paerl *et al.,* 1998; Qian *et al.,* 2000; Glasgow *et al.,* 2001). The entire basin has been designated as nutrient-sensitive, and additional regulatory controls are being implemented to improve water quality. Both the Neuse and Pamlico portions of the estuary have been subject to seasonal episodes of anoxia that significantly affect the quality of Atlantic sturgeon nursery habitat. CAFOs cause at least some portion of the current water quality problems in the Pamlico watershed (Mallin and Cahoon, 2003). Farms that produce hogs, turkeys, and chickens have proliferated throughout the coastal portion of the basin in the last decade, with increases in both aquatic and atmospheric deposition of nitrogenous waste products. North Carolina passed a moratorium in 1997 limiting additional hog operations and is conducting a study of measures to address the problem; the moratorium was renewed in 1999 and 2003. Water quality in the Cape Fear River is poor for aquatic life, due largely to industrial development and use, including the Port of Wilmington and numerous industrial point-source discharges. Development of CAFOs in the coastal portion of the Cape Fear River basin has been especially heavy (most concentrated operations of CAFOs occur in the Cape Fear River drainage within North Carolina) and contributes to both atmospheric and aquatic inputs of nitrogenous contamination, possibly causing DO levels to regularly fall below the 5 mg/L state standard (Mallin and Cahoon, 2003). In recent years, fish kills have been observed, usually as a result of blackwater swamps (with low DO) being flushed after heavy rainfall.

Industrialization also threatens the habitat of the Carolina DPS. Paper and steel mills in the Winyah Bay system, which includes the Waccamaw, Pee Dee, and Sampit rivers, have impacted water quality. Riverine sediment samples contain high levels of various toxins including dioxins (NMFS and USFWS, 1998). Though the effects of these contaminants on Atlantic sturgeon are unknown, Atlantic sturgeon are particularly susceptible to impacts from contaminated sediments due to their benthic foraging behavior and long-life span, and effects from these compounds on fish include production of acute lesions, growth retardation, and reproductive impairment (Cooper, 1989; Sinderman, 1994). It should be noted that the effect of multiple contaminants or mixtures of compounds at sub-lethal levels on fish has not been adequately studied. Atlantic sturgeon use marine, estuarine, and freshwater habitats and are in direct contact through water, diet, or dermal exposure with multiple contaminants throughout their range.

Habitat used by the South Atlantic DPS in the Savannah River has also been modified by mercury contamination (ASSRT, 2007). While water quality in the Altamaha River is good at this time, the drainage basin is

dominated by silviculture and agriculture, with two paper mills and over two dozen other industries or municipalities discharging effluent into the river. Nitrogen and phosphorus concentrations are increasing, and eutrophication and loss of thermal refugia are growing concerns for the South Atlantic DPS. In the Ogeechee River, the primary source of pollution results from non-point sources, which results in nutrient-loading and decreases in DO. These problems result from the cumulative effect of activities of many individual landowners or managers. The Ogeechee River Basin Watershed Protection Plan developed by the Georgia Environmental Protection Division (GAEPD, 2001b) states that because there are so many small sources of non-point loading spread throughout the watershed, non-point sources of pollution cannot effectively be controlled by state agency permitting and enforcement, even where regulatory authority exists. The increases in nutrients and resulting decreases in DO are coupled with increases in water temperature resulting from clearing of the riparian canopy and increased paved surface areas. Downstream sturgeon nursery habitat is compromised during hot, dry summers when water flow is minimal, and non-point sources of hypoxic waters have a greater impact on the system as potential thermal refugia are lost when the aquifer is lowered. Since 1986, average summer DO levels in the Ogeechee have dropped to approximately 4 mg/L (GAEPD, 2001b). Low DO (less than 5 mg/L), most likely due to non-point sources, was a common occurrence observed during 1998 and 1999 water quality surveys (GAEPD, 2002) in the Satilla River, which serves as both spawning and nursery habitat for sturgeon in the South Atlantic DPS. The extirpation of the Atlantic sturgeon spawning population in the St. Marys River is believed to have been caused by reduced DO levels during the summer in the nursery habitat, probably due to eutrophication from non-point source pollution (ASSRT, 2007). Both the St. Marys and St. Johns Rivers continue to be used as nursery habitat by Atlantic sturgeon in the South Atlantic DPS; however, low DO is a common occurrence during the summer months when water temperatures rise. At times, it is so severe in the St. Marys that it completely eliminates juvenile nursery habitat during the summer (D. Peterson, UGA, pers. comm.)

Water allocation issues are a growing threat in the Southeast and exacerbate existing water quality problems. Taking water from one basin and transferring it to another fundamentally and irreversibly alters natural water flows in both the originating and receiving basins, which can affect DO levels, temperature, and the ability of the basin of origin to assimilate pollutants (Georgia Water Coalition, 2006). Water allocation issues increasingly threaten to exacerbate the present threat of degraded water quality on the endangered status of the Carolina DPS. North Carolina is experiencing problems where somewhat limited natural availability of water is coupled with high demand or competition among water users. Some of the areas in North Carolina where this is an emerging issue are the Central Coastal Plain, where the Cretaceous aquifers have a relatively slow recharge rate; the headwater areas of the Piedmont river basins, where streamflows are greatly reduced during dry weather; and some areas near the coast and on the Outer Banks, where the natural availability of fresh water is limited (NCDENR, 2001a). Interbasin water transfers are increasingly being looked at to deal with the inadequate water availability. In 1993, the North Carolina Legislature adopted the Regulation of Surface Water Transfers Act (G.S. § 143–215.22I). This law regulates large surface water transfers between river basins by requiring a certificate from the North Carolina Environmental Management Commission. The act has been modified several times since it was first adopted, most recently in 2007 when G.S. § 143–215.22I was repealed and replaced with G.S. § 143–215.22L. A transfer certificate is required for a new transfer of 2 mgd (7,600 m^3pd) or more and for an increase in an existing transfer by 25 percent or more (if the total including the increase is more than 2 mgd). Certificates are not required for facilities that existed or were under construction prior to July 1, 1993, up to the full capacity of that facility to transfer water, regardless of the transfer amount.

The North Carolina Department of Environment and Natural Resources reports that 20 facilities, with a combined average (not maximum) daily transfer of 66.5 mgd (252,000 m^3pd), were grandfathered in when G.S. § 143–215.22I was enacted (NCDENR, 2009). Since then, five additional facilities have received certificates to withdraw up to a combined maximum total of 167.5 mgd (634,000 m^3pd). The most significant certified interbasin transfer in this group is the withdrawal of 60 mgd (227,000 m^3pd) of water from Lake Gaston (part of the Roanoke River Basin) by Virginia Beach, Virginia. Virginia Beach began pumping in 1998 following a very lengthy and contested FERC approval process, during which North Carolina opposed the withdrawals (NCDENR, 2001b). Certificates are pending for three facilities, totaling almost 60 mgd (227,000 m^3pd). This includes the Kerr Lake Regional Water System (KLRWS), a regional provider of drinking water. The KLRWS has an existing, grandfathered, surface water transfer capacity of 10 mgd (38,000 m^3pd). The grandfathered capacity allows the system to move water from the Roanoke River Basin (Kerr Lake) to sub-basins of the Tar-Pamlico River Basin. On February 18, 2009, KLRWS submitted a Notice of Intent to Request an Interbasin Transfer Certificate to the Environmental Management Commission. In that notice, KLRWS requested to increase the authorized transfer from 10 mgd to 24 mgd (38,000 m^3pd to 91,000 m^3pd), and to transfer 2.4 mgd (9,100 m^3pd) from the Roanoke River Basin to the Neuse River Basin. These transfer amounts are based on water use projections to the year 2040.

Water allocation issues also increasingly threaten to exacerbate the present threat of degraded water quality on the endangered status of the South Atlantic DPS. Water allocation issues are occurring on the Atlantic Coast of South Carolina and Georgia (Ruhl, 2003). This area is served by five major rivers—the Savannah, Altamaha (including its two major tributaries, the Oconee and Ocmulgee rivers), Ogeechee, Satilla, and St. Marys Rivers. A 2006 study by the Congressional Budget Office (CBO) reported that Georgia had the sixth highest population growth (26.4 percent) in the nation, followed by Florida (23.5 percent) (CBO, 2006). A report from UGA states that the per capita water use in Georgia has been estimated to be 8 to 10 percent greater than the national average, and 17 percent higher than per capita use in neighboring states (UGA, 2002). Water shortages have already occurred and are expected to continue due to increasing periods of drought coupled with the rapid population growth expected in the region over the next 50 years (Cummings *et al.,* 2003). Two of the largest and most rapidly expanding urban areas in the Savannah River basin, Augusta-Richmond County and Savannah, currently utilize both ground water and surface water for drinking water uses (GAEPD, 2001a). Surface water use in the Savannah River basin is expected to increase in the near future, due to a population increase in the basin. Predictions for 2050 estimate

the population will increase to nearly 900,000 (GAEPD, 2001a). It is important to note that the two water supply sources are not independent, because ground water discharge to streams is important in maintaining dry-weather flow. Thus, withdrawal of ground water also results in reduction in surface water flow.

The Vogtle Electric Generating Plant consists of two nuclear reactors and currently uses up to 64 mgd of water from the Savannah River to generate power. In March 2008, the Southern Nuclear Operating Company applied to the Nuclear Regulatory Commission for a license to build two additional nuclear reactors at the plant, increasing the potential water usage to 80 mgd. Up to 100 mgd (379,000 m^3pd) of Savannah River water may be withdrawn to support the growth of South Carolina communities located outside of the Savannah River basin, such as Greenville and Beaufort County (Spencer and Muzekari, 2002). While Georgia has laws restricting interbasin transfers of water, South Carolina has yet to adopt stream flow protections and does not regulate surface water withdrawals (Rusert and Cummings, 2004). Savannah has been withdrawing water from its coastal aquifer since the city became established. However, Savannah has grown to the point that the aquifer has been depleted over 100 ft (31 m) beneath the city due to growth and increased water usage. This decrease in aquifer storage water has resulted in salt water intrusion into the water wells used by Hilton Head, just north of Savannah. Currently, five of Hilton Head's 12 wells are unusable and the problem is expected to escalate if no action is taken to prevent further salt water intrusion. The South Carolina team on the Savannah River Basin Advisory Group has begun looking at withdrawing surface water from the Savannah River to ease the aquifer problem (Massey, 2007; Spencer and Muzekari, 2002).

New surface water withdrawal permits in the Savannah, Ogeechee, and Altamaha Rivers pose potential threats to water quality in those rivers (Alber and Smith, 2001). Approximately 126,500 people depend on the Altamaha basin for water. The Ocmulgee River, a tributary of the Altamaha, is located in North Georgia and passes through Atlanta and Macon before joining the Altamaha River. Of the seven river basins in Georgia, the Ocmulgee River Basin has the highest population of 1,714,722 people. The Ocmulgee River Basin is home to a diverse industrial and attraction base, from agriculture to defense. It has the highest agriculture production and the most agricultural water withdrawal permits in Georgia (Fisher *et al.,* 2003).

It is not known how much water is already being removed from rivers utilized by the South Atlantic DPS for spawning and nursery habitat because there is little information concerning actual withdrawals and virtually no information concerning water discharges. This is particularly the case for municipal and industrial uses because water use permits are not required for withdrawals less than 100,000 gpd (379 m^3pd) (Cummings *et al.,* 2003) and discharge permits are not required unless discharge contains selected toxic materials. Agricultural water use permits are not quantified in any meaningful way, thus neither water withdrawals nor return flows are measured (Fisher *et al.,* 2003). Large withdrawals of water (such as those for municipal use) result in reduced water quality (altered flows, higher temperatures, and lowered DO), and reduced water quality is already contributing to the endangered status of the South Atlantic DPS. Therefore, water withdrawals from the rivers in the range of the South Atlantic DPS, which are highly likely to occur based on current water shortages and increasing demand, threaten to exacerbate water quality problems that are currently modifying and curtailing Atlantic sturgeon habitat in the South Atlantic DPS.

Climate Change

Climate change threatens to exacerbate the effects of modification and curtailment of Atlantic sturgeon habitat caused by dams, dredging, and reduced water quality on the endangered status of the Carolina and South Atlantic DPSs. A major advance in climate change projections is the large number of simulations available from a broader range of climate models, run for various emissions scenarios. The IPCC reports in its technical paper ''Climate Change and Water'' that best-estimate projections from models indicate that decadal average warming over each inhabited continent by 2030 (*i.e.,* over the next 20-year period) is insensitive to the choice of emissions scenarios and is ''very likely'' to be at least twice as large (around 0.36 degrees Fahrenheit or 0.2 degrees Celsius per decade) as the corresponding model-estimated natural variability during the 20th century (IPCC, 2008). Continued greenhouse gas emissions at or above current rates under non-mitigation emissions scenarios would cause further warming and induce many changes in the global climate system during the 21st century, with these changes ''very likely'' to be larger than those observed during the 20th century. In addition, the IPCC expects the rate of warming to accelerate in the coming decades. Because 20 years is equal to at least one generation of Atlantic sturgeon (ASSRT, 2007), and possibly multiple generations in the Southeast where Atlantic sturgeon may mature as early as 5 years (Smith *et al.,* 1982), the modifying effects of climate change over the next 20 years on vital parameters of the Carolina and South Atlantic DPS's habitat will occur on a scale relevant to their endangered status. Researchers anticipate that the frequency and intensity of droughts and floods will change across the nation (CBO, 2006). The IPCC report states that the most important societal and ecological impacts of climate change in North America stem from changes in surface and groundwater hydrology (IPCC, 2008).

Both the Carolina and South Atlantic DPSs are within a region the IPCC predicts will experience overall climatic drying. Since the status review report was completed, the Southeast experienced approximately 3 years of drought. During this time, South Carolina experienced drought conditions that ranged from moderate to extreme (South Carolina State Climatology Office, 2008). From 2006 until mid-2009, Georgia experienced the worst drought in its history. In September 2007, many of Georgia's rivers and streams were at their lowest levels ever recorded for the month, and new record low daily streamflows were recorded at 15 rivers with 20 or more years of data in Georgia (USGS, 2007). The drought worsened in September 2008. All streams in Georgia except those originating in the extreme southern counties were extremely low. While Georgia has periodically undergone periods of drought—there have been 6 periods of drought lasting from 2 to 7 years since 1903 (USGS, 2000)—drought frequency appears to be increasing (Ruhl, 2003). Abnormally low stream flows restrict access to habitat areas, reduce thermal refugia, and exacerbate water quality issues, such as water temperature, reduced DO, nutrient levels, and contaminants.

The Carolina and South Atlantic DPSs are already threatened by reduced water quality resulting from dams, inputs of nutrients, contaminants from CAFOs, industrial activities, and non-point sources, and interbasin transfers of water. The IPCC report projects with high confidence that higher water temperatures and changes in extremes in this region, including floods and

droughts, will affect water quality and exacerbate many forms of water pollution—from sediments, nutrients, dissolved organic carbon, pathogens, pesticides, and salt, as well as thermal pollution, with possible negative impacts on ecosystems. In addition, sea-level rise is projected to extend areas of salinization of groundwater and estuaries, resulting in a decrease of freshwater availability for humans and ecosystems in coastal areas. Some of the most populated areas of this region are low-lying, and the threat of salt water entering into its aquifers with projected sea-level rise is a concern (U.S. Global Research Group, 2004). Existing water allocation issues would be exacerbated, leading to an increase in reliance on interbasin water transfers to meet municipal water needs, further stressing water quality. Dams, dredging, and poor water quality have already modified and curtailed the extent of suitable habitat for Atlantic sturgeon spawning and nursery habitat. Changes in water availability (depth and velocities) and water quality (temperature, salinity, DO, contaminants, *etc.*) in rivers and coastal waters inhabited by Atlantic sturgeon resulting from climate change will further modify and curtail the extent of suitable habitat for the Carolina DPS. Effects could be especially harmful since these populations have already been reduced to low numbers. The spawning populations within the Carolina DPS are all estimated to number fewer than the 500 recommended by Thompson (1991) to maintain sufficient genetic variability for adaptation to changing environmental conditions, and certainly smaller than the 1,000 to 10,000 recommended by other authors (Salwasser *et al.,* 1984; Belovsky, 1987; Soulé, 1987; Thomas, 1990).

The ASSRT concluded that habitat modifications due to the placement of dams, dredging, and degraded water quality present a moderate to moderately high threat to all river populations within the Carolina DPS, with the exception of the Roanoke River. For the South Atlantic DPS, the ASSRT concluded that dredging and water quality issues are having a moderately low to moderate impact on the river populations. We believe that the modification and curtailment of Atlantic sturgeon habitat resulting from dams, dredging, and degraded water quality is contributing to the endangered status of both the Carolina and South Atlantic DPSs. Further, additional threats arising from water allocation and climate change threaten to exacerbate water quality problems already present throughout the range of both DPSs. Existing water allocation issues will likely be compounded by population growth and potentially climate change. Climate change is also predicted to elevate water temperatures and exacerbate nutrient-loading, pollution inputs, and lower DO, all of which are current threats to the Carolina and South Atlantic DPSs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial purposes is a factor that contributed to the historical drastic decline in Atlantic sturgeon populations throughout the species' range. Data on the total weight of Atlantic and shortnose sturgeon harvested were collected by each state starting in 1880, and in the late 1800s commercial fisheries were landing upwards of 6,800,000 lbs (3,084 kg) of sturgeon annually (Murawski and Pacheco, 1977). By 1905, only 15 years later, this number had dropped to 20,000 lbs (9,071 kg). The population sizes were then further reduced by overfishing in the 1900s, when the landings drastically fell to a total of 215 lbs (98 kg) in 1990 (Stein *et al.,* 2004b). The total landings recorded include shortnose sturgeon as well as Atlantic sturgeon; however, the harvest is thought to have been primarily Atlantic sturgeon due to the large mesh-size nets commonly used at that time. A complete moratorium on possession of Atlantic sturgeon has been implemented in both state and Federal waters since 1998 to eliminate the threat of directed catch and incentives to retain Atlantic sturgeon bycatch. However, Atlantic sturgeon are taken as bycatch in various commercial fisheries along the entire U.S. Atlantic Coast within inland, coastal, and Federal waters. While Atlantic sturgeon caught incidentally can no longer be legally landed, bycatch may still be a threat if fish are injured or killed in the act of being caught.

Based on their life history, Atlantic sturgeon are more sensitive to fishing mortality than other coastal fish species. They are a long-lived species, have an older age at full maturity, have lower maximum fecundity values, with 50 percent of the lifetime egg production for Atlantic sturgeon occurring later in life (Boreman, 1997). Boreman (1997) looked at the relationship between fishing mortality (F) and the corresponding percentage of the maximum lifetime egg production of an age 1 female. The F_{50} is the fishing rate at which a cohort produces 50 percent of the eggs that it would produce with no fishing effort. Boreman calculated a sustainable fishing (bycatch) mortality rate of 5 percent per year for adult Atlantic sturgeon based on the F_{50}. While many fishery models use a less conservative target fishing level of F_{30} or F_{20}, the more conservative choice of F_{50} for Atlantic sturgeon is justified by their late age at maturity and because they are periodic spawners (Boreman, 1997).

We currently do not have all the data necessary to determine whether the percentage of Atlantic sturgeon populations lost annually due to bycatch mortality exceeds a sustainable rate of 5 percent per year suggested by Boreman (1997), because we do not have abundance estimates for the Carolina and South Atlantic DPSs and bycatch remains highly underreported. However, bycatch is occurring throughout the range of the Carolina and South Atlantic DPSs of Atlantic sturgeon, and the bycatch mortality associated with the dominant fishing gear in the Southeast is relatively high. All the spawning populations in the Southeast Region are quite small, which means that the loss of a small number of fish to bycatch mortality could exceed the sustainable rate of 5 percent per year. Bycatch of Atlantic sturgeon in commercial fisheries is presently a threat to the Carolina and South Atlantic DPSs, and we believe it is contributing to their endangered status.

Mortality rates of Atlantic sturgeon taken as bycatch in various types of fishing gear range between 0 and 51 percent, with the greatest mortality occurring in sturgeon caught by sink gillnets (Stein *et al.,* 2004b; ASMFC, 2007). The ASMFC Sturgeon Technical Committee (TC) determined that bycatch losses principally occur in sink gillnet fisheries, though there may be losses in the trawl fisheries, as well. Atlantic sturgeon are particularly vulnerable to sink gillnets due to their demersal nature (tendency to be at the bottom of the water column). If the nets are not tended often enough, it can be detrimental to the sturgeon, resulting in suffocation because their operculum or gills can be held closed by the net. Using the NMFS ocean observer dataset, the NMFS Northeast Fisheries Science Center (NEFSC) estimated that bycatch mortality of sturgeon captured in sink gillnets between 2001 and 2006 was 13.8 percent (ASMFC, 2007). The ASMFC Sturgeon TC notes that any estimate of bycatch from the NMFS ocean observer dataset will be an underestimate because bycatch is under-reported in state waters and there is limited observer coverage in fisheries potentially affecting Atlantic sturgeon in the South Atlantic (North Carolina to Florida) Federal waters. In addition,

bycatch mortality estimates do not account for post-capture mortality. The 13.8 percent mortality rate for sink gillnets estimated by the NEFSC may further underestimate the mortality rate in sink gillnets in the Carolina and South Atlantic DPSs because bycatch survival is greater in colder water temperatures of the north compared to warmer southern waters occupied by these DPSs (ASSRT, 2007). Mortality of Atlantic sturgeon captured by trawls seems to be low, with most surveys reporting 0 percent mortality. The State of North Carolina has documented bycatch in over 958 tows conducted by commercial shrimp trawlers working in North Carolina with no Atlantic sturgeon reported; there have also been no Atlantic sturgeon captured in the 528 blue crab trawl tows examined since 1990. However, these studies do not include post-capture mortality, and studies of mortality from trawl fisheries conducted in the south, where tow times are longer and water temperatures are higher, are very limited.

Sink gillnets and trawls are used throughout riverine, estuarine, and marine waters in the range of the Carolina DPS to target a wide array of finfish and shellfish. Data on Atlantic sturgeon bycatch in Albemarle and Pamlico Sound commercial fisheries come from three sources: (1) NCDMF IGNS that were initially designed to monitor striped bass; (2) NCDMF Observer Program; and (3) NC Sea Grant Fishery Resource Grant project that examined sturgeon bycatch in the flounder fishery (White and Armstrong, 2000). The Albemarle and Pamlico IGNS used sink and drift gillnets, similar to those used by the shad/herring and the flounder fisheries. Overall bycatch mortality in the Albemarle Sound IGNS from 1990–2009 was 3 percent. Mortality rates in Albemarle Sound varied annually from 0–19 percent, and also varied by month (0–7 percent) and by mesh size (0–100 percent). Overall bycatch mortality in the Pamlico Sound IGNS from 2001–2009 was 10 percent, and ranged from 0–100 percent annually, 0–25 percent by month, and 0–25 percent by mesh size. In the Pamlico, Pungo, and Neuse Rivers IGNS, overall bycatch mortality between 2000 and 2009 was 12 percent, ranging annually from 0–50 percent. Bycatch mortality rate also varied by month (0–67 percent) and by mesh size (0–33 percent). Since 2001, the NCDMF Observer Program has observed approximately 3,031,356 yards of large and small mesh gill nets and collected 110 Atlantic sturgeon with an overall bycatch mortality of 6 percent (7 fish). Mortalities ranged from 0 percent in 2008 to a high of 12 percent in 2004. Overall bycatch mortality in large mesh nets was 5 percent and ranged between 0 and 8 percent. Overall bycatch mortality in small mesh nets was 17 percent, ranging from 0–100 percent. Commercial fishermen in Albemarle and Pamlico Sound and Cape Fear River reported catches of zero to two sturgeon per fishery per year. However, White and Armstrong (2000) reported that sturgeon bycatch in flounder gillnets fished from 1998 to 2000 by a single fishermen in the Albemarle Sound flounder fishery included the capture of 131 Atlantic sturgeon. Of the 131 Atlantic sturgeon captured, no mortalities were reported, although four individuals were noted as having minor injuries. These data indicate that underreporting of sturgeon bycatch is occurring in this area.

A sink gillnet survey conducted in the Cape Fear River by University of North Carolina at Wilmington personnel noted that 25 percent of sturgeon intercepted (22 of 88 caught) were killed. The gillnets were set one day, checked the second, and retrieved on the third. The greatest mortality occurred during periods of highest water temperature (Moser *et al.,* 1998). This survey was continued by the NCDMF, and it has reported mortality rates of 37 percent overall. Similar to earlier findings, mortality was greatest during the summer months (June through August), averaging 49 percent (34 of 69 sturgeon died) (ASSRT, 2007). This study has been discontinued due to lack of funding. There are no estimates of bycatch in fishery dependent surveys.

Winyah Bay is currently fished for American shad using both sink and drift gillnets. This fishery has an estimated bycatch of 158 Atlantic sturgeon per year, of which 16 percent (25 fish) die and another 20 percent are injured to some degree, although this estimate is dated (Collins *et al.,* 1996). Shad fishers also operate within the rivers, but neither fishing effort nor average numbers of Atlantic sturgeon encountered are known. Poaching of adult Atlantic sturgeon has been reported from the Winyah Bay area in recent years. Carcasses of large females have been found with the ovaries (caviar) removed.

The mouth of the Santee River, just south of Winyah Bay, has the largest shad landings in the Southeast (ASSRT, 2007), likely resulting in mortality and injury of sturgeon similar to that in the Winyah Bay shad fishery. Upriver bycatch levels are unknown. The Cooper River also has an active hook and line shad fishery because gillnets are restricted (ASSRT, 2007).

The two largest commercial fisheries likely to capture Atlantic sturgeon from the South Atlantic DPS in the state waters of South Carolina and Georgia are the American shad gillnet and shrimp trawl fisheries. Studies in Georgia on commercial gillnet fisheries for American shad (*Alosa sapidissima*) showed that they accounted for 52 percent of Atlantic sturgeon bycatch and the shrimp trawl fisheries accounted for 39 percent (Collins *et al.,* 1996). The American shad fisheries use sink gillnets and drift gillnets. Collins *et al.* (1996) documented a 16 percent capture-induced mortality rate for sturgeon in the American shad fishery.

There was a directed commercial fishery for Atlantic sturgeon in the ACE Basin prior to the 1985 fishery closure. The commercial sturgeon fishery operated in the lower and middle portions of both the Combahee and Edisto rivers. Commercial shad fisheries captured some juvenile Atlantic sturgeon, but most fishermen operate upriver from the areas of greatest abundance during that time of year. The shrimp trawl fishery in St. Helena Sound also captures juveniles, as evident from tag returns (ASSRT, 2007).

Although a few commercial sturgeon fishers apparently operated in the Port Royal river system prior to 1985, the landing of only one Atlantic sturgeon has been recorded (Smith and Dingley, 1984). Little, if any, shad fishing takes place in this system. It is not known whether there is any significant bycatch in the shrimp trawl fishery in this area.

During 1989 to 1991, the commercial shad gillnet fishery's bycatch in the Savannah River included more endangered shortnose sturgeon than juvenile Atlantic sturgeon. Collins *et al.* (1996) reported that two commercial fishermen collected 14 Atlantic and 189 shortnose sturgeon over the period of 1990 to 1992. It appears that abundance within the Savannah River is extremely low, as evidenced from low bycatch and reported captures over the last 15 years. Thus, bycatch may be a more serious impact if abundance is low and fishing effort is high.

Bycatch in the shad fishery in the Ogeechee River is a heightened concern because evidence suggests that this Atlantic sturgeon population is stressed and that complete recruitment failure has occurred in some years (ASSRT, 2007). Bycatch mortality in the estuarine and lower river shad fishery is suspected to be high, but no estimates of take are available (ASSRT, 2007).

Estimated annual total bycatch of Atlantic and shortnose sturgeon in the

shad gillnet fishery in the tidal portion of the Altamaha River during 1982 and 1983 averaged 372 sturgeon (Collins *et al.,* 1996). The mortality rate of sturgeon taken as bycatch in the Altamaha River during this time period was not determined. During a study conducted between 1986 and 1992 in the Altamaha River, 97 of 1,534 tagged juvenile Atlantic sturgeon were recaptured primarily by shad gillnets (52 percent) and shrimp trawls (39 percent) (Collins *et al.,* 1996). Juvenile Atlantic sturgeon from the Altamaha are relatively abundant in comparison to other rivers in the region, so a large percentage of the individuals in winter mixed-stock aggregations on the shelf are likely from this river. Most sturgeon occurring as shrimp trawl bycatch are from mixed-stock aggregations. Using the percentages of Atlantic and shortnose sturgeon from the 1986 to 1992 Altamaha catch data and applying them to the 1982 and 1983 total estimated sturgeon bycatch, it is expected that 89 percent (331 fish) of the catch consisted of Atlantic sturgeon (ASSRT, 2007). Also, assuming a 10 percent bycatch mortality rate for Atlantic sturgeon from drift nets (Stein *et al.,* 2004b), the dominant gear used in the shad gillnet fishery, it is estimated that 33 Atlantic sturgeon would die each year from the fishery. However, in their latest compliance report to the ASMFC, GADNR noted that less than 10 fish per year were estimated to have been captured in the Altamaha River anchored gillnet fishery during a 3-year study. All fish were juveniles and no injury or mortality was documented. GADNR also noted the season for gillnetting shad occurs while adults are at sea and juveniles are in the lower parts of the estuary. Since the 2007 status review, which ranked bycatch as a moderate threat in the Altamaha, the Georgia Board of Natural Resources has prohibited the use of gillnets for shad fishing in a large portion of the Altamaha.

Shad fishing effort is low in the Satilla River due to an apparently depleted shad population. However, because the Atlantic sturgeon population is depleted and highly stressed, any bycatch mortality could have an impact on the population (ASSRT, 2007).

The ASSRT concluded that bycatch presents a moderate threat to the Carolina DPS, while the threat of bycatch to the South Atlantic DPS was characterized as moderately low in each of the populations, with the exception of the Altamaha, where bycatch was deemed to pose a moderate threat, though we note again Georgia's prohibition of shad gillnet fishing in a large portion of the Altamaha since the status review. Historical overutilization of Atlantic sturgeon from directed fishing caused initial severe declines in Atlantic sturgeon populations in the southeast, from which they have never rebounded. Further, we believe continued bycatch of Atlantic sturgeon in commercial fisheries is an ongoing impact to the Carolina and South Atlantic DPSs that is contributing to their endangered status. Atlantic sturgeon are particularly vulnerable to being caught in sink gillnets and fisheries using this type of gear account for most recorded Atlantic sturgeon bycatch. However, little data exist on bycatch in the Southeast, and high levels of bycatch underreporting are suspected (ASMFC, 2005; ASSRT, 2007; White and Armstrong, 2000). Further, total population abundances for the Carolina and South Atlantic DPSs are not available; therefore, it is not possible to calculate the percentages of the Carolina and South Atlantic DPSs subject to bycatch mortality based on the available bycatch mortality rates for individual fisheries. However, fisheries known to incidentally catch Atlantic sturgeon occur throughout the marine range of the species and in some riverine waters as well. Because Atlantic sturgeon mix extensively in marine waters and may access multiple river systems, they are subject to being caught in multiple fisheries throughout their range. Atlantic sturgeon taken as bycatch may suffer immediate mortality. In addition, stress or injury to Atlantic sturgeon taken as bycatch but released alive may result in increased susceptibility to other threats, such as poor water quality (*e.g.,* exposure to toxins and low DO). This may result in reduced ability to perform major life functions, such as foraging and spawning, or may even result in post-capture mortality. Several of the river populations in the South Atlantic DPS (*e.g.,* the Ogeechee and the Satilla) are stressed to the degree that any level of bycatch could have an adverse impact on the status of the DPS (ASSRT, 2007).

C. Disease or Predation

Very little is known about natural predators of Atlantic sturgeon. The presence of bony scutes is likely an effective adaptation for minimizing predation of sturgeon greater than 25 mm (Gadomski and Parsley, 2005). Gadomski and Parsley (2005) have shown that catfish and other species do prey on juvenile sturgeon, and concerns have been raised regarding the potential for increased predation on juvenile Atlantic sturgeon by introduced flathead catfish (Brown *et al.,* 2005). Atlantic sturgeon populations are persisting in the Cape Fear River, North Carolina, and Altamaha River, Georgia, where flatheads have been present for many years, at least in the absence of any directed fisheries for Atlantic sturgeon. Thus, further research is warranted to determine at what level, if any, flatheads and other exotic species prey upon juvenile Atlantic sturgeon and to what extent such predation is affecting the sturgeon populations.

While some disease organisms have been identified from wild Atlantic sturgeon, they are unlikely to threaten the survival of the wild populations. Disease organisms commonly occur among wild fish populations, but under favorable environmental conditions, these organisms are not expected to cause population-threatening epidemics. There is concern that non-indigenous sturgeon pathogens could be introduced, most likely through aquaculture operations. Fungal infections and various types of bacteria have been noted to have various effects on hatchery Atlantic sturgeon. Due to this threat of impacts to wild populations, the ASMFC recommends requiring any sturgeon aquaculture operation to be certified as disease-free, thereby reducing the risk of the spread of disease from hatchery origin fish. The aquarium industry is another possible source for transfer of non-indigenous pathogens or non-indigenous species from one geographic area to another, primarily through release of aquaria fish into public waters. With millions of aquaria fish sold to individuals annually, it is unlikely that such activity could ever be effectively regulated. Definitive evidence that aquaria fish could be blamed for transmitting a non-indigenous pathogen to wild fish (sturgeon) populations would be very difficult to collect (ASSRT, 2007).

In their status review, the ASSRT ranked the threat from disease and predation as a low risk. While information on the impacts of disease and predation on Atlantic sturgeon is limited, there is nothing to indicate that either of these factors is currently having any measurable adverse impact on Atlantic sturgeon. Therefore, we concur with the ASSRT, and we conclude that disease and predation are not contributing to the endangered status of either the Carolina or the South Atlantic DPS.

D. Inadequacy of Existing Regulatory Mechanisms

As a wide-ranging anadromous species, Atlantic sturgeon are subject to numerous Federal (U.S. and Canadian),

state and provincial, and inter-jurisdictional laws, regulations, and agency activities. These regulatory mechanisms are described in detail in the status review report (see Section 3.4). We believe that the inadequacy of regulatory mechanisms to control bycatch and the modification and curtailment of Atlantic sturgeon habitat is contributing to the endangered status of the Carolina and South Atlantic DPSs.

Current regulatory mechanisms have effectively removed threats from legal, directed harvest in the United States, as well as incentives for retention of bycatch. The ASMFC was given management authority in 1993 under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) (16 U.S.C. 5101–5108), and it manages Atlantic sturgeon through an interstate fisheries management plan (IFMP). The moratorium prohibiting directed catch of Atlantic sturgeon was developed as an Amendment to the IFMP. The ACFCMA, authorized under the terms of the ASMFC Compact, as amended (Pub. L. 103–206), provides the Secretary of Commerce with the authority to implement regulations that are compatible to ASMFC FMPs in the Exclusive Economic Zone (EEZ) in the absence of an approved Magnuson-Stevens FMP. In 1999, it was under this authority that a similar moratorium was implemented for Atlantic sturgeon in Federal waters. The Amendment includes a stock rebuilding target of at least 20 protected mature age classes in each spawning stock, which is to be achieved by imposing a harvest moratorium. The Amendment requires states to monitor, assess, and annually report Atlantic sturgeon bycatch and mortality in other fisheries. The Amendment also requires that states annually report habitat protection and enhancement efforts. Finally, the Amendment states that each jurisdiction with a reproducing population should conduct juvenile assessment surveys (including CPUE estimates, tag and release programs, and age analysis), and states with rivers that lack a reproducing sturgeon population(s) but support nursery habitat for migrating juveniles should also conduct sampling.

While the ASMFC and NMFS have made significant strides in reducing the threats from direct harvest and retention of bycatch, those threats have not been eliminated, and continued bycatch of Atlantic sturgeon is contributing to the endangered status of the Carolina and South Atlantic DPSs. Although the FMP contains requirements for reporting bycatch, fishery managers, such as the ASMFC Atlantic Sturgeon Management Board, widely accept that Atlantic sturgeon bycatch is underreported or not reported at all based on research and anecdotal evidence (ASMFC, 2005; ASSRT, 2007; White and Armstrong, 2000). Abundance estimates are available only for two river systems (the Hudson and the Altamaha) even though the FMP states that each jurisdiction with a reproducing population should conduct juvenile assessment surveys (including CPUE estimates, tag and release programs, and age analysis). While the aforementioned mechanisms have addressed impacts to Atlantic sturgeon through directed fisheries, there are currently no mechanisms in place to address the significant impacts and risks posed to Atlantic sturgeon by commercial bycatch.

State and Federal agencies are actively employing a variety of legal authorities to implement proactive restoration activities for this species, and coordination of these efforts is being furnished through the ASMFC. Due to existing state and Federal laws, water quality and other habitat conditions have improved in many riverine habitats, although many systems still have DO and toxic contaminants issues, and habitat quality and quantity continue to be affected by dams, dredging, and/or altering natural flow conditions.

Though statutory and regulatory mechanisms exist that authorize reducing the impact of dams on riverine and anadromous species, such as Atlantic sturgeon, and their habitat, these mechanisms have proven inadequate for preventing dams from blocking access to habitat upstream and degrading habitat downstream. Hydropower dams are regulated by the FERC. The Federal Power Act, originally enacted in 1920, provides for cooperation between FERC and other Federal agencies, including resource agencies, in licensing and relicensing power projects. The Federal Power Act authorizes NMFS to recommend hydropower license conditions to protect, mitigate damages to, and enhance anadromous fish, including related habitat. The Federal Power Act also provides authority for NMFS to issue mandatory fishway prescriptions. FERC licenses have a term of 30 to 50 years, so NMFS' involvement in the licensing process to ensure the protection and accessibility of upstream habitat, and to improve habitat degraded by changes in water flow and quality from dam operations, may only occur twice or thrice a century. The Federal Power Act does not apply to non-hydropower dams, such as those operated by the Army Corps of Engineers for navigation purposes. Even where fish passage currently exists, evidence is rare that it effectively passes sturgeon, including Atlantic sturgeon. As mentioned in previous sections, dams in the Southeast are currently blocking access to over 60 percent of the habitat in three rivers with historical and/or current spawning Atlantic sturgeon populations (the Cape Fear River and Santee-Cooper System in the Carolina DPS and the St. Johns River in the South Atlantic DPS), though we are hopeful that NMFS' 2007 fishway prescription of passage for sturgeon through the lowest dams on both the Santee and Cooper Rivers will be implemented once FERC issues the new license for this project in the near future. In addition to the loss of important spawning and juvenile developmental habitat upstream, dam operations reduce the quality of the remaining habitat downstream by affecting water quality parameters (such as depth, temperature, velocity, and DO) that are important to Atlantic sturgeon. Therefore, the inadequacy of regulatory mechanisms to ensure safe and effective upstream and downstream passage to Atlantic sturgeon and prevent degradation of habitat downstream from dam operations in riverine habitat is contributing to the endangered status of the Carolina and South Atlantic DPSs.

Inadequacies in the regulation of water allocation also impact the South Atlantic DPS. Data concerning consumptive water use in this region are, at best, very limited. While extensive data exist concerning permitted water withdrawals, there is little information concerning actual withdrawals and virtually no information concerning water discharges. This is particularly the case for municipal and industrial uses because water use permits are not required for withdrawals less than 100,000 gpd (379 m^3pd) (Cummings *et al.,* 2003) and discharge permits are not required unless discharge contains selected toxic materials. Agricultural water use permits are not quantified, neither water withdrawals nor return flows are measured (Fisher *et al.,* 2003). While several other states have similar permitting thresholds, the majority require permits for water withdrawals less than 100,000 gpd (379 m^3pd) and some require a permit for any water withdrawal. The present limit in Georgia allows access to water in amounts required to satisfy the household needs of more than 300 households without a permit (Cummings *et al.,* 2003).

Fundamental requisites for basin water planning—data for historical,

unimpaired flows in the coastal regions' rivers—do not exist (Fisher *et al.,* 2003). There are 125 river gauges in the region's 7 river basins. However, 72 of these gauges are inactive, and 28 of the remaining 53 gauges do not provide consistent flow information. Moreover, historical data from many gauges have gaps, reflecting periods (sometimes extending over months) during which the gauge was inoperative. Also, there are extensive discharge areas between the last gauge in each river system and the point at which the river discharges into the ocean—thus, there are potentially large water supplies for which no information is available (Fisher *et al.,* 2003).

Water quality continues to be a problem, even with existing controls on some pollution sources. Data required to evaluate water allocation issues are either very weak, in terms of determining the precise amounts of water currently being used, or non-existent, in terms of our knowledge of water supplies available for use under historical hydrologic conditions in the region. Current regulatory regimes are not sufficiently effective in controlling water allocation issues (*e.g.,* no permit requirements for water withdrawals under 100,000 gpd (379 m^3pd) in Georgia and no restrictions on interbasin water transfers in South Carolina).

In their status review, the ASSRT ranked the threat from the inadequacy of regulatory mechanisms as moderately low to moderate. While some of the threats to the Carolina and South Atlantic DPSs have been ameliorated or reduced due to the existing regulatory mechanisms, such as the moratorium on directed fisheries for Atlantic sturgeon, bycatch is currently not being addressed through existing mechanisms. Further, water quality continues to be a problem even with existing controls on some pollution sources and water withdrawal, and dams continue to curtail and modify habitat, even with the Federal Power Act.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The ASSRT considered several manmade factors that may affect Atlantic sturgeon, including impingement and entrainment, ship strikes, and artificial propagation. The vast withdrawal of water from rivers that support Atlantic sturgeon populations was considered to pose a threat of impingement and entrainment; however, data are lacking to determine the overall impact of this threat on sturgeon populations, as impacts are dependent on a variety of factors (*e.g.,* the species, time of year, location of the intake structure, and strength of the intake current). Multiple suspected boat/ship strikes have been reported in several rivers. A large number of the mortalities observed in these rivers from potential ship strikes have been of large adult Atlantic sturgeon. Lastly, potential artificial propagation of Atlantic sturgeon was also a concern to ASSRT members, as both stock enhancement programs and commercial aquaculture can have negative impacts on a recovering population (*e.g.,* fish disease, escapement, outbreeding depression). In order to circumvent these potential threats, stock enhancement programs follow culture and stocking protocols approved by the ASMFC. Commercial aquaculture facilities are expected to maintain disease-free facilities and have safeguards in place to prevent escapement of sturgeon into the wild. While in at least one instance cultured Atlantic sturgeon have gone unaccounted for from a commercial aquaculture facility in Florida, this is not considered to be a significant threat, as this was a rare event. Mechanisms are in place at all facilities to prevent escapement of sturgeon; facilities are all land based, and most are not located in close proximity to any Atlantic sturgeon rivers.

Along the range of Atlantic sturgeon from the Carolina and South Atlantic DPSs, most, possibly all, populations are at risk of possible entrainment or impingement in water withdrawal intakes for commercial uses, municipal water supply facilities, and agricultural irrigation intakes. In North Carolina, over two billion gallons of water per day were withdrawn from the Cape Fear, Neuse, Tar, and Roanoke rivers in 1999 by agriculture and non-agricultural industries (NCDENR, 2006). Three surveys, included in the 2007 status review, have shown the direct impacts of water withdrawal on Atlantic sturgeon: (1) Hudson River Utility Surveys, (2) Delaware River Salem Power Plant survey, and (3) Edwin I. Hatch Nuclear Power Plant survey. Information on the Brunswick Nuclear Power Plant and its impacts on Atlantic sturgeon was provided by Progress Energy during the public comment period on the proposed listing rule. The Edwin I. Hatch Nuclear power plant (HNP) is located 11 miles north of Baxley, Georgia. The HNP uses a closed-loop system for main condenser cooling that withdraws from, and discharges to, the Altamaha River. Pre-operational drift surveys were conducted and only two *Acipenser* larvae were collected. Entrainment samples at HNP were collected for the years 1975, 1976, and 1980, and no *Acipenser* species were observed in the samples (Sumner, 2004). The Brunswick Nuclear Power Plant is located on the lower Cape Fear River. An average of 55 juvenile Atlantic sturgeon were impinged per year from 1975 to 1981. Plant modifications were implemented in the early 1980s as part of the NPDES permit. A fish diversion was installed in 1981 and a fish return system was installed in 1983. Only two impinged juveniles were observed between 1982 and 2010 and were returned alive to the river. Though most rivers have multiple intake structures which remove millions of gallons a day during the spring and summer months, it is believed that the migratory behavior of larval sturgeon allows them to avoid intake structures, since migration is active and occurs in deep water (Kynard and Horgan, 2002). Effluent from these facilities can also affect populations, as some facilities release heated water that acts as a thermal refuge during the winter months, but drastic changes in water temperature have the potential to cause mortality.

Locations that support large ports and have relatively narrow waterways are more prone to ship strikes (*e.g.,* Delaware, James, and Cape Fear rivers). One ship strike per 5 years is reported for the Cape Fear River within the Carolina DPS. Ship strikes have not been documented in any of the rivers within the South Atlantic DPS. While it is possible that ship strikes may have occurred that have gone unreported or unobserved, the lack of large ship traffic on narrow waterways within the range of the DPS may limit potential interactions.

Artificial propagation of Atlantic sturgeon for use in restoration of extirpated populations or recovery of severely depleted wild populations has the potential to be both a threat to the species and a tool for recovery. Within the range of the Carolina DPS, several attempts were made by Smith *et al.* (1980 and 1981) to hormonally-induce spawning and culture Atlantic sturgeon captured in the Atlantic Ocean off the Winyah Bay jetties. Fry were produced during each spawning attempt, but the fry lived less than a year. As a result of successful spawning of Hudson River Atlantic sturgeon from 1993 to 1998, USFWS' Northeast Fisheries Center (NEFC) is currently rearing five year-classes of domestic fish. These fish could potentially be used as broodstock for aquaculture operations and stock enhancement, provided that there is no risk to wild fish. Aquaculturists along the East Coast, including some in North

Carolina and South Carolina, have contacted the NEFC and expressed interest in initiating commercial production of Atlantic sturgeon. In 2006, La Paz Aquaculture Group was approved by North Carolina state resource agencies and ASMFC to produce Atlantic sturgeon for flesh and caviar sales. However, their first year of production was halted because remnant storms from Hurricane Katrina destroyed their fry stock. In August 2006, ASMFC reevaluated the La Paz permit, and voted to draft an addendum to allow La Paz to acquire Atlantic sturgeon from multiple Canadian aquaculture companies (previously restricted to one company), allowing them to resume Atlantic sturgeon culture. Resource managers who reviewed the permit found the La Paz facility to pose little threat to Atlantic sturgeon or shortnose populations due to the facility location (far inland), use of a recirculating system, and land application of any discharge (ASSRT, 2007).

In the range of the South Atlantic DPS, artificial propagation has been attempted for the purposes of both restoration and commercial profit. The St. Marys Fish Restoration Committee (SMFRC) is working with Florida and Georgia to reestablish Atlantic sturgeon in the St. Marys River. Efforts are currently underway to refine restoration approaches within the system. Phase 1 of the restoration plan includes a population and habitat assessment. Field investigations are being funded through ESA Section 6 and coordinated through Georgia DNR. The State of Florida has been involved in fish sampling and will continue to explore and refine sturgeon sampling strategies. Aquatic habitat and water quality surveillance work will continue to be accomplished by the St. Johns River Water Management District, the Environmental Protection Agency, Florida Department of Environmental Protection, USFWS, TNC, and the St. Marys River Management Committee. Phase 2 of the plan would include experimental transplanting of Atlantic sturgeon to assess environmental factors, habitat use at different life-stages, contaminants, migration-homing, *etc.* Upon approval from the ASMFC, the SMFRC transferred 12 Atlantic sturgeon from the Altamaha River in Georgia to the Bears Bluff National Fish Hatchery in South Carolina. The SMFRC hopes to develop and refine captive propagation techniques for predictable spawning and provide fish to approved researchers.

Aquaculturists in South Carolina and Florida have also contacted the NEFC and expressed interest in initiating commercial production of Atlantic sturgeon through use of the Hudson River broodstock. In 2001, the Canadian Caviar Company shipped 18,000 Atlantic sturgeon sac fry to the University of Florida. These fry were used to conduct early larval and feeding trials. Survivors of these experiments were transferred to four aquaculture businesses: (1) Evan's Fish Farm in Pierson, Florida; (2) Watts Aquatics in Tampa, Florida; (3) Hi-Tech Fisheries of Florida in Lakeland, Florida; and (4) Rokaviar in Homestead, Florida. According to information provided by FDACS in August 2011, Evan's Fish Farm is the only aquaculture facility still in possession of Atlantic sturgeon. They experienced a catastrophic systems failure in 2004 and currently have only one Atlantic sturgeon on their premises. The remaining Atlantic sturgeon obtained from Canada by Florida aquaculture facilities died in captivity.

The ASSRT ranked the threats from impingement/entrainment, ship strikes, and artificial propagation as low for both DPSs, with the exception of the threat from ship strikes as moderately low for the Carolina DPS. We concur with these rankings and conclude that none of these threats are contributing to the endangered status of the DPS.

Current Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into account those efforts, if any, being made by any State or foreign nation to protect the species. In judging the efficacy of existing protective efforts, we rely on the Services' joint ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). The PECE is designed to guide determinations on whether any conservation efforts that have been recently adopted or implemented, but not yet proven to be successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming a basis for listing a species as threatened rather than endangered. The purpose of the PECE is to ensure consistent and adequate evaluation of future or recently implemented conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents when making listing decisions. The PECE provides direction for the consideration of such conservation efforts that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy is expected to facilitate the development by states and other entities of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

The Services established two basic criteria in the PECE: (1) The certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. Satisfaction of the criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment for the species. Through the PECE analysis, the Services ascertain whether the formalized conservation effort improves the status of the species at the time a listing determination is made.

We evaluated the current conservation efforts underway to protect and recover Atlantic sturgeon in making our listing determination. In the 2007 status review report and the proposed listing rule, we determined that only the following conservation efforts warrant consideration under the PECE for the Carolina and South Atlantic DPSs: The 1998 ASMFC FMP and the proposal by the SMFRC to restore Atlantic sturgeon to the St. Marys River. In addition, we evaluated North Carolina's NCCHPP and designation of AFSAs based on information submitted during the public comment period on the proposed listing rule.

The 1998 Amendment to the ASMFC Atlantic Sturgeon FMP strengthens conservation efforts by formalizing the closure of the directed fishery, and by banning possession of bycatch, eliminating any legal incentive to retain Atlantic sturgeon. However, bycatch is known to occur in several fisheries (ASMFC, 2007) and it is widely accepted that bycatch is underreported (ASMFC, 2005; ASSRT, 2007; White and Armstrong, 2000). Contrary to information available in 1998 when the Amendment was approved, Atlantic sturgeon bycatch mortality is a major stressor affecting the recovery of Atlantic sturgeon, despite actions taken by the states and NMFS to prohibit directed fishing and retention of Atlantic sturgeon. Therefore, there is considerable uncertainty that the Atlantic Sturgeon FMP will be effective in meeting its conservation goals. In addition, though the 1998 Amendment contains requirements for population surveys, it is highly uncertain these will be implemented, as there are limited resources for assessing current abundance of spawning females for each

of the DPSs and to date, abundance estimates have only been completed for one river within the range of the two DPSs considered here. For these reasons, there is great uncertainty regarding the implementation and effectiveness of the intended ASMFC FMP conservation effort for the Carolina and South Atlantic DPSs of Atlantic sturgeon.

The SMFRC is working with Florida and Georgia with the intention of reestablishing Atlantic sturgeon in the St. Marys River. Efforts are currently underway to refine restoration approaches within the system. As discussed in Section E, Phase 1 of the restoration plan includes a population and habitat assessment, and Phase 2 includes experimental transplanting of Atlantic sturgeon to assess environmental factors, habitat use at different life-stages, contaminants, migration-homing, *etc.* Atlantic sturgeon are believed to be extirpated in the St. Marys River. This conservation effort may increase our knowledge and understanding of Atlantic sturgeon status and habitat conditions in the St. Marys River, as well as provide methods for restoring a population there in the future. As previously discussed, artificial propagation of Atlantic sturgeon for use in restoration of extirpated populations or recovery of severely depleted wild populations has the potential to be both a threat to the species and a tool for recovery. Because it is in the earliest stages of planning, development, and authorization, the feasibility of any project or the potential degree of success for this effort is unknown. Therefore, the SMRFC efforts do not satisfy the PECE policy's standards for certainty of implementation or effectiveness.

The State of North Carolina adopted the NCCHPP in 2005 and its stated goals are: (1) Improving effectiveness of existing rules and programs protecting coastal fish habitats; (2) identifying, designating, and protecting strategic habitat areas (SHAs); (3) enhancing habitat and protecting it from physical impacts; and (4) enhancing and protecting water quality. The NCMFC approved SHAs for Region 1 (the waters and adjacent wetlands draining into and out of Albemarle Sound through Oregon Inlet to the adjoining coastal ocean) in North Carolina in January 2009, and is currently evaluating SHAs for other regions in North Carolina. SHAs represent priority habitat areas for protection due to their exceptional condition or imminent threat to their ecological functions supporting estuarine and coastal fish and shellfish species and will be incorporated into conservation and restoration efforts. One SHA (Bellows Bay to Knotts Island Bay) was identified in part due to the nearshore ocean areas that are important for Atlantic sturgeon and striped bass and another SHA (Chowan and Roanoke Rivers and western Albemarle Sound) may include one of the few Atlantic sturgeon spawning habitats in North Carolina. NCDMF also provides input to federal and state regulatory agencies of the location of habitats used by Atlantic sturgeon. NCDMF and the North Carolina Wildlife Resources Commission have designated Anadromous Fish Spawning Areas (AFSA) through rules for their respective jurisdictions. While these programs have excellent goals of increasing enforcement of existing regulations, identifying and protecting habitat important to the species, and monitoring these habitats, these actions are still in the early stages and it is not clear exactly what protections will be given to areas designated as SHAs or AFSAs. Therefore, the efforts associated with the NCCHPP and the designation of AFSAs do not satisfy the PECE policy's standards for certainty of implementation or effectiveness.

Listing Determinations

Carolina DPS

The Carolina DPS is estimated to number less than 3 percent of its historical population size (ASSRT, 2007). Prior to 1890, Secor (2002) estimated there were between 7,000 and 10,000 adult females in North Carolina and 8,000 adult females in South Carolina. Currently, there are estimated to be less than 300 adults spawning annually (total of both sexes) in the major river systems occupied by the DPS in which spawning still occurs, whose freshwater range occurs in the watersheds from the Roanoke River southward along the southern Virginia, North Carolina, and South Carolina coastal areas to the Cooper River. We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with the Atlantic sturgeon in the Carolina DPS. We considered relevant substantial information and recommendations made by the peer reviewers and the public on the proposed listing rule. After reviewing the best scientific and commercial information available, we find that the Atlantic sturgeon Carolina DPS is in danger of extinction throughout its range as a result of a combination of habitat curtailment and alteration, bycatch in commercial fisheries, and inadequacy of regulatory mechanisms in ameliorating these impacts and threats, and have determined it should be listed as endangered.

South Atlantic DPS

The South Atlantic DPS is estimated to number less than 6 percent of its historical population size (ASSRT, 2007), with all river populations except the Altamaha estimated to be less than 1 percent of historical abundance. Prior to 1890, Secor (2002) estimated there were 8,000 adult spawning females in South Carolina and 11,000 adult spawning females in Georgia. Currently, there are an estimated 343 adults spawning annually in the Altamaha and less than 300 adults spawning annually (total of both sexes) in the other major river systems occupied by the DPS in which spawning still occurs, whose freshwater range occurs in the watersheds of the ACE Basin in South Carolina to the St. Johns River, Florida. We have reviewed the status review report, as well as other available literature and information, and have consulted with scientists and fishery resource managers familiar with the Atlantic sturgeon in the South Atlantic DPS. We considered relevant substantial information and recommendations made by the peer reviewers and the public on the proposed listing rule. After reviewing the best scientific and commercial information available, we find that the Atlantic sturgeon South Atlantic DPS is in danger of extinction throughout its range as a result of a combination of habitat curtailment and alteration, bycatch in commercial fisheries, and inadequacy of regulatory mechanisms in ameliorating these impacts and threats, and have determined it should be listed as endangered.

Effects of Listing

Conservation measures provided for species listed as endangered under the ESA include recovery actions (16 U.S.C. 1533(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' endangered status through listing promotes conservation actions by Federal and state agencies, private groups, and individuals.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that activities authorized, funded, or carried out by those agencies are not likely to jeopardize the

continued existence of the species or destroy or adversely modify critical habitat. We do not know how many section 7 consultations may be required for Federal agencies. From 2005 to 2010, there were 108 informal and 10 formal consultation requests for the shortnose sturgeon, a species whose range overlaps with that of Atlantic sturgeon in freshwater and estuarine habitats.

The Carolina and South Atlantic DPSs are distinguished based on genetic data and spawning locations. However, extensive mixing of the populations occurs in coastal waters. Therefore, the distributions of the DPSs outside of natal waters generally overlap with one another, and with fish from Northeast river populations. This presents a challenge in conducting ESA section 7 consultations because fish from any DPS could potentially be affected by a proposed project. Project location alone will likely not inform the section 7 biologist as to which populations to consider in the analysis of a project's potential direct and indirect effects on Atlantic sturgeon and their habitat. This will be especially problematic for projects where take could occur, because it is critical to know which Atlantic sturgeon population(s) to include in the jeopardy analysis. One conservative but potentially cumbersome method would be to analyze the total anticipated take from a proposed project as if all Atlantic sturgeon came from a single DPS and repeat the jeopardy analysis for each DPS the taken individuals could have come from. However, recently funded research may shed some light on the composition of mixed stocks of Atlantic sturgeon, relative to their rivers of origin, in locations along the East Coast. The specific purpose of the study is to evaluate the vulnerability to coastal bycatch of Hudson River Atlantic sturgeon, thought to be the largest stock contributing to coastal aggregations from the Bay of Fundy to Georgia. However, the mixed stock analysis will also allow NMFS to better estimate a project's effects on different components of a mixed stock of Atlantic sturgeon in coastal waters or estuaries other than where they were spawned. Results from the study are expected by early 2012. Genetic mixed stock analysis, such as proposed in this study, requires a high degree of resolution among stocks contributing to mixed aggregations and characterization of most potential contributory stocks. Fortunately, almost all extant populations have been characterized in previous genetic studies, though some additional populations will be characterized in this study. Genetic testing of mixed stocks will be conducted in eight coastal locales in both the Northeast and Southeast Regions. Coastal fisheries and sites were selected based on sample availabilities, bycatch concerns, and specific biological questions (*i.e.,* real uncertainty as to stock origins of the coastal aggregation).

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) of the ESA provides for additional time to promulgate a critical habitat designation if such designation is not determinable at the time of final listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. The designation of critical habitat is not determinable at this time due to the extensive range of the Carolina and South Atlantic DPSs and extremely complex biological and physical requirements of Atlantic sturgeon. Although we have gathered information through the status review and public comment processes, we currently do not have enough information to determine which of these features are essential to the conservation of the two DPSs and may require special management considerations or protection. We will continue to gather and review other ongoing studies on the habitat use and requirements of Atlantic sturgeon to attempt to identify these features. Additionally, we need more time to gather the information needed to perform the required analyses of the impacts of the designation. Once areas containing the essential features are identified and mapped, and economic, national security, and other relevant impacts are considered, we will publish, in a separate rule, a proposed designation of critical habitat for the Carolina and South Atlantic DPSs.

Section 9 Take Prohibitions

ESA section 9(a) and 16 U.S.C. 1538 (a)(1)(B) take prohibitions apply to all species listed as endangered. These include prohibitions against the import, export, use in foreign commerce, or ''take'' of the species. Take is defined as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the U.S. or on the high seas.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, we and USFWS published a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272; July 1, 1994). The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We will identify, to the extent known, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation.

Activities that we believe could result in violation of section 9 prohibitions against ''take'' of the Atlantic sturgeon in the Carolina and South Atlantic DPSs include, but are not limited to, the following: (1) Capture and mortality in commercial and recreational fisheries; (2) poaching of individuals for meat or caviar; (3) marine vessel strikes; (4) destruction of or blocking access to riverine, estuarine, and marine habitat through such activities as agricultural and urban development, commercial activities, diversion of water for hydropower and public consumption, and dredge and fill operations; (5) impingement and entrainment in water control structures; (6) unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPSs); (7) releasing a captive Atlantic sturgeon into the wild; and (8) harming captive Atlantic sturgeon by, among other things, injuring or killing them through veterinary care, research, or breeding

activities outside the bounds of normal animal husbandry practices. Permits to conduct activities that may result in ''take'' of Atlantic sturgeon for scientific purposes or to enhance the propagation or survival of the DPSs may be issued under section 10 of the ESA. Such permits would be required to authorize take regardless of whether the sturgeon were in captivity at the time this final listing rule becomes effective, or are collected from the wild after this rule becomes effective.

ESA sections 10(a)(1)(A) and 10(a)(1)(B) provide NMFS with authority to grant exceptions to the section 9 take prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a take of listed species. We have issued section 10(a)(1)(A) research and enhancement permits for other listed species for these purposes. ESA section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The ESA also provides some exceptions to the prohibitions, without permits, for certain antique articles and species held in captivity at the time of listing. ESA section 10(h) allows antique articles of listed species to be excluded from essentially all the ESA prohibitions as long as they are at least 100 years old and meet certain other specified conditions. Section 9(b)(1) provides a narrow exemption for animals held in captivity at the time of listing: those animals are not subject to the import/export prohibition in section 9(a)(1)(A) or to protective regulations adopted by the Secretary under section 9(a)(1)(G), so long as the holding of the species in captivity, before and after listing, is not in the course of a commercial activity and does not violate the applicable prohibitions under ESA section 9(a)(1). However, 180 days after listing there is a rebuttable presumption that the exemption does not apply. Thus, in order to apply this exemption, the burden of proof for confirming the status of animals held in captivity prior to listing lies with the holder. The section 9(b)(1) exemption for captive wildlife would not apply to any progeny of the captive animals that may be produced post-listing.

Based on the best available information, we believe that the following actions will not result in a violation of ESA section 9: (1) Take or possession of Atlantic sturgeon acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or take in accordance with the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (2) Federally approved projects that involve activities such as agriculture, managed fisheries, road construction, discharge of fill material, stream channelization, or diversion for which consultation under section 7 of the ESA has been completed and determined not likely to jeopardize the continued existence of the Atlantic sturgeon DPS, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA; (3) continued possession of live Atlantic sturgeon that were in captivity or in a controlled environment (*e.g.,* in aquaria) at the time of this listing, so long as the applicable prohibitions under an ESA section 9(a)(1) are not violated; and, (4) provision of care for live Atlantic sturgeon that were in captivity at the time of this listing.

Policies on Peer Review

On July 1, 1994, NMFS and USFWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270; July 1, 1994), the Office of Management and Budget (2004) Bulletin on Peer Review. The intent of the peer review policies is to ensure that listings are based on the best scientific and commercial data available. We formally solicited the expert opinion of three appropriate and independent specialists regarding scientific or commercial data or assumptions related to the information considered for listing. We conclude that these experts' reviews satisfy the requirements for ''adequate [prior] peer review'' contained in the Bulletin (sec. II.2.), as well as the Services joint policy.

References

A complete list of the references used in this final rule is available on the internet at *http://sero.nmfs.noaa.gov/pr/sturgeon.htm.*

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant agencies in each state in which the Carolina and South Atlantic DPSs occur, and these agencies were invited to comment. Their comments were addressed with other comments in the ''Public Comments'' section.

Executive Order 12898, Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The listing determination is not expected to have a disproportionately high effect on minority populations or low-income populations.

Coastal Zone Management Act (16 U.S.C. 1451 et seq.)

Section 307(c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of approved state coastal zone management programs to the maximum extent practicable. We have determined that this action is consistent to the

maximum extent practicable with the enforceable policies of approved CZMA Programs of each of the states within the range of the two DPSs. Letters documenting NMFS' proposed determination, along with the proposed rule, were sent to the coastal zone management program offices in each affected state. A list of the specific state contacts and a copy of the letters are available upon request.

The North Carolina Department of Coastal Management (NCDCM) objected to our consistency determination and identified the following three relevant enforceable policies of their approved management program with which they believed listing Atlantic sturgeon as endangered would be inconsistent: (1) 15A NCAC07H.0203 Management Ojective of the Estuarine and Ocean System; (2) 15A NCAC 07H .0206 Estuarine Waters; and, (3) 15A NCAC 07H .0207 Public Trust Areas. NCDCM believes listing Atlantic sturgeon as proposed would be inconsistent with their objective of managing Atlantic sturgeon resources in a manner that would perpetuate the biological and economic values of marine resources within North Carolina's coastal zone because: (1) Sampling programs for many fish species would have to be immediately terminated, and (2) North Carolina's fishing industry would be affected since sampling and/or bycatch of Atlantic sturgeon would constitute unpermitted take. NCDCM expressed concern that during the time it takes to obtain ESA permits for research and bycatch in fisheries, the ability to monitor population trends and comply with data collection requirements of ASMFC's FMPs will be curtailed. NCDCM is concerned about prohibitions on gear and other hardships on North Carolina fisheries, as well as administrative burdens on the state, including having to provide observer coverage. NCDCM stated that a finding of concurrence with our consistency determination could be made if: (1) The listing was delayed until permits for take have been obtained for research and fisheries bycatch, and (2) coordination takes place with NCDMF and NCWRC to implement a data collection program to further examine the listing determination for Atlantic sturgeon.

Per 15 CFR 930.43(d) of the regulations implementing the CZMA, a Federal agency shall not proceed with the activity over the State agency's objection unless: (1) The Federal agency has concluded that under the ''consistent to the maximum extent practicable'' standard described in 15 CFR 930.32, consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency, and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See 15 CFR 930.32(a) and 930.39(a)); or, (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects. As we discussed in our letter to NCDCM responding to their objection, section 4(b)(1)(A) of the ESA and 50 CFR 424.11(b) of the implementing regulations require that listing determinations be made solely on the basis of the best scientific and commercial data available to us and without reference to possible economic or other impacts of such a determination. In addition, sections 4(b)(3)(B) and 4(b)(6)(A) of the ESA establish mandatory deadlines under the ESA for determining whether listing of the species is warranted, and for associated rules. Those deadlines were triggered when NMFS received the listing petition from the NRDC. Therefore, per 15 CFR 930.43(d)(1), we are prohibited from considering the potential consequences, such as permitting requirements, increased regulatory responsibilities, and hardships on fisheries (*e.g.,* gear restrictions), in our listing determination, and we cannot enter into a partnership with NCDMF and NCWRC in lieu of listing Atlantic sturgeon. However, we believe these partnerships, such as the NMFS-funded section 6 project with NCDMF, North Carolina State University, South Carolina Department of Natural Resources, and the University of Georgia looking at movements of Atlantic and shortnose sturgeon, will play a crucial role in working toward conservation and recovery of the species. Further, as discussed in this final rule and in our letter to NCDCM, NMFS is taking steps that should minimize the potential impacts to the state of North Carolina's fishery sampling programs and fishing industry raised by NCDCM. For example, NMFS contacted known sturgeon researchers, at the time of publication of the proposed rule, requesting information on planned research activities to facilitate development of an expedited permitting process. We also informed NCDCM, and other North Carolina agencies, of the expedited process during a conference call in March 2011. Further, section 10(a)(1)(B) of the ESA allows NMFS to issue permits authorizing incidental take of listed species during the course of otherwise lawful activities, such as state fishery survey and sampling programs targeting species other than Atlantic sturgeon. Section 7 consultations required for any federally-authorized fisheries that take Atlantic sturgeon as bycatch would authorize such incidental take after ensuring the fishing activity would not jeopardize sturgeon. Based on these factors, we concluded pursuant to 15 CFR 930.43(d)(2) that this listing rule is consistent with the State's enforceable policies listed above that provide for managing the Atlantic sturgeon resources in a manner that would perpetuate the biological and economic values of marine resources within North Carolina's coastal zone.

List of Subjects in 50 CFR Part 224

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

Dated: January 24, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101 the table in paragraph (a) is amended by adding entries for Atlantic Sturgeon-Carolina DPS and Atlantic Sturgeon-South Atlantic DPS at the end of the table to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

Species		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
Atlantic Sturgeon—Carolina DPS.	*Acipenser oxyrinchus oxyrinchus*.	The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The Carolina DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS.	[*Insert FR page number where the document begins*]; 2/6/12.	NA.
Atlantic Sturgeon—South Atlantic DPS.	*Acipenser oxyrinchus oxyrinchus*.	The South Atlantic DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (*e.g.,* aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS.	[*Insert FR page number where the document begins*]; 2/6/12.	NA.

* * * * *

[FR Doc. 2012–1950 Filed 2–3–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Monday,

No. 24 February 6, 2012

Part IV

The President

Notice of February 3, 2012—Continuation of the National Emergency With Respect to the Situation in or in Relation to Côte d'Ivoire

Federal Register
Vol. 77, No. 24
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Presidential Documents

Title 3—

The President

Notice of February 3, 2012

Continuation of the National Emergency With Respect to the Situation in or in Relation to Côte d'Ivoire

On February 7, 2006, by Executive Order 13396, the President declared a national emergency, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in or in relation to Côte d'Ivoire and ordered related measures blocking the property of certain persons contributing to the conflict in Côte d'Ivoire. The situation in or in relation to Côte d'Ivoire, which has been addressed by the United Nations Security Council in Resolution 1572 of November 15, 2004, and subsequent resolutions, has resulted in the massacre of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and fatal attacks against international peacekeeping forces.

While the Government of Côte d'Ivoire and its people continue to make significant progress, the situation in or in relation to Côte d'Ivoire continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on February 7, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 7, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13396.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 3, 2012.

[FR Doc. 2012–2866
Filed 2–3–12; 4:15 pm]
Billing code 3295–F2–P

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