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Presidential Documents

Title 3—

The President

Proclamation 8873 of October 1, 2012

National Arts and Humanities Month, 2012

By the President of the United States of America

A Proclamation

After the bombing of Fort McHenry during the War of 1812, a young lawyer named Francis Scott Key reached for his pen and captured the resilience of the American people. His poem became our National Anthem, and almost two centuries later, it continues to speak to the American spirit just as it did on that September day so long ago. Throughout our history, the arts and humanities have given us comfort and confidence, drawn us together, and called on us to strive for a more perfect Union. This month, we celebrate our Nation's rich artistic heritage.

Artistic expression and memorable ideas can resonate with us, challenge us, and teach us important lessons about ourselves and each other. At their best, great works of literature, theater, dance, fine art, and music reflect something common in all of us. They open dialogues between cultures and raise poignant questions about our world. They are also vital components of our children's education and our national growth—not only teaching our youth to observe closely, interpret creatively, and think critically, but also bringing new cultural experiences to our communities and helping drive economic progress. That is why my Administration is committed to strengthening arts and humanities programs in schools and communities across our Nation.

When children read their first book, pick up their first instrument, or perform in their first play, they demonstrate the power of the arts to ignite wonder and imagination. This month, let us pledge to invest in America's next generation by ensuring our children have the opportunity to participate in and enjoy the arts and humanities. If we give them the tools to create and innovate, they will do their part to disrupt our views, challenge our perceptions, and stir us to be our best selves.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Arts and Humanities Month. I call upon the people of the United States to join together in observing this month with appropriate ceremonies, activities, and programs to celebrate the arts and the humanities in America.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–24652
Filed 10–3–12; 8:45 am]
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Presidential Documents

Proclamation 8874 of October 1, 2012

National Breast Cancer Awareness Month, 2012

By the President of the United States of America

A Proclamation

Breast cancer touches the lives of Americans from every background and in every community across our Nation. Though we have made great strides in combatting this devastating illness, more than 200,000 women will be diagnosed with breast cancer this year, and tens of thousands are expected to lose their lives to the disease. During National Breast Cancer Awareness Month, we honor those we have lost, lend our strength to those who carry on the fight, and pledge to educate ourselves and our loved ones about this tragic disease.

Though the exact causes of breast cancer are unknown, understanding its risk factors is essential to prevention. Older women and those who have a personal or family history of breast cancer are among those at greater risk of developing the illness. Early detection is also key in the fight against breast cancer. Getting recommended screening mammograms can help to detect breast cancer early. I encourage women and men to speak with their health care provider about breast cancer, and to visit www.Cancer.gov to learn more about symptoms, diagnosis, and treatment.

My Administration remains committed to ensuring access to quality health care that includes preventive services for women. Thanks to the Affordable Care Act, many health plans are required to cover mammograms and other recommended cancer screenings without co-pays or deductibles. Starting in 2014, it will also ensure that no American can be denied health insurance because of a pre-existing condition—including breast cancer.

This month, we stand with the mothers, daughters, sisters, aunts, and friends who have been affected by breast cancer, and we recognize the ongoing efforts of dedicated advocates, researchers, and health care providers who strive each day to defeat this terrible disease. In memory of the loved ones we have lost and inspired by the resilience of those living with the disease, let us strengthen our resolve to lead our Nation toward a future free from cancer in all its forms.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Breast Cancer Awareness Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and all other interested groups to join in activities that will increase awareness of what Americans can do to prevent breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



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Presidential Documents

Proclamation 8875 of October 1, 2012

National Cybersecurity Awareness Month, 2012

By the President of the United States of America

A Proclamation

Today, Americans are more connected to each other and to people around the world than ever before. Many of us depend on the Internet and digital tools in our daily lives—from shopping at home and banking on our mobile devices to sharing information with friends across the globe. And America far outpaces the rest of the world in adoption of cutting-edge wireless broadband technology. Our growing reliance on technology reminds us that our digital infrastructure is not just a convenience; it is a strategic national asset. During National Cybersecurity Awareness Month, we recommit to ensuring our information and infrastructure remain secure, reliable, and resilient.

Though our Nation benefits immensely from the Internet, increased connectivity brings increased risk of theft, fraud, and abuse. That is why my Administration has made cybersecurity a national and economic security priority. By bringing together Federal, State, and local governments and private industry partners, we have made great progress in securing cyberspace for business, education, entertainment, and civic life. In November 2011, we released the Blueprint for a Secure Cyber Future—a strategic plan to protect government, the private sector, and the public against cyber threats today and tomorrow.

As we continue to improve our cybersecurity under existing authorities, comprehensive legislation remains essential to securing our critical infrastructure, facilitating greater cyber information sharing between government and the private sector, and protecting the privacy and civil liberties of the American people. My Administration looks forward to working with the Congress to address these goals.

Cybersecurity cannot be guaranteed by government, industry, and law enforcement alone. Each of us has an important role to play in reducing the cyber threat and increasing our resilience following cyber incidents. The Department of Homeland Security's ''Stop.Think.Connect.'' campaign continues to empower digital citizens with the information and tools they need to stay safe online. To learn more about how we can all contribute to the security of our shared cyber networks, visit www.DHS.gov/StopThinkConnect.

America's digital infrastructure underpins our progress toward strengthening our economy, improving our schools, modernizing our military, and making our government more open and efficient. Working together, we can embrace the opportunities and meet the challenges cyberspace provides while preserving America's fundamental belief in freedom, openness, and innovation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Cybersecurity Awareness Month. I call upon the people of the United States to recognize the importance of cybersecurity and to observe this month with activities, events, and trainings that will enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



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Presidential Documents

Proclamation 8876 of October 1, 2012

National Disability Employment Awareness Month, 2012

By the President of the United States of America

A Proclamation

In the 22 years since the signing of the Americans with Disabilities Act, we have made significant progress in giving all Americans the freedom to make of our lives what we will. Yet, in times of prosperity as well as challenge, people with disabilities have had fewer opportunities in our workplaces than those without. As we work to revitalize our economy, it is essential that each of us can bring our talents, expertise, and passion to bear in the marketplace. But a stronger economy is not enough; we must ensure not only full participation, but also full opportunity. During National Disability Employment Awareness Month, we recognize the indispensable contributions people with disabilities make in our economy and recommit to building a country where each of us can realize the full extent of our dreams.

Because America's workforce should reflect the diversity of its people—including people with disabilities—my Administration remains committed to helping our businesses, schools, and communities support our entire workforce. To meet this challenge, the Federal Government must be a model employer. That is why I was proud to sign an Executive Order in 2010 that called on Federal agencies to increase recruitment, hiring, and retention of people with disabilities. In 2012, the Office of Personnel Management reported on our progress, revealing that we are moving toward meeting our goal of hiring an additional 100,000 people with disabilities into the Federal workforce over 5 years. Today, more people with disabilities work for the Federal Government than at any time in the past 20 years, and we are striving to make it easier to get and keep those jobs by improving compliance with Section 508 of the Rehabilitation Act.

All Americans are entitled to an accessible workplace, a level playing field, and the same privileges, pursuits, and opportunities as any of their family, friends, and neighbors. This month, let us rededicate ourselves to bringing down barriers and raising up aspirations for all our people, regardless of disability, so we may share in a brighter future together.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Disability Employment Awareness Month. I urge all Americans to embrace the talents and skills that individuals with disabilities bring to our workplaces and communities and to promote the right to equal employment opportunity for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



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Presidential Documents

Proclamation 8877 of October 1, 2012

National Domestic Violence Awareness Month, 2012

By the President of the United States of America

A Proclamation

For far too long, domestic violence was ignored or treated as a private matter where victims were left to suffer in silence without hope of intervention. As we mark the 18th anniversary of the landmark Violence Against Women Act, authored by Vice President Joe Biden, we reflect on how far we have come. We have made significant progress in changing laws and attitudes, providing support to survivors, and reducing the incidence of domestic violence. But we also know that we have not come far enough, and that there is more work left to be done. During National Domestic Violence Awareness Month, we stand with all those who have been affected by this terrible crime, recognize the individuals and groups who have stepped forward to break the cycle of violence, and recommit to putting an end to domestic violence in America.

Despite considerable progress in reducing domestic violence, an average of three women in the United States lose their lives every day as a result of these unconscionable acts. And while women between the ages of 16 and 24 are among the most vulnerable to intimate partner violence, domestic violence affects people regardless of gender, age, sexual orientation, race, or religion. Tragically, without intervention, children exposed to such violence can suffer serious long-term consequences that may include difficulty in school, post-traumatic disorders, alcohol and drug abuse, and criminal behavior.

My Administration remains committed to getting victims the help they need, from emergency shelter and legal assistance to transitional housing and services for children. We are also working to stop violence before it starts. Last year, agencies across the Federal Government held town hall meetings nationwide to promote men's roles in ending violence against women. Through Vice President Biden's 1is2many initiative, we built on that progress earlier this year by releasing a public service announcement that features professional athletes and other role models speaking out against dating violence. This April, I directed leaders throughout my Administration to increase efforts to prevent and combat domestic violence involving Federal employees and address its effects on the Federal workforce. Since August, the Affordable Care Act has required most insurance plans to make domestic violence screening and counseling available as a preventive service for women—without co-payments, deductibles, or other cost-sharing. And most recently, we developed a new initiative to reduce domestic violence homicides through high risk screening and linking victims with services. Moreover, my Administration looks forward to working with the Congress to strengthen and reauthorize the Violence Against Women Act.

While government must do its part, all Americans can play a role in ending domestic violence. Each of us can promote healthy relationships, speak out when we see injustice in our communities, stand with survivors we know, and change attitudes that perpetuate the cycle of abuse. We must also ensure that survivors of domestic violence know they are not alone, and that there are resources available to them. I encourage victims, their loved ones, and concerned citizens to learn more by calling the National

Domestic Violence Hotline at 1–800–799–SAFE, or by visiting www.TheHotline.org.

This month, let us renew our efforts to support victims of domestic violence in their time of greatest need, and to realize an America where no one lives in fear because they feel unsafe in their own home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Domestic Violence Awareness Month. I call on all Americans to speak out against domestic violence and support local efforts to assist victims of these crimes in finding the help and healing they need.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–24682
Filed 10–3–12; 8:45 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8878 of October 1, 2012

National Energy Action Month, 2012

By the President of the United States of America

A Proclamation

A secure energy future is vital to an economy built to last. When we use American energy to power our homes, businesses, and vehicles, we create new American jobs, grow new American industries, and safeguard our national security and our economic potential. As demand for energy increases worldwide, our Nation must continue to lead the world in a rapidly evolving energy market by pursuing safe and responsible domestic energy production, promoting efficiency, and developing clean energy and renewable fuels.

My Administration is pursuing an all-of-the-above strategy to put energy independence within our reach and power a sustainable, vibrant economy. We took bold action to double our use of renewable energy sources like solar, wind, and geothermal; finalized new standards to nearly double the fuel efficiency of our Nation's automobiles by 2025; and invested in energy-saving upgrades in homes, public buildings, and businesses across our Nation. These programs spur innovation, make American manufacturers more competitive, and save families money on their energy bills.

As we lay the foundation for a clean energy economy, we must also take advantage of the abundant energy resources we have here at home and reduce our dependence on oil imports. That is why my Administration continues to open millions of acres for oil and gas exploration. Today, domestic oil production is at the highest level in nearly a decade, while oil imports have fallen to the lowest level in nearly 20 years.

Thanks to pioneering new technologies developed right here at home, America is also now the world's leading producer of natural gas. As production has increased, it has boosted our manufacturing, dramatically reduced prices, and created more jobs for the American people. Along with advances in renewable energy and increased efficiency, our investments in natural gas can help reduce greenhouse gas emissions that cause climate change.

Moving forward, we will continue to invest in new technologies that put Americans to work in the jobs of tomorrow—from building advanced wind turbines and long-lasting batteries to developing cutting-edge clean coal technologies and next generation biofuels. We will promote growth and job creation throughout the entire energy sector by further developing our domestic energy resources and supporting our nuclear industry. And we will modernize our electric grid, allowing us to better integrate renewable energy, increase efficiency and reliability, and empower families to make informed decisions about their energy consumption.

Finally, we must also harness our greatest natural resource—the creativity, drive, and entrepreneurial spirit of the American people. Across our country, scientists and engineers are laying the groundwork for the next big energy breakthrough, farmers across rural America are producing homegrown fuels, students are promoting conservation in their communities, and autoworkers are manufacturing the next generation of fuel-efficient cars. If we continue to invest in American potential, I am confident that new plants and factories will dot our landscape and new energy will power our future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Energy Action Month. I call upon the citizens of the United States to recognize this month by working together to achieve greater energy security, a more robust economy, and a healthier environment for our children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–24699
Filed 10–3–12; 8:45 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8879 of October 1, 2012

National Substance Abuse Prevention Month, 2012

By the President of the United States of America

A Proclamation

Every day, far too many Americans are hurt by alcohol and drug abuse. From diminished achievement in our schools, to greater risks on our roads and in our communities, to the heartache of lives cut tragically short, the consequences of substance abuse are profound. Yet, we also know that they are preventable. This month, we pay tribute to all those working to prevent substance abuse in our communities, and we rededicate ourselves to building a safer, drug-free America.

By stopping drug use before it starts, we can prevent the disease of addiction and create stronger neighborhoods across our country. My Administration has placed prevention at the heart of our *National Drug Control Strategy,* promoting a balanced approach that advances evidence-based public health and safety reforms. We have invested in outreach programs that empower young Americans with the facts about substance abuse, and we have worked to stem the tide of prescription drug abuse through education, monitoring, proper disposal, and enforcement. We have also worked to develop a nationwide, community-based prevention system that joins stakeholders at every level of government with local organizations that can deliver local solutions.

All of us can play a role in preventing drug and alcohol abuse. As our children's first teachers, parents and guardians can help by talking to their kids about the dangers of substance abuse. Alongside them, coalitions of teachers, faith-based groups, health care providers, law enforcement officials, and other local leaders are joining together to address substance abuse in their communities. As we observe National Substance Abuse Prevention Month, let us join in those vital efforts and reaffirm our vision for an America where each of us has the fullest opportunity to live in health and happiness.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2012 as National Substance Abuse Prevention Month. I call upon all Americans to engage in appropriate programs and activities to promote comprehensive substance abuse prevention efforts within their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–24703
Filed 10–3–12; 8:45 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8880 of October 1, 2012

Child Health Day, 2012

By the President of the United States of America

A Proclamation

As a Nation, we share an obligation to ensure the health and well-being of our children. The youth of today will shape America's tomorrow, and on Child Health Day, we rededicate ourselves to providing our next generation with access to the quality health care and clean environment that will nurture their future success.

My Administration has made the health of our Nation's children a top priority. Because of the Affordable Care Act, insurance companies can no longer deny coverage to children with pre-existing conditions. The law also allows young adults to stay on their parents' health insurance plan until age 26, which has brought coverage to more than 3 million Americans. My Administration has also taken action to ensure all our children can attend schools that are safe, where we address bullying and end the myth that it is a simple rite of passage. And through First Lady Michelle Obama's *Let's Move!* initiative, we are joining with parents, schools, and community leaders to address childhood obesity.

A safe environment in which our children can live and grow is also essential to their well-being. Because clean water is the foundation for healthy communities, we are working to reduce contaminants in our drinking water by updating standards and better protecting our water sources from pollution. We are also building on the successes of the Clean Air Act to improve our air quality and help decrease harmful toxins that can lead to acute bronchitis, asthma, cancer, and impaired development.

On Child Health Day, we are reminded that by giving our children a healthy start in life, we put them and our Nation on the path to a successful future. As we mark this important occasion, let us reaffirm our commitment to meeting that most fundamental responsibility.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as Child Health Day and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Monday, October 1, 2012, as Child Health Day. I call upon families, child health professionals, faith-based and community organizations, and all levels of government to help ensure America's children stay healthy.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–24709
Filed 10–3–12; 8:45 am]
Billing code 3295–F3

Rules and Regulations

Federal Register
Vol. 77, No. 193
Thursday, October 4, 2012

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[Docket No. NASA–2012–0004]

RIN 2700–AD78

Removal of Obsolete Regulation: Use of the Centennial of Flight Commission Name

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes nonsubstantive changes by removing a regulation that is obsolete and no longer used. The revision to this rule are part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open government Web site at *http://www.nasa.gov/open/*.

DATES: This direct final rule is effective on December 3, 2012. Comments due on or before November 5, 2012. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RIN 2700–AD78 and may be sent to NASA via the *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Nanette Jennings, 202–358–0819.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes to remove sections from the Code of Federal Regulations that are obsolete and no longer used. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Background

On January 18, 2011, President Obama signed EO 13563, Improving Regulations and Regulatory Review, directing agencies to develop a plan for a retrospective analysis of existing regulations. NASA developed its plan and published it on the Agency's open Government Web site at *http://www.nasa.gov/open/*. The Agency conducted an analysis of its existing regulations to comply with the Order and determined that section 1204. 506 entitled ''Delegation of Authority to License the Use of the Centennial of Flight Commission Name.''

Section 506, Delegation of Authority to License the Use of the Centennial of Flight Commission Name—The Centennial of Flight Commemoration Act of 1999 (the Act), Public Law 105–389, as amended by Public Law 106–68, was issued to establish the U.S. Centennial Flight Commission to assist in commemoration of the centennial of powered flight and the achievements of the Wright brothers' first powered flight at Kill Devil Hills, North Carolina, and to serve as a national and international source for activities commemorating this historic event. The Wright brothers, Orville and Wilbur, were two Americans credited with inventing and building the world's first successful airplane and making the first controlled, powered and sustained heavier-than-air human flight on December 17, 1903. Therefore, to plan for these commemorative activities, the Act authorized the NASA Administrator use of the Centennial of Flight Commission's name on any logo, emblem, seal, or descriptive or designating mark, after consultation with the Commission, in connection with the commemoration of the centennial of powered flight. Section 506 was promulgated to delegate the authority of the NASA Administrator to the Assistant Administrator for Public Affairs, without authority for further delegation. With this authority, NASA used the Centennial of Flight Commission's name on its exhibits, educational, historical and experimental programs and materials to support a year-long commemoration that started in December 2002. NASA's recognition of the Centennial ended December 17, 2003. Therefore, this section is no longer needed.

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113 (a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review

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). EO 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 as ''not significant'' under section 3(f) of EO 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This

requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule removes one section from Title 14 of the CFR and, therefore, does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under EO 13132

EO 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the EO. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1204

Authority delegations.

Accordingly, under the authority of the National Aeronautics and Space Act, as amended, NASA amends 14 CFR part 1204 as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

■ 1. The authority citation for part 1204 subpart 500 is revised to read as follows:

Authority: 51 U.S.C. 20113.

§ 1204.506 [Removed and Reserved]

■ 2. Remove and reserve § 1204.506.

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2012–23649 Filed 10–3–12; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1212

[Document No. NASA—NASA–2012–0005]

RIN 2700–AD86

Update of Existing Privacy Act—NASA Regulations

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This rule makes non-substantive changes to NASA rules governing implementation of the Privacy Act by updating statute citations, position titles, terminology, and adjusting appellate responsibility for records held by the NASA Office of the Inspector General. This revision is part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open Government Web site at *http://www.nasa.gov/open/*.

DATES: This rule is effective on December 3, 2012, unless adverse comments are received by November 5, 2012. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RIN 2700–AD86 and may be sent to NASA via the *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitted comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Patti Stockman, Office of the Chief Information Officer, 202–358–4787.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes to remove sections from the Code of Federal Regulations that are obsolete and no longer used. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Background

This rule was last published in the **Federal Register** as an interim final rule (FR 57 4928) on February 11, 1992. That revision changed internal Agency responsibility with regard to the handling of appeals, set forth general housekeeping policies and procedures, and made changes to comply with statutory requirements.

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20101(a), authorizes the NASA Administrator to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review

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 as ''not significant'' under section 3(f) of Executive Order 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule does not have any economic impact on small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under Executive Order of 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any

direct effects on state and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1212

Privacy, Procedural rules.

Accordingly, NASA amends 14 CFR part 1212 as follows:

PART 1212—PRIVACY ACT—NASA REGULATIONS

■ 1. The authority citation for part 1212 is revised to read as follows:

Authority: The National Aeronautics and Space Act, as amended, 51 U.S.C. 20101 *et seq.;* the Privacy Act of 1974, as amended, 88 Stat. 1896, 5 U.S.C. 552a.

§ 1212.100 [Amended]

■ 2. Section 1212.100 is amended by removing the words ''NASA Field Installations'' and adding in their place the words ''NASA Field Centers''.

§ 1212.101 [Amended]

■ 3. Section 1212.101 is amended:
■ a. In paragraph (e), by removing the word ''Installation,'' and adding in its place the word ''Center'' in two places;
■ b. In paragraph (h), by removing the word ''related'' and adding in its place the word ''relates''; and
■ c. By removing paragraph (i).

Subpart 1212.2—Requests for Access to Records

■ 4. The heading for subpart 1212.2 is revised to read as set forth above.

■ 5. Section 1212.200 is amended by:
■ a. Revising the section heading;
■ b. Revising the introductory text;
■ c. Adding ''under 5 U.S.C. 552a(d)(1)'' after the word ''record'' in paragraph (b); and
■ d. Adding ''under 5 U.S.C. 552a(c)(3)'' after the word ''records'' in paragraph (c).

The revisions read as follows:

§ 1212.200 Procedures for requesting records subject to the Privacy Act.

The procedures outlined in this subpart 1212.2 apply to the following types of requests made by individuals under the Privacy Act concerning records about themselves:

* * * * *

■ 6. Section 1212.201 is amended:
■ a. By revising the section heading;
■ b. In paragraph (c)(1), by adding ''Center Privacy Manager at'' before ''NASA Headquarters,'' and removing the words ''Installation Information'';
■ c. In paragraph (c)(2)(iv), by adding ''time periods in which the records are believed to have been compiled,'' before ''etc.''; and
■ d. By revising paragraph (e).

The revisions read as follows:

§ 1212.201 Determining existence of records subject to the Privacy Act.

* * * * *

(e) If the Center Privacy Manager receives a request for access, the Privacy Manager will record the date of receipt and immediately forward the request to the responsible system manager for handling.

* * * * *

§ 1212.203 [Amended]

■ 7. In § 1212.203, in paragraph (a), remove the parenthetical statement ''(See NASA Management Instruction (NMI) 1382.18)'' and in paragraph (b)(2) remove the reference ''(g)'' and add ''(f)'' in its place.

§ 1212.300 [Amended]

■ 8. In § 1212.300 introductory text, after ''system of records'' in the first sentence, add the words ''under the provisions of 5 U.S.C. 552a(d)(2)''.

■ 9. Amend § 1212.400:
■ a. In paragraph (a) introductory text, by removing the words ''to the Assistant Deputy Administrator'';
■ b. By redesignating paragraphs (b) through (e) as (c) through (f), respectively;
■ c. By adding new paragraph (b);
■ d. In newly redesignated paragraph (c)(1), by removing ''Assistant'' and adding in its place ''Associate,'' and adding after ''20546'' the phrase ''or to the Inspector General, NASA Headquarters, Washington, DC 20546, for records as specified in paragraph (b) of this section''; and
■ e. In newly redesignated paragraph (e):
■ i. Remove the two occurrences of ''Assistant'' and add in their place ''Associate''
■ ii. Add the words, ''or Inspector General for appeals concerning records originating in the Office of the Inspector General'' after the first occurrence of ''Deputy Administrator''; and
■ iii. Add the words, ''or Inspector General'' after the second occurrence of ''Deputy Administrator''.

The addition reads as follows:

§ 1212.400 Appeals.

* * * * *

(b) The Associate Deputy Administrator or designee is responsible for making final determinations of appeals as specified in paragraphs (a)(1) through (3) of this section for all Agency records, with the exception of those records originating in the Office of the Inspector General for which the Inspector General is responsible for making final determinations of appeals.

* * * * *

§ 1212.500 [Amended]

■ 10. In § 1212.500, in paragraph (b), remove ''Assistant'' and add in its place ''Associate''.

§ 1212.501 [Amended]

■ 11. Amend § 1212.501:
■ a. In paragraph (a)(1)(i), in the first sentence, by adding the word ''sections'' before the colon and after the words ''except the following'';
■ b. In the first sentence of paragraph (a)(1)(ii), by removing the words ''there may exist'' and adding the words ''may exist'' following the words ''investigative files''; and
■ c. In paragraph (a)(2)(ii)(D), by removing ''fullfill'' and adding in its place ''fulfill''.

§ 1212.601 [Amended]

■ 12. In § 1212.601, in paragraph (b), remove the phrase '', and the NASA system notice shall include a reference to the system notice of the other agency''.

■ 13. In § 1212.603, add a second sentence to read as follows:

§ 1212.603 Mailing lists.

* * * This is not to be construed to require the withholding of names and addresses otherwise permitted to be made public.

■ 14. In § 1212.605, in paragraph (a), remove the word ''Installation'' and add in its place ''Center'' and after ''Security Officer'' add ''or Center Information Technology Security Officer for electronic records maintained in automated systems'' and add a second sentence to read as follows:

§ 1212.605 Safeguarding information in systems of records.

(a) * * * Safeguards must insure the security and confidentiality of records and protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

* * * * *

■ 15. In § 1212.701:
■ a. Revise the section heading;
■ b. In the introductory text, remove ''Assistant'' and add ''Associate'' in its place;
■ c. Add to the end of paragraph (a) the phrase '', except on those related to records originating in the Office of the Inspector General''; and

■ d. Add to the end of paragraph (c) the phrase '', except for an appeal related to records originating in the Office of the Inspector General''.

The revision reads as follows:

§ 1212.701 Associate Deputy Administrator.

* * * * *

§§ 1212.702 through 1212.706 [Redesignated as §§ 1212.703 through 1212.707]

■ 16. Redesignate §§ 1212.702 through 1212.706 as §§ 1212.703 through 1212.707 and add a new § 1212.702 to read as follows:

§ 1212.702 The Inspector General.

The Inspector General is responsible for:

(a) Making final Agency determinations on appeals related to records originating with the Office of the Inspector General (§ 1212.400), and

(b) Authorizing an extension for making a final determination on an appeal related to records originating with the Office of the Inspector General (§ 1212.400(e)).

■ 17. In newly redesignated § 1212.703:

■ a. Revise the section heading;

■ b. In paragraph (a) introductory text, remove the phrase ''Associate Administrator for Management Systems and Facilities'' and add in its place ''NASA Chief Information Officer'';

■ c. In paragraph (b):

■ i. Remove the phrase ''Associate Administrator for Management Systems and Facilities'' and add in its place ''Chief Information Officer'';

■ ii. Remove the words ''Privacy Officer'' and add in its place ''NASA Privacy Act Officer''; and

■ iii. Remove the word ''or'' and the phrase ''reporting directly to the Associate Administrator for Management Systems and Facilities''.

The revision reads as follows:

§ 1212.703 NASA Chief Information Officer.

* * * * *

■ 18. In newly redesignated § 1212.704:

■ a. Revise the section heading;

■ b. In paragraph (a) introductory text, remove the word ''Installations'' and add in its place ''Centers'';

■ c. In paragraph (a)(3), remove the reference ''§ 1212.203(g)'' and add in its place ''§ 1212.203(f)'';

■ d. In paragraph (a)(4), remove the reference ''§ 1212.704'' and add in its place ''§ 1212.705'';

■ e. Add paragraph (a)(5); and

■ f. Remove and reserve paragraph (b).

The revision reads as follows:

§ 1212.704 Headquarters and Field Centers or Component Facilities.

(a) * * *

(5) Establish a position of Center Privacy Manager to assist in carrying out the responsibilities listed in this section.

* * * * *

■ 19. In newly redesignated § 1212.705:

■ a. Revise paragraph (a)(1);

■ b. In paragraph (a)(3), remove the word ''Assistant'' and add in its place ''Associate'';

■ c. In paragraph (a)(7), remove the reference ''§ 1212.203(g)(1) through (12)'' and add in its place ''§ 1212.203(f)(1) through (12)'';

■ d. In paragraph (a)(12), remove ''14 CFR'' and add in its place ''§ '' and add the words ''of this part'' after ''1212.203'';

■ e. In paragraph (c), remove the word ''Installation'' and add in its place ''Center'' and remove the reference ''§ 1212.703(a)(4) and (b)'' and add in its place ''§ 1212.704(a)(4) and (5)''

§ 1212.705 System manager.

(a) * * *

(1) Overall compliance with this part, NASA Policy Directive (NPD) 1382.17 and NASA Procedural Requirements (NPR) 1382.1.

* * * * *

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2012–23645 Filed 10–3–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Change of Sponsor's Address; Monensin; Spinosad; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) during August 2012 and to reflect a change of sponsor's address for Baxter Healthcare Corp. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective October 4, 2012.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect original and supplemental approval actions during August 2012, as listed in table 1 of this document. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room. FOI Summaries may be found listed by application number at: *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/FOIADrugSummaries/default.htm*. Environmental assessments and findings of no significant impact may be found listed by the established name of the active pharmaceutical ingredient at: *http://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/EnvironmentalAssessments/ucm300656.htm*.

Also, Baxter Healthcare Corp., 95 Spring St., New Providence, NJ 07974, has informed FDA of a change of address to One Baxter Pkwy., Deerfield, IL 60015. Accordingly, the Agency is amending the regulations in 21 CFR 510.600(c) to reflect this change.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS APPROVED DURING AUGUST 2012

NADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
141–343	Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	PULMOTIL 90 (tilmicosin phosphate) plus RUMENSIN 90 (monensin) Type A medicated articles.	Original approval for use in two-way, combination drug type B and type C medicated feeds for cattle fed in confinement for slaughter.	558.355 558.618	yes	CE [1]
141–277	Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	COMFORTIS (spinosad) Chewable Tablets.	Supplemental approval for use in cats to kill fleas and for the prevention and treatment of flea infestations (*Ctenocephalides felis*) for 1 month on cats and kittens 14 weeks of age and older and 2 pounds of body weight or greater.	520.2130	yes	CE [1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

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.

21 CFR Part 558

Animal drugs, Animal feeds.

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, 520, and 558 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), revise the entry for ''Baxter Healthcare Corp.''; and in the table in paragraph (c)(2), revise the entry for ''010019'' 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
* * * * *	
Baxter Healthcare Corp., One Baxter Pkwy., Deerfield, IL 60015.	010019
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
010019	Baxter Healthcare Corp., One Baxter Pkwy., Deerfield, IL 60015.
* * * * *	

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.

■ 4. Revise § 520.2130 to read as follows:

§ 520.2130 Spinosad.

(a) *Specifications.* Each chewable tablet contains 90, 140, 270, 560, 810, or 1620 milligrams (mg) spinosad.

(b) *Sponsor.* See No. 000986 in § 510.600 of this chapter.

(c) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer tablets once a month at a recommended minimum dosage of 13.5 mg per pound (30 mg per kilogram) of body weight.

(ii) *Indications for use.* To kill fleas and for the prevention and treatment of flea infestations (*Ctenocephalides felis*) for 1 month on dogs and puppies 14 weeks of age and older and 3.3 pounds of body weight or greater.

(2) *Cats*—(i) *Amount.* Administer tablets once a month at a minimum dosage of 22.5 mg per pound (50 mg per kilogram) of body weight.

(ii) *Indications for use.* To kill fleas and for the prevention and treatment of flea infestations (*C. felis*) for 1 month on cats and kittens 14 weeks of age and older and 2 pounds of body weight or greater.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 6. In § 558.355, redesignate paragraph (f)(8)(iv) as paragraph (f)(8)(v); and add new paragraph (f)(8)(iv) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(8) * * *

(iv) Tilmicosin alone or in combination as in § 558.618.

* * * * *

■ 7. In § 558.618, remove and reserve paragraph (c)(3)(ii); and revise paragraph (e) to read as follows:

§ 558.618 Tilmicosin.

* * * * *

(e) * * *

(1) *Swine*—

Tilmicosin phosphate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 181 to 363	.....	Swine: For the control of swine respiratory disease associated with *Actinobacillus pleuropneumoniae* and *Pasteurella multocida*.	Feed continuously as the sole ration for 21-day period, beginning approximately 7 days before an anticipated disease outbreak. The safety of tilmicosin has not been established in male swine intended for breeding purposes. Swine intended for human consumption must not be slaughtered within 7 days of the last treatment with this drug product.	000986
(ii) [Reserved] ...	.....	.....	.....	000986

(2) *Cattle*—

Tilmicosin phosphate in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 568 to 757	.....	Beef and nonlactating dairy cattle: For the control of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Histophilus somni* in groups of beef and nonlactating dairy cattle, where active BRD has been diagnosed in at least 10 percent of the animals in the group.	Feed continuously for 14 days to provide 12.5 milligrams/kilogram/head/day. The safety of tilmicosin has not been established in cattle intended for breeding purposes. This drug product is not approved for use in female dairy cattle 20 months of age or older. Use in these cattle may cause drug residues in milk. This drug product is not approved for use in calves intended to be processed for veal. A withdrawal period has not been established in preruminating calves. Cattle intended for human consumption must not be slaughtered within 28 days of the last treatment with this drug product.	000986
(ii) 568 to 757 ...	Monensin, 5 to 40.	Cattle fed in confinement for slaughter: For improved feed efficiency; and for the control of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Histophilus somni* in groups of cattle fed in confinement for slaughter, where active BRD has been diagnosed in at least 10 percent of the animals in the group.	Feed continuously for 14 days to provide 12.5 milligrams tilmicosin/kilogram/head/day. The safety of tilmicosin has not been established in cattle intended for breeding purposes. This drug product is not approved for use in female dairy cattle 20 months of age or older. Use in these cattle may cause drug residues in milk. This drug product is not approved for use in calves intended to be processed for veal. A withdrawal period has not been established in pre-ruminating calves. Cattle intended for human consumption must not be slaughtered within 28 days of the last treatment with this drug product. See § 558.355(d) of this chapter.	000986
(iii) 568 to 757 ..	Monensin, 10 to 40.	Cattle fed in confinement for slaughter: For prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii;* and for the control of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Histophilus somni* in groups of cattle fed in confinement for slaughter, where active BRD has been diagnosed in at least 10 percent of the animals in the group.	Feed continuously for 14 days to provide 12.5 milligrams tilmicosin/kilogram/head/day. The safety of tilmicosin has not been established in cattle intended for breeding purposes. This drug product is not approved for use in female dairy cattle 20 months of age or older. Use in these cattle may cause drug residues in milk. This drug product is not approved for use in calves intended to be processed for veal. A withdrawal period has not been established in pre-ruminating calves. Cattle intended for human consumption must not be slaughtered within 28 days of the last treatment with this drug product. See § 558.355(d) of this chapter.	000986

Dated: September 28, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–24475 Filed 10–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 542 and 543

RIN 3141–AA–37

Minimum Internal Control Standards for Class II Gaming

AGENCY: National Indian Gaming Commission.

ACTION: Final rule; delay of effective date; suspension.

SUMMARY: The National Indian Gaming Commission (NIGC) announces the delay of the effective date of a rule published in the **Federal Register** on October 10, 2008. The Commission also announces the suspension of regulations. These changes are intended to maintain the regulatory status quo while tribes and operations transition to the new Class II Minimum Internal Control Standards that were published on September 21, 2012.

DATES: The effective date for amendments to §§ 542.7 and 542.16 in the final rule published October 10, 2008, 73 FR 60492, delayed October 9, 2009, at 74 FR 52138, September 10, 2010, at 75 FR 55269, and August 30, 2011, at 76 FR 53817, is further delayed until April 22, 2014. Section 543.3(c)(3) is suspended until 11:59 p.m. October, 21, 2012. Submit comments on or before October 11, 2012.

ADDRESSES: Send comments to Jennifer Ward, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005; email: *reg.review@nigc.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer Ward, Attorney, NIGC Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission under the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701–21 (IGRA), to regulate gaming on Indian lands. The NIGC published a final rule on September 21, 2012, that will supersede the existing part 543, Minimum Internal Control Standards Class II Gaming, with comprehensive and updated standards, effective October 22, 2012. The 2012 rule also provides up to 18 months for operations to implement the new standards.

During this transition period, the Commission desires to maintain the existing standards in part 542, as they apply to Class II gaming. Some of these standards, § 542.7 (Bingo) and § 542.16 (Information technology) are scheduled to be removed effective October 12, 2012 in accordance with the final rule, published on October 10, 2008. (73 FR 60492; delayed by 74 FR 52138, 75 FR 55269, and 76 FR 53817). In order to preserve regulation for these areas during the transition period, the Commission delays the effective date for removing §§ 542.7 and 542.16 until April 22, 2014.

Similarly, the 2008 final rule also set forth a requirement at § 543.3(c)(3) that required tribal operators to come into compliance with tribal internal control standards within a certain timeframe. This deadline was also extended numerous times, most recently by 76 FR 53817, to October 12, 2012. (74 FR 52138, 75 FR 55269, and 76 FR 53817). Rather than requiring operations to implement standards for the ten days before the 2012 final rule takes effect, the Commission suspends § 543.3(c)(3) until 11:59 p.m. October 21, 2012, after which time the standard will be overwritten by the final rule published on September 21, 2012 (77 FR 58708).

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0012, which expired in August of 2011. The NIGC published a notice to reinstate that control number on April 25, 2012. 77 FR 24731. There is no change to the paperwork created by this revision.

List of Subjects

25 CFR Part 542

Accounting, Gambling, Indian—Indian lands, Reporting and recordkeeping requirements.

25 CFR Part 543

Administrative practice and procedure, Gambling, Indian—Indian lands, Reporting and recordkeeping requirements.

For the reasons set forth above, under the authority at 25 U.S.C. 2701, 2702, 2706, *et seq.,* the effective date for the amendments removing and reserving §§ 542.7 and 542.16 in the final rule published October 10, 2008 (73 FR 60492), delayed October 9, 2009, at 74 FR 52138, September 10, 2010, at 75 FR 55269, and August 30, 2011, at 76 FR 53817, is further delayed from October 12, 2012, until April 22, 2014, and 25 CFR part 543 is amended as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

■ 1. The authority citation for part 543 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

§ 543.3 [Amended]

■ 2. Section 543.3(c)(3) is suspended until 11:59 p.m., October 21, 2012.

Dated: September 28, 2012.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel Little,

Associate Commissioner.

[FR Doc. 2012–24462 Filed 10–3–12; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0151; FRL–9735–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; The 2002 Base Year Emissions Inventory for the Washington DC-MD-VA Nonattainment Area for the 1997 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the Virginia State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), on April 4, 2008. The emissions inventory is part of the April 4, 2008 SIP revision that was submitted to meet nonattainment requirements related to Virginia's portion of the Washington DC-MD-VA nonattainment area (hereafter referred to as Virginia Area or Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) SIP. EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 5, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0151. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) 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 *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 31, 2012 (77 FR 45304), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the 2002 base year emissions inventory portion of the Virginia SIP revision. The formal SIP revision was submitted by the Commonwealth of Virginia on April 4, 2008.

II. Summary of SIP Revision

The 2002 base year emissions inventory submitted by VDEQ on April 4, 2008 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by VDEQ. The year 2002 was selected by VDEQ as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in Appendix B of the April 4, 2008 SIP submittal and in the NPR. Specific requirements of the base year inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory as a revision to the Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 December 3, 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 pertaining to the $PM_{2.5}$ 2002 base year emissions inventory portion of the Virginia SIP 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, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 13, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding at the end of the table an entry for ''2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard'' to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	Virginia portion of the Washington DC-MD-VA 1997 $PM_{2.5}$ nonattainment area.	4/4/08	10/4/12 [*Insert page number where the document begins*].	§ 52.2425(f)

■ 3. In § 52.2425, paragraph (f) is added to read as follows:

§ 52.2425 Base Year Emissions Inventory.

* * * * *

(f) EPA approves as a revision to the Virginia State Implementation Plan the 2002 base year emissions inventory for the Virginia portion of the Washington DC–MD–VA 1997 fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Virginia Department of Environmental Quality on April 4, 2008. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2).

[FR Doc. 2012–24382 Filed 10–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0912; FRL–9722–2]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Oregon (the State). The submission addresses transportation conformity requirements. EPA is approving the submission in accordance with the requirements of the Clean Air Act (the Act).

DATES: This action is effective on November 5, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number: EPA–R10–OAR 2010–0912. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be 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 in *www.regulations.gov* or in hard copy during normal business hours at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Region Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Chi at telephone number: (206) 553–1230, or Claudia Vergnani Vaupel at telephone number: (206) 553–6121, email address: *vaupel.claudia@epa.gov,* fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

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

I. Background

On June 1, 2012 (77 FR 32481), EPA proposed to approve a SIP revision that revises the State of Oregon's (the State) transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures. Transportation conformity is required under section 176(c) of the Act to ensure that federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide, and nitrogen dioxide.

Oregon's SIP revision updates the State's transportation conformity provisions, Oregon Administrative Rules (OAR) Division 252, to be consistent with the Act as amended by the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) and EPA regulations (40 CFR Part 93 and 40 CFR 51.390). Oregon's SIP revision also adds a provision that requires approval by the air quality agency in order for a Metropolitan Planning Organization (MPO) to shorten the timeframe of a conformity determination (OAR–340–252–0070). EPA has reviewed the submittal to assure consistency with the Act as amended by SAFETEA–LU and EPA regulations (40 CFR Part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable with the exception of two sentences providing an example in OAR–340–252–0070 for shortening the conformity timeframe. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, the EPA identifies how the submitted procedures, as clarified by the State's August 31, 2011, supplementary letter, satisfy the requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

No relevant adverse comment was received on the proposal and today EPA is taking final action to approve the proposed SIP amendments without change.[1] EPA is, accordingly, taking final action to approve the SIP revision as discussed in EPA's notice of proposed rulemaking.

II. Final Action

EPA is approving the SIP revision that was submitted by the State of Oregon on October 6, 2010, with the exception of an example in OAR–340–252–0070 for shortening the conformity timeframe as discussed in EPA's notice of proposed rulemaking. EPA is also taking no action on OAR–340–200–0040 (Oregon Clean Air Act Implementation Plan), which was included in the State's SIP submission, because this section merely describes the State's procedures for adopting its SIP and incorporates by reference all of the revisions adopted by Oregon's Environmental Quality commission for approval into the Oregon SIP (as a matter of state law).

III. 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 by December 3,

[1] One comment was submitted that raised issues pertaining to critical habitat designations on private lands, which is not germane to this rulemaking.

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

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 MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(139)(i)(C) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(139) * * *

(i) * * *

(C) Based on a SIP revision submitted by Oregon on October 6, 2010, and later supplemented in a letter submitted by the state on August 31, 2011, the following provisions from Oregon's Adminstrative Rules (OAR), Division 252, ''Transportation Conformity,'' are removed from the SIP.

(1) The following provisions, as effective October 14, 1999, are replaced by revised provisions effective March 5, 2010, Rules 340: 252–0030, 252–0060, 252–0070 (except the last two sentences), and 252–0230.

(2) The following provisions, as effective October 14, 1999, are removed without replacement, Rules 340: 252–0020 (except paragraph (3)), 252–0040, 252–0050 (except paragraphs (4) & (5)(b)), 252–0080, 252–0090, 252–0100 (except paragraphs (3) through (6)), 252–0110, 252–0120, 252–0130, 252–0140, 252–0150, 252–0160, 252–0170, 252–0180, 252–0190 (except paragraph (5)), 252–0200 (except paragraph (6)(c)), 252–0210 (except paragraph (1)(b)), 252–0220 (except paragraphs (1)(a) & (2)), 252–0240, 252–0250 (except paragraph (2)), 252–0260, 252–0270, 252–0280, and 252–0290.

* * * * *

[FR Doc. 2012–24376 Filed 10–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 162

[CMS–0040–CN]

RIN 0938–AQ13

Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for the International Classification of Diseases, 10th Edition (ICD–10–CM and ICD–10–PCS) Medical Data Code Sets; Corrections

AGENCY: Office of the Secretary, HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors in the final rule titled ''Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for the International Classification of Diseases, 10th Edition (ICD–10–CM and ICD–10–PCS) Medical Data Code Sets'' that appeared in the September 5, 2012 **Federal Register**.

DATES: *Effective Date:* November 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kari Gaare (410) 786–8612.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–21238 of September 5, 2012 (77 FR 54664), there were a number of technical errors that are identified and corrected in the Correction of Errors section. The provisions in this correction document are effective as if they had been included in the final rule published on September 5, 2012. Accordingly, the corrections are effective on November 5, 2012.

II. Summary of Errors

A. Summary of Errors in the Preamble

In FR Doc. 2012–21238 of September 5, 2102, there were the following errors:

On page 54674, in our discussion of the adoption of the International Organization for Standardization (ISO) Standard, we inadvertently mischaracterized a public comment. In the final rule, we used the phrase ''capacity but was concerned'' instead of ''capacity and was concerned.''

On page 54708, in our discussion of HPID savings, we referenced Table 14, which provides the cost in 2014 of a 1-year delay in the compliance date of ICD–10, rather than Table 10, which provides annual costs savings for providers from an increase in the volume of three electronic transactions due to the use of HPID.

On page 54714, in our discussion of the net cost avoidance associated with a 1-year delay of ICD–10, we inadvertently referenced Table 17, which provides a summary of the cost avoidance and costs in 2014 of a 1-year delay in the compliance date of ICD–10 rather than Table 18, which provides the cost avoidance less cost (net) of a 1-year delay in the compliance date of ICD–10.

B. Summary of Errors in the Regulations Text

On page 54719, in § 162.504, we made the following errors:

- In paragraph (a), we inadvertently stated that the compliance date for covered entities to comply with the implementation specification in § 162.510 is no later than November 5, 2014 instead of November 7, 2016.
- In paragraph (b)(1), we inadvertently omitted language describing the type of health plan subject to the regulatory requirement.
- In paragraph (b)(2), we inadvertently stated that the compliance date for small health plans was no later than November 5, 2014 instead of November 5, 2015.

On page 54679, in the HPID effective date and compliance requirements section of the September 5, 2012 final rule, we describe and discuss our final policy for HPID compliance. While we inadvertently inserted incorrect dates in the regulation text, the HPID effective date and compliance requirements are clearly stated in the preamble, as well as Chart 1 (see 77 FR 54679). The final policy, which is clearly reflected in the preamble discussion, is that health plans that are not small health plans must obtain HPIDs by November 5, 2014. Small health plans must obtain HPIDs by November 5, 2015. All

covered entities must comply with the implementation requirements in § 162.510 by November 7, 2016. We are correcting the regulation text so that it accurately reflects our final policy.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive these notice and comment procedures if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

In our view, this correcting document does not constitute a rule that would be subject to the APA notice and comment procedures. This correcting document corrects technical and typographical errors in the preamble and regulations text of the September 5, 2012 final rule and does not make substantive changes to the policies that were adopted. As a result, this correcting document is intended to ensure that the final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rule to which the notice and comment procedures applied, we find that there is good cause to waive such procedures. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule, but simply conforming our regulation text to our final policies. Therefore, we believe we have good cause to waive the notice and comment procedures.

IV. Correction of Errors

In FR Doc. 2012–21238 of September 5, 2012 (77 FR 54664), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 54674, third column, second full paragraph, lines 15 and 16, the phrase ''capacity but was concerned'' is corrected to read ''capacity and was concerned''.

2. On page 54708, lower quarter of the page (after Table 9), third column, first partial paragraph, line 1, the reference ''Table 14'' is corrected to read ''Table 10''.

3. On page 54714, third column, fourth full paragraph, line 1, the reference ''Table 17'' is corrected to read ''Table 18''.

B. Correction of Errors to the Regulations Text

1. On page 54719, in the second column—

a. Sixth full paragraph (§ 162.504(a)), line 4, the date ''November 5, 2014'' is corrected to read ''November 7, 2016''.

b. Eighth paragraph (§ 162.504(b)(1)), the sentence ''A health plan that November 5, 2014.'' is corrected to read ''A health plan that is not a small health plan— November 5, 2014.''.

c. Ninth paragraph (§ 162.504(b)(2)), last line, the date ''November 5, 2014'' is corrected to read ''November 5, 2015''.

Dated: September 27, 2012.

Oliver Potts,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2012–24329 Filed 10–3–12; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations of the Commission's rules, which were published in the **Federal Register** on Monday, May 2, 2011, 76 FR 24393. The final regulations address fraud, waste, and abuse in the Video Relay Service (VRS) industry.

DATES: Effective October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559–5158 (voice/videophone), or email *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending 47 CFR 64.604 in the **Federal Register** of May 2, 2011, (76 FR 24393). The amended rules are necessary to properly detect anomalies in submitted minutes, which can alert the Interstate Telecommunications Relay Service (TRS) Fund administrator and the Commission on the need to inquire further about, and if necessary, conduct an investigation into the legitimacy of such minutes.

Need for Correction

As published, the final regulations inadvertently referenced inaccurate regulatory text which may prove to be confusing and needs to be corrected accordingly.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (c)(5)(iii)(D)(*2*) to read as follows:

§ 64.604 Mandatory minimum standards.

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*2*) Call data required from all TRS providers. In addition to the data requested by paragraph (c)(5)(iii)(C)(*1*) of this section, TRS providers seeking compensation from the TRS Fund shall submit the following specific data associated with each TRS call for which compensation is sought:

(*i*) The call record ID sequence;

(*ii*) CA ID number;

(*iii*) Session start and end times noted at a minimum to the nearest second;

(*iv*) Conversation start and end times noted at a minimum to the nearest second;

(*v*) Incoming telephone number and IP address (if call originates with an IP-based device) at the time of the call;

(*vi*) Outbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call;

(*vii*) Total conversation minutes;

(*viii*) Total session minutes;

(*ix*) The call center (by assigned center ID number) that handled the call; and

(x) The URL address through which the call is initiated.

* * * * *

[FR Doc. 2012–24546 Filed 10–3–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–XC222

Fraser River Sockeye Salmon Fisheries; Inseason Orders

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

ACTION: Temporary orders; inseason orders.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate treaty and non-treaty (all citizen) commercial salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2012 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen commercial fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye salmon tribal and non-tribal commercial fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by Regional Administrator, Northwest Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1) and in 77 FR 25915 (May 2, 2012). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2012 orders are being published in this single document to avoid fragmentation.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2012 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) and in 77 FR 25246 (May 2, 2012); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Fraser River Panel Order Number 2012–01: Issued 12:30 p.m., July 24, 2012

Treaty Indian Fisheries:

Areas 4B, 5, and 6C: Open to drift gillnets from 12 p.m. (noon), Wednesday, July 25, 2012 to 12 p.m. (noon), Saturday, July 28, 2012.

Fraser River Panel Order Number 2012–02: Issued 12:30 p.m., July 30, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Open to drift gillnets 3 p.m., Monday, July 30, 2012, to 12 p.m. (noon), Wednesday, August 1, 2012.

Fraser River Panel Order Number 2012–03: Issued 12:30 p.m., July 31, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 1, 2012 through 12 p.m. (noon), Saturday, August 4, 2012.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Thursday, August 2, 2012 through 9 a.m., Friday, August 3, 2012.

All Citizen Fishery:

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Wednesday, August 1, 2012.

Areas 7 and 7A: Open to reef nets from 5 a.m. to 9 p.m., Wednesday, August 1, 2012.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Wednesday, August 1, 2012.

Fraser River Panel Order Number 2012–04: Issued 12:30 p.m., August 3, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 4, 2012, through 12 p.m. (noon), Tuesday, August 7, 2012.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Saturday, August 4, 2012 through 9 a.m., Sunday, August 5, 2012.

Fraser River Panel Order Number 2012–05: Issued 1 p.m., August 6, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Tuesday, August 7, 2012 to 12 p.m. (noon), Wednesday, August 8, 2012.

Fraser River Panel Order Number 2012–06: Issued 12:30 p.m., August 7, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 8, 2012 through 12 p.m. (noon), Saturday, August 11, 2012.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Wednesday, August 8, 2012 through 9 a.m., Thursday, August 9, 2012.

All Citizen Fishery:

Areas 7 and 7A: Open to purse seines from 8 a.m. to 2 p.m., Friday, August 10, 2012.

Areas 7 and 7A: Open to reef nets from 5 a.m. to 9 p.m., Saturday, August 11, 2012.

Areas 7 and 7A: Open to gillnets from 1 p.m. to 11 p.m., Thursday, August 9, 2012.

Fraser River Panel Order Number 2012–07: Issued 12:45 p.m., August 10, 2012

Treaty Indian Fishery:

Areas 4B, 5, and 6C: Drift gillnets, previously scheduled to be open through 12 p.m. (noon), Saturday, August 11, 2012, will now close at

6 p.m., Friday, August 10, 2012.

Fraser River Panel Order Number 2012–08: Issued 11:30 a.m., August 21, 2012

Relinquish regulatory control of all United States Panel Area waters effective 12:01 a.m., Sunday, September 2, 2012.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 1, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–24541 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120416016–2469–02]

RIN 0648–BB96

Atlantic Highly Migratory Species; Silky Shark Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 11–08, which prohibits retaining, transshipping, or landing of silky sharks (*Carcharhinus falciformis*) caught in association with ICCAT fisheries. In order to facilitate domestic compliance and enforcement, NMFS also prohibits the storing, selling, and purchasing of the species. This rule primarily affects the commercial Atlantic highly migratory species (HMS) pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This rule does not affect commercial fishermen fishing for sharks with bottom longline, gillnet, or handgear, and it does not further affect recreational fishermen because harvesting silky sharks is already prohibited in the recreational fishery. This action implements the ICCAT recommendation, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective November 5, 2012.

ADDRESSES: Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), and others, such as the Fishery Management Plans described below, may be downloaded from the Highly Migratory Species (HMS) Management Division Web site at *www.nmfs.noaa.gov/sfa/hms/*. These documents also are available by request at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Peter Cooper or Karyl Brewster-Geisz by phone: 301–427–8503 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act and ATCA, 16 U.S.C. 971 *et seq.* Under ATCA, the Secretary of Commerce (Secretary) shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at *http://www.iccat.int/en/*. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

At the 22nd Regular Meeting of ICCAT in 2011, ICCAT adopted Recommendation 11–08 (the ''Recommendation by ICCAT on the Conservation of Silky Sharks Caught in Association with ICCAT Fisheries''), which requires the United States to initiate rulemaking in order to fulfill obligations as a Contracting Party to the Convention. Recommendation 11–08 requires fishing vessels operating in ICCAT-managed fisheries to release all silky sharks whether dead or alive, and prohibits retaining on board, transshipping, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*). The ICCAT recommendation cites the fact that silky sharks were ranked as the species with the highest degree of vulnerability in ICCAT's 2010 ecological risk assessment for Atlantic sharks.

Further background information, including the need for these silky shark management measures, was provided in the preamble to the proposed rule (77 FR 37647, June 22, 2012) and is not repeated here.

NMFS prepared an EA/RIR/FRFA, which presents and analyzes anticipated environmental, social, and economic impacts of each alternative contained in this final rule. The complete list of alternatives and related analyses is provided in the EA/RIR/FRFA, and is not repeated here. A copy of the EA/RIR/FRFA prepared for this action is available from NMFS (see **ADDRESSES**).

In this final action, NMFS prohibits the retention of silky sharks on Atlantic HMS commercially-permitted vessels that have pelagic longline gear on board. As described in the Changes from the Proposed Rule section below, this final action also prohibits the retention of silky sharks on vessels that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. Additionally, as described in the response to comments below and in the EA, NMFS prohibits the storing, selling, or purchasing of silky sharks to facilitate domestic compliance and enforcement.

Comments and Responses

NMFS received five written public comments on the proposed rule. There were no attendees at the public hearing held via conference call on July 9, 2012. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule.

Comment 1: Given concerns about the vulnerability of silky sharks, retention of silky sharks should be prohibited in all HMS fisheries (commercial and recreational), and these species should be added to the prohibited species list.

Response: The purpose of this action is to implement ICCAT Recommendation 11–08, which requires the release of silky sharks ''caught in association with ICCAT fisheries.'' Consistent with previous rulemakings (see response to comment 2, below), NMFS interprets ''ICCAT fisheries'' to mean fisheries for tuna and tuna-like species and to not include directed shark fisheries or other HMS fisheries. Therefore, the request to expand this requirement to other fisheries is outside the scope of this rulemaking. NMFS manages the U.S. directed commercial shark fisheries through a variety of domestic management measures consistent with the requirements of the Magnuson-Stevens Act. The commenter further requested that we add silky sharks to the prohibited species list under the Magnuson-Stevens Act. That request is also beyond the scope of this rulemaking to implement ICCAT Recommendation 11–08 under ATCA.

Comment 2: The proposed rule fails to satisfy the federal government's ICCAT obligations by continuing to allow silky sharks to be retained in fisheries other than the pelagic longline fishery, which are clearly included in the scope of ICCAT recommendations. Whether or not a fishery is targeting sharks is irrelevant. NMFS must consider all HMS fisheries that are allowed to retain tuna or tuna-like species to be ICCAT fisheries and must therefore prohibit retention of silky sharks in all of them. If the true intent is to ensure a reduction in silky shark mortality and to ensure that ICCAT measures are enforced, then these prohibitions should apply to all HMS fisheries.

In the process of making the point above, one commenter incorrectly quoted the text of ICCAT Recommendation 11–08 as ''prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of silky sharks taken in the Convention Area in association with ICCAT fisheries.''

Response: The relevant ICCAT recommendation was limited in scope to silky sharks caught in association with ICCAT-managed fisheries. Therefore, the requirement to release all silky sharks will be applied only to U.S. fisheries that target tuna and tuna-like species. This action would affect primarily commercial vessels with pelagic longline gear onboard that fish for tunas and tuna-like species. During the preparation of the final rule and in response to the comment, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), the regulatory language associated with this action needed to be revised to specify that the prohibition on retention also applies to a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. Harvesting silky sharks is already prohibited in the recreational fishery. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the ''ICCAT fisheries'' subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

U.S. commercial shark fisheries using gear other than pelagic longline currently are managed through a variety of measures, including quotas and subquotas, seasons, retention limits, gear restrictions, and time/area closures. Although silky sharks could be caught on handgear, bottom longline, or gillnet gear, these gears directly target sharks and are not used in association with ICCAT fisheries. Additionally, while it is possible to catch tuna and tuna-like species using handgear, bottom longline, and gillnet gear, this rarely occurs when these gear types are used to target sharks. For example, data from observed bottom longline and gillnet trips show bycatch of two sailfish, no swordfish, and no managed tunas in 2010 (NMFS, 2011) and three bigeye tuna and one skipjack tuna in 2011 (Gulak, 2012; Hale *et al.,* 2012).

Because there are three separate ICCAT shark recommendations with similar language, NMFS would like to clarify the differences in the text to reduce potential confusion. Under Recommendation 10–07, ICCAT parties are required to ''prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks in any fishery.'' Under Recommendation 10–08, ICCAT parties are required to ''prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family *Sphyrnidae* (except for *Sphyrna tiburo*) taken in the Convention Area in association with ICCAT fisheries.'' The language in these two recommendations differs from that in Recommendation 11–08, under which ICCAT parties ''shall require fishing vessels flying their flag and operating in ICCAT managed fisheries to release all silky sharks whether dead or alive, and prohibit retaining on board, transshipping, or landing any part or whole carcass of silky shark.'' Recommendation 11–08 for silky sharks does not include language that prohibits storing, selling and purchasing any part of the shark species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention.

Comment 3: NMFS' proposal to prohibit retention of silky sharks only when tuna or tuna-like species are also retained is flawed and may increase dead discards. A fisherman may catch and keep a silky shark, thus killing the shark. If the fisherman then catches a tuna or tuna-like species that he would prefer to keep, the fisherman will dump the shark overboard dead. The discard mortality would be significantly higher than if the shark had been released immediately after being captured.

Response: The action NMFS is taking is to prohibit the retention of silky sharks on Atlantic HMS commercially-permitted vessels in the commercial ICCAT fisheries, primarily affecting those that have pelagic longline gear on

board. Under this action, in the scenario the commenter describes, a pelagic longline vessel would be required to release the silky shark regardless of what other species may be caught on the same trip because of the pelagic longline gear onboard. A vessel issued both an HMS Charter/Headboat permit and a commercial shark permit would not be able to retain both a tuna and a silky shark. This is a very small number of vessels, however, and very few such situations are expected to arise.

An analysis of the 2006–2010 HMS logbook data indicates that, on average, a total of 60 silky sharks are kept per year. An additional 1,417 silky sharks per year were caught (on average) and subsequently discarded (676 released alive and 742 discarded dead, on average). NMFS does not expect the actual number caught (1,477 per year on average) to change as a result of this action because fishermen participating in the pelagic longline fishery do not target or retain large numbers of silky sharks now and charter vessels typically do not target or land silky sharks when they have tunas or tuna-like species on board. NMFS estimates that, of the 60 silky sharks that are currently retained (on average), 17 (29 percent) would be released alive as a result of this rulemaking. The number of silky sharks discarded dead would increase slightly (from 742 to 785, on average) since pelagic longline vessels would no longer be able to retain any silky sharks, and one or two silky sharks might have to be released by vessels with the specified HMS Charter/Headboat and commercial shark permit combination. In addition, current regulations require that when HMS are released, they be released in a manner that will ensure maximum probability of survival, without removing the fish from the water. This is consistent with the provision of Recommendation 11–08 to promptly release silky sharks unharmed.

Comment 4: One commenter questioned NMFS' data on shark mortality, indicating it is antiquated, obsolete, and inaccurate, and stated that ICCAT is too lax and negligent in protection of species.

Response: The information NMFS used for the environmental and economic analyses for this action includes both pelagic longline observer program (POP) data and HMS logbook data from 2006 through 2010. Complete, finalized data from 2011 were not available at the time the draft EA/RIR/IRFA. NMFS conducted an analysis of the newly available 2011 data during the public comment period for this action and determined that, in general, the inclusion of the 2011 data would not substantially alter any of the data presented in the draft EA/RIR/IRFA, or result in any changes to the overall conclusions or preferred alternatives of the draft document.

NMFS has undertaken management measures for all Atlantic HMS species fully consistent with its legal obligations under the Magnuson-Stevens Act, ATCA, and other relevant statutes.

Comment 5: One commenter opposed using ICCAT as a vehicle for management of all sharks, especially large coastal sharks, until there is firm progress from other countries actively participating in pelagic shark conservation. Further, seeking shark recommendations at ICCAT circumvents U.S. domestic fisheries law, including the National Standards of the Magnuson-Stevens Act, and is contrary to the Food and Agriculture Organization of the United Nations (FAO) International Plan of Action, which ''encourages the full use of dead sharks.''

Response: ATCA requires NMFS to implement recommendations adopted at ICCAT regardless of progress from other countries actively participating in pelagic shark conservation. Contracting Parties are required to implement all measures adopted by the commission in their waters. Issues concerning Contracting Parties' non-compliance with ICCAT recommendations are addressed in the compliance committee. As described under Comment 1 above, NMFS does not manage the U.S. directed shark fishery for LCS or other shark species under ICCAT/ATCA.

The Shark Conservation Act of 2010 includes a provision that urges international fishery management organizations to which the United States is a member to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark and discarding the carcass of the shark at sea.

For example, in the case of shortfin mako, where the United States' contribution to the overall fishing mortality is small relative to other ICCAT Parties, developing effective multilateral shark management measures can be an effective tool for ending overfishing of the entire shortfin mako stock. This approach is also consistent with National Standard 3 that states that to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The main objective of the FAO IPOA for the Conservation and Management of Sharks (IPOA) is to ensure the conservation and management of sharks and their long-term sustainable use. It calls on members to ''strive to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, with a view to ensuring the sustainability of shark stocks, including, where appropriate, the development of subregional or regional shark plans.'' The IPOA calls on nations to implement a National Plan of Action that among other things should aim to ensure that shark catches from directed and non-directed fisheries are sustainable as well as identify and provide special attention in particular to vulnerable or threatened shark stocks. The IPOA provision regarding the ''full use of dead sharks'' referenced by the commenter is also an attribute that the FAO IPOA recommends for inclusion in a nation's national plan of action. In 2001, the United States developed and implemented the U.S. National Plan of Action for the Conservation and Management of Sharks in consultation with stakeholders. While it may be appropriate to require full utilization of certain species, the Ecological Risk Assessment highlighted that silky sharks are vulnerable due to limited productivity and susceptible to capture in pelagic longline fisheries such that ICCAT adopted a ban on retention. NMFS acknowledges that while this ban on retention may lead to some dead discards, the release of additional live silky sharks is expected to assist with sustainability of the resource.

Comment 6: Neither NMFS nor ICCAT has conducted a domestic ''species-specific'' stock assessment for silky sharks. The justification for Recommendation 11–08 was based on an ecological risk assessment. NMFS needs to conduct a full benchmark stock assessment for silky sharks as soon as possible.

Response: ICCAT's Standing Committee on Research and Statistics (SCRS) is responsible for conducting all ICCAT stock assessments and biological reviews for species included in the ICCAT Convention Area, and is authorized to study species other than tunas and tuna-like species under Article IV of the ICCAT Convention. The ICCAT plenary determines the schedule for stock assessments conducted by ICCAT.

While NMFS usually conducts shark stock assessments through the Southeast Data, Assessment, and Review (SEDAR) process, some pelagic sharks have been assessed by ICCAT's SCRS and because the United States is only one of numerous ICCAT Parties that catch silky sharks, it would be appropriate for

ICCAT's SCRS to assess the status of the entire Atlantic silky shark stock so that the assessment can take into account all sources of mortality. While there have been no formal or peer-reviewed stock assessments for silky sharks, the SCRS ecological risk assessment is a valid basis for management decisions in situations where there is no formal assessment and is appropriate for management action under the Magnuson-Stevens Act.

Comment 7: This action would result in more regulatory discards, especially if any southern zones currently closed to pelagic longline gear are reopened. Silky sharks are found in the southern ranges around the Gulf Stream and in the Gulf of Mexico.

Response: Please see the response to Comment 3 above. NMFS is not currently proposing or considering re-opening any southern zones to pelagic longline gear. While the comment is largely speculative, we note that any potential, future action to reopen an area or areas currently closed to HMS-permitted vessels with pelagic longline gear on board would include an analysis of the impacts of such proposed action on HMS and other species, including silky sharks, and the public would have opportunity to comment on any such proposal.

Comment 8: One commenter indicated that adult silky shark fins are worth approximately $20–25 per pound ex-vessel, substantially higher than the $11.11 value in the proposed rule analysis. The commenter also is concerned that the estimate of annual landings is low given the number of active pelagic longline vessels.

Response: The economic data and landings information used in the analysis for this action is as reported to NMFS via HMS logbooks during the 2006 through 2010 period. Reported economic data indicate that prices were $11.11, not $20–25 as the commenter stated. As landings information is tallied from HMS logbooks from all active fishing vessels, the estimate in this rule is the best available information.

Changes From the Proposed Rule

During the preparation of the final rule and in response to public comments about the scope of the proposed rule, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), and to align the rule with the regulated community's understanding of its application, the regulatory language associated with this action needed to be revised to specify that the prohibition on retention also applies to a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. This modification does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared an environmental assessment for this rule that analyzes the impact of the action on the environment. In this action, NMFS prohibits retaining, transshipping, landing, storing, selling, or purchasing silky sharks in the commercial ICCAT fisheries, primarily the Atlantic pelagic longline fishery for tuna and tuna-like species. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

In compliance with section 604(a)(1) of the RFA, the purpose of this rulemaking is, consistent with the Consolidated HMS FMP and its amendments, to implement ICCAT Recommendation 11–08 pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act. This rulemaking implements the 2011 silky shark recommendation in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be ICCAT fisheries, which are the fisheries to which the recommendation specifically applies. The regulatory changes would affect the commercial ICCAT fisheries, primarily the Atlantic highly migratory species (HMS) pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action is necessary to implement ICCAT Recommendation 11–08 pursuant to ATCA. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations.

Adding prohibitions beyond those called for under Recommendation 11–08 would make this action consistent with the approach NMFS has taken for oceanic whitetip sharks and scalloped, smooth and great hammerhead sharks in the commercial pelagic longline fishery for tuna and tuna-like species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The additions would enhance enforcement of the prohibition, particularly where prohibited retention is not initially detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention. Therefore, this action is intended to implement Recommendation 11–08 in a manner that meets our obligations under ICCAT and ATCA consistent with our management authority for HMS fisheries under the Magnuson-Stevens Act and the Consolidated HMS FMP.

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, the agency's assessment of such issues, and a statement of any changes made as a result of the comments.

There were no direct public comments raising significant issues in response to the IRFA. However, three public comments were received regarding the potential for increased regulatory discards by prohibiting the retention of silky sharks in the commercial pelagic longline fishery.

NMFS calculated that this action would lead to a total estimated average annual increase in silky shark discards

of 60 sharks, by converting average annual landings into regulatory discards. NMFS estimated in the IRFA that vessels that land silky sharks would incur collective annual economic losses of $3,392 ($1,489 for fins and $1,903 for meat) from having to discard these sharks. Logbook data indicate that under existing regulations, between 2006 and 2010, 96 percent of silky sharks caught on pelagic longline gear were discarded. NMFS does not know the rationale behind these discards, but assumes that vessel operators are choosing to discard these fish either because of existing retention limits or economic reasons. Participants using pelagic longline gear typically target tuna and swordfish, which are both higher valued species than sharks. Due to the high urea content of sharks, retaining sharks on vessels with limited hold space may affect product quality of other higher-valued species. Also, vessels may be limited by current large coastal and pelagic shark retention limits, depending on what type of commercial shark permit they hold (directed or incidental), which may also be the cause of these discards. The rule also affects the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the ICCAT fisheries subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

One commenter questioned the silky shark fin price per pound and annual estimate of silky shark landings in the analysis for the proposed rule. See Comment 9 and the corresponding response above and in Section 12 of the EA/RIR/FRFA.

No changes were made in the rule resulting from public comments in response to the IRFA.

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has defined a ''small'' fishing entity as one with average annual receipts of less than $4.0 million; a small charter/party boat entity is one with average annual receipts of less than $6.5 million; a small wholesale dealer as one with 100 or fewer employees; and a small seafood processor as one with 500 or fewer employees. This action would apply primarily to all participants in the Atlantic HMS commercial fisheries that have pelagic longline gear onboard, permitted shark dealers, and a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. These vessels and dealers are all considered small fishing entities under the SBA definition. However, Charter/Headboat vessels generally do not target or land silky sharks when they have tunas or tuna-like species on board. As of October 2011, 242 pelagic longline vessels held an Atlantic Tunas Longline permit, and 117 dealers held an Atlantic shark dealer permit. Including the vessels issued both HMS Charter/Headboat permits and commercial shark permits in the prohibition against silky shark retention does not affect this number because those vessels do not use longline gear.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of the EA/RIR/FRFA. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS prepared a FRFA to analyze the impacts on small entities of the alternatives for implementing the ICCAT Recommendation 11–08 for all domestic fishing categories that target tuna and tuna-like species. Specifically, the FRFA assesses the impacts of the various alternatives on pelagic longline vessels, which are the only vessels that participate in the Atlantic HMS commercial fishery that target tuna and tuna-like species, all of which are considered small entities. NMFS considered and analyzed three alternatives including Alternative 1 (no action); Alternative 2 (implementing ICCAT Recommendation 11–08 in the commercial ICCAT fisheries); and Alternative 3 (implementing ICCAT Recommendation 11–08 and additional prohibitions against storing, selling, and purchasing of silky sharks in the commercial ICCAT fisheries).

Under the No Action Alternative, Alternative 1, there would be no economic impacts to HMS pelagic longline vessels fishing for tuna and tuna-like species. Under this alternative, commercial pelagic longline vessels that fish for tuna and tuna-like species that are also currently authorized to land silky sharks would be able to continue that practice. Commercial pelagic longline fishermen would continue to be able to land silky sharks and could potentially earn $485 per vessel per year. Additionally, each vessel is predicted to earn a total of $190,986 per year in revenue from swordfish and tuna ($96,525 from swordfish and $94,461 from tuna). Therefore, revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue. Alternative 1 would not implement ICCAT Recommendation 11–08 and, therefore, is inconsistent with NMFS' obligations to promulgate regulations, as necessary and appropriate, to implement ICCAT recommendations. Because of this inconsistency, Alternative 1 is not a preferred alternative.

Under Alternative 2, pelagic longline vessel operators and owners could not retain, transship, or land silky sharks, consistent with ICCAT Recommendation 11–08. Thus, on

average, each vessel would lose approximately $485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas ($190,986 total revenues). Alternative 2 is limited in scope to 2011 ICCAT Recommendation 11–08 and establishes fewer prohibitions than Alternative 3 described below. For purposes of enforcement, Alternative 2 could be less effective than Alternative 3. Therefore, Alternative 2 is not a preferred alternative.

Under Alternative 3, pelagic longline vessel owners and operators could not retain, transship, land, sell, or store silky sharks, consistent with ICCAT Recommendation 11–08 and other domestic regulations. This alternative is essentially the same as Alternative 2 but would facilitate domestic compliance and enforcement. Thus, on average, each vessel would lose approximately $485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas ($190,986 total revenues). NMFS prefers Alternative 3, because it would implement ICCAT Recommendation 11–08, would likely have minor ecological benefits, would have minor socioeconomic impacts on the pelagic longline fishery, and would facilitate compliance and enforcement. Additionally, Alternative 3 would be unlikely to change fishing practices or effort.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 27, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, Performing the Functions and Duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.21, paragraph (c)(1)(ii) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) * * *

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

* * * * *

■ 3. In § 635.24, paragraph (a)(9) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, oceanic whitetip sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

■ 4. In § 635.31, paragraph (c)(6) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(6) A dealer issued a permit under this part may not purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board. A dealer issued a permit under this part may not purchase silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from the owner of a fishing vessel issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

■ 5. In § 635.71, paragraph (d)(19) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(19) Retain, possess, transship, land, store, sell or purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

* * * * *

[FR Doc. 2012–24429 Filed 10–3–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 120416010–2476–01]

RIN 0648–BB84

Western Pacific Pelagic Fisheries; Revised Limits on Sea Turtle Interactions in the Hawaii Shallow-Set Longline Fishery

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS revises the annual number of incidental interactions allowed between the Hawaii-based shallow-set pelagic longline fishery, and leatherback and North Pacific loggerhead sea turtles. NMFS also makes administrative housekeeping changes to the regulations relating to the fishery. The rule implements the incidental take statement of the current biological opinion on the fishery and clarifies the regulations.

DATES: This final rule is effective November 5, 2012.

ADDRESSES: Copies of supporting documentation that provide background information on this final rule, identified by NOAA–NMFS–2012–0068, are available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION: The Hawaii-based shallow-set pelagic longline fishery targets swordfish primarily on the high seas of the North Pacific Ocean. The Western Pacific Fishery Management Council (Council) and NMFS manage the fishery under the

Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region. The plan provides for, among other things, a limited-access program, vessel- and gear-marking requirements, vessel length restrictions, Federal catch and effort logbooks, large restricted fishing areas around the Hawaiian Archipelago, a vessel monitoring system, and annual protected species workshops. The plan also requires the use of gear and techniques for the safe handling and careful release of protected species, i.e., sea turtles, seabirds, and marine mammals. NMFS may issue a maximum of 164 longline permits for the deep- and shallow-set longline fisheries in Hawaii combined, and about 25–30 vessels have been active in the shallow-set fishery in recent years. NMFS deploys an official observer on every shallow-set fishing trip (100 percent observer coverage).

The fishery occasionally and incidentally interacts with (hooks or entangles) protected species, primarily leatherback and North Pacific loggerhead sea turtles, but also other protected species. Consistent with the terms of a no-jeopardy 2004 NMFS biological opinion (2004 BiOp), the Council recommended and NMFS implemented a broad suite of sea turtle conservation and management measures for the fishery (69 FR 17329, April 2, 2004), including annual interaction limits for leatherback and loggerhead turtles. NMFS currently allows the fishery to interact with up to 16 leatherback and 17 loggerhead sea turtles per year; these limits directly manage the impacts of the fishery on sea turtles. If the shallow-set fishery reaches either limit, NMFS closes the fishery for the remainder of the year.

As required under section 7 of the Endangered Species Act (ESA), NMFS re-evaluated in 2012 the impacts of the continued operation of the fishery, as governed under the current suite of management measures (the proposed action), on marine species protected by the ESA (i.e., humpback whales, North Pacific loggerhead sea turtle distinct population segment (DPS), leatherback sea turtles, olive ridley sea turtles, and green sea turtles). NMFS concluded in a biological opinion dated January 30, 2012 (2012 BiOp), that the proposed action is not likely to jeopardize the continued existence of these five species, and is not likely to destroy or adversely modify designated critical habitat. The 2012 BiOp is an integral component to managing the shallow-set fishery, because the one-year incidental take statement (ITS, including reasonable and prudent management measures, and terms and conditions) forms the basis for regulations that specify the annual limits on leatherback and North Pacific loggerhead sea turtle interactions with the fishery that are necessary to manage the impacts of the fishery on sea turtles.

In this final rule, NMFS is revising the annual limits on incidental interactions that may occur between the fishery and leatherback and North Pacific loggerhead sea turtles to 26 and 34 interactions, respectively. If the fishery reaches either of the interaction limits in a given year, NMFS would close the fishery for the remainder of that year.

NMFS is also making minor housekeeping changes to the longline regulations for clarity and consistency in terminology. NMFS is revising references to the ''shallow-set component of the longline fishery'' to read more simply the ''shallow-set longline fishery.'' The sections of Title 50 of the Code of Federal Regulations that contain these changes include § 665.802 paragraphs (ss) and (tt), and § 665.813 paragraphs (b)(2)(i) and (b)(2)(ii), and paragraph (i).

Comments and Responses

On June 11, 2012, NMFS published a proposed rule and request for public comment (77 FR 34334). The comment period for the proposed rule ended on July 11, 2012. NMFS received approximately 2,270 comment submittals on the proposed rule. About 2,180 were form letters associated with a non-governmental organization. Representatives of the longline fishery and non-governmental organizations provided additional comments, along with several private citizens. NMFS responds to comments received, as follows:

Comment 1: Increasing the allowable leatherback and North Pacific loggerhead sea turtle interactions from 16 to 26 and 17 to 34, respectively, would violate the ESA and cause jeopardy.

Response: NMFS disagrees. NMFS complied with all procedural and substantive requirements of the ESA for the proposed rulemaking. The NMFS Sustainable Fisheries Division consulted with the NMFS Protected Resources Division on the continued operation of the fishery with a gradual increase to a maximum of 5,500 sets per year, which resulted in the issuance of the 2012 BiOp. This final rule implements the ITS from the 2012 BiOp for leatherback and North Pacific loggerhead sea turtles. Both the 2012 BiOp and this rule comply with the ESA.

The agency must ensure that any activity that it authorizes is not likely, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. To carry out this mandate, NMFS consults with the appropriate agency (either USFWS or NMFS) on any Federal action that it determines may affect ESA-listed marine species. If the agency concludes that the proposed action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat but, nonetheless, determines that the proposed action will result in the take of listed species, the agency must issue an ITS. The ITS establishes the allowable take of listed species that would otherwise be prohibited, and specifies those reasonable and prudent measures and terms and conditions that minimize the impact of such take.

In 2004, following a multi-year court-ordered closure, NMFS reopened the fishery under a suite of sea turtle mitigation requirements, including the use of large circle hooks and fish bait, a set certificate program limiting effort at 2,120 annual sets, and compliance with the ITS in a no-jeopardy 2004 BiOp. The 2004 BiOp also required annual limits on the allowable number of leatherback and loggerhead sea turtles hooked or entangled in longline fishing gear by the fishery, specified at 16 leatherback and 17 loggerhead sea turtles. If the fishery reached either limit, NMFS would close the fishery for the remainder of the year. The 2004 BiOp also required NMFS to place observers on 100 percent of shallow-set fishing trips.

In 2009, the Secretary of Commerce approved Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. Amendment 18 removed the annual fishing effort limit and associated set certificate program to allow the fishery to achieve optimum yield of swordfish and other species, consistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Optimum yield means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. At the time of Amendment 18's approval, domestic and foreign swordfish landings in the North Pacific amounted to about 60 percent of an estimated maximum sustainable yield (MSY) of

22,284 metric tons (mt) as documented in Amendment 18. As analyzed under Amendment 18, the proposed action of 5,500 annual sets represents nearly the maximum annual level of effort that the fishery achieved during the five-year period 1994–1999, but was still below the 9,925 annual sets that would be necessary to produce MSY for the North Pacific swordfish stock, according to the 2004 stock assessment.

In 2008, NMFS concluded in a biological opinion (2008 BiOp) that, among other things, Amendment 18 would not jeopardize the existence of any ESA-listed sea turtles, and included an ITS that allowed up to 16 leatherback and 46 loggerhead sea turtle interactions before NMFS would close the fishery for the remainder of the year. Following litigation over the 2008 BiOp with the Center for Biological Diversity, Turtle Island Restoration Network, and KAHEA: The Environmental Alliance, the ITS for leatherback and loggerhead sea turtles and that portion of the rule implementing the ITS were remanded to the agency and vacated. Under the terms of a consent decree, NMFS was to complete a new biological opinion on the fishery within 135 days of the USFWS–NMFS final decision on a petition to identify and list nine distinct population segments of loggerhead sea turtles. Consistent with the consent decree, NMFS issued the no-jeopardy 2012 BiOp, which evaluated the continued operation of the fishery under the management measures established by Amendment 18, with fishing effort at up to 5,500 sets annually and incorporated the best available scientific and commercial information. For example, NMFS used sea turtles interaction rates with the fishery obtained from 100 percent observer coverage from 2004–2011. In the 2012 BiOp, NMFS considered the effects of the action within the context of the ''Status of Listed Species'' together with the 'Environmental Baseline' and the ''Cumulative Effects'' to determine whether the action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat. NMFS concluded that the proposed Federal action is not likely to jeopardize the continued existence of any of the five listed species in the action area, or destroy or adversely modify designated critical habitat. Accordingly, NMFS issued an ITS that, consistent with the expected level of take at 5,500 sets annually, allows interactions with up to 26 leatherback sea turtles and 34 North Pacific loggerhead sea turtles each year, along with reasonable and prudent measures designed to minimize the impact of fishery interactions.

With respect to leatherback sea turtles, the 2012 BiOp concluded that, ''the incidental lethal (up to 4 nesting females annually) and non-lethal takes of leatherback sea turtles associated with the proposed action are not reasonably expected to cause an appreciable reduction in the likelihood of survival of the species.'' While acknowledging the adverse effect of any level of take and morality, NMFS found that the expected level of take from the overall action, including a small number of mortalities, is extremely small when considered together with all impacts described in the Status of the Species, Environmental Baseline, and Cumulative Effects sections, including other federally-authorized U.S. fisheries and foreign fisheries. The 2012 BiOp further noted that, even with the expected loss of up to four females annually, ''the affected population is expected to increase'' and would ''remain large enough to retain the potential to contribute to species recovery.'' The BiOp noted that the ''proposed action does not appreciably impede progress on carrying out any aspect of the recovery program or achieving the overall recovery strategy,'' and that NMFS expects the ''overall population to continue to grow and to maintain genetic heterogeneity, broad demographic representation, and successfully reproduce.'' The biological opinion concluded that the proposed action would not affect the leatherbacks' ''ability to meet their lifecycle requirements and to retain the potential for recovery.'' Accordingly, the biological opinion concluded that the proposed action was ''not reasonably expected to cause an appreciable reduction in the likelihood of survival or recovery of the species.''

With regard to North Pacific loggerhead sea turtles, NMFS concluded that, although the proposed action would result in the mortality of up to one nesting female annually, ''this level of mortality would present negligible additional risk to the North Pacific DPS'' and would ''not prohibit the DPS from stabilizing or increasing, nor would it prohibit the DPS from reaching a biologically reasonable FENA (females estimated to nest annually) based on the goal of maintaining a stable population in perpetuity.'' The biological opinion noted that, although the climate-based population viability assessment (PVA) model reveals a declining population over the next 25 years, ''the population will remain large enough to retain the potential for recovery'' and that the proposed action ''does not appreciably impede progress on carrying out any aspect of the recovery program or achieving the overall recovery strategy.'' In particular, NMFS expects that the overall population will remain ''large enough to maintain genetic heterogeneity, broad demographic representation, and successful reproduction. The proposed action will have a small effect on the overall size of the population, and we do not expect it to affect the loggerheads' ability to meet their lifecycle requirements and to retain the potential for recovery.''

Accordingly, under this final rule, NMFS will revise the annual limits on incidental interactions with leatherback from 16 to 26 interactions and North Pacific loggerhead sea turtles from 17 to 34 interactions. If the fishery reaches either of the interaction limits in a given year, NMFS would close the fishery for the remainder of that year (as required by current regulations). The revised limits are consistent with the 2012 BiOp, and are necessary to manage the impacts of the fishery on sea turtles while affording the fishery the opportunity to achieve optimum yield.

NMFS is allowing the fishery to interact with leatherback and North Pacific loggerhead sea turtles consistent with the ESA. The sea turtle interaction limits under which the fishery currently operates are the product of a court-approved settlement, based on an eight-year old no-jeopardy biological opinion that analyzed the expected level of take resulting from a fishery capped at 2,120 annual sets. By contrast, the 2012 BiOp is based on the most current information available on sea turtle dynamics and demographics, and is supported by data from 100 percent observer coverage during 2004–2011 on the fishery's interactions, which NMFS used to analyze the effects of the fishery on sea turtle populations. In light of our improved understanding of sea turtle populations and the effectiveness of sea turtle mitigation measures in reducing both the frequency and severity of interactions in the fishery, NMFS appropriately authorized incidental take that exceeds the level (16 leatherbacks and 17 loggerheads) that was supported by judgments made in 2004, when the fishery was being reopened under an experimental regulatory regime that was untested in the Pacific where the fishery operates.

Finally, regarding compliance with the National Environmental Policy Act (NEPA), NMFS concluded that the action to revise the interaction limits for leatherback (to 26) and North Pacific loggerhead (to 34) sea turtles are within a range of interaction levels analyzed in

the 2009 final supplemental environmental impact statement (FSEIS) for Amendment 18. NMFS also concluded that the 2012 BiOp, while containing more recent scientific information regarding the natural status of sea turtle populations, spillover effects, and fishery interactions with green sea turtles, presented no substantial changes to the action proposed in Amendment 18, or new circumstances or significant information relevant to the environment or bearing on the action or its impacts that were not already considered in the 2009 FSEIS.

Comment 2: Current management of the shallow-set fishery is causing jeopardy to leatherback and North Pacific loggerhead sea turtles. Until there is consistent evidence that both the Western Pacific leatherback and North Pacific loggerhead populations are significantly recovering, allowing incidental take and mortality of either species would be irresponsible and contrary to the mandates of the ESA. Furthermore, the Ninth Circuit has made clear ''even where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm'' (*National Wildlife Federation* v. *NMFS,* 524 F.3d 917, 930 (9th Cir. 2008)).

Response: NMFS disagrees that the action will cause jeopardy. Likewise, NMFS concluded that the fishery, operating under the current management plan, is not causing jeopardy to listed sea turtles. In the 2012 BiOp, on which this action is based (and which provides related background information), NMFS relied on the best scientific and commercial information available to reach a no-jeopardy conclusion for the proposed action. Moreover, this action will not tip any sea turtle species into a state of jeopardy. See the response to Comment 1.

Comment 3: NMFS has an obligation under the ESA to ensure that fishery operations do not appreciably lower the species' chances of recovery, in light of the significant baseline impacts, such as fisheries bycatch, and cumulative threats to survival facing leatherbacks and loggerheads. Removing more sea turtles from shrinking populations that face growing threats from climate change and other impacts is not consistent with NMFS' duty to ensure the survival and recovery of these species.

Response: The NMFS and USFWS (1998) leatherback sea turtle recovery plan and loggerhead sea turtle recovery plan contain goals and criteria to achieve recovery including, but not limited to, monitoring of nesting activity, determining population trends, identifying stock boundaries, reducing incidental mortality in commercial fisheries, and ensuring protection of marine habitat. NMFS used the information from the recovery plans and other sources to develop the 2012 BiOp, including the baseline information and PVA models, and to reach the no-jeopardy conclusion.

As discussed in the 2012 BiOp, the proposed action will not impede progress on carrying out any aspect of the recovery plans or achieving the overall recovery strategies. The proposed action will not affect the majority of the recovery criteria or the highest priority tasks. We expect the overall leatherback and North Pacific loggerhead sea turtle populations to continue to maintain genetic heterogeneity, broad demographic representation, and successfully reproduce. The proposed action will have a small effect on the overall size of the populations. Therefore, NMFS does not expect the lethal and non-lethal takes of leatherback and North Pacific loggerhead sea turtles to cause an appreciable reduction in the likelihood of both their survival and recovery in the wild.

Comment 4: NMFS should not increase the annual allowable, incidental interactions with leatherbacks and loggerheads, and NMFS should review the regulations and protect sea turtles from being caught and killed in the shallow-set fishery.

Response: The Western Pacific Fishery Management Council and NMFS regularly review domestic fisheries management regulations, including how they relate to sea turtles and other protected species during public and agency meetings and during the rulemaking process. See the responses to Comments 1 and 3.

Comment 5: Sea turtle bycatch in commercial fisheries is one of, if not the greatest, threat to the recovery of leatherbacks, and NMFS should be seeking ways to reduce takes of this species instead of increasing them in order to accommodate fishing interests. Fishing at the same rate will result in killing more turtles per unit of effort.

Response: Most sea turtle interactions occur in foreign fisheries that lack sea turtle bycatch deterrent and mitigation regulations. NMFS has implemented a suite of fishery management measures designed to minimize sea turtle interactions and post-interaction mortality. Since the fishery re-opened in 2004, the required use of circle hooks and fish bait has reduced sea turtle interaction rates by approximately 83 percent for leatherbacks and 90 percent for loggerheads compared to 1994–2002, when the fishery was operating without these requirements (Gilman *et al.* 2007). Gilman *et al.* (2007) also demonstrated that the requirements have greatly reduced incidents of serious injury, e.g., the number of deeply hooked sea turtles. Additionally, handling and release requirements reduce sea turtle mortality. This rule will not alter or diminish these protective requirements.

Comment 6: The proposed rule will result in an increased take and mortality of target and non-target fish, marine mammals (Bryde's whales, false killer whales, bottlenose dolphin, humpback whales, Risso's dolphins), and seabirds (black-footed albatross, Laysan albatross, short-tailed albatross). Moreover, the Hawaii swordfish fishery is among the fisheries with the highest amounts of bycatch in the U.S. despite its strict requirements on operations. This signals a need to reduce bycatch in the fleet, not increase bycatch under this action.

Response: Because there would be no substantial change to the operational requirements of this fishery, NMFS does not expect this rule to affect the catch, interaction, and discard mortality rates of any fish stocks or protected species. NMFS does not expect bycatch rates to increase beyond the levels analyzed in the 2009 FSEIS. As described in the 2009 FSEIS, NMFS estimates fish bycatch in this fishery to be about 6–7 percent of the annual catch. NMFS does not expect substantial changes to the operation of the fishery in terms of fishing effort, amount of swordfish catch, fishing methods and gear, location of fishing effort (action area), capture rates of target, non-target, and bycatch species, or impacts to their habitats that were not already considered in the 2009 FSEIS. Discard mortality for many species is unknown, but is not expected to increase because of the increase in the sea turtle interaction limits. The fishery lands and sells many of the fish species caught. Therefore, the fishery optimizes the use of most of the resources encountered. The fishery will continue to use the sea turtle, seabird, and marine mammal deterrents and mitigation measures that have effectively reduced and mitigated harm to incidentally-caught species.

The only ESA-listed seabird that has the potential to interact with the fishery is the short-tailed albatross. Observers have not recorded any short-tailed albatross interaction with the fishery since NMFS began monitoring the fishery with observers in 1994. On

January 6, 2012, the USFWS issued a no-jeopardy biological opinion for the fishery. The fishery will continue to use proven seabird deterrents and mitigation measures that have effectively reduced bycatch.

Comment 7: The proposed rule should be modified to: establish effort limits on the number of sets to minimize the bycatch of other non-target organisms; maintain observer coverage of no less than 100 percent in the shallow-set fishery; establish time/area closures; dynamic area management; reduction of fishing effort; establish an incidental take limit of one leatherback or loggerhead, such that the fishery is closed upon reaching the one interaction limit; and shortening lines.

Response: The suggested modifications are outside the scope of this rule, which revises the annual interaction limits for leatherback and North Pacific loggerhead sea turtles applicable to the fishery and continues the operation of the fishery under current requirements. Amendment 18, approved by the Secretary of Commerce and implemented by NMFS in 2010, considered and analyzed a broad range of alternatives, such as effort limits and time and area closures. See Amendment 18 for further information. The annual interaction limits in this rule are consistent with the ITS in the 2012 BiOp, which analyzed the continued operation of the fishery at a maximum annual effort of 5,500 sets annually. Since the ESA requires NMFS to consider the best available scientific and commercial information, NMFS had no basis with which to impose an annual interaction limit of one leatherback or loggerhead. Furthermore, an ITS of one would be contrary to the purpose of Amendment 18, which is to allow the fishery to achieve optimum yield, while continuing to protect sea turtles and other ESA-listed species. This action will maintain proven mitigation measures currently applicable to the fishery, such as circle hooks and safe handling techniques for protected species. This action does not change the 100 percent observer coverage for the fishery.

Comment 8: NMFS admits in the 2012 BiOp that the direct effects of the proposed action have a ''detectable,'' that is, appreciable, effect on the loggerhead sea turtle population. This meets the regulatory definition of an action that is likely to jeopardize the species.

Response: The terms detectable and appreciable are not synonymous in the context of the ESA. The 2012 BiOp stated that the proposed action would have a detectable influence on North Pacific loggerheads but, after analyzing the status of the species, environmental baseline, effects of the action, and cumulative effects together, NMFS concluded that the proposed action would not likely jeopardize the survival and recovery of the species. *Jeopardize* means to engage in an action that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Comment 9: NMFS determined that the only way the Hawaii shallow-set longline fishery could reopen under the 2004 BiOp without jeopardizing leatherbacks and loggerheads would be to operate under the following restrictions: an effort limit of 2,120 sets annually, and interaction limits of 16 leatherbacks or 17 loggerheads, either of which, if reached, would result in the immediate closure of the fishery (72 FR 46608; August 21, 2007).

Response: The 2004 BiOp analyzed the proposed action recommended by the Council, including a limit of 2,120 shallow sets annually, among others. The Council based their recommendations on sea turtle interaction rates from longline fishing experiments in the Atlantic from 2001–2003 that tested sea turtle mitigation gear and safe handling techniques to find interaction limits applicable to the model fishery. That process resulted in interaction limits of 16 leatherbacks and 17 loggerheads. These numbers did not represent the upper limit of interactions that would avoid jeopardizing these species, but rather they represented the number of anticipated interactions associated with the 2004 proposed action. While the 2004 BiOp concluded the interaction limits would not jeopardize these species, it did not conclude that these were the only interaction rates allowable under the ESA, because NMFS based the information on Atlantic experimental results.

Based on 100 percent observer coverage from 2004–2011, the 2012 BiOp found that actual interaction rates around Hawaii were lower for leatherbacks and loggerheads, compared to the Atlantic experiments from 2001–2003. Relying on observed sea turtle interaction rates from the Hawaii shallow-set fishery from 2004–2011, the 2012 BiOp multiplied the proposed action of 5,500 sets per year by the average observed interaction rates per set to determine the interaction limits of 26 and 34, for leatherbacks and North Pacific loggerheads, respectively. Using the best available scientific and commercial information, the 2012 BiOp similarly found that the continued operation of the fishery with 5,500 sets annually would not likely jeopardize the continued existence of any ESA-listed species in the wild.

Comment 10: NMFS should not increase the sea turtle interaction limits because both leatherbacks and North Pacific loggerheads species are ''critically endangered'' and likely to decrease in the future.

Response: NMFS disagrees. NMFS evaluated the impacts of the continued operation of the fishery on leatherback and North Pacific loggerhead sea turtles, and concluded in the 2012 BiOp that the action would not likely cause jeopardy. This final rule conforms to the ITS that was prepared in accordance with ESA. See the response to Comment 1 regarding compliance with ESA and the no-jeopardy conclusion in the 2012 BiOp.

Comment 11: In the context of the ESA, the proposed rule would appropriately continue to authorize the negligible levels of incidental leatherback and loggerhead take experienced in the shallow-set fishery. This process and the resulting agency findings convincingly and conclusively demonstrate that the effects of the shallow-set fishery on leatherback and North Pacific loggerhead sea turtle populations are negligible and that, for purposes of the ESA, the shallow-set fishery is not likely to jeopardize the continued existence of either species.

Response: NMFS agrees that this action is not likely to jeopardize the continued survival and recovery of any ESA-listed species in the wild.

Comment 12: In spite of conservation efforts for the small number of hawksbill sea turtles nesting and foraging around Hawaii, NMFS wants to increase the interaction limit for this species.

Response: This rule does not address interaction limits for hawksbill turtles; it only revises the annual interaction limits for leatherback and North Pacific loggerhead sea turtles. There has been no recorded interaction with a hawksbill sea turtle in the fishery, and the probability of a hawksbill interaction is extremely unlikely. If the fishery does interact with a hawksbill sea turtle, NMFS would re-examine the effects of the fishery on this species.

Comment 13: Explain how NMFS enforces the interaction limits, and provide the historical annual numbers of interactions and fishery closures. The reported numbers of interactions are low or underreported.

Response: NMFS observers document sea turtle interactions in the fishery.

Because there is an observer on each trip, NMFS is able to determine the number of turtles that interact with the fishery and does not believe numbers are low or underreported. In addition to observers, fishing vessel captains are required to report any interaction with protected species in Federal logbooks for all fishing trips. If the fishery reaches an annual interaction limit, NMFS closes the shallow-set longline fishery north of the Equator through the end of the calendar year via direct and immediate notification (e.g., satellite telephone, email, etc.) to vessel owners, permit holders, captains, and observers. NOAA's Office of Law Enforcement investigates potential violations of the ESA.

In 2006, the fishery reached the interaction limit for loggerhead sea turtles and, in 2011, the fishery reached the limit for leatherback sea turtles. Both times, NMFS closed the fishery for the rest of the calendar year. For more information on annual sea turtle interactions in the shallow-set longline fishery, see the 2012 BiOp and *www.fpir.noaa.gov/SFD/SFD_turtleint.html.*

Comment 14: There is no justification for setting kill limits that affect survival numbers, genetic diversity, unreported bycatch, and other unknown factors.

Response: Under ESA, NMFS may authorize the fishery to interact with protected species that would otherwise be prohibited, if conducted pursuant to a lawful activity, and if conducted in accordance with the terms and conditions of a no-jeopardy biological opinion and ITS. The annual interaction limits specified in this rule conform to the ITS in the 2012 BiOp. NMFS believes most interactions do not result in mortality. In fact, since 2004, NMFS has no documented direct observation of any sea turtle mortality in the shallow-set fishery with 100 percent observer coverage. However, in the 2012 BiOp, NMFS conservatively estimated post-interaction mortality rates of 22.0 percent for leatherbacks and 18.6 percent for North Pacific loggerheads, based on factors such as whether there is trailing gear, the placement and location of the hook, degree of entanglement, and physical condition. In addition, this rule does not change the 100 percent observer coverage for the fishery.

Comment 15: The proposed rule correctly sets annual interaction limits for leatherback and North Pacific loggerhead sea turtles that are consistent with the agency's recommendations, as set forth in the 2012 BiOp.

Response: NMFS agrees.

Comment 16: The proposed action is similar to NMFS' failed attempt in the 2008 BiOp and Amendment 18 where NMFS proposed to raise the annual incidental interaction limit for leatherback sea turtles from 16 to 17, and the limit for loggerheads from 17 to 46.

Response: The action analyzed under Amendment 18 and the 2009 FSEIS, and subsequently implemented by NMFS in 2010, raised the annual loggerhead interaction limit from 17 to 46, but did not change the interaction limit for leatherbacks. Under the process established by Amendment 18, interaction limits are to be established consistent with a biological opinion prepared under section 7 of the ESA. The 2012 BiOp satisfies this requirement. See the response to Comment 1.

Comment 17: The Magnuson-Stevens Act requires NMFS to manage fisheries responsibly to minimize bycatch, protect habitat, and prevent overfishing. As such, it would be irresponsible and illegal of NMFS to approve this proposed rule. NMFS continues to promote non-sustainable longline and drift gillnet fishing gear, violating laws and continually eroding the credibility of fishery management agencies.

Response: In addition to minimizing impacts on protected species, NMFS is required to manage fisheries sustainably by achieving optimal yield. The Secretary of Commerce approved, and NMFS implemented, the management program established in Amendment 18 to allow the fishery to achieve optimal yield of the swordfish stock, which is healthy, not subject to overfishing, and underexploited. The fishery ecosystem plan for pelagic species manages interactions and post-interaction mortality by continuing mitigation measures that have a proven effectiveness, including the use of large circle hooks, fish bait, and safe handling gear and procedures for protected species. The current action does not affect NMFS' ability to protect essential fish habitats and prevent overfishing. NMFS monitors the fishery to detect changes and would work with the Council to develop management measures if overfishing ever becomes a concern. An incidental benefit of Amendment 18 may be to provide positive benefits to non-target stocks. For example, the reduction in regulatory barriers may lead fishermen in the deep-set fishery to participate in the shallow-set fishery, thereby reducing fishing pressure on bigeye tuna stocks, which are experiencing overfishing. NMFS has no information indicating that the fishery is not operating sustainably.

In 1992, the United Nations banned high seas drift gillnet fishing. Drift gillnets are not allowed in Federal waters around Hawaii or other U.S. Pacific Islands. The USA is a recognized leader in fisheries management worldwide and the Hawaii shallow-set longline fishery is among the most strictly regulated and sustainable suppliers of fresh seafood. NOAA's Office of Law Enforcement investigates potential violations of all applicable laws.

Comment 18: Hawaii's sea turtles and monk seals are important for tourism, because people enjoy diving and swimming with them. There are not enough of them, and they have been on the decline in Hawaii. Do not change how many sea turtles can be killed by lines or hooks before stopping fishing.

Response: Hawaii tourists enjoy seeing green sea turtles and, occasionally, hawksbill sea turtles. The numbers of nearshore green sea turtles have been increasing in Hawaii for over three decades, and the recent trend in the numbers of nesting hawksbill sea turtles in Hawaii is stable. The shallow-set fishery operates hundreds of miles offshore in deep ocean waters where the density of green sea turtles is lower. The fishery interacted with six green sea turtles from 2004–2011, and there have been no reported or observed interactions with hawksbills. Based on very low densities of hawksbill sea turtles in the action area, and the lack of any interactions with longline fisheries around Hawaii, an interaction with a hawksbill sea turtle is extremely unlikely.

The fishery also will not likely affect monk seals. State of Hawaii and Federal laws protect sea turtles and monk seals; longline fishing is not allowed in nearshore waters around Hawaii, from the shoreline to about 25 to 75 nautical miles from shore.

Comment 19: The United States has the power and influence to persuade other nations to help save sea turtles from drowning in fishing nets. There should be regulation on what kinds of nets the fisheries can use. Turtle hatchback nets have seen some success with fisheries, so that could be a place to start. We cannot afford to wait and must lead by educating and teaching other countries that all vessels must be required to have turtle excluder devices (TEDs). Our government must check to make sure that the TEDs are in place and working.

Response: NMFS agrees, and works to develop fishing gear that conserves protected resources to the extent practicable. Fishing with nets, including trawls, is prohibited in Federal waters around Hawaii and other U.S. Pacific Islands. NMFS is also active in efforts to

reduce interactions with protected resources in fisheries worldwide. The U.S. participates in international fisheries management organizations (RFMOs) worldwide, including the Western and Central Pacific Fisheries Commission (WCPFC) and Inter-American Tropical Tuna Commission (IATTC) in the Pacific. Due to efforts by the U.S. in these RFMOs, proven sea turtle bycatch mitigation measures required in Hawaii are now required in other countries and by RFMOs. NMFS continues to collaborate with foreign agencies and conservation organizations, to develop conservation measures and responsibly manage fisheries.

Comment 20: The Magnuson-Stevens Act and MMPA provide a process by which NMFS must identify nations whose fishing practices result in the bycatch of protected living marine resources, including sea turtles, and certify whether each nation or, in the alternative, imported shipment, meets U.S. requirements for bycatch reduction. Specifically, ''were harvested by practices that do not result in bycatch of protected marine species, or were harvested by practices that * * * include mandatory use of circle hooks, careful handling and release equipment, and training and observer programs * * *.'' Therefore, NMFS should restrict swordfish imports from fisheries that observe lower sea turtle and marine mammal conservation standards and, therefore, effectively reduce protected species mortality.

Response: The purpose of this rule is to implement the ITS from the 2012 BiOp for the shallow-set fishery, consistent with Amendment 18. Accordingly, the comment is outside the scope of this rule. However, NMFS works to identify fisheries that have high incidences of interactions with sea turtles and other protected species, and is actively engaged in efforts to manage fisheries bycatch through membership in international conventions such as WCPFC and IATTC.

Comment 21: The existing fishery, as regulated since 2004, has reduced loggerhead and leatherback bycatch by 97 [sic] percent and 83 percent, respectively, from prior levels, and every loggerhead and leatherback sea turtle that has interacted with the fishery during this time has been released alive.

Response: NMFS agrees, and this final rule will continue these successful measures.

Comment 22: The capture and entanglement of marine life on longlines reduces the efficiency of fishing operations and adds needless costs. NMFS must consider the negative economic impacts on the fishery to increased levels of sea turtle take, in addition to the potential benefits that have been described.

Response: When these measures were implemented, NMFS considered efficiency in utilization of fishery resources, minimizing costs, and bycatch, as required under the Magnuson-Stevens Act. NMFS has no information to conclude that this rule will impose additional costs on fishery participants or increase inefficiency in utilizing fishery resources, and NMFS certified under the Regulatory Flexibility Act to the Small Business Administration that this action would not have a significant economic impact on a substantial number of fishing businesses.

Comment 23: The effects analysis in the 2012 BiOp ignores sub-lethal effects of hooking or entangling turtles, which can render them less able to feed, swim, or avoid predation. Instead, the biological opinion's jeopardy analysis focuses on how many of the interactions between turtles and longline gear will result in mortality.

Response: NMFS based this rule on the best available scientific and commercial information, including an analysis of sub-lethal effects and post-interaction mortality, as documented in the 2012 BiOp. While NMFS cannot predict whether a sea turtle will breed, swim, feed, or avoid predation after an interaction, NMFS evaluates whether the injuries are serious enough as to make survival unlikely, using science-based criteria.

Comment 24: Provide clarification for the proposed regulation in § 665.813(2)(i) that states, as soon as practicable the shallow-set longline fishery shall be closed. This vague statement seems like it could be taken advantage of quite easily if requirements or punishment were lacking.

Response: Because of the inherent difficulty of communicating with vessels at sea, it is not always possible to provide immediate notice of a fishery closure to participants. However, NMFS provides notice to fishermen as soon as practicable in several ways. Constructive notice, in the form of a notification in the **Federal Register**, and actual notice via telephone and email to vessels owners on land and vessel captains at sea. This process to publish a notice in the **Federal Register** may take several days. NMFS places telephone calls and text messages to vessel owners and captains much more quickly. For example, when NMFS closed the fishery in 2011, we were able to reach all owners and captains, either directly or through observers on board the vessels, within several hours of reaching the interaction limit. NOAA's Office of Law Enforcement investigates potential violations of all applicable laws.

Comment 25: The proposed rule explained that there was no significant economic impact, yet there was no assessment provided. This begs the question of why revise the amount of turtle interactions if it means little to no impact on the economy? If there is no economic gain, then sea turtles should not be placed in more danger.

Response: This final rule will provide the swordfish fishery with the opportunity to achieve optimal yield for a fishery resource that is currently healthy and underexploited, while still maintaining important conservation and management safeguards for protected species. NMFS prepared a mandatory Regulatory Impact Review (RIR) under Executive Order 12866 on April 13, 2012, and made it available to the public during the public comment period at *www.regulations.gov* as document NOAA–NMFS–2012–0068–0005. In the RIR, NMFS analyzed the economic impacts on commercial fishery participants, and determined that the impacts would not be significant. This determination addresses the economic burden on the economy and the fishery, and does not suggest that the action would not have positive economic results.

Comment 26: The biological opinion, record of environmental consideration, and proposed rule did not recognize the proposed expansion of the California drift gillnet fishery discussed at the Pacific Fishery Management Council meeting in March 2012. The impacts to Western Pacific leatherback populations as a result of increased take in the American Samoa longline fishery as well as the California drift gillnet fishery must be considered and mitigated before making any determinations on increased take in the Hawaii swordfish longline fishery.

Response: NMFS disagrees. Actions taken by the Pacific Council in March 2012 relating to the California drift gillnet fishery and Pacific leatherback conservation area are preparatory and/or preliminary as to potential future action, if any, that the Pacific Council and NMFS might take. Given the uncertainty regarding the nature and scope of any future Federal action, or whether any Federal action will be taken at all, NMFS is unable to predict the potential effects any proposal from the Pacific Council on the environment or protected species at this time.

With respect to the American Samoa longline fishery, NMFS considered, under a separate 2010 biological opinion, the impact of the American Samoa longline fishery on sea turtles. Since implementation of gear requirements to protect turtles, NMFS has not documented any additional sea turtle interactions in the American Samoa longline fishery. Although NMFS has taken action to mitigate the impact of the American Samoa longline fishery on sea turtles, we know of no requirement to demonstrate effectiveness of those measures prior to authorizing the continued operation of the Hawaii shallow-set fishery.

Comment 27: The proposed action to allow 34 loggerhead sea turtle takes, making up seven mortalities a year, would be an increase in the government-authorized killing of what is now an endangered distinct population that, according to the climate-based PVA model, is clearly at high risk of extinction. The classical PVA model portrays an optimistic look for the loggerhead population and makes unrealistic assumptions that all environmental and human caused impacts will remain constant. NMFS discounts the classical PVA model because it is driven primarily by the last three years of loggerhead nesting, not the long-term trend showing a significant decline in the population. Therefore, NMFS should not allow an increase in sea turtle interaction levels.

Response: The 2012 BiOp is largely a qualitative evaluation of the general direction and magnitude of the probabilities projected in the climate-based PVA model, informed by relevant information from other sources. NMFS acknowledges that both the classical and climate-based approaches have limitations. Although the classical PVA model projected robust growth of the loggerhead population based on a linear projection of nesting data, we discounted that model specifically because the classical PVA model predicts future population sizes in linear fashion when many species, especially sea turtles, have populations that oscillate over time due to factors for which the model cannot account.

The climate-based PVA model, with results that differed from the classical PVA model, was more rigorous in applying data from the Pacific Decadal Oscillation (PDO) and, therefore, more useful to the analysis. According to Van Houtan (2011), the climate-based PVA model captures climate dynamics through two mechanisms: Juvenile recruitment and breeding remigration. This model recognizes that females do not breed annually; rather, breeding occurs when ocean conditions are sufficient for females to reproduce. In addition, juveniles are considered more susceptible to oceanographic variability as they have a limited ability to exploit their surroundings for food. Van Houtan and Halley (2011) concluded that loggerhead nesting varies synchronously within regions, suggesting that climate pressures operating over large geographic areas and time series account for periods of high and low abundance.

Considering the above, however, and given that a small number of sea turtle experts only recently developed the climate-based PVA model and that it uses a relatively short 25-year predictive period, we were cautious not to rely completely on any one model. NMFS chose to proceed carefully with a quantitative and qualitative empirical evaluation of the climate-based PVA model, along with inputs from multiple experts and sources. Based on this approach, we predicted an oscillating decline of the population below a 50-percent quasi-extinction threshold within one generation (25 years) due largely to climate-forcing factors. As noted in the 2012 BiOp, this threshold does not mean that the population will become functionally extinct; rather, it is an assumed fraction of the current population size (in this case, 50 percent) by which the population projections were modeled.

The fishery's impact, though detectable, would not appreciably reduce the likelihood of the North Pacific loggerhead's survival and recovery, in that the population would remain large enough to maintain genetic heterogeneity, broad demographic representation, and successful reproduction. In particular, with an adult female nesting population conservatively estimated at 7,100, the effect of the removal of one adult female under the proposed action (0.35 percent of the estimated total population over 25 years) would be insignificant, and that the additional risk to the DPS that would result from loss of one adult female annually is negligible. NMFS has no empirical basis with which to leave the current 16 leatherback and 17 loggerhead sea turtle incidental take levels in place.

Comment 28: Data input into both the classical and climate-based PVA models from converting juveniles to adult equivalents using central estimates of North Pacific loggerhead sea turtle age (13 years old) and post-hooking mortality (18.6 percent) is problematic and overly risky. NMFS wrongly assumes that 100 percent of the mortalities are juveniles for calculating the adult equivalent mortality after stating that 96 percent of mortalities are juveniles from direct observation of carapace length. Turtles may be older and closer to reproductive age than estimated, and there is substantial uncertainty in the post-hooking mortality estimates and actual mortality could be much greater.

Response: NMFS relied on the best scientific and commercial information available in developing the 2012 BiOp, which formed the basis for this final rule. As discussed in section 7 of the BiOp, 96 percent of loggerheads captured in the fishery were juveniles with the most common carapace length being about 57 cm. Based on studies conducted on loggerhead turtles in the Atlantic, this size turtle is equivalent to a 13-year-old turtle (there are no size-at-age comparisons for loggerhead turtles in the Pacific). In addition, NMFS used three different survival rates established for turtles between the ages of 13 and 25. NMFS applied a conversion formula to determine the annual effect of the action on adult females. In order to estimate adult equivalents that will be affected by the action, survival rates (Snover 2002) were applied to three distinct life stages that would occur between age 13 and the age at first reproduction estimate of 25 years (2012 BiOp Figure 4c and Table 6; Van Houtan 2011). The three survival rates applied to convert juveniles to adults were 0.81, 0.79, and 0.88 (Snover 2002, Van Houtan 2011). Seven juvenile mortalities result in the annual removal of the equivalent of one adult female (0.31 adult females round to 1) (2012 BiOp Figure 4c and Table 6; Van Houtan 2011), which included that female's reproductive potential and the lost reproductive potential of the unborn hatchlings. NMFS rounded this number to one, because the mortality of a fraction of a turtle is not biologically realistic and, therefore, made the estimate much more precautionary.

The calculation of adult female equivalents was rounded to the nearest significant digit, which conservatively accounts for variation in percentage of adult female equivalents. The difference to the mortality estimate if we included four percent of adults (assuming 96 percent are juveniles) in our calculation would mean an additional 0.13 adult female equivalent, which when added to 0.43 would still round up to 1 adult female mortality annually. Therefore, this single adult female equivalent mortality per year is a precautionary estimate that accounts for variation in the model's underlying assumptions.

NMFS derived the post-interaction mortality rates used in the effects

analysis from a workshop that developed criteria for assigning post-interaction mortality values based upon identified variables, including hook placement, degree of entanglement, and physical condition (Ryder et al. 2006). NMFS relied on a conservative and established approach for applying its guidance on sea turtle post-interaction mortality rates in developing the 2012 BiOp. Therefore, the mortality rates did not appear to be over- or underestimated.

Comment 29: The climate-based PVA model is inconsistent with empirical nesting data, and the results conflict strongly with the classical PVA model. Therefore, there is no justification for NMFS using the climate-based PVA model as a basis for a no jeopardy finding, as it is directly contrary to the best available science.

Response: The 2012 BiOp analysis is largely a qualitative evaluation of the general direction and magnitude of the probabilities projected in the climate-based PVA model, informed by other relevant information from other sources. NMFS acknowledged that both the classical and climate-based approaches have limitations. For example, although the classical PVA model projected a decline in the leatherback population based on a linear projection of nesting data, NMFS discounted the model because of its inherent limitations. In particular, NMFS noted that the classical PVA model predicts future population sizes in linear fashion when many species, especially sea turtles, have populations that oscillate over time due to factors for which the model cannot account. NMFS found that the climate-based model, which differed from the classical PVA model, was more rigorous in applying actual data (i.e., PDO data) and, therefore, more useful to our analysis. According to Van Houtan (2011), the climate-based PVA model captures climate dynamics through two key turtle life stages: neonates and nesting females. This model recognizes that females do not breed annually, but when ocean conditions are sufficient for females to reproduce. In addition, juveniles are considered more susceptible to oceanographic variability as they have a limited ability to exploit their environs for food. Van Houtan and Halley (2011) concluded that sea turtle nesting varies synchronously within regions, suggesting that climate pressures operating over large geographic areas and time series account for periods of high and low abundance.

However, given that the climate-based PVA model was only recently developed by a small number of sea turtle experts, and its relatively short 25-year predictive period, NMFS was cautious not to rely completely on any one model, and elected to proceed carefully with a quantitative and qualitative empirical evaluation of the climate-based PVA model along with inputs from multiple experts and sources, where available. Based on our analysis, NMFS anticipates a rebound of the leatherback population due to decadal oscillations in the North Pacific Ocean and that the number of nesting females will increase over 80 percent by the year 2035. Further, when NMFS analyzed the proposed action with the annual mortality of four adult females, there is a measureable loss to the population, but the population still grows. We determined that the proposed action would not appreciably reduce the likelihood of survival and recovery of the species in the wild. We expect the overall population to continue to grow and to maintain genetic heterogeneity, broad demographic representation, and successful reproduction. Further, we expect the proposed action to have a small effect on the overall size of the population, and we do not expect it to affect the leatherbacks' ability to meet their lifecycle requirements and to retain the potential for recovery.

Comment 30: NMFS limits jeopardy analysis to only the next 25 years and does not adequately assess long-term threats, extinction risk, or jeopardy, for a long-lived species like sea turtles. Recent studies highlight the serious threats future climate change poses to endangered turtles, threats that would only be compounded by the substantial increases in fishery-related take the agency proposes to authorize. See Conner, 848 F.2d at 1454 (NMFS ''cannot ignore available biological information''); see, e.g., Saba *et al.* (2012); Tomillo *et al.* (2012). Both of these peer-reviewed studies project climate change-related impacts to the year 2100, demonstrating that NMFS could have, but failed to, model such impacts far beyond the 25 years with which the agency contented itself.

Response: The ESA requires NMFS to make predictions only as far as it can adequately explain reliance on the data. NMFS evaluated the effects of this rule, as analyzed in the 2012 BiOp, over the next 25 years, which corresponds to the forecast limitations of the climate-based PVA model. The climate-based model uses the historic nesting data for North Pacific loggerheads, but then adds the long-term dynamics of climate forcing on the population. Van Houtan and Halley (2011) demonstrated that climate plays a primary role in juvenile recruitment for North Pacific and Northwest Atlantic loggerhead populations. Their model accurately accounts for the last several decades of nesting trends at various spatial scales in two different populations and accounted for annual fluctuations over the 20–30 years. NMFS relied on the best available information in projecting out to 25 years. For further information on the reliance on the PDO, see Van Houtan and Halley (2011) and Van Houtan (2011).

Papers referenced by the commenters regarding Eastern Pacific leatherbacks only evaluate land-based climate change effects, such as sand temperature on hatchlings, which is why they could project out to 2100. The climate-based PVA model relies on the strong correlation that exists between sea turtle population trends and the Pacific Decadal Oscillation (PDO). The PDO cannot be predicted beyond what information we now have, and is currently limited to the next 25 years; therefore, the model cannot forecast climate-forcing population trends beyond that period. The correlation between hatchling success and favorable oceanic conditions prior to nesting is poorly understood, and NMFS cannot directly translate effects on the Eastern Pacific leatherback to the Western Pacific leatherback population. Since 1995, none of the genetic samples collected from interactions in the shallow-set fishery is from the Eastern Pacific leatherback population.

Comment 31: The climate-based PVA model does not account for cumulative effects of other impacts. It does not include other anthropogenic mortalities (e.g., bycatch in other fisheries), rather just the direct effects of the proposed action.

Response: NMFS based this rule on the 2012 BiOp, which used a climate-based PVA model that examined bottom-up climate forcing at two turtle life stages, both with and without the proposed action. The 2012 BiOp considered other anthropogenic threats and sources of mortality, for example, bycatch in other fisheries, in Status of the Species, Environmental Baseline, and Cumulative Effects sections. The no-jeopardy determination in the opinion is based on the effects of the action within the context of the species' status, environmental baseline, and cumulative effects to determine if the proposed action analyzed in the 2012 BiOp can be expected to have direct or indirect effects on threatened and endangered species that appreciably reduce the likelihood of surviving and recovering in the wild by reducing their reproduction, distribution, or numbers.

Comment 32: NMFS failed to consider information (e.g., Tapilatu *et al.,* unpublished) that indicates that leatherback sea turtles are declining at a much faster rate than analyzed in the 2012 BiOp and are at imminent risk of extinction. NMFS also fails to acknowledge that its own analysis reveals that leatherback sea turtles would experience a much higher rate of decline and that the proposed action is deepening the baseline conditions that are causing jeopardy.

Response: This rule is based on analyses in the 2012 BiOp, which considered all relevant information relating to leatherback sea turtle population status and trends, including Tapilatu et al. (unpublished). The 2012 BiOp, Status of the Species section for leatherbacks specifically acknowledged anecdotal reports from the early 1980s suggesting declines in leatherback nesting prior to reliable nest counts beginning in 1993. In addition, the 2012 BiOp considered information relating to the nesting population of the Jamursba-Medi component of the Western Pacific leatherback population from 1993–2010, which includes the Bird's Head peninsula as addressed by Tapilatu et al. (unpublished) and others, with the overall trend slightly declining. See also the responses to Comments 1, 2, and 3.

Comment 33: A central theme throughout the BiOp is the argument that allowing U.S. fishermen to kill more leatherback and loggerhead sea turtles will actually save more turtles globally in the long run. NMFS has specifically failed to demonstrate that production in other countries has increased or will increase to meet U.S. demand. It is entirely reasonable to conclude that international fisheries for swordfish will operate, if not expand, regardless of the Hawaii shallow-set fishery. Conversely, there is no empirical evidence to suggest that increased domestic production will result in decreased fishing effort by other swordfish producing nations. Ultimately, the Chan and Pan (2012) results depend on their underlying assumption that sea turtle interaction rates are higher from the countries from which the U.S. imports swordfish, not on actual data showing that this necessary condition holds. NMFS does not present clear evidence that increases in U.S. swordfish production lead to reductions in overall global swordfish effort. Given that the Hawaii shallow-set fishery has not hit its set limit even once since 2004 (and hit the cap on turtle take in only two years) and annual effort has varied from a low of 135 in 2004 to a high of 1,875 sets in 2010, foreign fishermen have had no way of knowing what level of domestic fishing would take place in any given year since the fishery reopened.

Response: In the 2012 BiOp, NMFS carefully evaluated the best available scientific and commercial information regarding the beneficial spillover effects from the Hawaii shallow-set fishery. The analysis considered whether sea turtles are affected, if and when the production by foreign fleets (that are known to have higher turtle interaction rates) displaces U.S. swordfish production (Hawaii represented 74 percent of all U.S. Pacific landings before 2001) in the same general area of the central and North Pacific. Chan and Pan (2012) conducted a new study of production displacement that was not considered by Rausser *et al.* in 2008, and presented empirical data to establish that, while U.S. swordfish production in the Pacific Ocean declined, foreign production increased. Between 1991 and 2009, swordfish production in the eastern central and northeast Pacific, where the Hawaii shallow-set fishery operates, had been stable or declining slightly, whereas production in the western central and northwest Pacific had trended upward, particularly after 1996. Using data on 1999–2009 global swordfish production from the Food and Agriculture Organization of the United Nations, the authors demonstrated that the foreign production in the central and North Pacific increased when the U.S. swordfish production decreased, and vice versa. The authors also used these empirical data to measure the degree of swordfish production displacement between U.S. and non-U.S. fishermen, and found the degree of displacement to be one-to-one. Chan and Pan (2012) incorporated variability and randomness in production throughout the time series. The result of the model showed fishing effort and capacity may be affected by regulation and, therefore, demonstrated a correlation of swordfish production displacement between foreign and U.S. fisheries. Based on this analysis, NMFS identified spillover effects as potential indirect effects of the proposed action. NMFS did not, however, incorporate these beneficial spillover effects in our quantitative PVA models, and NMFS reached the no-jeopardy conclusion both with and without the beneficial effects of spillover, formulating an ITS only on the expected adverse effects of the proposed action.

Comment 34: The NMFS 2012 Technical Memorandum on spillover effects is founded on a number of unsupported assumptions, not on any actual bycatch or observer or swordfish landings data from any foreign fisheries. The populations of sea turtles in question are not globalized resources. The take of an Atlantic leatherback turtle does not have the same effect on the Western Pacific population of leatherback turtles as the take of a Western Pacific leatherback turtle. Therefore, the assumption that sea turtle bycatch has the same biological effect regardless of where it occurs is markedly incorrect at a fundamental biological level. In other words, it does matter where the sea turtles are caught; therefore, they cannot be considered ''globalized resources.'' Further, Chan and Pan (2012) summarize their argument in terms of total number of turtles, even though there are at least four different species representing dozens of different populations. Also, there is no evidence that if the U.S. swordfish supply did in fact saturate the market, that foreign fleets would not simply sell to other markets where there is a demand for swordfish, casting considerable doubt on the market transfer effect. If NMFS has determined that U.S. demand for swordfish is causing harm to sea turtle populations globally, it has the responsibility to engage in consumer awareness campaigns aimed at reducing domestic swordfish demand.

Response: In the 2012 BiOp, NMFS identified and analyzed the spillover effect as a potential indirect effect of the proposed action. Because data on foreign fisheries are incomplete, NMFS' estimates of foreign fishery interaction rates may be imprecise, and the expected number of sea turtle interactions with foreign fisheries that would be avoided by this action cannot be confirmed by direct observation. Thus, the precision of analyzing spillover effects is not the same as for the domestic fishery with 100 percent observer coverage. For those reasons, NMFS did not include numerical determinations of sea turtle mortalities that will be avoided because of the spillover effect in our quantitative PVA models.

NMFS focused the analysis on whether sea turtle populations benefit when U.S. swordfish production displaces the fishing activities of foreign fleets that are known to have higher turtle interaction rates in the same general area. Chan and Pan (2012) projected a global beneficial effect for sea turtles to occur when the fishery fished at the effort level of 5,500 sets with a projected production of 5,461 mt of swordfish, and where there is a one-to-one displacement for the increased swordfish production, which is proportionally deducted from foreign

fleets. Under these circumstances, Chan and Pan (2012) determined that an increase in swordfish production by the fishery from 1,761 mt to 5,461 mt would replace 3,700 mt of foreign swordfish production, which would result in a decrease in turtle interactions by 12 percent, or 221 individual turtles of all species combined.

Because leatherbacks represent about 40.2 percent of the turtles caught in the shallow-set fishery in the action area in the North Pacific, NMFS estimated that, in the Pacific Ocean, there would be 89 (221 × 40.2 percent) fewer leatherback interactions with longline gear from international fisheries at this level of increase in U.S. swordfish production. Similarly, because North Pacific loggerheads represent about 52.8 percent of the turtles caught by the shallow-set fishery, we estimated that there would be 117 (221 × 52.8 percent) fewer loggerhead interactions in longline gear from international fisheries at this level of increase in U.S. swordfish production.

Chan and Pan (2012) discussed in detail the methodology for identifying the one-to-one displacement of U.S. swordfish production to non-U.S. production. NMFS was conservative in applying principles of economic analysis in the 2012 BiOp. For example, based on the fishery's potential effort level of 5,500 sets per year, and the expected one-to-one displacement of foreign swordfish production, the proposed action would result in 20–29 fewer leatherback sea turtle mortalities annually from displaced foreign swordfish production to meet U.S. demand, or an overall decrease in leatherback mortalities of 14–23 individuals annually from foreign longline fisheries in the central and North Pacific. Similarly for loggerheads, after accounting for the direct effects of the proposed action and the indirect spillover effects, the 2012 BiOp concluded that the proposed action would result in 22–47 fewer loggerhead sea turtle mortalities annually or an annual reduction of 15–40 loggerhead mortalities from foreign longline fisheries in the central and North Pacific. However, because the mortality reduction data associated with the spillover effect are not as robust as those analyzed for direct effects, we did not ''offset'' the direct effects of the proposed action (6 leatherback and 7 loggerhead total mortalities) in our quantitative PVA models, such that the fishery would effectively be credited for mortalities avoided from foreign fisheries. Similarly, the 2012 BiOp reached a no-jeopardy conclusion with and without considering the beneficial effects of spillover, and formulated the ITS only on the expected adverse affects of the proposed action.

With respect to consumer awareness campaigns, NMFS maintains FishWatch (*www.fishwatch.gov*), a web site that provides consumers with easy-to-understand science-based facts to help make smart, sustainable, and healthy seafood choices. See the response to Comment 33.

Comment 35: NMFS should hold an independent review of the methods and findings in the 2012 BiOp.

Response: NMFS' information quality procedures do not require external peer review of biological opinions. However, some of the references in the 2012 BiOp were peer-reviewed, e.g., the Chan and Pan (2012) spillover effects paper, the Van Houtan and Halley (2011) climate-forcing publication, and the Van Houtan (2011) PVA models paper. Further, the Center for Independent Experts also reviewed the Chan and Pan (2012) Technical Memorandum on spillover effects.

Comment 36: The regulatory record establishes that, taken as a whole, the effects of the shallow-set fishery are beneficial to both leatherback and North Pacific loggerhead sea turtles.

Response: In the 2012 BiOp, NMFS identified and analyzed the spillover effect as a potential indirect effect of the proposed action. NMFS believes that the proposed action will likely provide an overall benefit to sea turtle conservation by displacing the foreign effort of fisheries that follow less effective sea turtle mitigation measures. For further information regarding spillover effects, see the responses to Comments 33 and 34.

Comment 37: NMFS should issue its final rule in a timely manner so that regulation of the shallow-set fishery may resume in a way that is consistent with applicable science and law.

Response: NMFS agrees.

Comment 38: The theory underlying all market transfer analysis is basically sound in that in a global economy a change in a commodity chain in one region will often have ripple effects across other regions. However, unless it can be shown that the swordfish that are not caught by Hawaiian swordfish producers are caught by others, leaving total global production unchanged, then the case for increased turtle bycatch does not exist. This type of analysis would require detailed swordfish stock analysis and DNA testing to determine how many swordfish not caught by Hawaii's fishermen are caught by others, and the extent to which they augment existing production and do not simply displace it. None of the studies to date (Rausser et al. (2008) and Chan and Pan (2012)) have met this bar.

Further research should be conducted to truly determine the impacts of Hawaii's swordfish regulations on other non-U.S. swordfish fisheries. Until this is done, it would be prudent not to make the case that increased Hawaiian swordfish production actually decreases sea turtle mortality, as there is no robust evidence to support such a claim. If the government wants to increase allowable swordfish catch in Hawaii for economic reasons they should not use the (as of now) specious argument that this will actually improve the conditions for the global turtle population.

Response: The study area in Chan and Pan (2012) on production displacement only considered the central and North Pacific. Peer-reviewed stock assessments have defined the great majority of the swordfish in this area as North Pacific swordfish, or as western and central Pacific and eastern Pacific swordfish under the two-stock scenario as described in a 2010 assessment of North Pacific swordfish.

Chan and Pan (2012) indicate that U.S. swordfish production displaces non-U.S. production in the central and North Pacific almost one-for-one. The coefficient of the equation (−1.04) implies that, on the margin, an increase of one unit of U.S. production causes a reduction of 1.04 units of non-U.S. production. For further information regarding spillover effects, see the responses to Comments 33 and 34.

Comment 39: NMFS' new biological opinion requires only observer coverage at rates that have been determined to be statistically reliable for estimating protected species interaction rates onboard Hawaii-based shallow-set longline vessels. NMFS gives no further indication what that level might be. Without 100 percent observer coverage, NMFS must gather and analyze raw data from a subset of vessels, and come up with an estimate of take for the fishery as a whole. The combination of that uncertainty and reduced reporting by vessels without observers could easily translate into a significant increase in take that would not be immediately detected by NMFS.

Response: This final rule does not affect NMFS' placement of an observer on every shallow-set trip. In 2011, the Hawaii longline observer program cost the taxpayers about $7.5 million, and the cost increases each year. NMFS must continually consider the cost of each of its scientific and management programs, including observers, while maintaining the programs' effectiveness. The Council has requested from NMFS an analysis of observer coverage levels

for the shallow-set fishery that would continue to provide reliable estimates of turtle interactions, as an alternative to the current program.

Comment 40: NMFS has failed to establish critical habitat for North Pacific loggerheads as required under the ESA. As a result, increasing takes of this distinct population segment in the swordfish fishery must be delayed, if not abandoned, until critical habitat is designated and the harm to the habitat from Hawaii longline swordfish operations assessed and mitigated.

Response: NMFS is not required to delay or abandon this final rule until a determination is made regarding critical habitat for North Pacific loggerhead sea turtles. In the joint USFWS–NMFS determination of nine distinct population segments of loggerhead sea turtles (76 FR 58858, September 22, 2011), the agencies found that critical habitat was not determinable at this time, and invited interested parties to provide information related to the identification of critical habitat for the two loggerhead sea turtle DPSs occurring within the United States. Accordingly, critical habitat will be proposed and evaluated, as appropriate.

Comment 41: NMFS must err on the side of conservation rather than swordfish expansion to ensure the survival and recovery of the endangered leatherback and North Pacific loggerhead sea turtles.

Response: NMFS is required to comply with a number of laws in managing this fishery, including the Magnuson-Stevens Act and ESA. This rule is consistent with the 2012 BiOp and all applicable laws. It is necessary to allow the fishery the opportunity to achieve optimum yield on a swordfish stock that is healthy and underexploited, while still maintaining important conservation and management safeguards for sea turtles and other protected species.

Comment 42: In light of radiation from Japan and mercury contamination, NMFS should ensure that the fish caught in the Hawaii shallow-set fishery are safe to eat before allowing increased takes of sea turtles in the swordfish fishery to increase supplies of swordfish. Given that the loggerhead sea turtles captured in the fishery originate from Japan, NMFS should analyze the potential exposure to radiation from the nuclear disaster, its impacts on the population, and mitigation of those impacts by reducing bycatch of sea turtle species in this fishery.

Response: The U.S. Food and Drug Administration (FDA) and NMFS have high confidence in the safety of seafood products in the U.S. marketplace or exported U.S. seafood products.

At this time, there is insufficient information available on the potential effects of radiation on the North Pacific loggerhead sea turtles to determine what, if any, threat may exist. See the following Web sites for information about mercury in swordfish: *www.hawaii-seafood.org/seafood-safety, www.fishwatch.gov/eating_seafood,* and *www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood.*

Comment 43: Although demand for and consumption of swordfish in the U.S. from all sources, foreign and domestic, is declining, NMFS seems to be attempting to subsidize a shrinking fishery with its efforts in Hawaii, American Samoa, along the U.S. West Coast and elsewhere in the Pacific without a clear need.

Response: NMFS is required to establish conservation and management measures that achieve, on a continuing basis, the optimum yield from each U.S. fishery. This includes North Pacific swordfish, a stock that is healthy, and producing yields below MSY.

Comment 44: NMFS should complete a new biological opinion and supplemental environmental impact statement that accurately assess the impacts of the fishery in the context of the serious threats and population declines facing leatherback and North Pacific loggerhead sea turtles.

Response: The comment does not provide any specific objection regarding NMFS' compliance with NEPA in preparing a Record of Environmental Consideration, such that it would allow NMFS to give meaningful consideration to the objection. Moreover, the 2012 BiOp presented and assessed the best available scientific and commercial information. Further, this final rule is within the range of actions analyzed in the prior environmental analyses, and there is no new information that would affect the decision on the environmental impacts of this action and analyses available. See the response to Comment 1 regarding compliance with ESA and the no-jeopardy conclusion in the 2012 BiOp.

Changes From the Proposed Rule

There are no changes to the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this rule is necessary for the conservation and management of the Hawaii-based shallow-set pelagic longline fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments or new information regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS has determined that this action does not represent a substantial change to the action previously analyzed in the 2009 Final Supplemental Environmental Impact Statement on Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery (2009 FSEIS)(74 FR 65460, December 10, 2009, corrected at 75 FR 1023, January 8, 2010). NMFS has further determined that there are no significant new circumstances or information relevant to environmental concerns and bearing on the implementation of revised incidental interaction limits. A supplement to the 2009 FSEIS is, therefore, not required under NEPA.

This action does not conflict with the provisions implemented to protect migratory birds. On August 24, 2012, the USFWS issued a 3-year Special Purpose Permit that authorizes the shallow-set fishery to take, possess, transport, and import 191 black-footed albatrosses, 430 Laysan albatrosses, 30 northern fulmars, 30 sooty shearwaters, and one short-tailed albatross. If the fishery exceeds any of these take numbers, NMFS and the USFWS would consult, and may take appropriate action. The permit requires NMFS to report all seabird hookings and entanglements to the USFWS each year, and to continue to develop ways to reduce seabird interactions.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Fisheries, Fishing, Hawaii, Longline, Sea turtles.

Dated: October 1, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR Part 665 continues to read as follows:

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

■ 2. In § 665.802, revise paragraphs (ss) and (tt) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

* * * * *

■ 3. In § 665.813, revise paragraphs (b)(1) and (b)(2), and paragraph (i) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

* * * * *

(b) * * *

(1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and North Pacific loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-set fishing. The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 26, and the annual limit for North Pacific loggerhead sea turtles (*Caretta caretta*) is 34.

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers, the fishery has reached either of the two sea turtle interaction limits during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification that the fishery reached a sea turtle interaction limit. The notification will include an advisement that the shallow-set longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(2)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set longline fishery shall be closed.

* * * * *

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the Equator (0° lat.) any time during which the shallow-set longline fishery is closed pursuant to paragraph (b)(2)(ii) of this section.

* * * * *

[FR Doc. 2012–24536 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC277

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Herring Savings Areas of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels using trawl gear in the Winter Herring Savings Area of the Bering Sea and Aleutian Islands (BSAI). This action is necessary to prevent exceeding the 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 2012, through 1200 hrs, A.l.t., March 1, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI is 1,600 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

The Administrator, Alaska Region, NMFS, has determined that the 2012 herring bycatch allowance specified for the midwater trawl pollock fishery in the BSAI has been caught. Consequently, in accordance with § 679.21(e)(7)(vi), NMFS is closing directed fishing for pollock by vessels using trawl gear in the Winter Herring Savings Areas of the BSAI. The Winter Herring Savings Area of the BSAI is that part of the Bering Sea subarea that is between 58° N latitude and 60° N latitude and between 172° W longitude and 175° W longitude.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would

delay the closure of directed for pollock by vessels using trawl gear in the Winter Herring Savings Areas of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 28, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 1, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–24517 Filed 10–1–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 193
Thursday, October 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1040; Directorate Identifier 2012–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited 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 BAE Systems (Operations) Limited Model BAe 146, and Avro 146–RJ series airplanes. This proposed AD was prompted by a report of loss of the end caps on the anti-icing piccolo tube of the wing leading edge. This proposed AD would require a detailed inspection of the end caps on the anti-icing piccolo tube for lost or loose end caps, and replacing or repairing the end caps if necessary. We are proposing this AD to detect and correct lost and loose end caps on the anti-icing piccolo tube, and ice accretion on the wing leading edge or run-back ice, which could lead to a reduction in the stall margin on approach and loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 19, 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 BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; 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–2012–1040; Directorate Identifier 2012–NM–029–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 2012–0003, dated January 6, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An operator reported the loss of the wing leading edge anti-icing piccolo tube end caps on two aircraft. This was discovered during routine zonal inspections when the wing tips were removed. The loss of the end cap would result in a reduction in anti-icing efficiency, over the outboard portion of the leading edge of that wing, affecting approximately 25% of the wingspan towards the wing tip.
>
> The System Safety Analysis (SSA) classifies the loss of anti-icing of both of the outer wings as hazardous if the loss is not indicated to the crew. The loss of a piccolo tube end cap would not be indicated to the flight crew and, therefore, this reduction in anti-icing capability on one wing must also be classified as hazardous.
>
> This condition, if not detected and corrected, could result in ice accretion on the wing leading edge, or run-back ice and could lead to a reduction in the stall margin on approach together with a reduction in roll control authority.
>
> For the reasons described above, this [EASA] AD requires a one-off [detailed] inspection [for lost and loose end caps] of the piccolo tube end caps. The results of this inspection will be used to establish a suitable repeat inspection period, which will be introduced through the Maintenance Review Board (MRB) process.

The corrective action is replacing or repairing the end caps if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB. 30–025, dated April 19, 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

Although EASA Airworthiness Directive 2012–0003, dated January 6, 2012, and BAE Systems (Operations) Limited Inspection Service Bulletin ISB. 30–025, dated April 19, 2011, specify a reporting requirement, this AD does not require reporting. This difference has been coordinated with EASA.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 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. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $340, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $140, for a cost of $820 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:

BAE Systems (Operations) Limited: Docket No. FAA–2012–1040; Directorate Identifier 2012–NM–029–AD.

(a) Comments Due Date

We must receive comments by November 19, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

(e) Reason

This AD was prompted by a report of loss of the end caps on the anti-icing piccolo tube of the wing leading edge. We are issuing this AD to detect and correct lost and loose end caps on the anti-icing piccolo tube, and ice accretion on the wing leading edge or run-back ice, which could lead to a reduction in the stall margin on approach and loss of controllability 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

Within 12 months after the effective date of this AD: Do a detailed inspection of the end caps on the anti-icing piccolo tube for lost and loose end caps, in accordance the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB. 30–025, dated April 19, 2011.

(h) Corrective Action

If, during the detailed inspection required by paragraph (g) of this AD, a lost or loose end cap of the anti-icing piccolo tube is found: Before next flight, replace the end cap, in accordance the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB. 30–025, dated April 19, 2011, or repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) No Reporting Requirement

EASA Airworthiness Directive 2012–0003, dated January 6, 2012, specifies a reporting requirement; this AD does not require reporting.

(j) 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; 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.

(k) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2012–0003, dated January 6, 2012; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB. 30–025, dated April 19, 2011; for related information.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 27, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24473 Filed 10–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1036; Directorate Identifier 2011–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Model A319, A320, and A321 airplanes. The existing AD currently requires installing spacer assemblies at the attachment points of the YZ-latches of the cargo loading system (CLS) in the forward and aft cargo compartments, as applicable. Since we issued that AD, we have received reports that the installation has been applied only on one of the lower deck cargo holds, instead of on both forward and aft cargo holds, and that some airplanes could have installed the affected YZ-latches through the instructions of the cargo conversion manual. This proposed AD would require modifying the attachment points of fixed YZ-latches of the CLS lower deck cargo holds on those airplanes on which one or both lower deck cargo holds have not been modified. We are proposing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight of the airplane.

DATES: We must receive comments on this proposed AD by November 19, 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, WA. 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; 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–2012–1036; Directorate Identifier 2011–NM–122–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 February 22, 2007, we issued AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007). That AD required actions intended to address an unsafe condition on certain Airbus Model A319, A320, and A321 series airplanes.

Since we issued AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007), we have determined that additional airplanes are affected by the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0077, dated May 5, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Investigation has revealed that the installed Tie Down Points of YZ latches on the Cargo Loading System (CLS) of Airbus A319, A320 and A321 aeroplanes do not withstand the maximum loads in accordance with the certification requirements (CS 25.787 ''Stowage compartments'').
>
> In case of failure of Tie Down Points, unrestrained cargo parts could cause damage in the Forward (FWD) and AFT lower deck

cargo holds (e.g. air conditioning, fire protection system, hydraulic system, electrical wiring, etc.), and therefore could have an impact on the safety of the flight.

EASA AD 2006–0184 [which corresponds to FAA AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007)] was issued to require the modification of the attachment points of fixed YZ latches of the CLS in both FWD and AFT lower deck cargo holds, as applicable to aeroplane configuration, in accordance with Airbus SB A320–25–1294 Revision 01.

It has recently been identified that for some aeroplanes, Airbus SB A320–25–1294 Revision 01 has been applied only on one of the lower deck cargo holds (FWD or AFT) while both cargo compartments were concerned by the modification, and that some aeroplanes could have installed the affected YZ [latches] through the instructions of the Cargo Conversion Manual.

For the reasons described above, this [EASA] AD, which supersedes EASA AD 2006–0184, requires modification of the attachment points of fixed YZ latches of the CLS lower deck cargo holds on those aeroplanes on which one or both lower deck cargo holds have not been modified.

This [EASA] AD also prohibits installation of the affected YZ latches, identified by Part Number (P/N) in Table 1 of Appendix 1 of this [EASA] AD, on any aeroplane as replacement parts, unless all the attachment points of the YZ latch have been modified.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320–25–1294, Revision 06, dated July 23, 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 740 products of U.S. registry.

The actions that are required by AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007), and retained in this proposed AD take about 4 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $2,049 per product. Based on these figures, the estimated cost of the currently required actions is $2,389 per product.

We estimate that it would take about 15 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $2,656 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 up to $2,908,940, or $3,931 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);

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 airworthiness directive (AD) 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007), and adding the following new AD:

Airbus: Docket No. FAA–2012–1036; Directorate Identifier 2011–NM–122–AD.

(a) Comments Due Date

We must receive comments by November 19, 2012.

(b) Affected ADs

This AD supersedes AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007).

(c) Applicability

This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by results from tests that have shown that the attachment points of the YZ-latches of the cargo loading system (CLS) fail under maximum loads and reports that installation has been applied only on one of the lower deck cargo holds, instead of on both forward and aft cargo holds, and that some airplanes could have installed the affected YZ-latches through the instructions of the cargo conversion manual. We are issuing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo

causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight 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) Retained Spacer Assembly Installation

This paragraph restates the requirements of paragraph (f) of AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007). For Airbus Model A319, A320, and A321 airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 36 months after April 12, 2007 (the effective date of AD 2007–05–13), install spacer assemblies at the attachment points of the YZ-latches of the CLS in the forward and aft cargo compartments, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1294, Revision 2, dated September 5, 2006. Accomplishing the actions in paragraph (i) of this AD terminates the requirements of paragraph (g) of this AD.

(1) Airplanes on which one of the following has been incorporated in production: Airbus Modification 20065, 20040, 24495, 24848, 24496, 21895, 21896, 25905, 25907, 22601, 22602, 27187, 28319, 28322, 28330, 28335, or 31797.

(2) Airplanes on which one of the following has been incorporated in service: Airbus Service Bulletin A320–25–1132, A320–25–1133, A320–25–1145, A320–25–1175, A320–25–1177, A320–25–1276, A320–25–1278, A320–28–1134, or A320–28–1141.

(h) New Modification

Except for Model A319, A320, and A321 airplanes on which both Airbus Modifications 32244 and 32245, or both Airbus Modifications 32316 and 32317, have been incorporated in production, and on which no YZ-latch replacements have been made since first flight: Within 20 months after the effective date of this AD, modify the attachment points of fixed YZ-latches of the CLS, having a part number (P/N) listed in table 1 to paragraph (h) of this AD, in both forward and aft lower deck cargo holds by adding spacer assemblies having P/N D2557232700000, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25–1294, Revision 6, dated July 23, 2010. Accomplishing the actions in paragraph (h) of this AD terminates the requirements of paragraph (g) of this AD.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—AFFECTED CLD YZ-LATCHES

Part No.
D 255 7 2380 000
D 255 7 2380 002
D 255 7 2380 006
D 255 7 2380 008
D 255 7 2350 002
D 255 7 2350 004
D 255 7 2350 006

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on the CLS of any airplane, a YZ-latch having a part number listed in table 1 to paragraph (h) of this AD, unless it has been modified in accordance with the requirements of paragraph (h) of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the installation required by paragraph (g) of this AD, if the installation was performed before April 12, 2007 (the effective date of AD 2007–05–13, Amendment 39–14974 (72 FR 10348, March 8, 2007), using Airbus Service Bulletin A320–25–1294, dated March 14, 2003; or Revision 1, dated March 27, 2006; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the modification required by paragraph (h) of this AD, if the modification was performed before the effective date of this AD, using one of the following service information and the additional work is done, in accordance with the applicable instructions referenced as ''ADDITIONAL WORK'' in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–25–1294, Revision 6, dated July 23, 2010.

(i) Airbus Service Bulletin A320–25–1294, dated March 14, 2003.

(ii) Airbus Service Bulletin A320–25–1294, Revision 1, dated March 27, 2006.

(iii) Airbus Service Bulletin A320–25–1294, Revision 2, dated September 5, 2006.

(iv) Airbus Mandatory Service Bulletin A320–25–1294, Revision 3, dated January 22, 2007.

(v) Airbus Mandatory Service Bulletin A320–25–1294, Revision 4, dated March 13, 2008.

(vi) Airbus Mandatory Service Bulletin A320–25–1294, Revision 5, dated January 22, 2009.

(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, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; 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.

(l) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0077, dated May 5, 2011; and the following service information; for related information.

(i)Airbus Service Bulletin A320–25–1294, Revision 06, dated July 23, 2010.

(ii) Airbus Service Bulletin A320–25–1294, Revision 02, dated September 5, 2006.

(2) For service information identified in this 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, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 26, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24405 Filed 10–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1038; Directorate Identifier 2011–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Model A319 and A320 airplanes. The existing AD currently requires repetitive detailed inspections to detect cracks in the keel beam side panels, and repair if

necessary. Since we issued that AD, we have received reports of access difficulties. Additionally, we have determined that the detailed inspection is not sufficient to mitigate the unsafe condition. This proposed AD would require repetitive eddy current inspections for cracking in the keel beam side panels, and corrective actions if necessary. We are proposing this AD to detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 19, 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, Airworthiness Office—EAS, 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, WA. 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; 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–2012–1038; Directorate Identifier 2011–NM–166–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 June 16, 2004, we issued AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004), we have determined that the detailed inspection required by AD 2004–13–06 is not sufficient to mitigate the unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0134, dated July 15, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During certification structural fatigue tests, several cases of structural damage (cracks) have been found on keel beam side panels. Cracks were observed on both sides of the keel beam around the rivets below the center wing box between frame (FR) 40 and FR 42, and in part of the area of the upper elliptical cut out forward of FR 41.
>
> This type of damage, if not detected and repaired, would adversely affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, DGAC [Direction Générale de l'Aviation Civile] France issued AD 2003–146 [which corresponds to FAA AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004)] to require repetitive detailed inspections of those two areas and corrective actions, depending on findings.
>
> Prompted by reported access difficulties and to allow extension of the interval between two consecutive inspections, Airbus validated an Eddy current Non-Destructive Test (NDT) inspection to replace the detailed inspection.
>
> For the reasons described above, this [EASA] AD, which supersedes DGAC France AD 2003–146, requires repetitive Eddy-current NDT inspections for cracks in the affected areas of the keel beam side panel below the center wing box and corrective actions [repair], depending on findings.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 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.

Differences Between This AD and the MCAI or Service Information

Although the MCAI and Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010, allow further flight after cracks are found during compliance with the proposed actions, this proposed AD would require repair before further flight if cracks are detected in the keel beam side panels. We have determined that, because of the safety implications and consequences associated with that cracking, any cracking in the keel beam side panels must be repaired before further flight.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 351 products of U.S. registry.

We estimate that it would take about 29 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 $865,215, or $2,465 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. 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 removing airworthiness directive (AD) 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004), and adding the following new AD:

Airbus: Docket No. FAA–2012–1038; Directorate Identifier 2011–NM–166–AD.

(a) Comments Due Date

We must receive comments by November 19, 2012.

(b) Affected ADs

This AD supersedes AD 2004–13–06, Amendment 39–13688 (69 FR 38818, June 29, 2004).

(c) Applicability

This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; and Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; all manufacturer serial numbers, except those having embodied Airbus modification 30355 in production.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks on the side panels of the keel beams. We are issuing this AD to detect and correct fatigue cracks on the side panels of the keel beams, which could result in reduced structural integrity 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) Repetitive Eddy Current Inspection

At the applicable compliance time in paragraph (k)(1) or (k)(2) of this AD: Do an eddy current non-destructive test (NDT) inspection to detect cracks in the keel beam side panels at Area A and Area B, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010. Repeat the inspection thereafter at intervals not to exceed 12,000 flight cycles or 26,700 flight hours, whichever occurs first. Area A is part of the area of the upper elliptical cut-out stringer (STGR) 42 on the left-hand (LH) and right-hand (RH) side forward of Frame (FR) 41, and Area B is the area around the rivets on both sides of the keel beam side panel below the center wing box at STGR 42 on the LH and RH side between FR 40 and FR 42.

(1) For airplanes that have been inspected as specified in Airworthiness Limitations Item (ALI) Task 533142–01–1, which was specified in the Airbus A319/A320/A321 ALI document up to Revision 05 inclusive; or as specified in Airbus A319/A320/A321 Maintenance Review Board (MRB) Report up to Revision 08 inclusive; or as specified in the instructions of Airbus Service Bulletin A320–53–1060, dated June 19, 2002, or Revision 01, dated April 2, 2004: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 4,300 flight cycles or 9,600 flight hours after the last inspection, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Prior to the accumulation of 24,200 total flight cycles, or 48,400 total flight hours, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(h) Corrective Action for Cracking

(1) If any crack is found in Area A during any inspection required by paragraph (g) of this AD: Before further flight, repair the affected area, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010. Accomplishing a repair terminates the repetitive inspections of Area A required by paragraph (g) of this AD for that side of the keel beam.

(2) If any crack is found in Area B during any inspection required by this AD: Before further flight, repair the affected area in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; 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.

(j) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be repaired (if the operator elects to do so), provided the conditions in paragraph (n)(1), (n)(2), or (n)(3) of this AD are met. Areas A and B are defined in Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010.

(1) No multiple cracks in Area A.

(2) If there is a single crack in Area A, the length must be less than 20.0 millimeters (0.79 inch).

(3) No cracking in Area B.

(k) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2011–0134, dated July 15, 2011; and Airbus Mandatory Service Bulletin A320–53–1060, Revision 02, dated November 30, 2010; for related information.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 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, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 26, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24404 Filed 10–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1039; Directorate Identifier 2011–NM–275–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 certain Airbus Model A319–112, –113, and –132 airplanes; Model A320–211, –212, –214, –231, and –232 airplanes; and Model A321–111 and –131 airplanes. This proposed AD was prompted by a report of two fatigue cracks on the left-hand and right-hand sides of the continuity fittings at the front windshield lower framing on a Model A319 airplane. This proposed AD would require a high frequency eddy current (HFEC) inspection for any cracking on the left-hand and right-hand sides of the windshield central lower node continuity fittings, and repair if necessary. We are proposing this AD to detect and correct cracking of the windshield central lower node continuity fittings, which could reduce the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 19, 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, Airworthiness Office—EAS, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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–2012–1039; Directorate Identifier 2011–NM–275–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 2011–0231, dated December 9, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One operator reported finding two fatigue cracks on continuity fittings at left-hand (LH) and right-hand (RH) sides at the front windshield lower framing on an A319 aeroplane on which Airbus modification (mod.) 22058 had been embodied in production. Airbus mod. 22058 (which is included in Airbus mod. 21999) was introduced to improve the fatigue strength of the windshield front framing by increasing the thickness of framing flanges adjacent to the concerned fittings.
>
> Further analyses have demonstrated that the damage tolerance and fatigue requirements of JAR 25.571 (b) are not met on aeroplanes in post-mod. 22058 configuration.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the affected aeroplanes.

Required actions include an HFEC inspection for any cracking on the left-hand and right-hand sides of the windshield central lower node continuity fittings, and repair if

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

Relevant Service Information

Airbus has issued Service Bulletin A320–53–1245, Revision 01, including Appendix 1, dated May 17, 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 105 products of U.S. registry. We also estimate that it would take about 20 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 $178,500, or $1,700 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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–2012–1039; Directorate Identifier 2011–NM–275–AD.

(a) Comments Due Date

We must receive comments by November 19, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A319–112, –113, and –132 airplanes; Model A320–211, –212, –214, –231, and –232 airplanes; and Model A321–111 and –131 airplanes; certificated in any category; manufacturer serial numbers 0259, 0260, 0264, 0266 through 0270 inclusive, 0275, 0276, 0278, 0287, 0296, 0300, 0303, 0312, 0320, 0321, 0323, 0325, 0328, 0332, 0334, 0335, 0337, 0346, 0352, 0353, 0356, 0365, 0369, 0375, 0377, 0382, 0383, 0396, 0398, 0401, 0412, 0413, 0416, 0419, 0421, 0431, 0432, 0438, 0440, 0441, 0445, 0453, 0458, 0459, 0466, 0468, 0473, 0474, 0482, 0484, 0491, 0493, 0497, 0498, 0501, 0502, 0505, 0507, 0509, 0518, 0520, 0521, 0529, 0531, 0534, 0537, 0538, 0544, 0549, 0554, 0555, 0560, 0563, 0577, 0578, 0585, 0598, 0600, 0608, 0612, 0618, 0621, 0625, 0637, 0660, 0685, 0976, 1010, 1092, 1096, 1103, 1139, 1143, 1158, 1251, 1356, and 1511.

(d) Subject

Air Transport Association (ATA) of America Code 53, fuselage.

(e) Reason

This AD was prompted by a report of two fatigue cracks on the left-hand and right-hand sides of the continuity fittings at the front windshield lower framing on a Model A319 airplane. We are issuing this AD to detect and correct cracking of the windshield central lower node continuity fittings, which could reduce the structural integrity 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 and Corrective Action

Before the accumulation of 34,000 total flight cycles since the airplane's first flight, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection for any cracking on the left-hand and right-hand sides of the windshield central lower node continuity fittings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1245, Revision 01, including Appendix 1, dated May 17, 2011. If any cracking is found, before next flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(h) Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Airbus, Customer Service Directorate, Attn: SDC32 Technical Data and Documentation Services, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 28 06; email *sb.reporting@airbus.com*; at the applicable time specified in paragraph (h)(1) or (h)(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.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD,

if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1245, including Appendix 1, dated March 2, 2011, which is not incorporated by reference in this AD.

(j) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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.

(k) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2011–0231, dated December 9, 2011; and Airbus Service Bulletin A320–53–1245, Revision 01, including Appendix 1, dated May 17, 2011; for related information.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 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.

Issued in Renton, Washington, on September 27, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–24472 Filed 10–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0952; Airspace Docket No. 12–AAL–6]

Proposed Establishment Class E Airspace; Kasigluk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Kasigluk Airport, Kasigluk, AK, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before November 19, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0322; Airspace Docket No. 12–AAL–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

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–2012–0952 and Airspace Docket No. 12–AAL–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

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–2012–0952 and Airspace Docket No. 12–AAL–6''. 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 the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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 establishing Class E airspace extending upward from 700 feet above the surface at Kasigluk Airport, Kasigluk, AK. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Kasigluk Airport, and would enhance the safety and management of instrument flight rules operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined 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 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 this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for 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 would modify controlled airspace at Kasigluk Airport, Kasigluk, AK.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9 W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 201 is amended as follows:

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

* * * * *

AAL AK E5 Kasigluk, AK [New]

Kasigluk Airport, AK
(Lat. 60°52′24″ N., long. 162°31′27.50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Kasigluk Airport.

Issued in Seattle, Washington, on September 20, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–23879 Filed 10–3–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0536; FRL–9737–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; South Bend-Elkhart, Indiana Ozone Maintenance Plan Revision To Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's request to revise the South Bend-Elkhart, Indiana 1997 8-hour ozone maintenance air quality State Implementation Plan (SIP) by replacing the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model. Indiana submitted this request to EPA for parallel processing with a letter dated June 15, 2012, and followed up with a final submittal after the state public comment period ended on July 18, 2012.

DATES: Comments must be received on or before November 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0536, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312)692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0536. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Patricia Morris, Environmental Scientist at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *patricia.morris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What action is EPA proposing to take?
III. What is the background for this action?
a. SIP Budgets and Transportation Conformity
b. Prior Approval of Budgets
c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period
d. Submission of New Budgets Based on MOVES2010a
IV. What are the criteria for approval?
V. What is EPA's analysis of the state's submittal?
a. The Revised Inventories
b. Approvability of the MOVES2010a-Based Budgets
c. Applicability of MOBILE6.2-Based Budgets
VI. What action is EPA taking?
VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period.

II. What action is EPA proposing to take?

EPA is proposing to approve new MOVES2010a-based budgets for the South Bend-Elkhart, Indiana 1997 8-hour ozone maintenance area. The South Bend-Elkhart, Indiana area was redesignated to attainment of the 1997 8-hour ozone standard effective July 19, 2007 (72 FR 39577), and the MOBILE6.2-based budgets were approved in that action. If EPA finalizes this proposed approval, the newly submitted MOVES2010a-based budgets will replace the existing MOBILE6.2-based budgets in the state's 1997 8-hour ozone maintenance plan and must then be used in future transportation conformity analyses for the area. At that time, the previously approved MOBILE6.2-based budgets would no longer be applicable for transportation conformity purposes.

If EPA approves the MOVES2010a-based budgets, the South Bend-Elkhart 1997 8-hour ozone maintenance area must use the MOVES2010a-based budgets starting on the effective date of the final approval. See the official release of the MOVES2010 Emissions Model (75 FR 9411) for background and section III(c) below for details.

III. What is the background for this action?

a. SIP Budgets and Transportation Conformity

Under the Clean Air Act (CAA), states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given National Ambient Air Quality Standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress (RFP) and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks, and other on-road vehicles. These motor vehicle SIP budgets are the portions of the total emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance, if they are not exceeded. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under CAA section 176(c), transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR parts 51 and 93.

In general, before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, budgets that are replacing approved budgets must be found adequate and approved before the budgets can replace the older budgets. Therefore, EPA cannot just find these replacement budgets adequate because adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same purpose, as is the case with Indiana's MOVES2010a 1997 8-hour ozone maintenance plan budgets, EPA must approve the revised SIP and budgets, and must affirm that they are adequate at the same time. Once EPA approves the budgets in the SIP, the revised budgets must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

b. Prior Approval of Budgets

EPA had previously approved budgets for the South Bend-Elkhart, 8-hour ozone maintenance area for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the year 2020 on July 19, 2007 (72 FR 39577). These budgets were based on EPA's MOBILE6.2 emissions model. The ozone maintenance plan established 2020 budgets for the South Bend-Elkhart, Indiana area of 6.64 tons per day (tpd) for VOCs and 7.73 tpd for NO_X. These budgets demonstrated a reduction in emissions from the monitored attainment year and included a margin of safety.

c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010.

MOVES will be required for new regional emissions analyses for transportation conformity determinations (''regional conformity analyses'') outside of California that begin after March 2, 2013, or when EPA approves MOVES-based budgets, whichever comes first.[1] Prior to March 2, 2013, areas can continue to use MOBILE6 unless the area has approved MOVES budgets. The grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions (e.g., MOVES2010a and MOVES2010b). For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

EPA encouraged areas to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development (77 FR 9411 and 77 FR 11394).

The Michiana Council of Governments (MACOG), which is the Metropolitan Planning Organization (MPO) for the South Bend-Elkhart area, has used MOVES2010a emission rates with the transportation network information to estimate emissions in the years of the transportation plan and also for the SIP. Indiana is revising the budgets at this time using the latest planning assumptions including population and employment updates. In addition, newer vehicle registration data has been used to update the age distribution of the vehicle fleet. Since MOVES2010 (or a minor model revision) will be required for conformity analyses after the grace period ends, Indiana has concluded that updating the budgets with MOVES2010a will prepare the areas for the transition to using MOVES for conformity analyses and determinations. The interagency consultation group has had extensive consultation on the requirements and need for new budgets.

d. Submission of New Budgets Based on MOVES2010a

On June 15, 2012, Indiana submitted to EPA, for parallel processing, replacement budgets based on MOVES2010a for the South Bend-Elkhart area. Indiana provided public review and comment which ended on July 18, 2012. There were no comments. Indiana submitted the final SIP revision request on August 17, 2012.

The MOVES2010a budgets are proposed to replace the prior approved MOBILE6.2 budgets and are for the same years and pollutants/precursors. The new MOVES2010a budgets are for the year 2020 for both VOCs and NO_X and are detailed in a Table in section V(b) of this notice. Indiana has also provided the total emissions including mobile emissions based on MOVES2010a for the attainment year of 2004, the interim year 2010 and the 2020 maintenance year. The total safety margin available in 2020 for NO_X is 54.42 tpd and for VOC is 7.94 tpd. This information is detailed in the submittal and provided in the following table. The safety margin is defined as the reduction in emissions from the base year (in this case the 2004 attainment year) to the final year of the maintenance plan (in this case the 2020 year). The total emissions includes point, area, non-road, and on-road mobile sources.

TABLE OF TOTAL EMISSIONS WITH MOVES2010a EMISSIONS

Year	2004	2010	2020	Safety margin
VOC	96.83	84.65	88.89	7.94

[1] Upon the release of MOVES2010, EPA established a two-year grace period before MOVES is required to be used for regional conformity analyses (75 FR 9411). EPA subsequently promulgated a final rule on February 27, 2012 to provide an additional year before MOVES is required for these analyses (77 FR 11394). In this case the grace period ends on March 2, 2013.

TABLE OF TOTAL EMISSIONS WITH MOVES2010a EMISSIONS—Continued

Year	2004	2010	2020	Safety margin
NO_X	91.48	60.04	37.06	54.42

The submittal demonstrates how all emissions decline from the attainment year of 2004. In 2004, the total estimated NO_X emissions from all sources (including mobile, point, area, and non-road sources) is 91.48 tpd and the total VOC emissions, for the 2004 attainment year, from all sources is 96.83 tpd. The 2020 estimated emissions for total NO_X from all sources is 37.06 tpd and the total VOC emissions from all sources is 88.89 tpd. This is further discussed in section V of this notice and detailed in a table. This reduction in emissions demonstrates that the area will continue below the attainment level of emissions and maintain the 1997 8-hour ozone standard. The motor vehicle emissions, when included with point, area, and non-road sources continue to demonstrate maintenance of the attainment level of emissions in the South Bend-Elkhart area.

No additional control measures were needed to maintain the 1997 ozone standard in the South Bend-Elkhart area. An appropriate safety margin for NO_X and VOCs was discussed by the interagency consultation group (the interagency consultation group as required by the state conformity agreement, consists of Federal Highway Administration, the Indiana Department of Transportation, Indiana Department of Environmental Management, EPA, and the local MPO). The allocation of safety margin is included in Table 5.2–A of the Indiana submittal. The on-road MOVES2010a based budgets are in Table 5.2–A of the submittal and are listed as 13.95 tpd for NO_X and 6.73 tpd for VOCs in the year 2020. These budgets will continue to keep emissions in the South Bend-Elkhart area below the calculated attainment year of emissions.

IV. What are the criteria for approval?

EPA has always required that revisions to existing SIPs and budgets continue to meet applicable requirements (i.e., RFP, attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The SIP must also meet any applicable SIP requirements under CAA section 110.

In addition, the transportation conformity rule (at 40 CFR 93.118(e)(4)(iv)) requires that ''the budgets, when considered together with all other emissions sources, is consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate or approve them for conformity purposes.

In addition, EPA has stated that areas can revise their budgets and inventories using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the baseline/attainment year and maintenance year are the same or greater using MOVES than they were previously. The Indiana submittal meets this requirement, as described below in section V.

For more information, see EPA's latest ''Policy Guidance on the Use of MOVES2010 for SIP Development, Transportation Conformity, and Other Purposes'' (April 2012).

V. What is EPA's analysis of the state's submittal?

a. The Revised Inventories

The Indiana SIP revision request for South Bend-Elkhart 1997 ozone maintenance seeks to revise only the on-road mobile source inventories and not the non-road inventories, area source inventories, or point source inventories for the 2020 year for which the SIP revises the budgets. IDEM has certified that the control strategies remain the same as in the original SIP, and that no other control strategies are necessary. Attainment of the ozone standard with current control strategies is confirmed by the monitoring data for South Bend-Elkhart, IN, which continues to monitor attainment for the 1997 8-hour ozone standard. The area is also monitoring attainment for the 2008 8-hour ozone standard. Thus, the current control strategies are continuing to keep the area in attainment of the NAAQS.

EPA has reviewed the emission estimates for point, area, and non-road sources and concluded that no major changes to the projections need to be made, as discussed further below. Indiana finds that growth and control strategy assumptions for non-mobile sources (i.e., area, non-road, and point) have not changed significantly from the original submittal for the years 2004, 2010, and 2020. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2004, 2010, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Indiana confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions from mobile sources) are 91.48 tpd for NO_X and 96.83 tpd for VOCs in the 2004 attainment year. The total emissions from all sources in the 2020 year are 37.06 tpd for NO_X and 88.89 tpd for VOCs. These totals demonstrate that emissions in the South Bend-Elkhart area are continuing to decline and remain below the attainment levels.

Indiana has submitted MOVES2010a-based budgets for the South Bend-Elkhart area that are clearly identified in Table 5.2–A of the submittal. The on-road budgets for 2020 are 13.95 tpd for NO_X and 6.73 tpd for VOCs. These are the budgets that are being proposed for approval.

b. Approvability of the MOVES2010a-Based Budgets

EPA is proposing to approve the MOVES2010a-based budgets submitted by the state for use in determining transportation conformity in the South Bend-Elkhart 1997 ozone maintenance area. EPA is making this proposal based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation

of the State's submittal and SIP requirements. EPA has determined, based on its evaluation, that the area's maintenance plan would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4).

The adequacy criteria found in 40 CFR 93.118(e)(4) are as follows:

- The submitted SIP was endorsed by [the Governor/Governor's designee] and was subject to a state public hearing (§ 93.118(e)(4)(i));
- Before the control strategy implementation plan was submitted to EPA, consultation among Federal, state, and local agencies occurred, and the state fully documented the submittal (§ 93.118(e)(4)(ii));
- The budgets are clearly identified and precisely quantified (§ 93.118(e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (§ 93.118(e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the control strategy implementation plan (§ 93.118(e)(4)(v); and
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions and changes to established safety margins and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) (§ 93.118(e)(4)(vi).

Our review finds that Indiana has met all of the adequacy criteria. The final submittal is dated August 17, 2012, and signed by the governor's designee. All public hearing materials were submitted with the formal SIP revision request. The interagency consultation group, which is comprised of the state air agency, state Department of Transportation, Federal Highway Administration, EPA, and the MPOs for the area, have discussed and reviewed the budgets developed with MOVES2010a and the safety margin allocation. The budgets are clearly identified and precisely quantified in the submittal in table 5.2–A. The budgets when considered with other emissions sources (point, area, non-road) are consistent with continued maintenance of the 1997 ozone standard. The budgets are clearly related to the emissions inventory and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model are detailed in the Appendix to the submittal. EPA has reviewed the inputs to the MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration—Indiana Division and the Indiana Department of Transportation have taken a lead role in working with the MPO and contractor to provide accurate, timely information and inputs to the MOVES2010a model runs. The MACOG network model provided the vehicle miles of travel and other necessary data from the travel demand network model.

The CAA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (in this case, maintenance). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Indiana's submitted MOVES2010a budgets meet EPA's two criteria for revising budgets without revising the entire SIP:

(1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and

(2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

The State has documented that growth and control strategy assumptions continue to be valid and do not change the overall conclusions of the maintenance plan. The emission estimates for point, area and non-road sources have not changed. Indiana finds that growth and control strategy assumptions for non-mobile sources (i.e., area, non-road, and point) from the original submittal for the years 2004, 2010, and 2020 were developed before the downturn in the economy over the last several years. Because of this, the factors included in the original submittal may project more growth than actual into the future. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2004, 2010, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Indiana confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions for mobile sources) decrease from the 2004 attainment year to the year 2020 (the last year of the maintenance plan). These totals demonstrate that emissions in the South Bend-Elkhart area are continuing to decline and remain below the attainment levels. The table below shows total emissions in the South Bend-Elkhart area including point, area, non-road, and mobile sources and demonstrates the declining emissions from the 2004 attainment year.

TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS

Year	2004	2010	2020
VOC	96.83	84.65	88.89
NO_X	91.48	60.04	37.06

The following table displays the submitted budgets that are proposed in the notice to be approved. The budgets include an appropriate margin of safety while still maintaining total emissions below the attainment level.

TABLE OF MOTOR VEHICLE EMISSION BUDGETS (MOVES) SOUTH BEND-ELKHART, INDIANA FOR YEAR 2020

VOC (tpd)	6.73
NO_X (tpd)	13.95

Based on our review of the SIP and the new budgets provided, EPA has determined that the SIP will continue to meet its requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

c. Applicability of MOBILE6.2-Based Budgets

Pursuant to the State's request, EPA is proposing that, if we finalize the approval of the revised budgets, the state's existing MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes upon the effective date of that final approval.

In addition, once EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOBILE6 instead of MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets will end for the South Bend-Elkhart ozone maintenance area on the effective date of that final approval.[2]

VI. What action is EPA taking?

EPA is proposing in this action that the South Bend-Elkhart, Indiana existing approved budgets for VOCs and NO_X for 2020 for the 1997 8-hour ozone maintenance plan, that were based on the MOBILE6.2 emissions model, be replaced with new budgets based on the MOVES2010a emissions model. Once this proposal is finalized, future transportation conformity determinations would use the new, MOVES2010a-based budgets and would no longer use the existing MOBILE6.2-based budgets. EPA is also proposing to find that the South Bend-Elkhart area's maintenance plan would continue to meet its requirements as set forth under the CAA when these new budgets are included.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: September 21, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–24512 Filed 10–3–12; 8:45 am]

BILLING CODE 6560–50–P

[2] For more information, see EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (April 2012).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 12–201; FCC 12–77]

Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; extension of reply comment date.

SUMMARY: In this document, the Federal Communications Commission (Commission), via the Office of Managing Director, seeks comment on a report released by the Government Accountability Office Report on September 12, 2012, entitled, *Federal Communications Commission, Regulatory Fee Process Needs To Be Updated.* In addition, this document extends the reply comment date in response to the Commission's Notice of Proposed Rulemaking seeking comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees.

DATES: The comment period is reopened and the reply comment period is extended for the proposed rule published August 17, 2012, at 7 FR 49749. Interested parties may submit comments in response to the *GAO Regulatory Fees Reform Report* on or before October 9, 2012, and reply comments in response to both the *GAO Regulatory Fees Reform Report* and *Regulatory Fees Reform Notice of Proposed Rulemaking* on or before October 23, 2012.

ADDRESSES: You may submit comments, identified by MD Docket No. 12–201, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- *Email: ecfs@fcc.gov.* Include MD Docket No. 12–201 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express

Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: On July 17, 2012, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking (NPRM), FCC 12–77, seeking comment on proposals to reform the Commission's policies and procedures for assessing and collecting regulatory fees. The Commission published this *Regulatory Fees Reform NPRM* in the **Federal Register**, establishing a comment deadline of September 17, 2012 and reply comment deadline of October 16, 2012. On September 10, 2012, the Government Accountability Office (GAO) released a report entitled, *Federal Communications Commission, Regulatory Fee Process Needs To Be Updated*.

In this Public Notice, the Office of Managing Director (OMD) seeks comment on the *GAO Regulatory Fees Report* and extends the deadline for filing reply comments in response to the *Regulatory Fees Reform NPRM* until October 23, 2012. This extension aligns the reply comment deadlines in response to both items so that interested parties have the opportunity to concurrently examine and comment on the intertwined issues in these items. Accordingly, comments for the *GAO Regulatory Fees Report* will be due October 9, 2012 and reply comments in response to both the *GAO Regulatory Fees Report and Regulatory Fees Reform NPRM* are due October 23, 2012. Finally, OMD has entered the *GAO Regulatory Fees Report* into the record of the *Regulatory Fees Reform* proceeding so that comments on both documents may be filed in MD Docket 12–201.

The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Comment Filing Procedures

Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–24514 Filed 10–3–12; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[EPA–HQ–OARM–2012–0196]

EPAAR Clause for Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The proposed rule provides updates to outdated information currently in the *Printing* clause.

DATES: Comments must be received on or before November 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2012–0196, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: valentino.thomas@epa.gov.*
- *Mail:* EPA–HQ–OARM–2012–0196, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave.

NW., Washington, DC 20460. Please include a total of three (3) copies.

• *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2012–0196. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket, and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov,* or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

II. Background

In 2011 the EPA reviewed EPAAR clause 1552.208–70, *Printing.* Review was performed to reconsider the electronic reproduction threshold under which vendors may provide contract deliverables without violating mandatory printing source requirements. Reconsideration of the reproduction threshold was warranted given the ease with which electronic media may be reproduced. The clause is also being updated to clarify that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers provided by the Joint Committee on Printing. Finally, the definition of non-paper copies that the contractor may provide has been expanded to include other types of portable electronic media in addition to compact discs. As such, the proposed updates to the clause raise the limit for contractor-provided non-paper copies from 100 to 500, and clarifies that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers.

III. Proposed Rule

This proposed rule amends the EPAAR to revise the following within the *Printing* clause:

1. Paragraph (d)(2)—changed from ''the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing'' to ''Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.''

2. Paragraph (d)(3)—changed from ''the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing'' to ''Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.''

3. Paragraph (d)(4)—changed from ''the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing'' to ''Only the Joint Committee on Printing has the

authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.''

4. Paragraph (d)(4)—duplication limit changed from 100 to 500.

5. Paragraph (d)(4)—examples of non-paper duplication expanded from ''CDs/DVDs'' to ''electronic information storage device.''

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or recordkeeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Goverments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use'' (66 FR 28335, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C. 272 note) of NTTA, Public Law 104–113, directs EPA to use voluntary consensus standards in it's regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking does not involve human health or environmental affects.

List of Subjects in 48 CFR Part 1552

Environmental Protection, Required Sources of Supply, Printing.

Dated: September 18, 2012.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Revise 1552.208–70 to read as follows:

1552.208–70 Printing.

As prescribed in 1508.870, insert the following clause:

Printing (SEP 2012)

(a) Definitions. ''Printing'' is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

''Composition'' applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

''Camera copy'' (or ''camera-ready copy'') is a final document suitable for printing/duplication.

''Desktop Publishing'' is a method of composition using computers with the final output or generation of a camera copy done by a color inkjet or color laser printer. This is not considered ''printing.'' However, if the output from desktop publishing is being sent to a typesetting device (i.e., Linotronic) with camera copy being produced in either paper or negative format, these services are considered ''printing.''

''Microform'' is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform services are classified as printing services and include microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

''Duplication'' means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

''Requirement'' means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the duplication limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

''Incidental'' means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) Prohibition. (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) Affirmative Requirements. (1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA's Web site for the Comprehensive Procurement Guidelines at: *http://www.epa.gov/cpg/*.

(d) Permitted Contractor Activities. (1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel. Duplication services of ''incidentals'' in excess of the thresholds are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(4) The contractor may perform the duplication of no more than a total of 500 units of an electronic information storage device (e.g., CD–ROMs, DVDs, thumb drives*) (including labeling and packaging) per work assignment or task order/delivery order per contract year. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(e) Violations. The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) Flowdown Clause. The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

* Pursuant to the July 2008 guidance *Promotional Communications for EPA,* a thumb drive can be used as a promotional item, but it also must be an information medium in itself. Namely, it must have substantive EPA information already loaded into the drive. Due to its intrinsic material value, it may not be used simply or primarily to display an EPA message on the exterior of the drive.

(End of clause)

[FR Doc. 2012–23991 Filed 10–3–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 77, No. 193
Thursday, October 4, 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.

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, USDA.

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, the List Sampling Frame Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length. Annually, NASS obtains lists of farm and ranch operators from different crop and livestock organizations. Historically we have averaged 500,000 potential new operators each year from these lists. Before adding these names to our list of active operators we will contact the operators to collect basic farming information from them on the size and type of operation. These data will be used to eliminate any duplication we may have with names already on our list. Since the 2012 Census of Agriculture will be conducted in 2013, the sample sizes for 2014 and 2015 will be greatly reduced. Additional questions may need to be added to the questionnaire during the next three years to accommodate any new trends or changes in the farming community that need to be identified (i.e. Organic farming, renewable energy production, expansion of acreage of alternative or specialty crops, etc.).

DATES: Comments on this notice must be received by December 3, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0140, 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:* List Sampling Frame Surveys.

OMB Control Number: 0535–0140.

Expiration Date of Approval: February 28, 2013.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for a period of three 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, economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain as complete a list as possible of farm operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Data from these agricultural surveys are used by government agencies and educational institutions in planning, farm policy analysis, and program administration.

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, (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),'' 72 FR 33362, Jun. 15, 2007.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per respondent.

Respondents: Farms.

Estimated Number of Respondents: 200,000.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80% we estimate the burden to be 40,000 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, September 24, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–24494 Filed 10–3–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Vessel Monitoring System (VMS) and Related Requirements.

OMB Control Number: 0648–0544.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 905.

Average Hours per Response: Installation/activation checklist, 15 minutes; power down exemption request, 5 minutes; fishing activity report, 1 minute. Annual maintenance is 2 hours, but not counted as a response.

Burden Hours: 2,383.

Needs and Uses: This request is for extension of the current information collection.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the reef fish fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The vessel monitoring system (VMS) regulations for the Gulf reef fish fishery may be found at 50 CFR 622.9.

The FMP contains several area-specific regulations where fishing is restricted or prohibited in order to protect habitat or spawning aggregations, or to reduce fishing pressure in areas that are heavily fished. Unlike size, bag, and trip limits, where the catch can be monitored onshore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and the limited number of patrol vessels, resulting in a need to improve enforceability of area fishing restrictions through remote sensing methods. In addition, all fishing gears are subject to some area fishing restrictions. Because of the sizes of these areas and the distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. An electronic VMS allows a more effective means to monitor vessels for intrusions into restricted areas.

The VMS provides effort data and significantly aids in enforcement of areas closed to fishing. All position reports are treated in accordance with NMFS existing guidelines for confidential data. As a condition of authorized fishing for or possession of Reef Fish in or from the Gulf of Mexico Exclusive Economic Zone (EEZ), a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the United States Coast Guard (USCG), and their authorized officers and designees, access to the vessel's position data obtained from the VMS.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, one time and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 28, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–24413 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1860]

Approval for Manufacturing Authority, Foreign-Trade Zone 99, Fisker Automotive, Inc., (Electric Passenger Vehicles), Wilmington, DE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Delaware Economic Development Office, grantee of FTZ 99, has requested manufacturing authority on behalf of Fisker Automotive, Inc., within FTZ 99—Site 2, Wilmington, Delaware (FTZ Docket 23–2012, filed 3–23–2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 19000, 3–29–2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 99 on behalf of Fisker Automotive, Inc. (Fisker), as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to the following condition:

Fisker must admit all foreign man-made fiber and cotton bags (HTSUS Subheadings 4202.12.8030, 4202.12.8070, 4202.92.4500, 4202.92.9060, 4202.99.9000, 6305.20), labels and cords (6307.90), and felt (5602.90) to the zone under privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Signed at Washington, DC, this 20th day of September 2012.

Paul Piquado,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–24542 Filed 10–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1859]

Grant of Authority for Subzone Status; Tesla Motors, Inc., (Electric Passenger Vehicles), Palo Alto and Fremont, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to

qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of San Jose, California, grantee of Foreign-Trade Zone 18, has made application to the Board for authority to establish a special-purpose subzone at the electric passenger vehicle manufacturing facilities of Tesla Motors, Inc., located in Palo Alto and Fremont, California (FTZ Docket 3–2012, filed 1–10–2012);

Whereas, notice inviting public comment has been given in the **Federal Register** (77 FR 2269, 1–17–2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing of electric passenger vehicles and related powertrain components at the Tesla Motors, Inc., facilities located in Palo Alto and Fremont, California (Subzone 18G), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 20th day of September 2012.

Paul Piquado,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–24543 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 4, 2012.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is July 1, 2011, through December 31, 2011. The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. The final determination will be issued 135 days after publication of this preliminary determination in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–6231, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The products covered by the scope of this investigation are drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of these investigations if they are included within the sales price of the drawn stainless steel sinks.[1] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigations. Drawn stainless steel sinks are covered by the scope of the investigations whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigations are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by these investigations are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value (''NV'') has been calculated in accordance with section 773(c). Specifically, the Department preliminarily selected Thailand as the surrogate country, which is economically comparable to the PRC and is a significant producer of comparable merchandise. Thus, we calculated NV using Thai prices, when available, to value the respondents' factors of production (''FOPs'').

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant

[1] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of these investigations if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

Secretary for Import Administration, dated concurrently with this determination and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *https://iaaccess.trade.gov* and in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

The preliminary weighted-average antidumping duty (''AD'') margin percentages are as follows:

Exporter	Producer	Percent margin
Zhongshan Superte Kitchenware Co., Ltd./Zhongshan Superte Kitchenware Co., Ltd. invoiced as Foshan Zhaoshun Trade Co., Ltd.	Zhongshan Superte Kitchenware Co., Ltd	63.87
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	Guangdong Dongyuan Kitchenware Industrial Co., Ltd	54.25
B&R Industries Limited	Xinhe Stainless Steel Products Co., Ltd and Jiamen XHHL Stainless Steel Manufacturing Co., Ltd.	59.06
Elkay (China) Kitchen Solutions, Co., Ltd	Elkay (China) Kitchen Solutions, Co., Ltd	59.06
Feidong Import and Export Co., Ltd	Jiangmen Liantai Kitchen Equipment Co.; Jiangmen Xinhe Stainless Steel Product Co., Ltd.	59.06
Foshan Shunde MingHao Kitchen Utensils Co., Ltd	Foshan Shunde MingHao Kitchen Utensils Co., Ltd	59.06
Franke Asia Sourcing Ltd	Guangdong YingAo Kitchen Utensils Co., Ltd.; Franke (China) Kitchen System Co., Ltd.	59.06
Grand Hill Work Company	Zhongshan Xintian Hardware Co., Ltd	59.06
Guangdong G-Top Import and Export Co., Ltd	Jiangmen Jin Ke Ying Stainless Steel Wares Co., Ltd	59.06
Guangdong Yingao Kitchen Utensils Co., Ltd	Guangdong Yingao Kitchen Utensils Co. Ltd	59.06
Hangzhou Heng's Industries Co., Ltd	Hangzhou Heng's Industries Co., Ltd	59.06
J&C Industries Enterprise Limited	Zhongshan Superte Kitchenware Co., Ltd	59.06
Jiangmen Hongmao Trading Co., Ltd	Xinhe Stainless Steel Products Co., Ltd	59.06
Jiangmen New Star Hi-Tech Enterprise Ltd	Jiangmen New Star Hi-Tech Enterprise Ltd	59.06
Jiangmen Pioneer Import & Export Co., Ltd	Jiangmen Ouert Kitchen Appliance Manufacturing Co., Ltd.; Jiangmen XHHL Stainless Steel Manufacturing Co., Ltd.	59.06
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd	Jiangxi Offidun Industry Co. Ltd	59.06
Ningbo Oulin Kitchen Utensils Co., Ltd	Ningbo Oulin Kitchen Utensils Co., Ltd	59.06
Primy Cooperation Limited	Primy Cooperation Limited	59.06
Shunde Foodstuffs Import & Export Company Limited of Guangdong.	Bonke Kitchen & Sanitary Industrial Co., Ltd	59.06
Zhongshan Newecan Enterprise Development Corporation	Zhongshan Xintian Hardware Co., Ltd	59.06
Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	59.06
PRC-Wide Rate *		76.53

* This rate also applies to Jiangmen Liantai Kitchen Equipment Co., Jiangmen Xinhe Stainless Steel Product Co., Ltd., Kele Kitchenware Co., Ltd., Capstone International Development Corporation, and Foshan Fancome Trading Co., Ltd.

Disclosure and Public Comment

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[2] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[3] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

For the final determination in this investigation interested parties may submit publicly available information to value the FOPs within 40 days after the publication of this preliminary determination.[4]

[2] *See* 19 CFR 351.309.

[3] *See* 19 CFR 351.310(c).

[4] *See* 19 CFR 351.301(c)(3)(i). In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and

Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of drawn sinks from the PRC, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through,[5] as follows: (1) The separate rate margin for the exporter/producer combinations listed in the table above will be the rate the Department has determined in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate AD margin above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

We have adjusted the preliminary determination AD margins for export subsidies and estimated domestic subsidy pass-through as follows: [6]

(1) For Superte and Dongyuan, mandatory respondents each receiving their own calculated AD margin, we reduced their respective cash deposit rates by the respective export subsidies and estimated domestic subsidy pass-through determined for each of these respondents in the companion countervailing duty (''CVD'') proceeding.[7]

(2) For exporter/producer combinations receiving a separate AD margin based on the rates calculated for the mandatory respondents in the AD determination, we reduced the AD cash deposit rate by the lesser of a) the export subsidy rate applicable to each exporter or b) the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate in the AD determination is based.[8] Additionally, pursuant to section 777A(f) of the Act, we further reduced the AD cash deposit rate by the estimated domestic subsidy pass-through contained in the AD separate rate margin, capped by the corresponding domestic subsidy determined for the exporter in the companion CVD proceeding.

(3) For the PRC-wide entity, which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate and the lowest estimated domestic subsidy pass-through determined for any party in the companion CVD proceeding.

These cash deposit instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of drawn sinks, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 27, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Initiation
2. Period of Investigation
3. Postponement of Preliminary Determination
4. Scope of the Investigation
5. Scope Comments
6. Non-Market Economy Country Status
7. Selection of Respondents
8. Postponement of Final Determination and Extension of Provisional Measures
9. Surrogate Country
10. Surrogate Value Comments
11. Separate Rates
    a. Separate Rate Recipients
    b. Companies Not Receiving a Separate Rate
12. Margin for the Separate Rate Companies
13. Combination Rates
14. The PRC-Wide Entity
15. Application of Facts Otherwise Available and Adverse Facts Available
16. Corroboration of Information
17. Date of Sale
18. Fair Value Comparisons
19. Export Price
20. Normal Value
21. Factor Valuations Methodology
22. Determination To Apply an Alternative Methodology
23. Currency Conversion
24. Verification
25. Double Remedies Offset
26. International Trade Commission Notification
27. Conclusion

[FR Doc. 2012–24549 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–DS–P

Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

[5] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to the CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[6] *See* Preliminary Decision Memorandum.

[7] *See Id.*

[8] *See Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021, 17026 (March 23, 2012); *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011). *See also* Preliminary Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 4, 2012.

SUMMARY: The Department of Commerce (''the Department'') has received a

timely request for a new shipper review (''NSR'') of the antidumping duty order on certain frozen fish fillets (''fish'') from the Socialist Republic of Vietnam (''Vietnam''). The Department has determined that the request meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is August 1, 2011, through July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0238.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on fish from Vietnam was published on August 12, 2003.[1] On August 31, 2012, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214, the Department received a NSR request from Golden Quality Seafood Corporation (''Golden Quality'').[2] The requesting company certified that it is a producer and exporter of the subject merchandise upon which the request was based.[3]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), the requesting company certified that it did not export subject merchandise to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), the requesting company certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), the requesting company also certified that its export activities were not controlled by the central government of Vietnam.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), the requesting company submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on the documentation provided by Golden Quality, we find that the request submitted by Golden Quality meets the threshold requirements for initiation of the NSR for shipments of fish from Vietnam.[8] The POR is August 1, 2011, through July 31, 2012.[9] The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation.[10]

We will instruct U.S. Customs and Border Protection (''CBP'') 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 the requesting company in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Golden Quality certified that it both produced and exported the subject merchandise, the sale of which is the basis for the new shipper review request, we will instruct CBP to permit the use of a bond only for subject merchandise which Golden Quality both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: September 21, 2012.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–24547 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See* Request for New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated Aug. 31, 2012.

[3] *See id.* at 1.

[4] *Id.* at Ex. 1.

[5] *Id.*

[6] *Id.*

[7] *Id.* at Exs. 2–4; *See also* ''Memorandum to the File, from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Placing CBP data on the record,'' dated concurrently with this notice.

[8] *See* ''Memorandum to the File, from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: New Shipper Initiation Checklists,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.214(g)(1)(i)(A).

[10] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

Stony Brook University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated 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). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 12–034. *Applicant:* Stony Brook University, Stony Brook, NY 11794. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. Intended Use: See notice at 77 FR 55185, September 7, 2012.

Docket Number: 12–035. *Applicant:* The City College of New York, New York, NY 10031. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. Intended Use: See notice at 77 FR 55185, September 7, 2012.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 27, 2012.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2012–24545 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Usage of Elevators for Occupant Evacuation Questionnaire

AGENCY: National Institute of Standards and Technology (NIST).

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 December 3, 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 Erica Kuligowski, *erica.kuligowski@nist.gov,* 301–975–2309.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a reinstatement with change of a previously approved information collection. The questionnaire approved by the Office of Management and Budget (OMB) in August 2011 has been revised in order to be a more effective tool for gathering information on the use of elevators during building evacuations. Some questions and possible answers to those questions have been revised or modified to ensure privacy of possible respondents.

NIST's research on elevators has primarily focused on the technical aspects of ensuring safe and reliable evacuation for the occupants of tall buildings. In addition, the International Code Council and the National Fire Protection Association provide requirements for the use of elevators for both occupant evacuation and fire fighter access into the building. However, there still is little understanding of how occupants use elevator systems during fire emergencies.

The main focus of this research effort is to gain an understanding of how elevators are currently used by occupants of existing multi-story buildings in the United States during fire emergencies. This research aims to summarize emergency plans and procedures from buildings that make use of one or multiple elevators from the existing elevator system (used for normal building traffic) for the evacuation of building occupants during fire emergencies. Building managers and designated safety personnel from existing buildings in the United States, including federal buildings, will be contacted to fill out a questionnaire asking about how the buildings' evacuation plans incorporate the use of the existing elevator system to evacuate occupants during fire emergencies, specifically individuals with disabilities, if at all.

II. Method of Collection

This data will be collected electronically. Questionnaires will be made available on a secured Web site and the link to this Web site will be distributed by NIST staff to building property managers and designated safety personnel.

III. Data

OMB Control Number: 0693–0061.

Form Number: None.

Type of Review: Regular submission (reinstatement with change).

Affected Public: Selected individuals, such as building managers and designated safety personnel, who are familiar with or in charge of developing emergency procedures for multi-story buildings in the United States, including both federal and private sector buildings.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 375 hours each year.

Estimated Total Annual Cost to Public: $0.

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: September 28, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–24474 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Antarctic Marine Living Resources Conservation and Management Measures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 3, 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 Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mi Ae Kim at (301) 427–8365 or *mi.ae.kim@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR meets annually to adopt measures to conserve and manage the marine living resources of the Convention Area. The United States is a Contracting Party to the Convention and a member of CCAMLR and its Scientific Committee. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the United States to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations

implementing AMLRCA are at 50 CFR part 300, Subpart G.

The recordkeeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. The reporting requirements included in this collection concern CCAMLR Ecosystem Monitoring Program (CEMP) activities, United States (U.S.) harvesting permit applicants and/or harvesting vessel operators, and U.S. importers and re-exporters of Antarctic Marine Living Resources (AMLR).

II. Method of Collection

Paper applications, electronic reports, satellite-linked vessel monitoring devices, radio and telephone calls, gear and vessel markings are required from participants and methods of transmittal include Internet, satellite, facsimile and mail transmission of forms, reports and information.

III. Data

OMB Control Number: 0648–0194.

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: 86: 1 research entity; 5 vessel owners; 80 dealers.

Estimated Time per Response: One hour to apply for a CEMP research permit; one hour to report on permitted research; 28 hours to supply information on potential new or exploratory fishing; two hours to apply for a harvesting permit; 2 minutes to transmit information by radio; 4 hours to install a vessel monitoring device (VMS); two hours for annual VMS maintenance; 45 minutes to mark a vessel; 40 minutes to mark buoys; 10 hours to mark pot gear; six minutes to mark trawl nets; 15 minutes to apply for a dealer permit to import and/or re-export Antarctic marine living resources; 15 minutes to complete and submit a toothfish catch document; 15 minutes to apply for pre-approval of toothfish imports; 15 minutes to complete and submit re-export catch documents; fifteen minutes to submit import tickets.

Estimated Total Annual Burden Hours: 294.

Estimated Total Annual Cost to Public: $132,373 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the continuing 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 continuing 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: September 28, 2012.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–24414 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BC52

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) study area from January 2014 through January 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than November 5, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

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

A copy of the Navy's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Navy's Draft Environmental Impact Statement (DEIS) for HSTT was made available to the public on May 11, 2012 (77 FR 27743). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has

defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

With respect to military readiness activities, the MMPA defines ''harassment'' as: ''(i) Any act that injures or has the significant potential to injure a marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On April 13, 2012, NMFS received an application from the Navy requesting two letters of authorization (LOAs) for the take of 39 species of marine mammals incidental to Navy training and testing activities to be conducted in the HSTT Study Area over 5 years. The Navy is requesting a 5-year LOA for training activities and a 5-year LOA for testing activities, each proposed to be conducted from 2014 through 2019. The Study Area includes three existing range complexes: the Southern California (SOCAL) Range Complex, Hawaii Range Complex (HRC), and Silver Strand Training Complex (SSTC) (see page 2 of the Navy's application for a map). In addition, the Study Area includes Navy pierside locations and areas on the high seas where maintenance, training, or testing may occur. These activities are classified as military readiness activities. The Navy states that these activities may expose some of the marine mammals present within the Study Area to sound from active sonar, underwater detonations, and pile driving and removal. In addition, incidental takes of marine mammals may occur from ship strikes. The Navy is requesting authorization to take 39 marine mammal species by Level B harassment and 30 marine mammal species by serious injury or mortality.

Description of the Specified Activity

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting the following training and testing activities: amphibious warfare; anti-surface warfare; anti-submarine warfare; mine warfare; naval special warfare; Naval Air Systems Command (NAVAIR) testing; Naval Sea Systems Command (NAVSEA) testing; Space and Naval Warfare Systems Command (SPAWAR) testing; and Office of Naval Research (ONR) and Naval Research Laboratory (NRL) testing. Detailed descriptions of these activities, including duration, location, and equipment involved, are provided in the Navy's application. The Navy has also prepared a Draft Environmental Impact Statement (DEIS) analyzing the effects on the human environment of implementing their preferred alternative (among others).

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All input related to the Navy's HSTT request and NMFS' role in governing the incidental taking of marine mammals will be considered by NMFS when developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: September 27, 2012.

Helen M. Golde,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–24539 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC090

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) study area from January 2014 through January 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS announces our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and invites information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than November 5, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Hopper@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

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

An electronic copy of the Navy's application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Navy's Draft Environmental Impact Statement (DEIS) for AFTT was made available to the public on May 11, 2012 (77 FR 27742). NMFS is a cooperating agency in the development of the Navy's DEIS for AFTT. The dates and times of the public meetings may be viewed at: *http://www.aftteis.com.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is

limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

With respect to military readiness activities, the MMPA defines ''harassment'' as: ''(i) any act that injures or has the significant potential to injure a marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On April 13, 2012, NMFS received an application from the Navy requesting two letters of authorization (LOAs) for the take of 40 species of marine mammals incidental to Navy training and testing activities to be conducted in the AFTT Study Area over 5 years. The Navy requests a 5-year LOA for training activities and a 5-year LOA for testing activities, each proposed to be conducted from 2014 through 2019. The Study Area includes the following range complexes: the Northeast Range Complexes (consisting of the Boston, Narragansett Bay, and Atlantic City Ranges Complexes); the Naval Undersea Warfare Center Division, Newport Testing Range; the Virginia Capes Range Complex (VACAPES); the Navy Cherry Point Range Complex (CHPT); the Jacksonville Range Complex (JAX), the South Florida Ocean Measurement Facility Testing Range; the Undersea Warfare Training Range; the Key West Range Complex; the Naval Surface Warfare Center, Panama City Division Testing Range; and the Gulf of Mexico Range Complex (GOMEX) (see Figure 1–1 in the Navy's LOA application for a map of the AFTT Study Area). In addition, the Study Area includes Navy pierside locations and areas on the high seas where maintenance, training, or testing may occur. These activities are classified as military readiness activities. The Navy states that these activities may expose some of the marine mammals present within the Study Area to sound from active sonar, underwater detonations, and pile driving and removal. In addition, incidental takes of marine mammals may occur from ship strikes.

Description of the Specified Activity

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting training and testing operations that involve the use of active acoustics and underwater detonations. These non-impulsive (sonar) and impulsive (explosives) sources would be used during the following training and testing activities: amphibious warfare; anti-surface warfare; anti-submarine warfare; mine warfare; naval special warfare; Naval Air Systems Command (NAVAIR) testing; Naval Sea Systems Command (NAVSEA) testing; Space and Naval Warfare Systems Command (SPAWAR) testing; and Office of Naval Research (ONR) and Naval Research Laboratory (NRL) testing. Detailed descriptions of these activities are included in the LOA application.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All input related to the Navy's AFTT request and NMFS' role in governing the incidental taking of marine mammals will be considered by NMFS when developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: September 27, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–24538 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 120928505–2505–01]

RIN 0660–XC002

Development of the Nationwide Interoperable Public Safety Broadband Network

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice of Inquiry (NOI) on behalf of the First Responder Network Authority (FirstNet) to seek public comment on the conceptual network architecture presentation made at the FirstNet Board of Directors' meeting held on September 25, 2012, as well as to invite input on other network design and business plan considerations. NTIA also seeks comment on the general concept of how to develop applications for public safety users as discussed at the FirstNet Board meeting. FirstNet intends to use the input received from this process to shape its efforts to establish the interoperable public safety broadband network based on a single, nationwide network architecture called for under the Middle Class Tax Relief and Job Creation Act of 2012 (Act).[1]

DATES: Comments must be received no later than November 1, 2012 at 5:00 p.m. Eastern Daylight Time.

ADDRESSES: Written comments may be submitted by email to *firstnetnoi@ntia.doc.gov.* Written comments also may be submitted by mail to: National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., HCHB Room 7324, Attn: FirstNet NOI, Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. Paper submissions should also include a CD or DVD with an electronic version of the document, which should be labeled with the name

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (Act).

and organizational affiliation of the filer. Do not submit Confidential Business Information or otherwise sensitive or protected information. All email messages and comments received are a part of the public record and will generally be posted without change to the NTIA Web site at *http://www.ntia.doc.gov/federal-register-notice/2012/comments-nationwide-interoperable-public-safety-broadband-network-noi.* All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Comments should not exceed 25 double-spaced pages.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Senior Advisor for Public Safety, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; telephone: (202) 482–0016; email: *uonyeije@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

The Middle Class Tax Relief and Job Creation Act of 2012 created the First Responder Network Authority (FirstNet) as an independent authority within NTIA and authorized it to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (PSBN) based on a single, national network architecture.[2] FirstNet is responsible for, at a minimum, ensuring nationwide standards for use and access of the network; issuing open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; leveraging, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-federal entities to build, operate, and maintain the network.[3]

FirstNet is headed by a Board of Directors (Board) with 15 voting members.[4] The FirstNet Board held its first public meeting on September 25, 2012, during which it took action on several organizational and administrative items, including approving resolutions to adopt its bylaws, create a State, Regional, Local, and Tribal Consultation Committee, and request the Federal Communications Commission (FCC) transfer the public safety spectrum license to FirstNet. FirstNet Board member Craig Farrill shared a presentation outlining a possible framework for designing the public safety network architecture in a manner that leverages existing resources and infrastructure, as is contemplated in the Act. Specifically, the FirstNet Nationwide Network (FNN) concept would leverage the significant investments and combined efforts of the public sector and the commercial wireless industry to achieve the major elements of the nationwide wireless network called for under the Act, including ubiquitous coverage, reliable, redundant, and interoperable service, at reduced costs and with accelerated availability. The presentation of the FNN concept is available for review on NTIA's Web site at *http://www.ntia.doc.gov/files/ntia/publications/firstnet_fnn_presentation_09-25-2012_final.pdf.*

FirstNet Board Chairman Sam Ginn also discussed a general concept for developing applications designed specifically for public safety users. Under this general concept, FirstNet would seek to understand what applications federal, state, local, and tribal public safety users would like to see developed. FirstNet would define interface and certification requirements for FirstNet applications, and would call on innovators to develop applications for public safety to use to do its job better and more safely. The public safety community could download these applications, thus enabling public safety users nationwide to benefit from individual innovations.

These conceptual presentations mark a starting point for further discussions.

Request for Comments

On behalf of the FirstNet Board, NTIA requests public comments on the FNN conceptual network design model presented at the FirstNet Board meeting. NTIA also solicits input from interested stakeholders on other options that the FirstNet Board should consider in meeting the Act's requirements to deploy the PSBN based on a single, nationwide network architecture that evolves with technological advancements. FirstNet is particularly interested in receiving innovative ideas on how it can deploy a reliable, ubiquitous, redundant, and interoperable broadband network for public safety users. NTIA invites the submission of proposals that address the following criteria:

1. Meets public safety's requirements for priority, quality of service, and preemption features;

2. Uses, to the extent possible, existing radio access network and core network infrastructure installed by commercial mobile operators in order to maximize the coverage and performance delivered to public safety while minimizing the capital expenditures;

3. Reaches operational capability as quickly as possible; and

4. Enables voice services (cellular telephony and push-to-talk (PTT)) both within the FirstNet network as well as to/from other commercial networks, including the public switched telephone network (PSTN).

Any proposal submitted in response to this NOI should: (1) Describe all of the assumptions necessary for the proposal to succeed; (2) identify the specific opportunities or benefits the proposal provides in meeting the Act's objectives and the criteria enumerated above; (3) discuss any existing challenges or obstacles that must be overcome to realize the proposal; and (4) specify any areas in need of further research and development to ensure the success of the proposal.

NTIA also seeks input from all stakeholders on the FirstNet Board's conceptual discussion of a potential framework for developing applications for public safety use. Commenters should: (1) Provide suggestions for applications that would benefit public safety users; (2) address what interface requirements and other information innovators need in order to develop applications in an open environment; (3) address what specific security requirements public safety needs in its applications; (4) provide ideas as to what framework or organizational factors would allow for the development of the greatest number of quality applications; (5) provide specific suggestions for FirstNet's applications certification requirements; (6) discuss possible delivery methods (*e.g.,* app store models) under the FNN conceptual architecture model presented at the FirstNet Board meeting or based on any alternative network design models that commenters propose; and (7) provide comment on any other issues that FirstNet should consider in facilitating the development of public safety applications.

Dated: September 28, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–24469 Filed 10–3–12; 8:45 am]

BILLING CODE 3510–60–P

[2] 47 U.S.C. 1422(b).

[3] 47 U.S.C. 1426(b)(1).

[4] 47 U.S.C. 1424.

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0003]

Proposed Extension of Approval of Information Collection; Comment Request—Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations setting forth the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than December 3, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0003, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Antennas (16 CFR part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard and to maintain records of those tests. The certification regulations are codified at 16 CFR part 1204, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expires on December 12, 2012. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

B. Estimated Burden

Commission staff estimates that about five firms manufacture or import citizens band base station antennas subject to the standard. Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*), for an estimated annual cost to the industry of $67,925.

Commission staff will expend approximately 40 hours reviewing records required to be maintained for omnidirectional citizens band base station antennas. The annual cost to the federal government of the collection of information in these regulations is estimated to be $3,309. This estimate uses an annual total compensation of $119,238 (the equivalent of a GS–14 step 5 employee, with an additional 30.7 percent added for benefits.)

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be

minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: October 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–24486 Filed 10–3–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0005]

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CSPC or Commission) requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of walk-behind power lawn mowers. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205). The Commission will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than December 3, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0005, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of amputations, avulsions, lacerations, and other serious injuries that have resulted from the accidental contact of some part of an operator's body with the rotating blade of a power lawn mower. The standard contains performance and labeling requirements for walk-behind power lawn mowers to address risks of blade-contact injuries.

Subpart B of the standard sets forth regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power mowers. These regulations also require manufacturers, importers, and private labelers of walk-behind power mowers to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part 1205, Subpart B. Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission uses the information compiled and maintained by manufacturers and importers of walk-behind power mowers to protect consumers from risks of injuries associated with walk-behind power lawn mowers. More specifically, the Commission uses this information to determine whether the mowers produced and imported comply with the applicable standard. The Commission also uses this information to obtain corrective actions if walk-behind power mowers fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The OMB approved the collection of information requirements for walk-behind mowers under control number 3041–0091. OMB's most recent extension of approval will expire on December 31, 2012. The Commission proposes to request an extension of approval for this collection of information requirements.

B. Estimated Burden

Commission staff estimates that about 34 firms are subject to the testing and recordkeeping requirements of the certification regulations. Commission staff estimates further that the annual testing and recordkeeping burden imposed by the regulations on each of these firms on average is approximately 390 hours. Thus, the total annual burden imposed by the certification regulations on all manufacturers and importers of walk-behind power mowers is about 13,260 hours (34 firms $\times$ 390 hours).

In addition, manufacturers are expected to spend an additional hour, per production day, to collect the information for labeling. Accordingly, an additional 130 hours per firm is added to the total burden. For the 34 firms involved, the total estimated burden related to labeling is 4,420 hours. Aggregate annual burden hours related to testing, recordkeeping, and labeling are estimated to be 520 hours

per firm and 17,680 hours for the industry.

CPSC staff estimates that the hourly wage for the time required to perform the required testing and recordkeeping is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*), and the hourly wage for the time required to maintain the labeling requirements is approximately $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing, private industries: *http://www.bls.gov/ncs*). The annualized total cost to the industry for annual testing and recordkeeping is estimated to be $818,805, based on 13,260 hours × $61.75. The annualized cost burden related to labeling is estimated to be $122,169, based on 4,420 hours × $27.64. Aggregate burden costs related to testing, recordkeeping, and labeling are estimated to be $940,972 for the industry.

The annual cost to the federal government of the collection of information in these regulations is estimated to be $6,618 for one-half of one CPSC staff month to review records required to be maintained. This estimate uses an annual total compensation of $119,238 (the equivalent of a GS–14 step 5 employee with an additional 30.7 percent added for benefits.)

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: October 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–24490 Filed 10–3–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0002]

Proposed Extension of Approval of Information Collection; Comment Request—Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. See 16 CFR parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear.

The Commission will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than December 3, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0002, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. The Standards

Children's sleepwear in sizes 0 through 6X, manufactured for sale in or imported into the United States, is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615). Children's sleepwear in sizes 7 through 14 is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616). The children's sleepwear flammability standards require that fabrics, seams, and trim used in children's sleepwear in sizes 0 through 14 must self-extinguish when exposed to a small open-flame ignition source. The children's sleepwear standards and implementing regulations also require manufacturers and importers of children's sleepwear in sizes 0 through 14 to perform testing of products and to maintain records of the results of that testing. 16 CFR part 1615, subpart B; 16 CFR part 1616; subpart B. The Commission uses the information compiled and maintained by manufacturers and importers of children's sleepwear to help protect the public from risks of death or burn injuries associated with children's sleepwear. More specifically, the Commission reviews this information to determine whether the products

produced and imported by the firms comply with the applicable standard. Additionally, the Commission uses this information to arrange corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the children's sleepwear standards and implementing regulations under control number 3041–0027. OMB's most recent extension of approval will expire on December 12, 2012. The Commission proposes to request an extension of approval for the collection of information in the children's sleepwear standards and implementing regulations.

B. Estimated Burden

Commission staff estimates that about 83 firms manufacture or import products subject to the two children's sleepwear flammability standards. These firms may perform an estimated 2,000 tests each, which take up to 3 hours per test. Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 6,000 hours on each of those firms (2,000 tests × 3 hours). That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing mandated by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 498,000 hours (83 firms × 6,000). The annual cost to the industry is estimated to be $30,751,500, based on an hourly wage of $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs*) × 498,000 hours.

The Commission will expend approximately 3 months of professional staff time annually, for examination of information in the records maintained by manufacturers and importers of children's sleepwear subject to the standards. The annual cost to the federal government of the collection of information in the sleepwear standards and implementing regulations is estimated to be $43,014. This estimate uses an annual total compensation of $119,238 (the equivalent of a GS–14 step 5 employee with an additional 30.7 percent added for benefits.)

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–24491 Filed 10–3–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0004]

Proposed Extension of Approval of Information Collection; Comment Request—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations titled, ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than December 3, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0004, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children that are powered by electrical current from a nominal 120

volt circuit. Video games and articles designed primarily for use by adults that may be used incidentally by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. 16 CFR 1505.4(a)(2). Additionally, section 1505.4(a)(3) of the regulations require those firms to maintain records for 3 years, containing information about: (1) The material and production specifications and the description of the quality assurance program required by 16 CFR 1505.4(a)(2); (2) the results of all inspections and tests conducted; and (3) records of sales and distribution.

OMB approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expires on December 31, 2012. The Commission now proposes to request an extension of approval for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission to: (i) identify specific lots or production lines of products that fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of 10 products each year, for which testing and recordkeeping would be required, resulting in approximately 400 records. Commission staff estimates that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping can be performed for one product in 4 hours. Thus, the estimated testing burden hours are 6,400 (16 hours × 400), and the estimated recordkeeping burden hours are 1,600 hours (400 records × 4 hours).

Commission staff estimates that each firm may spend 30 minutes or less per model on the labeling requirements. Assuming each firm produces 10 new models each year, the estimated labeling burden hours are 200 hours (40 firms × 10 models per firm × 0.5 hours per model = 200 hours) per year. The estimated total burden hours for recordkeeping and labeling are 1,800 hours for all firms (1,600 hours for recordkeeping + 200 hours for labeling).

CPSC staff estimates that the hourly wage for the time required to perform the required testing and recordkeeping is approximately $61.75 (Bureau of Labor Statistics: total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs,* and the hourly wage for the time required to maintain the labeling requirements is approximately $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing, private industries: *http://www.bls.gov/ncs*). The annualized total cost to the industry is estimated to be $444,952 (6,400 × $61.75 + 1,800 × $27.64).

Commission staff will expend less than one staff month reviewing records required to be maintained for electrically operated toys and children's articles. The annual cost to the federal government of the collection of information in these regulations is estimated to be less than $14,338. This estimate uses an annual total compensation of $ 119,238 (the equivalent of a GS–14 step 5 employee, with an additional 30.7 percent added for benefits.)

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: October 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–24489 Filed 10–3–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0001]

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice, before requesting approval of this extension of a collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive written comments not later than December 3, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0001, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted

without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation, under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 et seq.), requiring that residential garage door operators comply with the provisions of a standard published by Underwriters Laboratories (UL) to protect against entrapment. The entrapment protection requirements of UL Standard 325 are codified into the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR part 1211.

OMB approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on December 31, 2012. The Commission now proposes to request an extension of approval of this collection of information.

A. Certification Requirements

Section 203 of Public Law 101–608 requires that UL Standard 325 shall be considered to be a consumer product safety standard under section 9 of the CPSA (15 U.S.C. 2058. The Commission's regulations provide that manufacturers and importers of automatic residential garage door operators subject to the safety standard shall issue certificates of compliance. 16 CFR 1112.20. Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission. Section 16(b) of the CPSA (15 U.S.C 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part 1211, Subparts B and C. The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard. The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

Commission staff estimates that about 23 firms are subject to the testing and recordkeeping requirements of the certification regulations. Staff estimates that each respondent will spend 40 hours annually on the collection of information, for a total of about 920 hours. The estimated total annual cost to industry is approximately $25,429, based on 920 hours × $27.64 (Bureau of Labor Statistics, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs*).

Commission staff will expend approximately 6 staff months reviewing records required to be maintained for automatic residential garage door operators. The annual cost to the federal government of the collection of information in these regulations is estimated to be $86,031. This estimate uses an annual total compensation of $119,238 (the equivalent of a GS–14 step 5 employee, with an additional 30.7 percent added for benefits.)

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: October 1, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–24487 Filed 10–3–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the U.S. Marine Corps Basewide Water Infrastructure Project at Marine Corps Base Camp Pendleton, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice of record of decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C.) Section 4332(2)(c), the regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy (DoN) NEPA regulations (32 CFR part 775), and the Marine Corps Environmental Compliance and Protection Manual (Marine Corps Order P5090.2A, Change 2), the DoN announces its decision to upgrade and improve the Basewide water infrastructure at Marine Corps Base Camp Pendleton, California (MCBCP). More specifically, the DoN has decided to implement Alternative 5, the Preferred Alternative of the Basewide Water Infrastructure Improvements Final Environmental

Impact Statement (EIS), which entails two separate projects to construct, operate, and maintain water infrastructure upgrades, expansions, and improvements at MCBCP. These potable water infrastructure improvements will include construction, operation, and maintenance of a new Northern Advanced Water Treatment plant and associated facilities, an effluent discharge system, and connection of the MCBCP northern and southern water systems. All practical means to avoid or minimize environmental impacts resulting from implementation of the Preferred Alternative have been adopted.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available for public viewing on the project Web site at *http://www.marines.mil/unit/basecamppendleton/Pages/BaseStaffandAgencies/Environmental/EAEIS/Home.aspx* along with the Final Environmental Impact Statement (EIS). For further information, contact Mr. Jesse Martinez, EIS Project Manager, 1220 Pacific Highway, San Diego, California 92132–5190, 619–532–3844 or *jesse.w.martinez1@navy.mil*.

Dated: September 25, 2012.

D.G. Zimmerman,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–24481 Filed 10–3–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, October 29, 2012, 1:00 p.m.–5:00 p.m.; Tuesday, October 30, 2012, 8:30 a.m.–4:30 p.m.

ADDRESSES: Hilton Garden Inn, 1065 Stevens Creek Road, Augusta, GA 30907.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, October 29, 2012

1:00 p.m. Combined Committees Session
5:00 p.m. Adjourn

Tuesday, October 30, 2012

8:30 a.m. Approval of Minutes, Agency Updates
Public Comment Session
Waste Management Committee Update
Nuclear Materials Committee Report
Public Comment Session
12:30 p.m. Lunch Break
1:30 p.m. Facilities Disposition and Site Remediation Committee Update
Strategic and Legacy Management Committee Report
Administrative Committee Report
Public Comment Session
4:30 p.m. Adjourn

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on September 28, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–24483 Filed 10–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–022]

Decision and Order Granting a Waiver to Sanyo From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of correction.

SUMMARY: The U.S. Department of Energy (DOE) published a decision and order (Case No. RF–022) in the **Federal Register** on August 16, 2012 (77 FR 49443) that grants Sanyo E&E Corporation (Sanyo) 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. This Notice of Correction includes information that was inadvertently omitted from the decision and order which was contained in the petition for wavier pertaining to a correction factor which is needed to calculate the energy efficiency. This information was included in the petition for waiver published in the **Federal Register** on April 2, 2012 (77 FR 19654).

DATES: This Notice of Correction is effective October 4, 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*.

Correction

In FR Doc. 2012–20125 published in the **Federal Register** on August 16, 2012

(77 FR 49443), the following correction should be made:

Page 49444, first column, ''III. Conclusion,'' paragraph (3) is corrected by adding the following paragraph after the first paragraph in that section:

Sanyo shall also use the K factor (correction factor) value of 0.85 when calculating the energy consumption of one of the models listed above. Therefore, the energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)] * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (38\ °F - TBC1)/(TBC2 - TBC1)].$$

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

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–24488 Filed 10–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–23–000; Order No. 1000]

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice.

SUMMARY: The Commission issued Order No. 1000, 76 FR 49842 (August 11, 2011) and Order No. 1000–A, 77 FR 32,184 (May 31, 2012). All compliance filings must be submitted in accordance with the Commission's electronic tariff filing (eTariff) requirements in *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008). To designate one's filing a compliance filing, the filer must select the Type of Filing Code: 80. In addition, to facilitate searching, filers are asked to title such filings ''OATT Order No. 1000 Compliance Filing'' in the eTariff Filing Title field and in the Description field in eFiling.

DATES: Effective on October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Christopher P. Daignault, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–8286.

SUPPLEMENTARY INFORMATION: Take notice of the following filing procedures with respect to compliance obligations in *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g,* Order No. 1000–A, 77 FR 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012).

All compliance filings must be submitted in accordance with the Commission's electronic tariff filing (eTariff) requirements in *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008). To designate one's filing a compliance filing, the filer must select the Type of Filing Code: 80. In addition, to facilitate searching, filers are asked to title such filings ''OATT Order No. 1000 Compliance Filing'' in the eTariff Filing Title field and in the Description field in eFiling.

The filer may request a specific effective date, or, if the date is not yet known (as in the case where the filer wants the tariff sheet(s) to be effective the day after the Commission issues the order addressing its Order No. 1000 compliance filing), the filer may request that the Commission designate the effective date by (1) explaining this in the filer's transmittal letter submitted with its eTariff filing and (2) listing the effective date in e-Tariff as ''12/31/9998''.

Dated: September 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–24437 Filed 10–3–12; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice 2012–0522]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Annual Competitiveness Report Survey of Exporters and Bankers.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form electronically.

Ex-Im Bank plans to invite approximately 300 U.S. exporters and commercial lending institutions that have used Ex-Im Bank's short-, medium-, and long-term programs over the previous calendar year with an electronic invitation to participate in the online survey. The proposed survey, modified from the previous survey to account for new policies and programs, will ask participants to evaluate the competitiveness of Ex-Im Bank's programs and how the programs compare to those of foreign credit agencies. Ex-Im Bank will use the responses to develop an analysis of the Bank's competitiveness.

The survey form can be viewed at *www.exim.gov/pub/EIB00–02.pdf.*

DATES: Comments should be received on or before November 5, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–0004.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 00–02 Annual Competitiveness Report Survey of Exporters and Bankers.

OMB Number: 3048–0004.

Type of Review: Renewal.

Need and Use: This information will be used to fulfill the statutory mandate (Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 35 minutes.

Government Burden Hours: 137.5 hours (55 minutes per response).

Estimate Government Burden Cost: $5,324.01.

Frequency of Reporting or Use: Yearly.

Dated: September 28, 2012.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–24480 Filed 10–3–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12–239; DA 12–1411]

Auction of FM Broadcast Construction Permits Scheduled for March 26, 2013; Comment Sought on Competitive Bidding Procedures for Auction 94

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits scheduled to commence on March 26, 2013. This document also seeks comment on competitive bidding procedures for Auction 94.

DATES: Comments are due on or before October 10, 2012, and reply comments are due on or before October 24, 2012.

ADDRESSES: All filings in response to this public notice must refer to AU Docket No. 12–239. The Wireless Telecommunications and Media Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction94@fcc.gov.* Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Howard Davenport at (202) 418–0660; for general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. *Audio Division, Media Bureau:* For FM service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 94 Comment Public Notice* released on September 11, 2012. The complete text of the *Auction 94 Comment Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 94 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–1411. The *Auction 94 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/94/,* or by using the search function for AU Docket No. 12–239 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications and Media Bureaus (the Bureaus) announce an auction of certain FM broadcast construction permits and seek comment on the procedures to be used for this auction. This auction is scheduled to commence on March 26, 2013, and is designated as Auction 94.

II. Construction Permits in Auction 94

2. Auction 94 will offer 117 construction permits in the FM broadcast service. The construction permits to be auctioned are for 117 new FM allotments, including 26 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A of the *Auction 94 Comment Public Notice* lists the specific vacant FM allotments for which the Federal Communications Commission (FCC or Commission) will offer construction permits, along with the reference coordinates for each vacant FM allotment. These comprise FM channels added to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, and designated for use in the indicated communities. An applicant may apply for any vacant FM allotment listed in Attachment A of the *Auction 94 Comment Public Notice.* If two or more short-form applications (FCC Form 175) specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, then, even if only one applicant is qualified to bid for a particular construction permit in Auction 94, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application, but fails to timely submit an upfront payment, will retain its status as an applicant in Auction 94 and will remain subject to the rules prohibiting certain communications but, having purchased no bidding eligibility, will not be eligible to bid.

III. Due Diligence

3. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service,

subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

4. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. A *Report and Order* adopted in an FM allotment rulemaking proceeding may include anomalies such as site restrictions or expense reimbursement requirements. Additionally, each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 94 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

5. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 94 in order to determine the existence of pending administrative or judicial proceedings, including pending allocations rulemaking proceedings, that might affect its decisions regarding participation in the auction.

6. The Bureaus strongly encourage participants in Auction 94 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 94 Comment Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

IV. Bureaus Seek Comment on Auction Procedures

7. The Commission directed the Bureaus, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. Therefore the Bureaus seek comment on the following issues relating to the conduct of Auction 94.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

8. The Bureaus propose to auction all construction permits included in Auction 94 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Bidding Rounds

9. Auction 94 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

10. The Commission will conduct Auction 94 over the Internet using the Commission's Integrated Spectrum Auction System (FCC Auction System). Bidders will also have the option of placing bids by telephone through a dedicated Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

11. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

12. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 94, the Bureaus propose to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted in this auction). Thus, unless the Bureaus announce alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

13. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 94: (a) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b) above; (d) Declare the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close; and (e) Keep the

auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

14. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

15. For Auction 94, the Bureaus propose that they may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureaus may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

16. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these considerations in mind, the Bureaus propose the upfront payments set forth in Attachment A of the *Auction 94 Comment Public Notice.* The Bureaus seek comment on the upfront payments specified in Attachment A of the *Auction 94 Comment Public Notice.*

17. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureaus propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the *Auction 94 Comment Public Notice.* The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureaus request comment on these proposals.

ii. Activity Rule

18. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on one hundred percent (100%) of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal. If commenters believe the auction should be conducted with multiple stages, they should explain the reason for doing so.

iii. Activity Rule Waivers and Reducing Eligibility

19. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

20. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

21. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been

reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

22. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

23. Consistent with recent FCC auctions, the Bureaus propose that each bidder in Auction 94 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

25. The Bureaus propose to establish minimum opening bid amounts for Auction 94. The Bureaus believe that a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose to establish separate reserve prices for the construction permits to be offered in Auction 94.

26. For Auction 94, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. Attachment A of the *Auction 94 Comment Public Notice* lists a proposed minimum opening bid amount for each construction permit available in Auction 94. The Bureaus seek comment on the minimum opening bid amounts specified in Attachment A.

27. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. The Bureaus ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, and any other relevant factors.

v. Bid Amounts

28. The Bureaus propose that, in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

29. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the FCC will calculate the minimum acceptable bid amount by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

30. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

31. For Auction 94, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

32. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus

should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

vi. Provisionally Winning Bids

33. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines a provisionally winning bid for each construction permit based on the highest bid amount received. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

34. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). The Bureaus reminds bidders that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

35. For Auction 94, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively ''unsubmit'' any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

36. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 94. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the ''withdraw bids'' function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.

37. Based on this guidance and on the Bureaus' experience with past auctions of FM broadcast construction permits, the Bureaus propose to prohibit bidders from withdrawing any bids after the close of the round in which bids were placed. The Bureaus make this proposal in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). Thus, the Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. The Bureaus also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public. The Bureaus seek comment on our proposal to prohibit bid withdrawals.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

38. In the event the Bureaus allow bid withdrawals in Auction 94, the Bureaus propose the interim bid withdrawal payment be 20 percent of the withdrawn bid. A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

39. The amount of the interim bid withdrawal payment may range from three percent to twenty percent of the withdrawn bid amount, with the percentage generally being higher where there is greater risk of bid withdrawals being used for anti-competitive purposes, such as when there is little need for bidders to aggregate permits. The Bureaus propose to use the maximum interim bid withdrawal payment percentage allowed by 47 CFR 1.2104(g)(1) in the event bid withdrawals are allowed. The Bureaus request comment on using twenty percent for calculating an interim bid withdrawal payment amount in Auction 94. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

ii. Additional Default Payment Percentage

40. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 94 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

41. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.

42. For Auction 94, the Bureaus propose to establish an additional default payment of twenty percent. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional twenty percent default payment will be more effective in

deterring defaults than the three percent used in some earlier auctions. In light of these considerations, the Bureaus propose for Auction 94 an additional default payment of twenty percent of the relevant bid. Moreover, a twenty percent additional default payment amount is consistent with the percentage used in recent auctions of FM permits. The Bureaus seek comment on this proposal.

V. Ex Parte Rules

43. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commisison.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–24544 Filed 10–3–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Registration of Mortgage Loan Originators (3064–0171)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of notice and request for comment.

SUMMARY: The FDIC is withdrawing the Notice of Submission for OMB Review; Comment Request; Registration of Mortgage Loan Originators (3064–0171) published in the **Federal Register** on September 27, 2012 (77 FR 59397). The September 27, 2012 publication was an inadvertent duplication of the Notice of Submission for OMB Review; Comment Request; Registration of Mortgage Loan Originators (3064–0171) published in the **Federal Register** on September 26, 2012 (77 FR 59192).

Dated: September 27, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

[FR Doc. 2012–24502 Filed 10–3–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). 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 instrument(s) 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.

On July 6, 2012 the Federal Reserve published a notice in the **Federal Register** (77 FR 40051) requesting public comment for 60 days to extend for three years, with revision, the FR Y–14A/Q/M. The comment period for this notice expired on September 4, 2012. The Federal Reserve received eight comment letters. The substantive comments are summarized and addressed below.

FOR FURTHER INFORMATION CONTACT: 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.

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.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB Control number: 7100–0341.

Effective Date: September 30, 2012.

Frequency: Annually, quarterly, and monthly.

Reporters: Large banking organizations that meet an annual threshold of $50 billion or more in total consolidated assets (large Bank Holding Companies or large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).[1]

Estimated annual reporting hours: FR Y–14A: Summary, 25,080 hours; Macro scenario, 930 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III/Dodd-Frank, 600 hours; and Regulatory capital, 600 hours. FR Y–14 Q: Securities risk, 1,200 hours; Retail risk, 1,920 hours; Pre-provision net revenue (PPNR), 75,000 hours; Wholesale corporate loans, 6,720 hours; Wholesale commercial real estate (CRE) loans, 6,480 hours; Trading risk, 41,280 hours; Basel III/Dodd-Frank, 1,800 hours; Regulatory capital, 3,600 hours; and Operational risk, 3,360 hours; and Mortgage Servicing Rights (MSR) Valuation, 864 hours; Supplemental, 960 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,216 hours. FR Y–14M: Retail 1st lien mortgage, 129,000 hours; Retail home equity, 123,840 hours; and Retail credit card, 77,400 hours. FR Y–14 Implementation and On-Going Automation: Start-up for new respondents, 79,200 hours; and Ongoing revisions for existing respondents, 9,120 hours.

Estimated average hours per response: FR Y–14A: Summary, 836 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III/Dodd-Frank, 20 hours; and Regulatory capital, 20 hours. FR Y–14Q: Securities risk, 10 hours; Retail risk, 16 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III/Dodd-Frank, 20 hours; Regulatory capital, 40 hours; Operational risk, 28 hours, MSR Valuation, 24 hours; Supplemental, 8 hours; and Retail FVO/HFS, 16 hours. FR Y–14M: Retail 1st lien mortgage, 430 hours; Retail home equity, 430 hours; and Retail credit card, 430 hours. FR Y–14 Implementation and On-Going

[1] The Capital Plan rule applies to every top-tier large BHC. This asset threshold is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

Automation: Start-up for new respondents, 7,200 hours; and On-going revisions for existing respondents, 480 hours.

Number of respondents: 30.

General description of report: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain bank holding companies (BHCs) and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)). Such exemptions will be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M provides the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including (1) continuous monitoring of BHCs' planning and management of liquidity and funding resources, and (2) regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed. Respondent BHCs are required to complete and submit up to 17 filings each year: one annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with these information collections is mandatory.

The annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period, which are used to support supervisory stress test models and for continuous monitoring efforts.[3] The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement the two loan level collections.

Under section 165 of the Dodd-Frank Act, the Federal Reserve is required to issue regulations relating to stress testing (DFAST) for certain BHCs and nonbank financial companies supervised by the Board. On January 5, 2012, the Board published a proposal (77 FR 594) which includes new reporting requirements found in proposed regulations at 12 CFR 252.134(a), 252.146(a), and 252.146(b) all related to stress testing. The Federal Reserve anticipates that further detail regarding these proposed reporting requirements and the PRA burden associated with these requirements would be addressed in a future FR Y–14 proposal.[4]

Current actions: On July 6, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 40051) requesting public comment for 60 days to extend for three years, with revision, the FR Y–14 information collection. The comment period expired on September 4, 2012. The Federal Reserve received eight comment letters from four BHCs and six trade associations.[5] All substantive comments are summarized and addressed below. Also addressed are comments related to the collection of data on legal reserves for pending and probable litigation claims which were originally proposed in February 2012.[6]

The FR Y–14A/Q/M revisions proposed in the Federal Reserve's July 2012 **Federal Register** notice, effective September 30, 2012, included (1) implementing three new quarterly reporting schedules (Mortgage Servicing Rights Valuation, Supplemental, and Retail Fair Value Option/Held For Sale schedules), (2) revising the respondent panel, (3) enhancing data items previously collected on various schedules, (4) deleting data items that are no longer needed, (5) adding attestation of data accuracy, and (6) collecting contact information. The Federal Reserve proposed the revisions based on experience gained from previous capital review and stress testing efforts. The revisions provide the Federal Reserve with new information to refine its analysis, while removing data items that are no longer deemed necessary for such analysis.

Summary of Comments

The Federal Reserve received comments from the industry by letter, email, and orally through industry outreach calls. Most of the comments received requested clarification of the instructions for the information to be reported, or were technical in nature. Response to these comments will be addressed in the final FR Y–14 reporting instructions. The Federal Reserve also received a number of comments on matters that were not directly related to the FR Y–14 information collection, such as a request to use a consistent file format and requests for clarification of general CCAR procedures and timeline. The Federal Reserve plans to take these comments under consideration and address them at a later date, as appropriate. The following is a detailed discussion of aspects of the proposed FR

[2] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[3] BHCs are required to submit both quarterly and annual schedules for third quarter data, and with the exception of the Basel III/Dodd-Frank and Regulatory Capital Instruments schedules. For these schedules, only data for the annual schedules are submitted for the third quarter data.

[4] The proposed rules would implement the enhanced prudential standards required to be established under section 165 of the Dodd-Frank Act and the early remediation framework established under section 166 of the Act. The enhanced standards include risk-based capital and leverage requirements, liquidity standards, requirements for overall risk management, single counterparty credit limits, DFAST requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability. The 2011 proposal implementing the FR Y–14A and Q acknowledged the impending publication of the DFAST reporting requirements under section 165 of the Dodd-Frank Act. That proposal included a statement noting that revisions to the quarterly and annual data collections, based on the enhanced standards rulemaking, would be incorporated into the FR Y–14A and Q information collection.

[5] Three trade associations submitted a joint comment letter.

[6] Notice of this proposal action was published in the **Federal Register** (77 FR 10525, February 22, 2012). The Federal Reserve received six comment letters addressing the proposed changes to the FR 14A and Q. In response to public concerns over the sensitivity of these legal reserves data, the Federal Reserve postponed implementing the data items and reopened the public comment period (77 FR 32970, June 4, 2012). The comment period expired on August 6, 2012 (77 FR 38289, June 27, 2012). The Federal Reserve received four additional comment letters addressing the collection of the legal reserves data items.

Y–14 collection for which the Federal Reserve received one or more substantive comments and an evaluation of, and response to, the comments received.

A. General

In general, commenters expressed support for the objectives of the proposal to revise the FR Y–14; however, they expressed concerns about the overall expansion of the information collection and the increased granularity of the data being collected. Specifically, several commenters noted that the proposal substantially increased the number of data items on various schedules, leaving BHCs insufficient time to make appropriate changes to their models, modify reporting systems, and integrate these systems with internal controls structure. These commenters also requested delayed implementation of the revisions to several schedules or guidance for BHCs that have missing or incomplete data. The commenters also provided suggestions around operational aspects of the collection and requested additional clarification on the proposed revisions.

The Federal Reserve weighed the potential increase in respondent burden against the need to collect additional information to enhance the Federal Reserve's ability to conduct supervisory stress testing and made certain modifications to the proposal in response to the comments received. Specifically, the Federal Reserve will eliminate certain proposed data items from selected data schedules and also delay the effective date of the new Mortgage Servicing Right (MSR) Valuation schedule as noted below.

Commenters generally expressed concerns about the proposed attestation requirement for the FR Y–14 submission. Several commenters noted that the Federal Reserve has continued to revise the information collection since first implementing it in 2011; therefore, the scope and form of the information collection have not been sufficiently solidified to allow BHCs to establish the infrastructure, general controls, and system validation requirements to comply with the proposed attestation requirement. Several commenters opposed a near-term attestation requirement, requested that any future attestation requirement be tailored to the FR Y–14, suggested various modifications to the attestation requirement, and opposed an attestation requirement for projected financial data. One commenter suggested a safe harbor provision for any attestation of projected data.

The Federal Reserve acknowledges that BHCs require time to continue developing and improving the infrastructure and controls needed to accommodate the FR Y–14 collection and to support attestation. As such, the final schedules and instructions do not include an attestation requirement at this time to allow BHCs time to make these improvements. However, the Federal Reserve believes appropriate controls are crucial to ensure data quality and that attestation is an important affirmation of data quality, and may revisit the attestation requirement in a future proposal. The Federal Reserve also notes that under federal law, BHCs are prohibited from making a false entry in a report to the Federal Reserve.[7]

One commenter indicated that foreign privacy and blocking laws may restrict BHCs from reporting on the FR Y–14 any identifiable client information about their foreign clients. In response to this comment, the Federal Reserve will revise the final FR Y–14 reporting schedules and instructions to provide that a BHC will not be required to report a particular data item if a foreign law prohibits the BHC from providing the information to the Federal Reserve. However, the Federal Reserve is authorized by law to collect information from a BHC regarding its credit exposures, including foreign exposures, and a BHC will be required to include with its data submission a legal analysis of the foreign law that prohibits reporting the data to the Federal Reserve.[8] As noted above, data collected through the FR Y–14 schedules is confidential information and the Federal Reserve has no present intention to make the information public.

One commenter noted the difficulty in completing FR Y–14Q/M schedules during acquisitions as the acquiring institution would not yet have the acquired institution's data on their general ledger or loans systems on the date when the acquisition is finalized. Referencing the final **Federal Register** notice issued on June 4, 2012,[9] which noted that the Federal Reserve would consider requests to file delayed submissions for newly acquired data following an acquisition, the commenter asked the Federal Reserve to establish a formal process and criteria for requesting and determining a grace period. The Federal Reserve agrees with this comment and is considering ways to formalize the process and criteria, as appropriate.

Several commenters provided suggestions for reducing the burden associated with the information collection, including suggestions related to the use of consistent file formats. The Federal Reserve appreciates these suggestions and will work to improve the data collection process, considering all suggestions aimed at reducing reporting burden. During the public comment period, the Federal Reserve sought additional feedback from first-time respondents on ways to reduce reporting burden. One commenter responded that a tailored materiality threshold would increase, rather than decrease burden by adding complexity. This commenter noted that a transition period that takes into consideration related and overlapping deadlines would be useful in reducing reporting burden. The Federal Reserve will provide first-time respondents with a transition phase including extended filing deadlines, as follows: For the Y–14Q schedules, the filing deadline will be extended to (1) 90 days after the quarter-end for the first two quarterly submissions and (2) 65 days after the quarter-end for the third and fourth quarterly submissions. Beginning with the fifth quarterly submission, these respondents will be required to adhere to the standard Consolidated Financial Statements of BHCs (FR Y–9C; OMB No. 7100–0128) reporting deadlines.[10] For the Y–14M schedules, the initial deadline will be 90 days after the end of the reporting month, at which time data for all three intervening months would be due. For example, a new respondent for the September 30 reporting period will be expected to submit data corresponding to the September 30, October 31, and November 30 reporting periods by December 31. The Federal Reserve will implement the filing deadline for the Y–14A schedules as proposed.

B. FR Y–14A Summary Schedule

1. Income Statement and Balance Sheet Worksheets

The Federal Reserve proposed revising 14 of the 19 worksheets[11] in

[7] *See,* for example, 18 U.S.C. 1005.

[8] *See,* for example, 12 U.S.C. 1844(c).

[9] During the public comment period for proposed revisions implemented on June 30, 2012, a similar industry comment was received. The comment was addressed in the final **Federal Register** notice published on June 4, 2012 (77 FR 32970).

[10] The standard FR Y–9C reporting deadlines are: 40 calendar days after the calendar quarter-end for March, June, and September and 45 calendar days after the calendar quarter-end for December.

[11] The worksheets include: *Income Statement, Balance Sheet, ASC 310–30, Retail Balance and Loss Projections, Retail Repurchase, Securities OTTI by Portfolio, Securities OTTI Methodology, Securities AFS Market Shock, Securities Market*

Continued

the Summary schedule (which, for the most part, collects current quarter data plus nine quarters of projections for the same data items), which included adding more granular breakouts on various schedules. Several commenters noted that the proposed collection of more granular projections data for portfolio balances and associated losses does not align with BHCs' internal reporting and projections. The Federal Reserve acknowledges the proposed increase in respondent burden; however, the Federal Reserve believes that these additional data items will substantially enhance the ability to evaluate BHCs' stress test results consistently across BHCs. Each proposed product type has a unique risk profile, and, therefore, projecting balances at the granular product level should provide a better understanding of BHCs' overall risk exposure.

Originally, the Federal Reserve proposed adding to the *Income Statement* and *Balance Sheet* worksheets granular breakouts of the Allowance for Loan and Lease Losses (ALLL) and loan-loss provisions by loan category. Two commenters questioned the need for the proposed disaggregation of the ALLL, noting that the FR Y–14 proposal was not consistent with the proposed revision to Schedule RI–C of the commercial bank Consolidated Reports of Condition and Income (Call Report; FFIEC 031 and 041; OMB No. 7100–0036), as described in the **Federal Register** (76 FR 72035, November 21, 2011).[12] The asset categories on the Income Statement and Balance Sheet worksheets of the FR Y–14A Summary schedule generally parallel those of the FR Y–9C and Call Report, but differ when the stress testing process requires different categorizations. At a more aggregate level, the categories for the ALLL and loan-loss provisions are generally aligned with those on the Income Statement and Balance Sheet worksheets. In order to assess whether BHCs' provisions are consistent with projected losses, the Federal Reserve will implement the revisions, as proposed.

2. Retail Balance and Loss Projections Worksheet

Several commenters noted that the proposed increase in the granularity of balance and loss projections does not align with BHCs' internal reporting and projections. The Federal Reserve acknowledges that the increase in data items will increase respondent burden, but believes that these data items will enhance the Federal Reserve's ability to conduct supervisory stress tests. Each proposed product type has a unique risk profile, therefore, projecting balances at the granular product level should provide a better understanding of BHCs' overall risk exposure. However, to reduce burden, the Federal Reserve will reduce the granularity associated with certain product types to which the industry generally has less exposure.

In an effort to streamline the Summary schedule, the Federal Reserve proposed combining the *Retail Balance* and *Loss Projections* worksheets, and adding data items to capture more details about balance projections. The Federal Reserve proposed that BHCs break out projected credit card balances into two segments: balance projections on existing accounts and balance projections on new accounts. One commenter suggested not collecting balance projections for credit card products by vintage given that BHCs do not necessarily project credit card balances by vintage. The Federal Reserve recognizes that there is burden associated with breaking out balance projections by vintage, and therefore will eliminate the projections by vintage for certain portfolios to which the industry generally has less exposure.

3. Retail ASC 310–30 Worksheet

The Federal Reserve originally proposed significantly revising the *Retail ASC 310–30* worksheet, which collects data on purchased credit impaired (PCI) loans, by expanding the number of data items requested in order to better align with accounting definitions for the loans reported in the PCI portfolio. The new data items would collect information about the portfolios' carrying value, allowance, provisions to and charge-offs from the allowance, estimates of cash flows to be collected over the life of the loan, the nonaccretable difference and its components, changes to the nonaccretable difference, and the accretable yield and its components. Several commenters expressed concern about their ability to split requested data items into principal and interest components, the difficulty of projecting cash-flows in the various macroeconomic scenarios, and the difficulty with gathering the data requested from their loan processing systems and accounting systems.

In response to the industry comments, the Federal Reserve will revise the worksheet to reduce the number of required data items from 32 to 13. The Federal Reserve will remove the distinction between principal and interest, as well as delete certain data items related to cash flows, changes to the non-accretable difference, and changes to the accretable yield. These will be replaced with data items requesting unpaid principal balance, the total original contractual amount of PCI loans that would be deemed charged off or identified as loss under a non-PCI charge-off policy (i.e. losses in the quarter that would be offset at some point against the non-accretable difference and/or the PCI Allowance) and overall movement of the non-accretable difference. The Federal Reserve believes that the revised schedule will substantially alleviate the burden associated with procuring the data from the BHCs information systems.

C. Summary Schedule (Capital Worksheet) and Annual Basel III/Dodd-Frank Schedule

The *Capital* worksheet contained in the annual Summary schedule and the annual Basel III/Dodd-Frank schedule are being modified to reflect anticipated final rules that would implement the stress test requirements under Dodd-Frank. The *Capital* worksheet instructions will be modified to require BHCs to provide an additional *Capital* worksheet for each of the adverse, baseline, and severely adverse scenarios using capital assumptions that are required under any final stress testing rules that the Federal Reserve may issue. The annual Basel III/Dodd-Frank schedule instructions will be modified to require BHCs to provide an additional schedule for the baseline scenario only using capital assumptions that are required under any final stress testing rules that the Federal Reserve may issue.

D. FR Y–14A/Q Pre-Provision Net Revenue (PPNR) Annual Worksheet and Quarterly Schedule

In an effort to better understand the core drivers of BHCs revenues and expenses, the Federal Reserve originally proposed revising certain annual and quarterly PPNR data items, increasing granularity of several data items, and adding a new business line into the components of revenues (on the annual *PPNR Projections worksheet* and the quarterly *PPNR Submission worksheet*).[13]

Value Sources, Trading Risk, Counterparty Risk Worksheet, and three PPNR worksheets.

[12] This revision to the Call Report has been proposed but not yet implemented.

[13] The proposed revisions included: a new breakout for credit card revenues would split interchange revenues from reward activity and partner-sharing contra-revenue; revenue from the mortgage and home equity business line would be split into production and servicing income; provisions to reserves for representations and

One commenter noted that, in some instances, certain historical data may not be available due to organizational restructuring. The Federal Reserve agrees with this comment and is considering ways to develop a process and criteria to address this issue, as appropriate.

Another commenter requested eliminating the disclosure of legal reserves data to be consistent with other FR Y–14 schedules regarding the level and frequency of reporting legal reserves data. In response to the comment, the Federal Reserve will delete the data items for ''Provisions to Litigation Reserves/Liability Specific to Sold Residential Mortgage Claims'' on the annual *PPNR Projections* worksheet and on the quarterly *Submission* worksheet (*PPNR Submission/Projections).* Such provisions will instead be reported, in the aggregate, as part of the Operational Risk Expense in both the quarterly PPNR schedule and annual PPNR worksheets. Furthermore, the Federal Reserve will delete the ''Legal Expenses and Litigation Settlements & Penalties (unrelated to Operational Risk and not reported elsewhere)'' data item and instruct the BHCs to add the ''Legal Expenses'' (i.e. the routine ''business as usual'' legal expenses) to the ''Professional and Outside Services Expenses'' data item and the ''Litigation Settlements & Penalties'' to the ''Operational Risk Expenses'' data item.

Currently, BHCs with deposits equal to at least one-third of liabilities may choose either the *PPNR Submission/Projections* worksheet or the *PPNR Net Interest Income* worksheet as ''Primary Net Interest Income'' with the other worksheet designated as ''Supplementary Net Interest Income.'' Reporting requirements are reduced on the net interest income portion of the ''Supplementary'' worksheet. BHCs that have deposits equal to less than one-third of total liabilities must designate the *PPNR Submission/Projections* worksheet as Primary and are not required to report any data on the *PPNR Net Interest Income* worksheet. In the proposal that was published for comment, the Federal Reserve proposed removing the Primary/Supplementary distinction and making all data items mandatory (subject to certain criteria described in the instructions).

The trade associations and one other commenter suggested retaining the Primary/Supplementary distinction. One commenter also suggested allowing BHCs to report average balances and yields on the *PPNR Net Interest Income* worksheet at a lower level of detail than was proposed. The commenters cited concerns including increased burden and limited usefulness of data created for purposes outside BHCs' regular internal practice. In response to these comments, the Federal Reserve will retain the Primary/Supplementary designation but change how the primary/supplementary designation is assigned and make all net interest income data items mandatory (subject to certain criteria). Further, for all BHCs with deposits above the threshold, the *PPNR Net Interest Income* worksheet should be designated as ''Primary Net Interest Income'' and for BHCs that are not required to complete the *PPNR Net Interest Income* worksheet that the *PPNR Submission/Projections* worksheet should be designated as ''Primary Net Interest Income.'' The Federal Reserve also proposed lowering the reporting threshold for the *PPNR Net Interest Income* worksheet to deposits equal to one-quarter of total liabilities. Since no comments were specifically received, the Federal Reserve will implement the reporting threshold revision as proposed.

The trade associations commented that reporting the proposed data items on the *PPNR Net Interest Income* worksheet would require time and suggested providing a delayed submission deadline (as was done with the submission deadline when the FR Y–14 was implemented in 2011). Although the Federal Reserve acknowledges the increase in respondent burden for certain BHCs, the Federal Reserve believes that these data items will enhance the ability to identify the vulnerability of BHCs to macroeconomic stress and will implement the revisions on the proposed timeline.

Originally, the Federal Reserve proposed adding credit card rewards and partner-sharing in the non-interest income and non-interest expense sections of the *PPNR Submission/Projections* worksheets. The trade associations requested additional guidance regarding credit and debit card rewards and partner-sharing contra-revenue and expense data items. In the case of credit cards, they also requested clarification around how rewards and partner-sharing data should be reported across net interest income, non-interest income, and non-interest expense components of PPNR. In response, and to reduce burden, the Federal Reserve will eliminate the breakout of credit card rewards and partner-sharing on the *PPNR Submission/Projections* worksheets. The Federal Reserve will also add a credit card rewards and partner sharing data item to the *PPNR Metrics* worksheet. BHCs will be required to indicate which data items on the *PPNR Submission/Projections* worksheet include the credit card rewards and partner-sharing data item.

One commenter asked whether the ''Sales and Trading Segment/Prime Brokerage/Total Revenue (incl. Net Interest Income)'' data item in the *PPNR Metrics* worksheet should be defined as the combination of the ''Prime Brokerage'' non-interest income data item and the portion of the ''Sales and Trading'' net interest income data item related to prime brokerage in the *PPNR Submission* worksheet. To simplify the reporting of these data items, the Federal Reserve will remove the ''Sales and Trading Segment/Prime Brokerage/Total Revenue (incl. Net Interest Income)'' data item on *PPNR Metrics* worksheet and break out Net Interest Income for the Sales and Trading data item into ''Prime Brokerage'' and ''Other'' on the *PPNR Submission/Projection* worksheet.

One commenter requested clarification on the types of accounts that should be included in the ''Total Deposit Accounts'' data item in the ''Retail and Small Business Segment'' on the *PPNR Metrics* worksheet. The Federal Reserve will revise the data item to require the reporting of only ''Total Open Checking and Money Market Accounts'' as of the end of the reporting period.

One commenter requested clarification on the definition of the term ''curve'' in relation to the ''New Business Pricing for Time Deposits'' data item in the ''Average Retail Deposit Repricing Beta'' section of the *PPNR Metrics* worksheet. To clarify the requested data item, the Federal Reserve will provide an additional option for reporting ''New Business Pricing for Time Deposits.'' Specifically, if BHCs only assume a single maturity term for new issuances, then they would provide the relative index and spread used to estimate new business pricing in lieu of the curve.

E. FR Y–14Q MSR Valuation Schedule

Originally, the Federal Reserve proposed implementing the quarterly MSR Valuation schedule that would collect information on the data that BHCs use to value their MSRs and the sensitivities of those valuations to changes in economic factors. Several

warranties and repurchase obligations and other liabilities related to sold mortgages also would be split out; revenue related to retail and small business deposits would separate overdraft fees; and a new business line for Merchant Banking/Private Equity would be added; previously this business line had been included among the other business lines, typically Investment Banking.

commenters stated that the proposal did not provide sufficient time to properly modify and validate the MSR modeling changes required to produce the data. The Federal Reserve agrees with the comments and further concedes that BHCs should be allotted sufficient time to implement model changes and validate the changes in compliance with SR 11–7 (Guidance for Model Risk Management). The Federal Reserve will delay the implementation of the new quarterly MSR schedule until March 31, 2013.

One trade association expressed various concerns with the proposed new MSR schedule, stating that: (1) It appeared to collect duplicative data already available through other external reporting mechanisms, including a survey conducted by the Office of the Comptroller of the Currency (OCC); (2) the questions should be included in pre-examination requests instead of requiring servicers to report the data on a quarterly basis (if the purpose of the MSR schedule was to gather information in advance of a safety and soundness examination); and (3) many servicers are not part of a BHC and therefore, the schedule would not necessarily include data from all major market makers that affect fair value. Further, the commenter noted that the proposed restrictions on MSR assets contained in the Basel III notices of proposed rulemaking (NPR) [14] may dramatically change the servicing competitive landscape, with more and more servicing being performed by non-depository institutions, and therefore, the overall data received could become less meaningful.

Prior to proposing the new MSR schedule, the Federal Reserve evaluated the feasibility of obtaining MSR data from external sources; however, several potential supervisory concerns were noted with this approach. First, not all BHCs supervised by the Federal Reserve complete the external surveys mentioned above. Second, certain metrics collected via external sources differ by type or by construct, or are not collected at all, which may generate a lack of comparability across BHCs. The Federal Reserve concluded that the proposed FR Y–14Q schedule would facilitate the timely supervision of BHCs on both a continuous monitoring and examination basis; therefore, the Federal Reserve will implement the data requirements for the MSR schedule as proposed.

[14] On August 30, 2012, the OCC, the Board, and the Federal Deposit Insurance Corporation published for comment three NPRs that would revise and replace the agencies' current capital rules (77 FR 52791, 52887, and 52997).

One commenter noted that the MSR schedule would not increase the comparability of MSR valuations across all BHCs due to the range of valuation techniques, various prepayment and default models, different assumptions, and servicing portfolio characteristics unique to each BHC. The Federal Reserve recognizes that modeling methodologies, assumptions, and product structures are unique to each BHC, and these differences are considered when evaluating BHC MSR valuation. In addition, the Federal Reserve may augment this data collection with other information, such as information collected from BHC examinations, which will allow the Federal Reserve to better assess the risk of each BHC's MSR portfolio.

One commenter stated that the proposed MSR valuation sensitivity metrics in the MSR schedule, including metrics related to implied swaption volatility, servicing cost, sensitivity to macroeconomic conditions, and ancillary income, should be revised because they may not be direct inputs into some of the models used by the industry. The Federal Reserve believes that the delayed implementation, as well as clarifying the instructions, will address these issues.

F. FR Y–14A Regulatory Capital Instruments Schedule

One commenter noted an error on the *Capital Position Reconciliation* worksheet. In the draft schedule posted for public comment, the funded instruments data items erroneously referred to the *Proj. Actions & Balances* worksheet. The Federal Reserve will revise the annual Regulatory Capital Instruments schedule to reflect the correct references in the *Capital Position Reconciliation* worksheet.

G. FR Y–14A and Q Basel III/Dodd-Frank Schedule

Originally, the Federal Reserve proposed revising the annual and quarterly Basel III/Dodd-Frank schedules. To both schedules, the Federal Reserve proposed making definitional and calculation revisions consistent with the final Market Risk Capital rulemaking (Market Risk rule). To the FR Y–14A schedule, the Federal Reserve proposed adding two worksheets and refining the *Planned Action worksheet.* To the FR Y–14Q schedule, the Federal Reserve proposed adding worksheets and data items.

Several commenters noted errors or inconsistencies in the draft annual and quarterly schedules published for public comment. In response to those comments, the Federal Reserve will shorten the projection period for the annual schedule from 2019 to 2017, add a Comprehensive Risk Measure (CRM) surcharge data item to the annual schedule, and revise the quarterly schedule to include the correct start date of third quarter 2012.

Due to the timing of the publication of the FR Y–14 initial **Federal Register** and publication of the three capital NPRs, the Federal Reserve published questions in the FR Y–14 initial **Federal Register** notice directly soliciting feedback on the requirements for preparing both the annual and quarterly Basel III/Dodd-Frank schedules. Together, three trade associations provided a detailed comment requesting confirmation whether, for purposes of CCAR 2013, BHCs' capital plans and the FR Y–14A Basel III/Dodd-Frank schedule would be prepared (1) based upon the proposed requirements in the Basel III NPR and the Advanced Approaches NPR but (2) without regard to the proposed requirements in the Standardized Approach NPR. While this comment was specific to the annual schedule, the Federal Reserve will require BHCs to use the Basel III NPR and the Advanced Approaches NPR to prepare the annual and quarterly Basel III/Dodd-Frank schedules consistently instead of the Basel Committee on Banking Supervision (BCBS) guidance which was used during the prior CCAR exercise.

Specifically, the Federal Reserve will revise the Basel III/Dodd-Frank schedules to be consistent with the NPRs, including (1) revising the Accumulated Other Comprehensive Income calculator, (2) revising the 10% and 15% regulatory threshold deductions, (3) breaking out additional Tier 1 capital deductions, (4) collecting data and corresponding calculations consistent with the final Market Risk rule and the proposed requirements of the Advanced Approaches NPR (for applicable BHCs), (5) revising the Market RWA calculation to reflect the Market Risk rule's CRM, (6) revising the Credit RWA associated with Credit Valuation Adjustment capital charges, (7) collecting data relevant to the Tier 1 Leverage Ratio and Supplementary Leverage Ratio, and (8) revising data descriptions relevant to the Supplementary Leverage Ratio.

H. FR Y–14Q Retail Risk Schedule

Originally, the Federal Reserve proposed revising the Retail Risk schedule to remove data items no longer needed and add risk characteristics to existing portfolios. One commenter noted that the *Domestic Auto* portfolio was not included with the files posted

to the Federal Reserve Board's public Web site during the public comment period, even though the OMB Supporting Statement noted that a revision (from the Vintage segment to Age) was proposed for all FR Y–14Q Retail schedules that included the Vintage segment. The Federal Reserve acknowledges that the template was not provided and will apply the revision consistently across all FR Y–14Q Retail templates, including the *Domestic Auto* portfolio.

To the *Domestic Student Loan* portfolio, the Federal Reserve originally proposed adding a segment variable to capture the level of education being pursued by the borrower. One commenter suggested adding a new category to the Level of Education segment in the FR Y–14Q *Domestic Student Loan* portfolio to allow for the reporting of consolidated loans for which level of education is not applicable. The Federal Reserve will clarify the instructions to specify that, for consolidated loans, the highest level of education pursued by the borrower should be reported. Further, the Federal Reserve will add a new category for instances in which the level of education of the borrower is not available.

I. FR Y–14Q Supplemental Schedule

Originally, the Federal Reserve proposed implementing the quarterly Supplemental schedule to ensure that they would have a consistent view of BHCs' exposures that are collected at different levels of granularity. The proposed schedule would allow the Federal Reserve to identify factors contributing to the gaps between the FR Y–9C aggregate data and the data collected in the FR Y–14. One commenter noted material inconsistencies between definitions in the Supplemental schedule and the Retail *Small Business Loan* worksheet, Retail *Small Business and Corporate Card* worksheet, and Wholesale *Corporate Loan* collection. The Federal Reserve agrees that inconsistencies in certain definitions exist and will enhance the reporting requirements to allow flexibility for BHCs to report the data in a way that is consistent with the definitions in the other FR Y–14Q and M schedules.

J. FR Y–14Q Trading, Private Equity, and Other Fair Value Assets (Trading Risk) Schedule

Originally, the Federal Reserve proposed revising various worksheets and adding a worksheet to the Trading Risk schedule. Several commenters made suggestions related to the *Corporate Credit—Advance, Corporate Credit—Emerging, IDR*,[15] *and Credit Correlation* worksheets, including: adding a row to capture exposures that do not readily fit into the specified segments, making the reporting categories across worksheets consistent, and deleting the crossover category in the *Corporate Credit* worksheet as it could be implied from market observations. The Federal Reserve will revise the worksheets to make them consistent and add new rows to capture exposures that do not readily fit into the specific segments. While the Federal Reserve agrees that the way in which the crossover category was presented leaves ambiguity as to what was requested, the Federal Reserve does not agree that the underlying information is sufficiently implied from market observations. As such, the Federal Reserve will adjust the *Corporate Credit—Advanced, Corporate Credit—EM, Credit Correlation,* and *IDR—Corporate Credit* worksheets to more precisely capture the information in the crossover and related indexes.

One commenter noted that the attachment/detachment points in the *Credit Correlation* worksheet are not feasible for market values and notionals since the positions would have very large overlapping attachment and detachment points. Further, the commenter suggested simplifying the long and short breakout tables to only three buckets for clarity and consistency: (1) An ''Equity Tranche'' bucket for a position that has an attachment point of 0%, (2) a ''Mezzanine Tranche'' for any position that has a non-0% attachment and non-100% detachment, and (3) a ''Super Senior Tranche'' for positions with a detachment point of 100%.

The Federal Reserve agrees that, for bespoke products, the breakouts in the proposal would be challenging to report. However, for index tranches, which are standardized, the Federal Reserve believes that the breakouts in the proposal will be feasible. Further, having such breakouts will enhance the ability to understand correlation sensitivity. Therefore, the Federal Reserve will implement the approach suggested by the commenter for bespoke products but will implement the more granular breakouts for index tranches as originally proposed.

One commenter noted that the schedule currently requires the reporting of corporate owned and business owned life insurance (COLI/BOLI) on the Other Sector/Industry row of the *Other Fair Value Assets* worksheet, and suggested creating a separate category so that BHCs could explicitly state how much exposure BHCs have to COLI/BOLI. Given the size of these exposures, the Federal Reserve agrees with this comment, and will add a row to capture COLI/BOLI separate from the Other Sector/Industry exposures.

One commenter suggested disaggregating the *Municipal* worksheet into taxable and tax exempt bonds. While the Federal Reserve agrees that the suggested disaggregation has merit, they believe such disaggregation might be more challenging for some BHCs than for others and will investigate the challenges further before disaggregating the worksheet.

K. FR Y–14Q Operational Risk Schedule

The February 2012 proposal requested event level data for each legal reserve and required that BHCs (1) associate each reserve with an accounting date, Basel level 1 event type and business line; (2) note whether the reserve had been included in the BHCs' capital models; (3) give the amount of the reserve and (4) provide a description for events over $250k. Several commenters expressed concern with the proposed method as they feared if the data were to be disclosed, or if it became discoverable as part of ongoing litigation, it would risk prejudicing the outcome of a pending case. Additionally, commenters stated that because the reserve amount was often highly dependent on the judgment of BHCs' legal counsel, it could be a violation of attorney-client privilege. In a letter dated May 24, 2012, the joint trade associations submitted several possible alternatives.

In response to the comments, the Federal Reserve held a meeting on July 16, 2012, to discuss alternative methods proposed by both the Federal Reserve and the joint trade associations. The Federal Reserve circulated a document that articulated three alternative methods. The commenters expressed concern that these methods did not adequately address the possibility of deriving event-specific reserve information by combining the proposed data with other available data.

During the extended comment period, the Federal Reserve held three discussions with industry representatives and put forth two additional methods (for a total of five alternative methods) for collecting the legal reserves data in an effort to address concerns over the sensitive nature of the data. One of these methods suggested comingling legal reserve data with the

[15] IDR is defined as Incremental Default Risk.

BHC's entire operational loss data set submitted under the FR Y–14Q and eliminating the requirement of a detailed description item. The commenters felt that this alternative did not address their overall concerns. Another method suggested that the BHCs submit quarterly the frequency of events, aggregated by Basel level I event type, business line, and quarter of establishment; and a total BHC-wide aggregated legal reserve dollar amount. This level of aggregation would reduce the possibility that an outside observer could identify the existence and value of reserves related to any particular event. Commenters continued to express concern that the relationship between the yearly total reserve amount and an individual reserve might be inferred when a BHC reserved for a small number of events over a given year. However, the commenters also noted that this method appeared to be the most viable method of submitting legal reserve data that would allow the Federal Reserve to conduct its capital assessment and stress testing.

Based on the comments received and discussions with the industry, the Federal Reserve will revise the FR Y–14Q Operational Risk schedule to implement the latter method as described above. BHCs will report, on a quarterly basis, the number of legal reserves, categorized by quarter of establishment (starting in 2008), Basel level I event type, and business line.

As part of the proposal to revise the FR Y–14 as of September 30, 2012, the Federal Reserve proposed collecting various data items related to legal reserves on the FR Y–14A Summary schedule. One commenter requested that the Federal Reserve ensure that any other references to legal reserves be consistent with the decision reached on the FR Y–14Q Operational Risk schedule. Based on the concerns over data sensitivity expressed by the industry, the Federal Reserve will not implement the legal reserves data items specifically for litigation involving retail mortgage repurchases/claims on three worksheets in the Summary schedule: *Retail Repurchase, PPNR Projections,* and *Income Statement.* The Federal Reserve has previously used data on legal reserves related to repurchase litigation to adjust downward the supervisory mortgage repurchase loss projections, and anticipates that it may do so again. However, several BHCs commented that their repurchase litigation reserves were immaterial to their capital projections and the BHCs would prefer not to reveal them even if the Federal Reserve were not to use them to adjust the supervisory projections. Accordingly, the Federal Reserve will establish a voluntary data item related to repurchase litigation reserves. The Federal Reserve will only adjust its supervisory mortgage repurchase loss projections if the BHCs provided that data in a new FR Y–14A Operational Risk schedule (described below).

L. FR Y–14A New Operational Risk Schedule

Based on the comments received related to legal reserves data and in an effort to streamline the collection of annual operational risk data, the Federal Reserve will implement a new FR Y–14A Operational Risk schedule. The schedule will contain two worksheets related to operational risk data submitted annually. The *Legal Reserves* worksheet will collect the mandatory ''Legal Reserves'' data item, and the voluntary data item, ''Legal Reserves Pertaining to Repurchase Litigation.'' [16] In addition, the *OpRisk Historical Capital* worksheet (currently contained within the Summary schedule), which collects only historical data (not projection data as with the other worksheets contained within the Summary schedule) will be moved from the current FR Y–14A Summary schedule to the new Operational Risk schedule. As with the Summary schedule, only Basel II Mandatory or ''Opt-In'' BHCs will be required to complete the *OpRisk Historical Capital* worksheet in the new FR Y–14A Operational Risk schedule.

Board of Governors of the Federal Reserve System, September 28, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–24482 Filed 10–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

[16] In each firm's first submission of the FR Y–14A Operational Risk Schedule, it would be required to provide the historical data of the Legal Reserves data item annually as of September 30 of each year starting with 2008.

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Michael Cripps and Helen Cripps,* both of Murphysboro, Illinois; to acquire voting shares of First of Murphysboro, Corp., and thereby indirectly acquire voting shares of The First Bank and Trust of Murphysboro, both in Murphysboro, Illinois.

Board of Governors of the Federal Reserve System, October 1, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–24515 Filed 10–3–12; 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 October 29, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Wintrust Financial Corporation,* Rosemont, Illinois; to acquire 100 percent of the voting shares of HPK Financial Corporation, and thereby indirectly acquire voting shares of Hyde Park Bank & Trust Company, both in Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Forstrom Bancorporation, Inc.,* Clara City, Minnesota; to acquire 100 percent of the voting shares of Murdock Bancor, Inc., Mendota Heights, Minnesota, and thereby indirectly acquire voting shares of First State Bank of Murdock, Murdock, Minnesota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Pony Express Bancorp, Inc.,* Elwood, Kansas; to merge with Don-Co Investment Company, and thereby indirectly acquire 1st Bank of Troy, both in Troy, Kansas.

Board of Governors of the Federal Reserve System, October 1, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–24516 Filed 10–3–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Breast and Cervical Cancer Early Detection and Control Advisory Committee, Department of Health and Human Services, HHS, has been renewed for a 2-year period through September 12, 2014.

For information, contact Ms. Jameka Blackmon, Designated Federal Officer, BCCEDCAC, CDC, 1600 Clifton Road NE., M/S K57, Atlanta, Georgia, 30333, telephone (770)488–4740; fax (770)488–3230.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 24, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–24503 Filed 10–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1453–NC]

Medicare and Medicaid Programs; Announcement of Application From Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period announces a hospital's request for a waiver from the requirement to have an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). In addition, this notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 3, 2012.

ADDRESSES: In commenting, please refer to file code CMS–1453–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1453–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Department of Health and Human Services, Attention: CMS–1453–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments

received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1) and our regulations at 42 CFR § 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver in order to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Quitman County Hospital, LLC. of Marks, Mississippi, is requesting a waiver to work with:

Mississippi Organ Recovery Agency, 4400 Lakeland Drive, Flowood, MS 39232.

The Hospital's Designated OPO is:

Mid-South Transplant Foundation, Inc., 8001 Centerview Parkway, Suite 302, Memphis, TN 38018.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: September 28, 2012.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–24496 Filed 10–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2012–M–0371, FDA–2012–M–0372, FDA–2012–M–0373, FDA–2012–M–0390, FDA–2012–M–0407, FDA–2012–M–0562, and FDA–2012–M–0638]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with sections 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2012, through June 30, 2012. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2012, THROUGH JUNE 30, 2012

PMA No., Docket No.	Applicant	Trade name	Approval date
P020018/S040, FDA–2012–M–0371.	Cook, Inc	Zenith® Fenestrated AAA Endovascular Graft (with the adjunctive Zenith Alignment Stent).	April 4, 2012.
P110029, FDA–2012–M–0372	Abbot Laboratories	ARCHITECT HBsAg Qualitative, ARCHITECT HBsAg Qualitative Confirmatory, ARCHITECT HBsAg Qualitative Confirmatory Manual Diluent, ARCHITECT HBsAg Qualitative Calibrators, and ARCHITECT HBsAg Qualitative Controls.	April 12, 2012.
P110004, FDA–2012–M–0407	Medinol Ltd.	Presillion™ *plus* CoCr Coronary Stent on RX System	April 12, 2012.
P110035, FDA–2012–M–0373	Boston Scientific Corp	Epic™ Vascular Self-Expanding Stent System	April 13, 2012.
P090015, FDA–2012–M–0390	Leica Biosystems	BOND™ ORACLE™ HER2 IHC System	April 18, 2012.
P110010/S001, FDA–2012–M–0562.	Boston Scientific Corp	PROMUS® Element™ Plus Everolimus-Eluting Platinum Chromium Coronary Stent System (Monorail™ and Over-the-Wire).	June 1, 2012.
P090026, FDA–2012–M–0638	Beckman Coulter, Inc	Access® Hybritech® p2PSA on the Access Immunoassay Systems.	June 14, 2012.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm*.

Dated: September 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–24479 Filed 10–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

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 meetings.

The meetings 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.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Minority Institutional Training.

Date: October 25, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Program Project for Triglyceride Metabolism.

Date: October 26, 2012.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Room 9091, Bethesda, MD 20892.

Contact Person: Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Rm. 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI SBIR Phase II Contract Review.

Date: October 26, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 28, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24417 Filed 10–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Special Emphasis Panel (Clinical Seq Exploratory Research RFAs).

Date: October 29–30, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Montgomery I & II, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 28, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24418 Filed 10–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings 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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Social Network Analysis and Health.

Date: November 1, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Sensory Technologies.

Date: November 1–2, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Washington DC, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Risk, Prevention and Health Behavior.

Date: November 1–2, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Healthcare Delivery Methodologies.

Date: November 1, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Virology.

Date: November 1–2, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

Date: November 1–2, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Regis Hotel, 923 16th Street NW., Washington, DC 20006.

Contact Person: Yuan Luo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–827–7915, *luoy2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 10–142: New Biomedical Frontiers at the Interface of the Life and Physical Sciences.

Date: November 1–2, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: November 1, 2012.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Mechanisms of Emotion, Stress and Health.

Date: November 2, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: November 5, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–24419 Filed 10–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The NTP BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. The meeting is open to the public and preregistration is requested for both public attendance and comment. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/165*.

DATES: *Meeting:* December 11, 2012, beginning at 8:30 a.m. Eastern Standard Time and continuing until adjournment at approximately 4:30 p.m.

Written Public Comments Submissions: Deadline is November 27, 2012.

Pre-registration for Meeting and/or Oral Comments: Deadline is December 4, 2012.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Agency Meeting Web Page: The preliminary agenda, registration and other meeting materials are at *http://ntp.niehs.nih.gov/go/165*.

Webcast: The meeting will be available via webcast at *http://www.niehs.nih.gov/news/video/index.cfm*.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, Designated Federal Officer for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 919–541–9834, Fax: 919–541–0295, Email: *whiteld@niehs.nih.gov*. Hand Deliver/Courier address: 530 Davis Drive, Room K2136, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: This meeting is open to the public with time scheduled for oral public comments; attendance is limited only by the space available. The BSC will provide input to the NTP on programmatic activities and issues. A preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by December 4, 2012, to facilitate planning for the meeting. Registered attendees are encouraged to access this Web site to stay abreast of the most current information regarding the meeting. Visitor and security information is available at *niehs.nih.gov/about/visiting/index.cfm*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Lori White at phone: (919) 541–9834 or email: *whiteld@niehs.nih.gov*. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments: Written comments submitted in response to this notice should be received by November 27, 2012. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, email, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8:30 a.m. until adjournment, although public comments will be received only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site, indicate whether they will present comments in-person or via the teleconference line, and list the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration for oral comments will also be available on the meeting day, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement or PowerPoint slides to the Designated Federal Officer by December 4, 2012. Written statements can supplement and may expand upon the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

Background Information on the NTP BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology,

immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually. The authority for the NTP BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended. The NTP BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: September 28, 2012.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2012–24420 Filed 10–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0035]

Agency Information Collection Activities: Application To Adjust Status From Temporary to Permanent Resident, Form I–698, Extension Without Change, of a Currently Approved Collection

ACTION: 60-day notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 3, 2012.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–698. Should USCIS decide to revise Form I–698 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–698.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0019.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without Change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–698. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The data collected on this form is used by USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 165 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 165 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: October 1, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–24518 Filed 10–3–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5663–N–01]

Additional Waiver Granted to and Alternative Requirement for the Town of Union, New York's CDBG Disaster Recovery Grant

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of additional waiver and alternative requirement.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the town of Union, New York, for the purpose of assisting in the recovery related to the consequences of the town's 2011 disasters. HUD previously published in the **Federal Register** allocation and application notices applicable to this grant on April 16, 2012 (77 FR 22583).

DATES: Effective Date: October 9, 2012

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Davis at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

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II. Applicable Rule, Statute, Waiver and Alternative Requirement
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I. Background

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) (hereinafter, ''the Appropriations Act'') makes available up to $400 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) in 2011. The law provides that grants shall be awarded directly to a state or unit of general local government at the discretion of the Secretary. Based on the damage estimates, the town of Union, New York, received $10,137,818 in CDBG disaster recovery assistance. HUD previously published the majority of requirements and waivers applicable to the town in the **Federal Register** on April 16, 2012 (77 FR 22583).

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon: (1) A request by the grantee explaining why such a waiver is required to facilitate the use of such funds or guarantees, and (2) a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the title I of the Housing and Community Development Act of 1974 (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

II. Applicable Rule, Statute, Waiver, and Alternative Requirement

The Secretary finds that the waiver and alternative requirement, as described in this notice, is necessary to facilitate the use of the town's CDBG disaster recovery funds for the statutory purposes, and is not inconsistent with the overall purpose of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Appropriations Act and the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**. The following waiver and alternative requirement provides additional flexibility in program design and allows the grantee to adequately meet statutory requirements unique to this appropriation. As a result, the waiver and alternative requirement apply only to the CDBG disaster recovery funds appropriated in the Appropriations Act, and not to funds provided under the annual Entitlement CDBG program, or those provided under any other component of the CDBG program.

Except as described in this notice and the April 16, 2012, **Federal Register** notice, statutory and regulatory provisions governing the Entitlement CDBG program shall continue to apply to the town's allocation under this notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable entitlement regulations can be found at 24 CFR part 570.

1. *Low-to-moderate income area benefit national objective waiver and alternative requirement.* Section 105(c)(2) and 24 CFR 570.208(a)(1)(i), applicable to CDBG disaster recovery awards, sets out the requirements for the low- and moderate-income area benefit national objective. Specifically, activities designed to meet this national objective must serve an area in which at least 51 percent of the residents are considered to be of low- and moderate-income. Union, NY, has requested a waiver allowing activities to meet this national objective if at least 38 percent of the residents in each of the service areas can be classified as low- and moderate-income. The town identified 38% as this is the lowest percentage of low- and moderate-income persons in the services areas of the proposed infrastructure and facilities projects.

Union, NY expressed its intent to facilitate a full and complete recovery, but recognizes that the CDBG disaster recovery funds will not meet all needs. In its waiver request, the town indicated that damage estimates for town facilities and infrastructure alone were between $3 and $4 million dollars. Based on these needs, the town determined that its primary focus is to repair and improve vital infrastructure that serves and protects more than 50,000 residents of the town. This assessment utilized Census data, damage estimates, insurance claims, Federal Emergency Management Agency (FEMA) application data, and Small Business Administration (SBA) loan data. Given the limited CDBG disaster recovery funds available, the town prioritized infrastructure repairs because these improvements will benefit significantly more residents both immediately and in the face of future flood events.

In making this determination, Union, NY identified and budgeted for repairs and improvements to critical infrastructure facilities that will directly benefit and assist recovery in the low- and moderate-income areas that were affected by the disaster, even though when considered together with other populations within the service areas of these facilities, the town recognizes that overall populations served by repairs are not predominantly low- and moderate-income.

After meeting citizen participation requirements, the town finalized a budget that includes over $2.3 million for selected infrastructure and neighborhood facilities. The town provided the following information to demonstrate that the selected infrastructure and neighborhood facilities will benefit low- and moderate-income populations in the disaster-affected area:

a. *Westover YMCA* ($202,756 budgeted). This multipurpose facility is located in the Westover Business District and was flooded due to river waters than overtopped the existing levee. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). Westover itself was one of the most heavily damaged areas (over 14 percent of parcels experienced substantial damage).

b. *Johnson City Water Treatment Plant* ($716,000 budgeted). The water plant storage facility was damaged by the flood and a new building will be constructed. This plant services the

entire village of Johnson City as well as two subdivisions. While Johnson City's low- and moderate-income population is 50.5 percent, the subdivisions served in addition to Johnson City have lower percentages of low- and moderate-income residents, reducing the low- and moderate-income percentage for the service area for this activity to 46.5 percent.

c. *Village of Endicott Water Plant ($150,000 budgeted) and Western Heights Blvd. Water Tank Access* ($6,000 budgeted). The project will provide additional power and repairs to the water plant and the plant's access road. Approximately 53 percent of the village's population is low- and moderate-income. However, there are additional areas served by the plant and when the population of those areas is included in the service area, the percent of residents that are low- and moderate-income is reduced to 38.9 percent.

d. *Westover Levee Repair/ Enhancement* ($774,622 budgeted). The levee surrounding the Westover neighborhood was overtopped, sustaining and causing significant damage to the levee and surrounding neighborhoods. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). Westover was one of the most heavily damaged areas from the storm and has a business district that is home to one of the town's largest employers.

e. *North Jackson Avenue Sewer* ($20,000 budgeted). The sewer back flowed and damaged homes in the neighborhood. The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income).

f. *Johnson City-Endicott Water Booster Station Repairs* ($31,000 budgeted). The low- and moderate-income residential percentage for the area served by the improvement is less than 51 (approximately 38 percent low- and moderate-income). The booster station was completely under water during the storm. The town plans on using CDBG disaster recovery funds for improvements so that water can be provided to the village of Endicott.

Union, NY also carefully considered other unmet needs within the community and how it might meet the remaining recovery needs of low- and moderate-income populations. A local survey of post-flood needs indicated that many of surveyed households are expected to relocate or participate in the FEMA-assisted buyout. In addition, the town consulted Broome County Department of Social Services, which affirms that the affected households generally received FEMA assistance or found other means to support their housing needs. The Broome County Community Organizations Active In Disaster (COAD) and volunteers interviewed a small sample of households in the town and found that the majority of households surveyed had housing needs that were not urgent. Based on this information, the town developed and budgeted for the housing and acquisition programs described below to ensure CDBG disaster recovery funds meet other unmet needs of residents, particularly low- and moderate-income residents. In addition, the town acknowledges that the planning studies it proposes will identify future activities and likely result in several amendments to the town's initial Action Plan based on new information regarding unmet needs:

2. The town has allocated more than $3.9 million to the following activities where they anticipate that the majority of beneficiaries will have low- and moderate-incomes:

a. Owner-Occupied Rehabilitation ($601,378 budgeted).

b. Multifamily Rehabilitation ($100,000 budgeted).

c. Homeownership Incentives ($200,000 budgeted).

2. The town has identified other activities that may also benefit low- and moderate-income households:

a. *Acquisition for Open Space* ($2,100,378 budgeted).

b. *Acquisition for Redevelopment* ($950,992 budgeted).

HUD acknowledges that the town also included its Small Business Program Structural/Capital Repairs and Non-Residential Floodproofing in this waiver request. The town indicated both activities occur town-wide. In the activity worksheets that supplement the action plan, the town states that these activities address the priority of enhancing job creation or retention for low- and moderate-income persons; however it has classified these activities as intending to meet the urgent need national objective. After considering the materials submitted in support of the town's waiver request, HUD has determined the requested waiver will not extend to these activities. The town identified these activities as part of their priority for low- and moderate-income job creation and retention, the service areas for these activities have not been identified, and the town has indicated that it plans to continue its analysis of unmet needs for its low- and moderate-income populations.

HUD has reviewed the information submitted by the town in its Action Plan and other supporting documentation in conjunction with the Department's review of this waiver request. In its funding allocation methodology, HUD estimated the severe unmet needs of the most impacted counties in each state using the best available data at the time. In its application, the town provided updated estimates of severe damage to storm water facilities, sanitary sewer plans, and water treatment plants and explained its rationale for prioritizing repair to these facilities. The town indicated that since the storm damaged critical utility service facilities, it prioritized infrastructure repairs to significantly benefit residents both immediately and in the face of future flood events. Also, the town's surveys of homeowners and businesses indicate that the need for repair of infrastructure is greatest. The town's submissions provide a sound basis for why a waiver is necessary to facilitate the use of CDBG disaster recovery funds.

The town's submissions also support a finding that a waiver of section 105(c)(2) in conjunction with alternative requirements is not inconsistent with title I of the HCD Act. The town will be able to address its most critical unmet needs, while also ensuring it is able to dedicate at least 50 percent of its entire CDBG–DR award to activities that benefit low- and moderate-income persons. Maps of affected areas and other information provided by the town demonstrate the unique circumstances faced within areas affected by Hurricane Irene. The maps show flood inundation to be greatest in areas that do not include a majority of the homes occupied by low- and moderate-income residents. The town's priority is to repair damaged infrastructure and neighborhood facilities. Although the service areas of those facilities are often considerably larger than the town's predominantly low- and moderate-income areas, investment in these activities will also benefit disaster-affected low- and moderate-income populations that are within the service area of these facilities. And finally, although the town concluded based on its initial surveys that its greatest need is repair of infrastructure, the town has budgeted CDBG disaster recovery funds for additional studies of unmet needs and plans to amend its Action Plan as needed based on new information acquired in the studies.

HUD concludes that good cause exists to support the town's request for a waiver of section 105(c)(2) of the HCD Act and 24 CFR 570.208(a)(1)(i) and

imposes the following alternative requirements:

a. Only the activities identified as the *Westover YMCA, Johnson City Water Treatment Plant, Village of Endicott Water Plant, Western Heights Blvd. Water Tank Access, Westover Levee Repair/Enhancement, North Jackson Avenue Sewer,* and *the Johnson City-Endicott Water Booster Station Repairs,* totaling $2,305,891, as detailed in the town of Union's Action Plan submitted to HUD on July 23, 2012, may utilize this waiver; and

b. If the above referenced public improvements and public facilities activities are classified as meeting the low- and moderate-income area benefit national objective, each must serve an area in which at least 38 percent of the residents are considered low- and moderate-income; and must otherwise meet all other applicable requirements, including those for eligibility and national objective; and

c. The town must continue to identify the specific resources for low- and moderate-income households in each amendment to its Action Plan. If additional unmet disaster recovery needs are subsequently identified among households with low- and moderate-incomes, the town must make reasonable efforts to ensure those needs are addressed.

The activities identified above that may utilize the waiver are only proposed projects at this stage and the town must complete the environmental review process described in 24 CFR part 58 for each proposed project. If the town determines that the environmental review is satisfactory, the town must request and receive a release of funds from HUD before it can commit funds or take any choice limiting action with respect to the projects. Approval of this waiver does not constitute approval of the proposed projects.

As a reminder, CDBG–DR funds used for all infrastructure projects must not duplicate any benefit or other source of funding, such as that provided through FEMA's Public Assistance (PA) program. All work funded with CDBG–DR funds on the above listed projects must be determined as ineligible under the FEMA PA program.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: September 26, 2012.

Mark Johnston,

Acting Assistant Secretary for Community, Planning and Development.

[FR Doc. 2012–24426 Filed 10–3–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5666–N–01]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Manufactured Housing Consensus Committee (MHCC). The meeting is open to the public and the site is accessible to individuals with disabilities. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held October 23–25, 2012, commencing at 9:00 a.m. each day.

ADDRESSES: The meeting will be held at the Hilton Arlington, 950 North Stafford Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Henry S. Czauski, Acting Deputy Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 9164, Washington, DC 20410, Telephone number 202–708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3).

Public Comment: Citizens wishing to comment on the business of the MHCC are encouraged to register on or before October 16, 2012, by contacting: The National Fire Protection Association, *attention:* Robert Solomon; by mail to: One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts, 02169, or by fax to 617–984–7110, or by email to *lmackay@nfpa.org.*

Please submit written comments, in addition to an oral presentation. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters on the agenda.

Tentative Agenda:

October 23, 2012, 9:00 a.m. to 5:00 p.m.

October 24, 2012, 9:00 a.m. to 5:00 p.m.

October 25, 2012, 9:00 a.m. to 1:00 p.m.

October 23, 2012

—Call to Order
—Opening Remarks
—Minutes of October 2011 Meeting—Review and Approval
—Review of Agenda
—Subcommittee Meetings

October 24, 2012

—Meeting of the Full Committee
—Subcommittee and Other Reports
—Old Business
—Public Comment Period
—Consideration of Proposals

October 25, 2012

—Old Business (continued)
—New Business
—Public Comment Period
—Consideration of Proposals
—Adjourn at 1:00 p.m.

Dated: September 28, 2012.

Laura M. Marin,

Acting General Deputy Assistant, Secretary for Housing.

[FR Doc. 2012–24424 Filed 10–3–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5597–N–01]

Request for Information on Adopting Smoke-Free Policies in PHAs and Multifamily Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Request for information.

SUMMARY: This notice seeks information and invites public comment regarding how HUD can best continue to support the implementation of smoke-free policies for both public housing and multifamily housing. In this regard, HUD is seeking information from the general public and stakeholders, including resident councils, advocacy groups, and housing providers, directly impacted by or involved with the implementation of smoke-free policies in both public housing and multifamily programs. Specifically, HUD is seeking information on best practices and practical strategies from housing providers who have implemented smoke-free policies, ideas for overcoming potential obstacles to implementing a smoke-free policy and methods for supporting residents, and housing providers in transitioning to smoke-free housing. Additionally, this notice requests input from housing providers that have decided not to implement a smoke-free policy and those impacted by that decision. This information will assist HUD to develop and disseminate additional guidance and resources to support public housing agencies (PHAs) and owners and management agents (O/As) who wish to implement smoke-free policies.

DATES: *Comments Due Date:* November 5, 2012.

ADDRESSES: Interested persons are invited to submit comments responsive to this request for information to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' of this notice.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter submitting hard copy comments, by mail or hand delivery, should submit comments or requests to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments or requests by mail often result in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the documents must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all documents submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shauna Sorrells, Director, Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4232, Washington, DC 20410–4000, telephone number 202–402–2769 (this is not a toll-free number) or Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6134, Washington, DC 20410–4000, telephone number 202–708–3000 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In 2009, HUD issued PIH Notice 2009–21 [1] in which it strongly encouraged PHAs to adopt smoke-free policies in some or all of their public housing units. In 2010, HUD issued Housing Notice 2010–21 [2] in which it encouraged O/As to implement smoke-free housing policies in one or all of the properties they own or manage. Both notices stated that cigarette smoking is the number one cause of preventable disease in the United States and that secondhand smoke, also known as environmental tobacco smoke (ETS) and which may be involuntarily inhaled by nonsmokers, can migrate between units in multifamily properties, and cause respiratory illness, heart disease, cancer, and other adverse health effects for housing residents and employees. The notices also referenced studies that reviewed smoking-material fires and that concluded that smoking is the leading cause of fire deaths in multifamily properties.[3]

PIH Notice 2009–21 also referenced a case study produced by the Sanford Maine Housing Authority that concluded that smoke-free units are less expensive to turn over for new residents, due to a lack of damage to carpets, stains on walls and damage to other interior spaces and finishes caused by smoke and burn marks.[4] PHAs and O/As may also be able to negotiate for reduced insurance rates based on decreased fire risks in smoke-free buildings, increasing the potential savings from instituting smoke-free policies.

As of January 2011, over 225 PHAs have adopted smoke-free policies in some or all of their units. HUD has also received a substantial amount of correspondence from residents, PHAs, O/As, governmental agencies and advocacy groups requesting additional guidance on how housing providers can implement smoke-free policies. On May

[1] Available at: *http://www.hud.gov/offices/adm/hudclips/.*

[2] Available at: *http://www.hud.gov/offices/adm/hudclips/.*

[3] Citing U.S. Fire Administration, *Residential Structure and Building Fires,* (October 2008), *www.usfa.dhs.gov/downloads/pdf/publications/Residential_Structure_and_Building_Fires.pdf.*

[4] *Sanford Maine Housing Authority Case Study, http://www.smokefreeforme.org/landlord.php?page=Save+Money%2C%3Cbr%3ESave+Your+Building.*

29, 2012, HUD in partnership with the American Academy of Pediatrics, the American Lung Association and the U.S. Department of Health and Human Services issued a ''Smoke Free Housing Toolkit'' to assist PHAs, O/As and residents of public and assisted multifamily housing who want safer and healthier homes. The ''Smoke Free Housing Toolkit'' contains information on health effects of smoking, a synopsis of the Surgeon General's 2006 report of the harmful effects associated with exposure to secondhand smoke and other resources helpful for residents, and housing providers.

In light of the above, HUD is seeking public comment from the general public, PHAs, O/As, public housing residents, multifamily housing residents and other stakeholders to help inform HUD on how best to support housing providers and residents in their voluntary implementation of smoke-free policies while continuing to serve HUD's core mission of housing low-income families. HUD must carefully balance the interests of such policies with the need for low income residents to have decent, safe and affordable places to live.

II. Request for Information

HUD's purpose in requesting this information is to provide a meaningful opportunity for stakeholders as well as the general public to assist HUD in its development of useful and effective guidance to support the implementation of smoke-free policies in both public housing and multifamily housing. Therefore, in advance of issuing additional guidance and resources, HUD invites interested parties to provide detailed comments on all aspects of this issue. In addition, HUD is providing the following list of topics and questions to which it is seeking substantive responses, including rationales and explanations for the answers provided.

1. Benefits, Risks and Costs of Implementing a Smoke-Free Housing Policy

a. What benefits support the implementation of a smoke-free policy? For PHAs and O/As that have transitioned, were there any unanticipated quantifiable and qualitative benefits from implementing a smoke-free policy?

b. Should a minimum percentage of residents support implementing a smoke-free policy before the PHA or O/A implements such a policy? For PHAs and O/As that have transitioned, what percentage of residents wanted a smoke-free policy? How was this percentage determined?

c. What are the greatest risks or costs to implementing a smoke-free policy? For PHAs and O/As that have transitioned, what, if any, were the unintended consequences from implementing a smoke-free policy?

d. How can the benefits, risks and costs of a smoke-free policy be measured or tracked? For PHAs and O/As that have transitioned, are the benefits, risks and costs of implementing a smoke-free policy being measured or tracked and, if so, how and what are the results?

e. What costs might be incurred or monetary savings realized if the PHA and O/A transitioned to smoke-free housing? For example, are savings available on insurance rates or on unit turnover? How can these costs and savings be calculated? For PHAs and O/As that have transitioned, what were the actual short-term and long-term costs and savings resulting from the transition?

f. For PHAs and O/As that have considered implementing a smoke-free policy but have decided against doing so, what were the reasons for deciding not to move forward? Did the PHA or O/A that did not implement a smoke-free policy choose instead to make improvements or adjustments to housing units to reduce the migration of smoke between units, and if so, what were the associated costs?

2. Initial Policy Development and Implementation

a. What roles should PHA or O/A management, maintenance staff and resident representatives play in developing and implementing a smoke-free policy?

b. For PHAs and O/As that have implemented a smoke-free policy, what roles did residents, local groups (*e.g.,* Health Departments, health care providers or Federally Qualified Health Centers), smoking cessation and healthy living programs play in initiating, developing and implementing a smoke-free policy?

c. For PHAs and O/As that have implemented a smoke-free policy, beginning with the initial planning period, how long did it take to implement the smoke-free policy? Was the policy initiated by management or by residents? What were the steps in the process, and how long did each take? What steps were taken to engage residents, including residents with disabilities (*e.g.,* persons with vision, hearing or mobility impairments) and residents with limited English proficiency, before implementing a smoke-free policy?

d. How was the policy communicated to residents? How long after notifying the residents was the policy implemented? Was that sufficient notice, and if not, what would be sufficient notice?

e. What are the major elements of a smoke-free policy? For PHAs and O/As that have implemented smoke-free policies, have any changes been made to the policy due to unanticipated consequences? If so, in what ways has the policy changed?

f. What are the most challenging obstacles to implementing a smoke-free policy and how might they be overcome? For PHAs and O/As that have implemented smoke-free policies, what were the most challenging obstacles encountered and how were they addressed?

g. Currently, HUD encourages PHAs to revise their lease agreements to reflect any new smoke-free policy and asks O/As to make these revisions in their house rules. Should the PHA and O/A be required to amend resident leases or house rules if they implement a smoke-free policy? If so, how and when should the leases or house rules be amended? For PHAs and O/As that have implemented smoke-free policies, were leases or lease addendums (house rules) amended?

3. Policy Enforcement

a. How should smoke-free policies be enforced? What should the consequences of violating the smoke-free policy be? How should the consequences of violating the smoke-free policy be communicated to residents? For PHAs and O/As that have implemented smoke-free policies, what are the consequences if residents violate the policy, what enforcement mechanisms are used and what are the barriers to using the available enforcement mechanisms? For PHAs or O/As that have pursued evictions for failure to comply with the smoke-free policy, have any residents been evicted, and if so, how many times had the resident violated the smoke-free policy before it was considered a serious violation of the lease or house rules?

b. Should residents who smoked before the implementation of the policy be allowed to continue to smoke until they move out or for a specific period of time (*i.e.,* grandfathering)? If existing residents are ''grandfathered'' under the policy, how long should they continue to be allowed to smoke in their units?

c. Should residents affected by the smoke-free policy be offered other housing alternatives if the residents cannot or will not comply with smoke-free policies? For PHAs and O/As who

implemented smoke-free policies, how were residents who were unable to leave their unit to smoke accommodated? For PHAs and O/As that have implemented a smoke-free policy, what are the greatest challenges to enforcing a smoke-free policy? What steps are being taken to overcome those challenges?

4. Resources for Policy Implementation

a. For PHAs, O/As and residents that have used the ''Smoke Free Toolkit,'' how was the toolkit utilized and are there additional resources that should be added?

b. What resources are available from the community or state to help residents transition to a smoke-free policy, and do they include cessation counseling or nicotine substitutes (*e.g.,* tobacco patches, lozenges, nicotine gum)?

c. For PHAs and O/As that have implemented a smoke-free policy, what resources would have been helpful, but were not provided? In cases where nicotine substitutes or other smoking cessation resources (e.g., counseling) were provided, were the resources successful in helping ensure the policy was followed? What, if any resources were obtained from tobacco control advocates or health care providers?

Dated: September 26, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–24430 Filed 10–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2012–0008; OMB Number 1014–0009]

Information Collection Activities: Legacy Data Verification Process (LDVP); Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for the Notice to Lessees (NTL) on the Legacy Data Verification Process (LDVP). This notice also provides the public a second opportunity to comment on the paperwork burden of these requirements.

DATES: Submit written comments by November 5, 2012.

ADDRESSES: Submit comments either by fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0009). Please also submit a copy of your comments to BSSE by any of the means below:

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BSEE–2012–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0009 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION: *Title:* Legacy Data Verification Process (LDVP).

OMB Control Number: 1014–0009.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' These responsibilities are among those delegated to the Bureau of Safety and Environmental Enforcement (BSEE).

To carry out these responsibilities, BSEE issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we issue Notices to Lessees and Operators (NTLs) that provide clarification, explanation, and interpretation of our regulations. These NTLs are also used to convey purely informational material and to cover situations that might not be addressed in our regulations. The latter is the case for this information collection. Because of the unusual nature of this information collection, issuing an NTL is the appropriate means to collect the information.

The subject of this information collection request is the ''Legacy Data Verification Process (LDVP),'' formerly known as the ''Historical Well Data Cleanup Program (HWDC).'' It needs to be stressed that the information we are collecting is information that respondents are required to submit under regulations at 30 CFR part 250, subpart D. However, in the past we did not always enforce this regulatory requirement for certain wellbores for several reasons. We did not foresee the value of this information for all wellbores, nor did we anticipate that not having the information would later create problems for the agency and others. We also did not have a sophisticated electronic database that could handle the information. The LDVP IC is found in § 250.467(c). These are the records that the lessee must keep until the well is abandoned. The collection is also looking for any records that should have been submitted to BSEE but are not in BSEE's inventory. The key to this collection is that BSEE wants to know the location of all the wellbores, specifically:

—Records of well completion or workover activities that materially alter the completion configuration or affect a hydrocarbon-bearing zone—§ 250.467(c),
—Well logs and surveys run in the wellbore—§ 250.468(a),
—Directional surveys—§ 250.468(a),
—Service company reports on cementing, perforating, acidizing, testing, or other similar reports—§ 250.469(c).

We now collect all of the required information on a current basis (under 30 CFR part 250, subpart D, OMB Control Number 1014–0018). Prior assurance to respondents that providing the

information in connection with this process will not subject them to the penalties for not providing the information is still in place. We are requesting a renewal of this collection to allow operators more response time over a longer period to provide the missing or corrected data.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping Hour Burden: The estimated hour burden for this information collection is a total of 417 annual burden hours. The respondents will submit information for a remaining estimated 500 wells from an original 40,000 wells. Based on our own input, the concurrence of the contractor hired for this, and informal discussions with a few potential respondents, we estimate it will take respondents 0.5 hours to locate and copy scout tickets for each well and 2.0 hours to retrieve and analyze each well file over a 3-year timeframe (2.5 hours × 500 wells—1,250/3 = 417 annual burden hours (rounded)).

In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * '' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on May 14, 2012, we published a **Federal Register** notice (77 FR 28401) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to this effort.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 24, 2012.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–24470 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2012–0010; OMB Number 1014–0007]

Information Collection Activities: Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR Part 254, ''Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: You must submit comments by November 5, 2012.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0007). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, ''Enter Keyword or ID,'' enter BSEE–2012–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *Nicole.Mason@bsee.gov*, fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0007 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1014–0007.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. The authority and responsibility were delegated to BSEE by Executive Order 12777—Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990. Regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling

facilities seaward of the coast line, including associated pipelines. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected under 30 CFR 254 to determine compliance with OPA by lessees/operators. Specifically, BSEE needs the information to:

- Determine that lessees/operators have an adequate plan and are sufficiently prepared to implement a quick and effective response to a discharge of oil from their facilities or operations.
- Review plans prepared under the regulations of a State and submitted to BSEE to satisfy the requirements in 30 CFR 254 to ensure that they meet minimum requirements of OPA.
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to lead and witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;
- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of lessees/operators to prevent oil spills or prevent substantial threats of such discharges.

No confidential or proprietary information is collected in 30 CFR 254. Responses are mandatory.

Frequency: On occasion, monthly, annually, and biennially.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees or operators of facilities located in both State and Federal waters seaward of the coast line and oil-spill response companies.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 60,198 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

30 CFR 254 and NTLs	Reporting requirement	Hour burden	Average Number of annual responses	Annual burden hours
	Subpart A—General			
1(a) thru (d); 2(a); 3 thru 5; 7; 20 thru 29; 44(b)	Submit spill response plan for OCS facilities and related documents	250	26 new plans	6,500
1(e)	Request BSEE jurisdiction over facility landward of coast line (no recent request received)	0.5	2 requests	1
2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	19	1 certification	19
2(c); 30	Submit revised spill response plan for OCS facilities at least every 2 years; notify BSEE of no change.	64	177 revised plans	11,328
		1	1 plan	1
2(c)	Request deadline extension for submission of revised plan	4	11 extensions	44
8	Appeal BSEE orders or decisions	Exempt under 5 CFR 1320.4(a)(2), (c)		0
		Subtotal	**218 responses**	**17,893 hours**
	Subpart C—Related Requirements for OCS Facilities			
40	Make records of all OSRO-provided services, equipment, personnel available to BSEE	5	20 records	100
41	Conduct annual training; retain training records for 2 years	49	197 owners/ operators	9,653
42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years	200	134 exercises	26,800
42(f)	Inform BSEE of the date of any exercise (triennial)	1	170 notifications	170
43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years	3.5	55 inspections x 12 months = 660	2,310
46(a) NTL	Notify NRC of all oil spills from owner/operator facility	Burden would be included in the NRC inventory		0
46(b) NTL(s)	Notify BSEE of oil spills of one barrel or more from owner/operator facility; submit follow-up report; after catastrophic event may be requested to meet w/BSEE to discuss storm recovery strategies/pollution.	2	61 notifications & reports	122
46(c)	Notify BSEE & responsible party of oil spills from operations at another facility	2	24 notifications	48
		Subtotal	**1,266 responses**	**39,203 hours**

30 CFR 254 and NTLs	Reporting requirement	Hour burden	Average Number of annual responses	Annual burden hours
Subpart D—Oil Spill Response Requirements for Facilities Located in State Waters Seaward of the Coast Line				
50; 51	Submit response plan for facility in State waters by modifying existing OCS plan	42	10 plans	420
50; 52	Submit response plan for facility in State waters following format for OCS plan	100	9 plans	900
50; 53	Submit response plan for facility in State waters developed under State requirements	89	18 plans	1,602
54	Submit description of oil-spill prevention procedures and demonstrate compliance	5	36 submissions	180
		Subtotal	**73 responses**	**3,102 hours**
TOTAL HOUR BURDEN			**1,557 Responses**	**60,198 Hours**

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on June 6, 2012, we published a **Federal Register** notice (77 FR 33479) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 254.9 provides the OMB control number for the information collection requirements imposed by the 30 CFR 254 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Acting BSEE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: September 18, 2012.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–24471 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Establishment of the Advisory Committee on Climate Change and Natural Resource Science

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of establishment; request for nominees.

SUMMARY: The U.S. Department of the Interior (DOI) is establishing and seeking nominations for the Advisory Committee on Climate Change and Natural Resource Science (Committee). The Committee will provide advice on matters and actions relating to the establishment and operations of the U.S. Geological Survey National Climate Change and Wildlife Science Center and the DOI Climate Science Centers. In doing so, the Committee will obtain input from Federal, state, tribal, local government, nongovernmental organizations, private sector entities, and academic institutions.

DATES: Written nominations must be received by November 19, 2012.

ADDRESSES: Send nominations to: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, *romalley@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, *romalley@usgs.gov*.

SUPPLEMENTARY INFORMATION: We, the Department of the Interior, announce the establishment of the Advisory Committee on Climate Change and Natural Resource Science. We are establishing the Committee in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), and with the concurrence of the General Services Administration.

The Committee will:

- Advise on the contents of a national strategy identifying key science priorities to advance management of natural resources in the face of climate change.
- Advise on the nature, extent, and quality of relations with and engagement of key partners at the regional Climate Science Center level.
- Advise on the nature and effectiveness of mechanisms to ensure identification of key priorities from management partners and to effectively deliver scientific results in useful forms.
- Advise on mechanisms that may be employed by the National Climate Change and Wildlife Science Center to ensure high standards of scientific quality and integrity in its products.
- Review and evaluate the performance of individual Climate Science Centers before re-establishing expiring agreements.
- Coordinate as appropriate with any Federal Advisory Committee established

for the DOI Landscape Conservation Cooperatives.

We are seeking nominations for individuals to be considered as Committee members. Nominations should include a resume that describes the nominee's qualifications in enough detail to enable us to make an informed decision regarding meeting the membership requirements of the Committee and to contact a potential member.

Members of the Committee will be composed of approximately 25 members from both the Federal Government, and the following interests: (1) State and local governments, including state membership entities; (2) Non-governmental organizations, including those whose primary mission is professional and scientific and those whose primary mission is conservation and related scientific and advocacy activities; (3) American Indian tribes and other Native American entities; (4) Academia; (5) Individual landowners; and (6) Business interests.

In addition, the Committee may include scientific experts, and will include rotating representation from one or more of the institutions that host the DOI Climate Science Centers.

The Committee will meet approximately 2–4 times annually, and at such times as designated by the DFO. The Secretary of the Interior will appoint members to the Committee. Members appointed as special Government employees are required to file on an annual basis a confidential financial disclosure report.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee.

Certification Statement: I hereby certify that the establishment of the Advisory Committee on Climate Change and Natural Resource Science is necessary, is in the public interest, and is established under the authority of the Secretary of the Interior, in connection with the performance of the responsibilities of the Department of the Interior under Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and the Consolidated Appropriations Act of 2008, Public Law 110–161.

Dated: September 25, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–24478 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD08000; L51010000; EU0000; LVRWB11B4700; CACA–53705]

Notice of Intent To Prepare an Amendment to the California Desert Conservation Area Plan and Associated Environmental Assessment, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM), Barstow Field Office, Barstow, California, intends to prepare an amendment to the 1980 California Desert Conservation Area (CDCA) Plan with an associated Environmental Assessment (EA) to identify an 80-acre parcel of public land for possible direct sale. With this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the plan amendment with an associated EA. Comments on issues may be submitted in writing until November 5, 2012. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local news media. In order to be included in the EA, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the EA as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the plan amendment EA by any of the following methods:

- *Email: bhoover@blm.gov.*
- *Fax:* 760–252–6099.
- *Mail:* Birgit Hoover, Realty Specialist, BLM Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

Documents pertinent to this notice will be available for public review at the Barstow Field Office: 2601 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Birgit Hoover, Realty Specialist, BLM Barstow Field Office, telephone 760–252–6035; address 2601 Barstow Road, Barstow, CA 92311. 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 for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Barstow Field Office, Barstow, California, intends to prepare a plan amendment with an associated EA for the 1980 CDCA Plan, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in San Bernardino County, California, and encompasses approximately 80 acres of public land that has been identified for possible direct sale. The BLM received a request from OMYA, Inc., to purchase the planning area, by direct sale, under the authority of Section 203 of FLPMA (43 U.S.C. 1713). However, the public land described above is currently not available for sale under the 1980 CDCA Plan as amended, and a plan amendment is required to process a direct sale. This plan amendment will be limited to an analysis of whether the public land described above meets Section 203 sales criteria of FLPMA. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel. The issues include: Mineral resources, special status species, and cultural resources. Preliminary planning criteria include:

1. Compliance with FLPMA, NEPA, and all other applicable laws;

2. Coordination with local and county governments; and

3. Government-to-government consultation with federally recognized tribes.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public

involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, wildlife and fisheries, archaeologists, hydrology, soils, and lands and realty.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. 2012–24522 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–13–L14200000–BJ0000–LXSITRST0000]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the west boundary of the Wind River Indian Reservation and the subdivisional lines, and the metes-and-bounds survey of Tract 37, Township 5 North, Range 6 West, Wind River Meridian, Wyoming, Group No. 846, was accepted September 26, 2012.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: September 28, 2012.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2012–24506 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000 L13110000.XH0000]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Farmington District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting dates are October 17–18, 2012, at the BLM Farmington District Office, 6251 College Blvd., Farmington, New Mexico 87402, from 8:00 a.m. to 4:30 p.m. both days. The public may send written comments to the RAC at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Papich, BLM Farmington District Office, 6251 College Blvd., Farmington, NM 87402, telephone 505–564–7620. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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 10-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico. Planned meeting agenda items include discussion of a planned wild horse gathering and a proposed amendment to the Farmington Field Office Resource Management Plan that would revise how the Farmington Field Office manages the BLM Glade Run Recreation.

Other items on the meeting agenda include discussion of the Taos Field Office transportation plan, an update on the proposed management plan for the Taos Plateau and discussion of the Old Spanish Trail.

A half-hour public comment period during which the public may address the RAC is scheduled to begin at 3:00 p.m. at Thursday's meeting on October 18. All RAC meetings are open to the public. Depending on the number of

individuals wishing to comment and time available, the time for individual oral comments may be limited.

Dave Evans,

District Manager, Farmington.

[FR Doc. 2012–24484 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–VB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Review)]

Certain Polyester Staple Fiber 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 certain polyester staple fiber 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.[2]

Background

The Commission instituted this review on May 1, 2012 (77 FR 25744) and determined on August 6, 2012 that it would conduct an expedited review (77 FR 50530, August 21, 2012).

The Commission transmitted its determination in this review to the Secretary of Commerce on September 28, 2012. The views of the Commission are contained in USITC Publication 4351 (September 2012), entitled *Certain Polyester Staple Fiber from China: Investigation No. 731–TA–1104 (Review).*

By order of the Commission.

Issued: September 28, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24495 Filed 10–3–12; 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)).

[2] Commissioner Meredith Broadbent did not participate.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–794]

Certain Electronic Devices, Including Wireless Commmunication Devices, Portable Music and Data Processing Devices, and Tablet Computers; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order against certain infringing electronic devices, including wireless communication devices, portable music and data processing devices, and tablet computers, imported by Apple Inc. of Cupertino, California.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2661. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on September 14, 2012. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on October 22, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 794'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/*

secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: September 28, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24497 Filed 10–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–840]

Certain Semiconductor Integrated Circuit Devices and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 13) granting a joint motion to terminate the investigation in its entirety based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2012, based on a complaint filed by Microchip Technology Incorporated of Chandler, Arizona (''Microchip''). 77 FR 25747–48 (May 1, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuit devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,225,088; 6,245,597; 6,159,765; 5,760,720 (''the '720 patent''); 6,559,783; and 6,847,904. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents Intersil Corporation of Milpitas, California; Zilker Labs, Inc. of Austin, Texas (''Zilker''); and Techwell LLC of Milpitas, California. The Office of Unfair Import Investigations was not named as a participating party. The Commission later amended the Notice of Investigation to change the name of respondent Zilker to Zilker Labs LLC and to amend the Complaint to correct a clerical error concerning which alleged Microchip domestic industry product practices the '720 patent. *See* Notice (June 27, 2012); Order No. 7.

On September 6, 2012, Microchip and the respondents filed a joint motion to terminate the investigation in its entirety based on a settlement agreement and to stay the investigation pending disposition of the motion to terminate.

On September 7, 2012, the ALJ issued the subject ID, granting the joint motion to terminate the investigation pursuant to section 210.21 (b)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.21 (b)(1)). The ALJ found the issue of staying the investigation moot in light of the grant of termination. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 1, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24500 Filed 10–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–809]

Certain Devices for Mobile Data Communication; Notice of Commission Determination Not To Review an Initial Determination Granting in Part Complainant's Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 41) granting in part complainant's motion for leave to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's

electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 13, 2011, based on a complaint filed by Openwave Systems Inc. of Redwood City, California. 76 FR 63657–58 (Oct. 13, 2011). 76 FR 54252 (Aug. 31, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for mobile data communication by reason of infringement of various claims of United States Patent Nos. 6,233,608; 6,289,212; 6,405,037; 6,430,409; and 6,625,447. The notice of investigation named the following entities as respondents: Apple Inc. of Cupertino, California; Research In Motion Ltd. of Ontario, Canada; and Research In Motion Corp. of Irving, Texas.

On August 17, 2012, complainant filed a renewed motion to amend the complaint and notice of investigation. Respondents filed an opposition to the motion on August 29, 2012. The Commission investigative attorney filed a response in support of complainant's original motion on July 2, 2012, but did not file a response to the renewed motion.

On September 6, 2012, the ALJ issued the subject ID, granting in part the motion. The ALJ found that, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists to amend the complaint and notice of investigation. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 1, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24499 Filed 10–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–790]

Certain Coenzyme Q10 Products and Methods of Making Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order with respect to the accused products of respondents Zhejiang Medicine Co., Ltd., ZMC–USA, L.L.C., Xiamen Kingdomway Group Company, Pacific Rainbow International, Mitsubishi Gas and Chemical Company, Mitsubishi Gas Chemical America, Inc., and Shenzhou Biology and Technology Co., Ltd.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bond issued in this investigation on September 27, 2012. Comments should address whether issuance of an exclusion order and a cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on October 29, 2012.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–790'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing

Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: September 28, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24498 Filed 10–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–027]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 11, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–671–673 (Third Review) (Silicomanganese from Brazil, China, and Ukraine). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before October 24, 2012.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 2, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–24583 Filed 10–2–12; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 28, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States* v. *Elm Ridge Exploration Company LLC,* Civil Action No. 12–cv–02584.

The Consent Decree resolves alleged violations of the Clean Air Act's hazardous air pollutant control program at 42 U.S.C. 7412, and its Title V federal operating permits program at 42 U.S.C. 7661 at Elm Ridge's Ignacio Gas Treating Plant in La Plata County, Colorado, within the exterior boundaries of the Southern Ute Indian Reservation. The Consent Decree requires: (1) Payment of a civil penalty of $207,150; (2) performance of a $150,000 SEP to replace 50 residential wood stoves on the Reservation with cleaner wood or pellet stoves; (3) $67,850 paid to EPA's Title V fee fund to recover unpaid Title V permit fees; (4) mitigation of past violations by replacing four engines not presently covered by the HAP regulations with newer, cleaner engines at a cost of approximately $1,050,000; (5) injunctive provisions to ensure forward compliance with the Act's HAP control program on all eight engines at the Facility; (6) replacement of existing instrument gas systems with instrument air systems at a cost of $125,000; and (7) a requirement that Elm Ridge submit an updated Title V permit application to the Southern Ute Indian Tribe, which has recently obtained delegated Title V authority.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Elm Ridge Exploration Company LLC,* D.J. Ref. No. 90–5–2–1–10362. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–24511 Filed 10–3–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 27, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Nevada in the lawsuit entitled *United States, et al.* v. *Atlantic Richfield, et al.,* Civil Action No. 3: 12–civ–524.

The Consent Decree resolves claims brought by the State of Nevada on behalf of the Nevada Division of Environmental Protection (''NDEP'') and the Nevada Department of Wildlife (''NDOW''), the United States, on behalf of the United States Environmental Protection Agency (''EPA''), the United States Department of Interior (''DOI'') Bureau of Indian Affairs and Fish and Wildlife Service (''BIA'' and ''FWS'' respectively), the United States Department of Agriculture, Forest Service (''USFS''), and the Shoshone-

Paiute Tribes (''Tribes''), against Settling Defendants Atlantic Richfield Company, The Cleveland-Cliff Iron Company, E.I. du Pont de Nemours and Company, Teck American Incorporated, and Mountain City Remediation, LLC (''Defendants''), under Nevada Water Pollution Control Law, NRS § 445A.300 to 445A.730, and Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, et. seq. (''CERCLA''), related to the releases and threatened releases of hazardous substances at the Rio Tinto Mine Superfund Alternative Site (''Site'') in Elko County, Nevada.

The proposed Consent Decree requires the Settling Defendants to undertake a number of obligations including: (1) Implement the remedy selected in the Record of Decision on February 14, 2012, at an estimated cost of over $25 million; (2) pay to the State certain future response costs; (3) pay to EPA certain future response costs; (4) pay EPA $1,234,067 for past response costs; (5) pay to the Federal Natural Resource Trustees, DOI, and USFS, resource damage assessment costs of $709,527; and (6) pay to the Tribes $150,000 for their past and future costs.

The salient features of the remedy include removal of mine tailings and relocation of these materials to an engineered, covered repository constructed on-site; realignment and lining of a portion of Mill Creek, which will be reconstructed to allow for seasonal passage of Redband Trout between the Owyhee River and upper Mill Creek; reclamation of soil and re-vegetation in Lower Mill Creek Valley; monitoring of Mill Creek and the East Fork Owhyee River, and implementation of specific additional tasks necessary to achieve Performance Standards (specified in the ROD); collection and analysis of water samples from downstream points in the East Fork Owyhee River to determine if persistent water quality anomalies in the river exist, and whether they may be attributable to releases from the underground mine workings; and, if so, performance of additional investigation or response actions which NDEP or EPA may require to address anomalies determined to be attributable to the underground mine workings.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Atlantic Richfield, et al.,* D.J. Ref. No. 90–11–3–08510. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email ...	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $100.50 (25 cents per page reproduction cost) payable to the United States Treasury. In requesting a copy exclusive of exhibits and Defendants' signatures, please enclose a check in the amount of $31.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–24463 Filed 10–3–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Hertrich et al.,* Case No. 1:10–cv–03068–JKB, was lodged with the United States District Court for the District of Maryland on September 28, 2012.

This proposed Consent Decree concerns a complaint filed by the United States against Frederick W. Hertrich, III and Charles Ernesto, pursuant to Sections 301(a) and 309(d) of the Clean Water Act, 33 U.S.C. 1311(a) & 1319(d), to obtain injunctive relief and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to pay a civil penalty, and requiring Defendant Hertrich to impose a deed restriction on a portion of his property.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Amanda Shafer Berman, Environmental Defense Section, United States Department of Justice, P.O. Box 7611, Washington, DC 20044, and refer to *United States* v. *Hertrich et al.,* DJ # 90–5–1–1–18877.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Maryland, 101 W. Lombard Street, Baltimore, MD 21201. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2012–24432 Filed 10–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Bureau of Labor Statistics Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday November 9, 2012. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and survey design.

The meeting will be held in rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9 a.m. Opening remarks and introductions; agency updates.

9:15 a.m. Occupational Employment Statistics (OES) Time Series.

11:15 a.m. Discussion of future priorities.

1 p.m. Enhancements to the Chained CPI.

3 p.m. Survey of Occupational Illnesses and Injuries (SOII) Undercount.

4:30 p.m. Approximate conclusion.

The meeting is open to the public. Any questions concerning the meeting should be directed to Lisa Fieldhouse, Bureau of Labor Statistics Technical Advisory Committee, on 202–691–5025. Individuals who require special accommodations should contact Ms. Fieldhouse at least two days prior to the meeting date.

Signed at Washington, DC, this 28th day of October 2012.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2012–24492 Filed 10–3–12; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–49 and CP2012–61; Order No. 1481]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 16 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* October 9, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 16 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 16 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–49.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–61.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–49 and CP2012–61 to consider the Request pertaining to the proposed First-Class Package Service Contract 16 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 9, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–49 and CP2012–61 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24427 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–54 and CP2012–66; Order No. 1486]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail & Priority Mail Contract 10 to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* October 5, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:ww.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filings.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Express Mail & Priority Mail Contract 10 to the competitive product list.[1] The Postal Service asserts that Express Mail & Priority Mail Contract 10 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–54.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–66.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the first business day following the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement with written notice to the other party. *Id.* at 3.[2] The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–54 and CP2012–66 to consider the Request pertaining to the proposed Express Mail & Priority Mail Contract 10 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 5, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–54 and CP2012–66 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 5, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24441 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 10 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

[2] Under the terms of the contract, the customer may terminate the agreement with 90 days notice, while the Postal Service may terminate with 180 days. *Id.*

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–52 and CP2012–64; Order No. 1484]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 19 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* October 9, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 19 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 19 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–52.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–64.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–52 and CP2012–64 to consider the Request pertaining to the proposed First-Class Package Service Contract 19 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 9, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–52 and CP2012–64 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24438 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 19 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–53 and CP2012–65; Order No. 1485]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 20 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* October 9, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 20 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 20 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–53.

The Postal Service contemporaneously filed a redacted

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 20 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–65.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–53 and CP2012–65 to consider the Request pertaining to the proposed First-Class Package Service Contract 20 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 9, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–53 and CP2012–65 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24440 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–51 and CP2012–63; Order No. 1483]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 18 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* October 9, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 18 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 18 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–51.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–63.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 18 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–51 and CP2012–63 to consider the Request pertaining to the proposed First-Class Package Service Contract 18 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 9, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–51 and CP2012–63 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24436 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–50 and CP2012–62; Order No. 1482]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 17 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* October 9, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http:www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** portion of the preamble for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 17 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 17 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–50.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–62.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the date that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–50 and CP2012–62 to consider the Request pertaining to the proposed First-Class Package Service Contract 17 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 9, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–50 and CP2012–62 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 9, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–24431 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Express Mail and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–54, CP2012–66.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24428 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 17 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–50, CP2012t–62.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24461 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 20 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–53, CP2012–65.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24456 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class*

Package Service Contract 19 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2012–52, CP2012–64.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24439 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 18 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–51, CP2012–63.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24442 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 27, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 16 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–49, CP2012–61.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–24447 Filed 10–3–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30225]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 28, 2012.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2012. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 23, 2012, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

BlackRock New Jersey Investment Quality Municipal Trust Inc. [File No. 811–7670]; BlackRock New York Investment Quality Municipal Trust Inc. [File No. 811–7672]

SUMMARY: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 26, 2012, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants have retained approximately $73,311 and $72,526, respectively, in a liquidating trust to pay contingent liabilities. Expenses of $67,715 incurred in connection with each liquidation were paid by BlackRock Advisors, LLC, applicants' investment adviser.

FILING DATES: The applications were filed on July 31, 2012 and amended on September 7, 2012.

APPLICANTS' ADDRESS: 100 Bellevue Parkway, Wilmington, DE 19809.

ASGI Mesirow Insight TEI Fund I, LLC [File No. 811–22219]; ASGI Mesirow Insight Fund I, LLC [File No. 811–22220]; ASGI Mesirow Insight Fund A, LLC [File No. 811–22418]; ASGI Mesirow Insight TEI Fund A, LLC [File No. 811–22419]

SUMMARY: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicants have transferred their assets to ASGI Mesirow Insight Fund, LLC and, on March 31, 2012, made final distributions to shareholders based on net asset value. Expenses of $94,356, $276,255, $11,390 and $12,038, respectively, incurred in connection with the reorganizations were paid by each applicant.

FILING DATES: The applications were filed on May 29, 2012 and amended on August 2, 2012 and September 6, 2012.

APPLICANTS' ADDRESS: Alternative Strategies Group, Inc., 401 South Tryon St., Charlotte, NC 28202.

Mairs & Power Growth Fund Inc. [File No. 811–802]; Mairs & Power Balanced Fund Inc. [File No. 811–1048]

SUMMARY: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant transferred its assets to a corresponding series of Mairs & Power Funds Trust and, on December 31, 2011, made a final distribution to its shareholders based on net asset value. Expenses of approximately $176,460 and $10,714, respectively, incurred in connection with the reorganizations were paid by each applicant.

FILING DATES: The applications were filed on July 31, 2012, and amended on September 6, 2012.

APPLICANTS' ADDRESS: 332 Minnesota St., Suite W1520, St. Paul, MN 55101.

AllianceBernstein Greater China 97 Fund Inc. [File No. 811–8201]

SUMMARY: Applicant seeks an order declaring that it has ceased to be an investment company. On July 30, 2012, applicant completed its liquidating distributions to shareholders, based on net asset value. Expenses of $1,500 incurred in connection with the liquidation were paid by applicant.

FILING DATE: The application was filed on September 19, 2012.

APPLICANT'S ADDRESS: 1345 Avenue of the Americas, New York, NY 10105.

Washington National Variable Annuity Fund B [File No. 811–1662]

SUMMARY: Applicant, Washington National Variable Annuity Fund B, a unit investment trust registered under the Investment Company Act of 1940 (the ''Act''), seeks an order declaring that it has ceased to be an investment company. Washington National Insurance Company (''Company''), of which Applicant is a separate account, terminated the offering of Applicant's variable annuity contracts (''Contracts'') in 1981 and has not engaged in any solicitation or marketing activities with respect to the Contracts for 31 years. Since 1981, the number of outstanding Contracts declined as a result of surrenders by owners of the Contracts and deaths of owners or annuitants under their Contracts. As a result, Applicant currently has only 24 beneficial owners of such Contracts. Applicant is not making and does not presently propose to make a public offering of the Contracts. After the deregistration order requested by the Applicant issues, securityholders under the Contracts will be promptly notified that certain legal protections afforded to securityholders of an investment company registered under the Act will no longer apply. However, after issuance of the order, the Company will continue to be responsible for satisfying all the obligations to securityholders under the Contracts.

FILING DATE: The application was filed on July 6, 2012.

APPLICANT'S ADDRESS: 11815 N. Pennsylvania Street, Carmel, IN 46032.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24459 Filed 10–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30224; 812–14000]

PACE Select Advisors Trust and UBS Global Asset Management (Americas) Inc.; Notice of Application

September 27, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements. The requested order would supersede two prior orders.[1]

APPLICANTS: PACE Select Advisors Trust (the ''Trust'') and UBS Global Asset Management (Americas) Inc. (the ''Adviser'') (collectively, ''Applicants'').

FILING DATES: The application was filed on January 20, 2012, and amended on April 25, 2012, and September 10, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Mr. Joseph J. Allessie, UBS Global Asset Management (Americas) Inc., 1285 Avenue of the Americas, New York, NY 10019–6028.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and currently offers 15 series of shares (each a ''Series''), each with its own distinct investment objectives, policies and restrictions.[2] The Adviser is, and any future Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser serves as the investment adviser and

[1] PaineWebber PACE Select Advisors Trust and Mitchell Hutchins Asset Management, Inc., Investment Company Act Release Nos. 24823 (Jan. 11, 2001) (notice) and 24850 (Feb. 6, 2001) (order) and Managed Account Services Portfolio Trust and Mitchell Hutchins Asset Management Inc., Investment Company Act Release Nos. 21590 (Dec. 11, 1995) (notice) and 21666 (Jan. 11, 1996) (order).

[2] Applicants also request relief with respect to any future Series of the Trust and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included in the term ''Adviser''); (b) uses the manager of managers structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of this application (together with any Series that uses the Manager of Managers Structure, each a ''Subadvised Fund'' and collectively, the ''Subadvised Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. Each Series that is or currently intends to be a Subadvised Fund, and each Subadviser (as defined below) to a Subadvised Fund that currently intends to rely on the requested order, is identified in this application. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Subadviser, the name of the Adviser to that Subadvised Fund or trademark or trade name that is owned by the Adviser to that Subadvised Fund will precede the name of the Subadviser.

administrator to each Series pursuant to an investment management and administration agreement with the Trust (each an ''Investment Management Agreement'' and collectively, the ''Investment Management Agreements'').[3] Each Investment Management Agreement was approved or will be approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Subadvised Fund, or the Adviser (''Independent Trustees'') and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.[4]

2. Under the terms of each Investment Management Agreement, the Adviser, subject to the oversight of the Board and in conformity with the stated policies of the Trust, (a) manages the investment operations of the Trust; (b) administers the Trust's affairs; and (c) except with respect to PACE Money Market Investments,[5] makes recommendations for each Series regarding (i) the investment strategies and policies of each Series and (ii) the selection and retention of Subadvisers who will exercise investment discretion with respect to the assets of each Series. The Adviser periodically reviews investment policies and strategies of each Series and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by its Board. The Adviser receives a management fee for its investment management services to each Series, and receives an administrative fee for its administration services to each Series, based on each Series' average daily net assets. The terms of the Investment Management Agreements also permit the Adviser, subject to the approval of the Board, including a majority of the Independent Trustees, to delegate portfolio management responsibilities of all or a portion of the assets of a Series to one or more subadvisers (''Subadvisers''). The Adviser has entered into investment subadvisory agreements (''Subadvisory Agreements'') with a number of Subadvisers to serve as Subadvisers to the Series, except for PACE Money Market Investments.[6] Each Subadviser is, and any future Subadviser will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an ''investment adviser'' under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Subadvisers and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Adviser currently compensates each Subadviser out of the advisory fees paid to the Adviser under the relevant Investment Management Agreement; in the future, Subadvised Funds may directly pay advisory fees to the Subadvisers.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Subadvisers to manage all or a portion of the assets of a Series pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or a Subadvised Fund or the Adviser, other than by reason of serving as a Subadviser to Subadvised Funds (''Affiliated Subadviser'').

4. Applicants also request an order exempting the Subadvised Funds from certain disclosure requirements described below that may require the Applicants to disclose fees paid to each Subadviser by the Adviser or a Subadvised Fund. Applicants seek an order to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of each Subadvised Fund's net assets) only: (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, the ''Aggregate Fee Disclosure''). A Subadvised Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants

[3] Each future investment management agreement between an Adviser and a Subadvised Fund is also included in the term ''Investment Management Agreement''.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund.

[5] The Adviser provides investment advisory services for PACE Money Market Investments, although the Trust reserves the right to hire one or more Subadvisers to provide investment advisory services to PACE Money Market Investments if the Adviser recommends, and the Board, including a majority of the Independent Trustees, approves such action.

[6] The Adviser has entered into Subadvisory Agreements with the following Subadvisers to manage the assets of certain Series as described in the application: Analytic Investors, LLC; BlackRock Financial Management, Inc.; Brookfield Investment Management, Inc.; Buckhead Capital Management, LLC; CBRE Clarion Securities, LLC; Copper Rock Capital Partners, LLC; Delaware Management Company; First Quadrant, L.P.; Institutional Capital, LLC; J.P. Morgan Investment Management, Inc.; Kayne Anderson Rudnick Investment Management, LLC; Mackay Shields, LLC; Marsico Capital Management, LLC; Martin Currie, Inc.; Metropolitan West Capital Management, LLC; Mondrian Investment Partners Limited; Pacific Investment Management Company, LLC; Palisade Capital Management, LLC; Pzena Investment Management, LLC; Riverbridge Partners, LLC; Rogge Global Partners plc; Roxbury Capital Management, LLC; Standard Life Investments (Corporate Funds) Limited; Standish Mellon Asset Management Company, LLC; Systematic Financial Management, L.P.; Wellington Management Company, LLP; Westwood Management Corporation; and William Blair & Company, LLC.

state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Subadvisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Subadviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds and may preclude the Subadvised Funds from acting promptly when the Adviser and Board consider it appropriate to hire Subadvisers or amend Subadvisory Agreements. Applicants note that the Investment Management Agreements and any Subadvisory Agreement with an Affiliated Subadviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If new Subadvisers are hired, the Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [7] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in this Application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of Sections 15(a) and 15(c) of the 1940 Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. Applicants state that the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts if the Adviser is not required to disclose the Subadvisers' fees to the public. Applicants submit that the requested relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order, the operation of the Subadvised Fund in the manner described in the Application will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

8. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

10. The Adviser will provide general management and administrative services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (i) Set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a part of the Subadvised Fund's assets; (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers; (iv) monitor and evaluate the investment performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

[7] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested amended and restated order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

11. No Trustee or officer of the Trust or of a Subadvised Fund or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

12. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

14. For Subadvised Funds that pay fees to a Subadviser directly from fund assets, any changes to a Subadvisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24458 Filed 10–3–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67948; File Nos. SR–NYSEArca–2012–64; SR–ISE–2012–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; International Securities Exchange, LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes as Modified by Amendments No. 1 To List and Trade Option Contracts Overlying 10 Shares of Certain Securities

September 28, 2012.

I. Introduction

On June 15, 2012, NYSE Arca, Inc. (''NYSE Arca''), and on June 20, 2012, International Securities Exchange, LLC (''ISE,'' and together with NYSE Arca, ''Exchanges''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes to list and trade option contracts overlying 10 shares of certain securities (''mini options''). The proposed rule changes were published for comment in the **Federal Register** on July 3, 2012.[3] The Commission initially received two comment letters on the proposals.[4] On August 9, 2012, the Commission extended the time period for Commission action on both proposals to October 1, 2012.[5] On September 20, 2012, NYSE Arca filed Amendment No. 1 to its proposed rule change. Also, on September 20, 2012, ISE submitted a response letter [6] and filed Amendment No. 1 to its proposed rule change.[7] On September 24, 2012, NYSE Arca submitted a response letter.[8] The Commission subsequently received one additional comment letter [9] and one additional response letter from each of the Exchanges.[10] The Commission is publishing this notice to solicit comments on the Exchanges' proposals, as modified by Amendments No. 1, from interested persons and is approving the Exchanges' proposals, as modified by Amendments No. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes

The Exchanges propose to list and trade mini options [11] on certain underlying securities—SPDR S&P 500 ETF (''SPY''), Apple Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG''), and Amazon.com, Inc. (''AMZN'').[12] According to the Exchanges, these underlying securities were selected because they are currently trading at prices greater than $100 and are actively traded.[13] The Exchanges also note that the standard option contracts overlying these five securities are among the most actively traded, with average daily volume over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series.[14]

The Exchanges propose to designate mini options contracts with different trading symbols than their corresponding standard contracts.[15] In addition, the Exchanges propose that strike prices for mini options would be set at the same level as full-sized options.[16] Bids and offers for mini options would be expressed in terms of dollars per 1/10th part of the total value of the options contract.[17] As expressed in the Exchanges' proposals, the table below demonstrates the proposed differences between a mini options contract and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 67283 (June 27, 2012), 77 FR 39535 (''NYSE Arca Notice'') and 67284 (June 27, 2012), 77 FR 39545 (''ISE Notice'').

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated July 10, 2012 (''KOR Trading Letter'') and Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated July 24, 2012 (''CBOE Letter'').

[5] *See* Securities Exchange Act Release Nos. 67631, 77 FR 49044 (August 15, 2012) and 67632, 77 FR 49044 (August 15, 2012).

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated September 20, 2012 (''ISE Response Letter I'').

[7] In its Amendment No. 1, each Exchange represents that its current schedule of fees will not apply to the trading of mini options contracts. Further, each Exchange represents that it will not commence trading in mini options until it files with the Commission, as a proposed rule change, specific fees for mini options.

[8] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext, dated September 24, 2012 (''NYSE Arca Response Letter I'').

[9] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX Options Exchange LLC (''BOX''), dated September 24, 2012 (''BOX Letter'').

[10] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext, dated September 26, 2012 (''NYSE Arca Response Letter II'') and Katherine Simmons, Deputy General Counsel, ISE, dated September 26, 2012 (''ISE Response Letter II'').

[11] Mini options contracts would represent a deliverable of 10 shares of an underlying security, whereas standard contracts represent a deliverable of 100 shares.

[12] The Exchanges note that any expansion of the mini options program would require that a subsequent proposed rule change be submitted to the Commission. *See* NYSE Arca Notice, *supra* note 3, at n.3 and ISE Notice, *supra* note 3, at n.3.

[13] *See* NYSE Arca Notice, *supra* note 3, at n.3 and ISE Notice, *supra* note 3, at n.3.

[14] *See* NYSE Arca Notice, *supra* note 3, at n.3 and ISE Notice, *supra* note 3, at n.3.

[15] *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546. According to the Exchanges, the Options Clearing Corporation (''OCC'') symbology is structured for contracts that have a deliverable of other than 100 shares to be designated with a numeric added to the standard trading symbol. *See* NYSE Arca Notice, *supra* note 3, at n.6 and ISE Notice, *supra* note 3, at 39546. *See also* NYSE Arca Response Letter II, *supra* note 10, at 1.

[16] *See* NYSE Arca Rule 6.4, Commentary .14(b) and ISE Rule 504, Supplementary Material .12(b).

[17] *See* NYSE Arca Rule 6.71(c) and ISE Rule 709(c).

	Standard	Mini
Shares Deliverable Upon Exercise	100 shares	10 shares.
Strike Price	125	125.
Bid/Offer	3.20	3.20.
Premium Multiplier	$100	$10.
Total Value of Deliverable	$12,500	$1,250.
Total Value of Contract	$320	$32.

Further, the Exchanges propose not to permit the listing of additional mini options series if the underlying security is trading at $90 or less and to require that the underlying security trade above $90 for five consecutive days before the listing of mini options in an additional expiration month.[18]

In addition, in their proposals, each of the Exchanges states that it has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini options contracts.[19]

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes filed by NYSE Arca and ISE are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of mini options on SPY, AAPL, GLD, GOOG, and AMZN could benefit investors by providing them with additional investment alternatives. The Commission believes, as noted in the proposals and the KOR Trading Letter, the listing and trading of mini options would make options overlying high-priced securities more readily available to investors, thereby providing investors with a tool to manage risk in high-priced securities.[22] In particular, the Exchanges state that mini options would be more affordable for investors.[23] In addition, in its comment letter, KOR Trading states that certain stocks are priced too high for the average investor to purchase a round lot and investors are increasingly using odd lots.[24] It further states that mini options would allow investors who purchase odd lots to hedge their positions and that mini options would benefit investors significantly, particularly small investors.[25] BOX also states that options contracts on certain high-priced underlying securities are priced out of reach for the majority of retail investors.[26] As such, BOX expresses support for the creation of mini options that are one-tenth the size of the current standard-sized options.[27] In addition, CBOE expresses support for the objective of providing investors with access to exchange-traded options overlying high-priced securities that are smaller in size and, therefore, more readily available as an investing tool than standard-sized options.[28]

In its comment letter, CBOE raises a price protection issue with respect to the proposals. Specifically, CBOE states that, in connection with its prior proposal to list and trade both full-value and reduced-value options on the CBOE S&P 500 BuyWrite Index (''BXM''), Commission staff had expressed the concern that having two sizes of options on the same underlying interest created a potential for price protection issues because of the possibility that trades in the reduced-sized options might occur at a price inferior to the price available in the full-sized options, or vice versa.[29] In addition to CBOE, BOX suggests in its comment letter that the Exchanges did not discuss in sufficient detail the issue of either the mini options or the standard options on the same underlying security potentially ''trading through'' the market of the other.[30]

The Commission notes that price protection would not apply across standard and mini options contracts on an intramarket basis, as these are separate products. The Commission recognizes that trading different options products that overlie the same security or index could disperse trading interest across the products to some extent. In illiquid or nascent markets, increased dispersion across products may cause particular concern, as the markets for the separate products may lack the critical mass of buyers and sellers to allow such a market to become established or, once established, to thrive.

In the case of markets for options on SPY, AAPL, GLD, GOOG, and AMZN, there generally exists a critical mass of willing buyers and sellers both for the options and for the underlying securities that mitigate such concerns. The Exchanges propose to limit the listing and trading of mini options to those five underlying securities because they are high-priced and highly liquid securities, and the standard option contracts overlying these securities are among the most actively-traded options.[31] Specifically, the Exchanges note in their proposals that SPY, AAPL, GLD, GOOG, and AMZN were selected

[18] *See* NYSE Arca Rule 6.4, Commentary .14(c) and ISE Rule 504, Supplementary Material .12(c). In addition, the Exchanges propose that, for purposes of determining compliance with position limits, ten mini options contracts would equal one standard contract. *See* NYSE Arca Rule 6.8, Commentary .08 and ISE Rule 412, Supplementary Material .03.

[19] *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546. Each of the Exchanges also states that it has discussed the proposed listing and trading of mini options with the OCC, and the OCC has represented that it is able to accommodate mini options. *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546.

[20] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* NYSE Arca Notice, *supra* note 3, at 39536; ISE Notice, *supra* note 3, at 39546; and KOR Trading Letter, *supra* note 4, at 1.

[23] *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546.

[24] *See* KOR Trading Letter, *supra* note 4, at 1.

[25] *See id*. *See also* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546.

[26] *See* BOX Letter, *supra* note 9, at 1.

[27] *See id*.

[28] *See* CBOE Letter, *supra* note 4, at 1.

[29] *See id*., at 2. CBOE also states its belief that the Commission staff had similar concerns with respect to a proposal by the Philadelphia Stock Exchange to trade options on exchange-traded funds (''ETFs'') and trust issued receipts with a unit of trading of 1,000 shares and NYSE Amex's proposal to trade options on certain ETFs with a unit of trading of 1,000 shares alongside standard-sized options on the same underlying ETFs. *See id.,* at 2–3.

[30] *See* BOX Letter, *supra* note 9, at 1. BOX states that all reasonable measures should be required to ensure that users of either contract size receive the best price possible based on a measure of the price per underlying share. *See id.,* at 2.

[31] *See* NYSE Arca Notice, *supra* note 3, at 39535 and ISE Notice, *supra* note 3, at 39545. *See also* NYSE Arca Response Letter II, *supra* note 10, at 2.

because these securities are priced greater than $100 and are actively traded securities, and that the standard option contract exhibits average daily volume over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series.[32]

Further, the Exchanges in their response letters distinguish the current mini options proposals from the CBOE proposal to trade BXM options.[33] The Exchanges state that while the BXM options proposal would have listed two new options products on the same index prior to the development of an active liquid market, thus raising potential concerns regarding creating a bifurcated market without adequate liquidity in either market, the current proposals restrict the eligibility of mini options to options that overlie a limited group of highly liquid and high-priced ETFs and equities.[34]

In its comment letter, BOX questions whether arbitrage would ensure that markets for the mini options and standard options would remain within a minimal spread away from the price of the underlying equity share.[35] BOX states that ensuring that the market prices stay in line is not possible until the issue of cross-margin is addressed.[36] Further, BOX states that arbitrage will only occur where the spread between a transaction in the mini option and a transaction in the standard option is such that a profit can be achieved.[37] BOX states that, absent any determination of the trading fees for mini options as compared to standard options, one cannot make any conclusions about potential arbitrage between the two markets.[38] Also, BOX suggests that one cannot presume that such arbitrage will be sufficient to maintain efficient pricing between the two markets.[39] In their second response letters, the Exchanges note that the OCC would allow mini options and standard options on the same underlying security to be cross-margined.[40] In addition, each of the Exchanges states that its current fee schedule will not apply to transactions in mini options, and that it will not start trading mini options until it has filed a proposed rule change with the Commission on specific fees for mini options.[41] Accordingly, the Exchanges believe that the availability of mini options contracts is likely to result in more efficient pricing through arbitrage with standard contracts.[42]

The Commission has carefully considered the price protection issue raised with respect to the current proposals. As discussed above, the current proposals would apply only to options on SPY, AAPL, GLD, GOOG, and AMZN, which, along with the underlying securities, are highly liquid and have well-established trading histories. The Commission believes that the high trading volume and liquidity in the markets for the five underlying securities and the standard-sized options overlying them would mitigate the price protection concern that commenters noted.[43] To expand the trading of mini options beyond options on these five underlying securities, the Exchanges would be required to file new proposed rule changes with the Commission pursuant to Section 19(b) of the Act and the Commission would, at that time, assess any market impact of such an expansion.[44] In addition, the Commission notes that NYSE Arca and ISE each represented in its Amendment No. 1 that its current fee schedule will not apply to transactions in mini options, and that it will not start trading mini options until it has filed a proposed rule change with the Commission on specific fees for mini options.[45] However, the Commission expects the Exchanges to monitor the trading of the products to evaluate whether any issues develop.

CBOE also states in its comment letter that the Exchanges have adopted rules pursuant to which they may list standard-sized options with non-standard expiration dates (*e.g.,* weekly series, quarterly series, and LEAPS).[46] CBOE states that because these types of programs have been adopted by other exchanges as well, it is important to know whether mini options with non-traditional expiration dates would be permitted under the proposals.[47] CBOE also states that, if for example, the proposals would permit weekly mini options, the Commission should consider the impact that the potential doubling of the number of weekly exchange-traded options on the underlying securities might have on the options trading industry.[48] In response, the Exchanges clarify that mini options with non-standard expiration dates would be permitted under their proposals and in accordance with their existing rules.[49] Specifically, as proposed, the Exchanges may list mini options on SPY, AAPL, GLD, GOOG, and AMZN for all expirations applicable to 100-share options in each class.[50] The Exchanges also represent that they and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini options.[51] In light of the Exchanges' representations, the

[32] *See* NYSE Arca Notice, *supra* note 3, at n.3 and ISE Notice, *supra* note 3, at n.3. *See also* NYSE Arca Response Letter II, *supra* note 10, at 2. Further, as proposed by both Exchanges, no additional mini options series may be added if the underlying security is trading at $90 or less, and the underlying security must trade above $90 for five consecutive days prior to listing mini options in an additional expiration month. *See* NYSE Arca Rule 6.4, Commentary .14(c) and ISE Rule 504, Supplementary Material .12(c).

[33] *See* NYSE Arca Response Letter I, *supra* note 8, at 1 and ISE Response Letter I, *supra* note 6, at 1.

[34] *See* NYSE Arca Response Letter I, *supra* note 8, at 1 and ISE Response Letter I, *supra* note 6, at 1.

[35] *See* BOX Letter, *supra* note 9, at 2.

[36] *See id.* BOX states that market participants should have the ability for full cross-margining at the OCC between mini options and standard options overlying the same security. *See id.,* at 1. In addition, BOX states that the proposals should make clear that market participants are responsible for delivering the same underlying security for mini options contracts as for standard contracts. *See id.* In their second response letters, the Exchanges clarify that mini options and the corresponding standard options would overlie the same underlying security. *See* NYSE Arca Response Letter II, *supra* note 10, at 1 (stating its understanding that OCC instructions upon assignment will be to deliver the same underlying security to the National Securities Clearing Corporation, regardless of whether it is a mini option contract or a standard contract) and ISE Response Letter II, *supra* note 10, at 1.

[37] *See* BOX Letter, *supra* note 9, at 2.

[38] *See id.*

[39] *See id.*

[40] *See* NYSE Arca Response Letter II, *supra* note 10, at 1–2 and ISE Response Letter II, *supra* note 10, at 1–2.

[41] *See* NYSE Arca Response Letter II, *supra* note 10, at 2 and ISE Response Letter II, *supra* note 10, at 2.

[42] *See* NYSE Arca Response Letter I, *supra* note 8, at 1; ISE Response Letter I, *supra* note 6, at 1–2; and NYSE Arca Response Letter II, *supra* note 10, at 2.

[43] The Commission has previously approved options products in standard and reduced values that overlie the same index (*e.g.,* SPX and XSP). *See* Securities Exchange Act Release No. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (SR–CBOE–93–12) (order approving proposed rule change relating to the listing of reduced-value options on the S&P 500 Index). *See also* NYSE Arca Response Letter I, *supra* note 8, at 2 (referencing the full and mini S&P 500 Index options, the full and mini Nasdaq 100 Index options, and the full and jumbo Dow Jones Industrial Average options).

[44] *See* NYSE Arca Notice, *supra* note 3, at n.3 and ISE Notice, *supra* note 3, at n.3.

[45] *See supra* note 7. *See also* NYSE Arca Response Letter II, *supra* note 10, at 2 and ISE Response Letter II, *supra* note 10, at 2.

[46] *See* CBOE Letter, *supra* note 4, at 3.

[47] *See id.*

[48] *See id.*

[49] *See* NYSE Arca Response Letter I, *supra* note 8, at 2 and ISE Response Letter I, *supra* note 6, at 2.

[50] *See* NYSE Arca Rules 6.3, Commentary .01 and 6.4, Commentary .14(a) and ISE Rule 504, Supplementary Material .12(a).

[51] *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546. The Exchanges also represent that they have discussed the proposed listing and trading of mini options with the OCC, and the OCC has represented that it is able to accommodate the proposals. *See* NYSE Arca Notice, *supra* note 3, at 39536 and ISE Notice, *supra* note 3, at 39546.

Commission believes that it is consistent with the Act to allow the listing of the proposed mini options for all expirations applicable to full-sized options in each class.

The Commission believes that other aspects of the proposals are also consistent with the Act. Specifically, the Commission believes that, because each mini option would represent a deliverable of 10 shares of an underlying security, as opposed to 100 shares (*i.e.,* the deliverable for a standard-sized option is ten times the deliverable of a mini option), the proposed position limit rules for mini options, which state that ten mini options contracts shall equal one standard contract, are appropriate and consistent with the Act.[52] Further, the Commission believes that the proposed use of different trading symbols for mini options is consistent with the Act because it should help investors and other market participants distinguish mini options from the corresponding standard options.[53] In addition, the Commission believes that the proposed treatment of strike prices [54] and bids and offers [55] for mini options is consistent with the Act, as these amendments should make clear how mini options would be quoted and traded.

As national securities exchanges, each of the Exchanges is required, under Section 6(b)(1) of the Act,[56] to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that the Exchanges' rules that apply to the trading of standard options would apply to mini options. The Commission also notes that the Exchanges' existing market maker quoting obligations would apply to mini options.[57] In addition, the Commission notes that intermarket trade-through protection would apply to mini options to the extent that they are traded on more than one market.

Accordingly, for the reasons stated above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[58] for approving the Exchanges' proposals, as modified by Amendments No. 1, prior to the 30th day after the date of publication of the notices in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR–NYSEArca–2012–64 and SR–ISE–2012–58 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 Numbers *SR–NYSEArca–2012–64* and SR–ISE–2012–58. These file numbers 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filings also will be available for inspection and copying at the principal offices of the Exchanges. 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 Numbers SR–NYSEArca–2012–64 and SR–ISE–2012–58 and should be submitted on or before October 25, 2012.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule changes (SR–NYSEArca–2012–64; SR–ISE–2012–58), as modified by Amendments No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24457 Filed 10–3–12; 8:45 am]

BILLING CODE 8011–01–P

[52] *See* NYSE Arca Rule 6.8, Commentary .08 and ISE Rule 412, Supplementary Material .03. The Commission notes that, according to ISE Rule 412, Supplementary Material .03, positions in mini options are aggregated with positions in regular-sized options overlying the same security. Further, according to NYSE Arca Rule 6.8, in determining compliance with relevant position limits, NYSE Arca considers: (1) An aggregate long position in any class of options; (2) an aggregate short position in any class of options; (3) an aggregate position on the same side of the market in the same underlying stock, which position shall be ascertained by combining long call options with short put options and short call options with long put options; or (4) an aggregate uncovered short position in any class of options.

[53] *See supra* note 15 and accompanying text.

[54] *See* NYSE Arca Rule 6.4, Commentary .14(b) and ISE Rule 504, Supplementary Material .12(b).

[55] *See* NYSE Arca Rule 6.71(c) and ISE Rule 709(c). The Commission also believes that NYSE Arca's proposal to delete references to ''Exchange-Traded Fund Share'' in NYSE Arca Rule 6.71 is consistent with the Act.

[56] 15 U.S.C. 78f(b)(1).

[57] *See* NYSE Arca Rule 6.37B and ISE Rule 804.

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67946; File No. SR–CBOE–2012–080]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The Exchange proposes to revamp the appearance of its Fees Schedule in order to make it easier for investors to read and determine which fees are applicable to the variety of transactions available on CBOE. No substantive changes to the Fees Schedule, or any Exchange fees, are being made. All information that is proposed to appear in the new version of the Fees Schedule (the ''New Fees Schedule'') already appears in one form or another on the Exchange's previous version of the Fees Schedule (the ''Old Fees Schedule'').

In conjunction with this proposed re-organization of the Fees Schedule, some items are being moved within the Fees Schedule and clarifications are being given. Currently, broker-dealer transaction fees apply to, among others, the orders of non-Trading Permit Holder market-makers.[3] However, this is currently only explained in Footnote (16), and therefore in Section 1 of the Old Fees Schedule, which lists the actual transaction fees, there is no separate listing of fees for non-Trading Permit Holder market-makers (only broker dealers). The proposed new transaction fees chart lists out non-Trading Permit Holder market-maker transaction fees separate from broker-dealer transaction fees (the amounts of the fees will remain the same) in order to make it easier for non-Trading Permit Holder market-makers to know which transaction fees apply to them. Because non-Trading Permit Holder market-maker fees will now be listed separately from broker-dealer fees (even though the amounts of the fees are the same), Footnotes (13), (19), and (20), which all state that they apply to broker-dealers, are now being amended to clarify that they apply to non-Trading Permit Holder market-makers as well (just as they did prior to this proposed change). The statement in Footnote (16) that ''Broker-Dealer transaction fees apply to * * * non-Trading Permit Holder market-maker orders'' is not being changed, as while the fees for non-Trading Permit Holder market-maker orders are now listed separately, the amounts of such fees are not changing.

The Exchange also proposes adding origin codes into the New Fees Schedule. Origin codes are used on each order sent to the Exchange to denote the type of market participant sending the order.[4] Because these origin codes are affixed to orders sent to the Exchange by market participants, the Exchange proposes adding them to the New Fees Schedule in order to more easily determine which fees correspond to orders originating from these different market participants.

In SR–CBOE–2012–075, the Exchange proposed to change references in its Fees Schedule to options on the PowerShares QQQ Trust, whose ticker symbol changed from QQQQ to QQQ.[5] However, in that rule filing, the Exchange failed to change a reference to QQQQ in the Fees Schedule's section entitled Trading Permit Holder Transaction Fee Policies and Rebate Programs—Trading Permit Holder Transaction Fees—Equity and Index Options. The Exchange hereby proposes to change that reference from QQQQ to QQQ.

In re-organizing the Fees Schedule, the Exchange added Footnotes (21)–(27) to the New Fees Schedule. The text of these Footnotes was transferred from various sections within the Old Fees Schedule. Footnote (21) of the New Fees Schedule is composed of text from Section 7 of the Old Fees Schedule. Footnote (22) of the New Fees Schedule is composed of text from the Clearing Trading Permit Holder Fee Cap in All Products Except SPX, VIX or Other Volatility Indexes, OEX or XEO portion of Section 1 of the Old Fees Schedule. Footnote (23) of the New Fees Schedule is composed of text from the CBOE Proprietary Products Sliding Scale portion of Section 1 of the Old Fees Schedule. Footnote (24) of the New Fees Schedule is composed of text from Section 10(A)(i) of the Old Fees Schedule. Footnote (25) of the New Fees Schedule is composed of text from Section 10(A)(iv) of the Old Fees Schedule. Footnote (26) of the New Fees Schedule is composed of text from the portion of Section 10(A) entitled ''Assessment of Trading Permit and Tier Appointment Fees'' of the Old Fees Schedule. Footnote (27) of the New Fees Schedule is composed of text from Section 18 of the Old Fees Schedule.

Other changes were made to references within the Footnotes. Footnote (2) previously said ''Please see item 18 for details of Customer Large Trade Discounts.'' However, there is no longer an ''item 18'' but instead just a separate table regarding Customer Large Trade Discounts, and a new Footnote (27) with details of Customer Large Trade Discounts, so Footnote (2) now says ''Please see Customer Large Trade Discounts table and footnote 27 for details of Customer Large Trade Discounts'' instead. Footnote (3) previously stated that ''Trading Permit Holder transaction fee policies and rebate programs are described in the last section.'' However, this is no longer true, as the sections have been moved around, and there is now a table regarding Trading Permit Holder transaction fee policies and rebate programs. Instead, Footnote (3) now says ''Trading Permit Holder transaction fee policies and rebate programs are described in the Trading Permit Holder Transaction Fee Policies and Rebate Programs Table.''

In both of the Index Options Rate Tables in the New Fees Schedule, the ''QCC'' field is blacked out. This is because a QCC (qualified contingent cross) trade cannot be made on a cash-settled index (for QCCs, options must be tied to a physically deliverable Regulation NMS security). The Old Fees Schedule listed possible fees for QCCs because the section on index options fees also included fees for exchange-traded funds (''ETFs''), on which QCCs can be executed. Because the New Fees Schedule has separate tables for index options and ETFs, the Index Options Rate Tables in the New Fees Schedule has the ''QCC'' field blacked out.

The Old Fees Schedule lists the AIM Agency/Primary fee and the AIM Contra Execution fee in the section that lists

[3] *See* CBOE Fees Schedule, Footnote (16).

[4] *See* CBOE Regulatory Circular RG12–057 (April 26, 2012) for a list of all CBOE origin codes.

[5] *See* Securities Exchange Act Release No. 67557 (August 1, 2012), 77 FR 47148 (August 7, 2012) (SR–CBOE–2012–075).

index options because that section includes fees for proprietary and non-proprietary index options (as well as other products, including ETFs). The only proprietary index option class on which AIM (the Exchange's Automated Improvement Mechanism) is available is VIX options. Therefore, since the New Fees Schedule has a separate table for proprietary index options (the Proprietary Index Options Rate Table), the listing in that table for the AIM Agency/Primary fee and the AIM Contra Execution fee clarifies that it only applies to VIX options.

Professionals and Voluntary Professionals are billed in SPX as Customers because SPX is the only class that trades on the Exchange's Hybrid 3.0 platform, and the classifications as a Professional and Voluntary Professional do not have applicability in Hybrid 3.0 classes. As such, in the Old Fees Schedule, there were no fees listed for Professional and Voluntary Professional SPX trades. The New Fees Schedule, however, lists the SPX fees for Professional and Voluntary Professional (with such fees being the same as Customer SPX fees, both for trades above and below $1) in order to clarify the fees for Professional and Voluntary Professional SPX trades. There is no change occurring in the amounts of the fees for Professional and Voluntary Professional SPX trades (or anywhere else in this proposed rule change).

In the Old Fees Schedule, there are no separate listings for VIX options transactions; as a Volatility Index, VIX is simply included by implication in the listings of fees for Volatility Indexes. The Proprietary Index Options Rate Table in the New Fees Schedule lists VIX options fees separately to make VIX options fees more clearly apparent; the amounts of the fees for VIX options transactions are not changing and will still be the same as those for Volatility Indexes.

In the Old Fees Schedule, Customer fees for transactions in SPX Weeklys (''SPXW'') are not separately spelled out, as SPXW falls within the universe of SPX transactions. However, because SPXW is a product that has experienced a growth in trading volume, the Exchange proposes to separately list the fees for SPXW Customer transactions as well as the Surcharge Fee. The amount of the fees for SPXW Customer transactions and the Surcharge Fee is not changing.

The Exchange has made a universal change to the New Fees Schedule to remove any references in the Old Fees Schedule to fees being listed in a ''table below'' or similar language when such language no longer applies (i.e. the table is no longer below).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In organizing the Fees Schedule in charts that are easy for investors to read and grouping together fees that apply to certain market participants into the same subsections and charts, the Exchange eliminates confusion regarding fees, thereby removing impediments to and to perfecting the mechanism for a free and open market, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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)[8] of the Act and paragraph (f) of Rule 19b–4[9] thereunder. 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.

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–CBOE–2012–080 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–CBOE–2012–080. 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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–CBOE–2012–080, and should be submitted on or before October 25, 2012.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–24493 Filed 10–3–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8052]

Convening of an Accountability Review Board To Examine the Circumstances Surrounding the Deaths of Personnel Assigned in Support of the U.S. Government Mission to Libya in Benghazi, Libya on September 11, 2012

SUMMARY: Pursuant to Section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), Secretary of State Hillary Rodham Clinton has determined that the recent deaths of Ambassador J. Christopher Stevens, Information Management Officer Sean Smith, and security personnel Glen Doherty and Tyrone Woods in Benghazi, Libya involved loss of life at or related to a U.S. mission abroad. Therefore, Secretary Clinton has convened an Accountability Review Board, as required by that statute, to examine the facts and circumstances of the attacks and to report findings and recommendations as it deems appropriate, in keeping with its mandate. The Secretary has appointed Thomas Pickering, a retired U.S. ambassador, as Chair of the Board. He will be assisted by Admiral Michael G. Mullen, Ms. Catherine Bertini, Mr. Richard J. Shinnick, and Mr. Hugh J. Turner III. They bring to their deliberations distinguished backgrounds in government service. If you are contacted for an interview by the Board, please give them your full and prompt cooperation.

The Board will submit its conclusions and recommendations to Secretary Clinton within 60 days of its first meeting, unless the Chair determines a need for additional time. Within the timeframe required by statute following receipt of the report, the Department will report to Congress on all recommendations made by the Board and any actions undertaken in response to those recommendations.

Anyone with information relevant to the Board's examination of these incidents should contact the Board promptly at (202) 647–6246 or send a fax to the Board at (202) 647–6640.

[10] 17 CFR 200.30–3(a)(12).

Dated: October 1, 2012.

Patrick F. Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2012–24504 Filed 10–3–12; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 8049]

In the Matter of the Designation of the Mujahadin-e Khalq, Also Known as MEK, Also Known as Mujahadin-e Khalq Organization, Also Known as MKO, Also Known as Muslim Iranian Students' Society, Also Known as National Council of Resistance, Also Known as NCR, Also Known as Organization of the People's Holy Warriors of Iran, Also Known as the National Liberation Army of Iran, Also Known as NLA, Also Known as People's Mujahadin Organization of Iran, Also Known as PMOI, Also Known as National Council of Resistance of Iran, Also Known as NCRI, Also Known as Sazeman-e Mujahadin-e Khalq-e Iran, as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

In consultation with the Attorney General and the Secretary of the Treasury, I hereby revoke the designation of the Mujahadin-e Khalq, and its aliases, as a Foreign Terrorist Organization pursuant to Section 219 (a)(6)(A) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(6)(A)). This action takes effect September 28, 2012.

This determination shall be published in the **Federal Register**.

Dated: September 21, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–24505 Filed 10–3–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8050]

In the Matter of the Designation of Mujahadin-e Khalq, Also Known as MEK, Also Known as Mujahadin-e Khalq Organization, Also Known as MKO, Also Known as Muslim Iranian Students' Society, Also Known as National Council of Resistance, Also Known as NCR, Also Known as Organization of the People's Holy Warriors of Iran, Also Known as the National Liberation Army of Iran, Also Known as NLA, Also Known as People's Mujahadin Organization of Iran, Also Known as PMOI, Also Known as National Council of Resistance of Iran, Also Known as NCRI, Also Known as Sazeman-e Mujahadin-e Khalq-e Iran, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of Section 1(b) of Executive Order 13224 of September 23, 2001, as amended (''the Order''), I hereby revoke the designation of the entity known as the Mujahadin-e Khalq, and its aliases, as a Specially Designated Global Terrorist pursuant to Section 1(b) of the Order. This action takes effect September 28, 2012.

This notice shall be published in the **Federal Register.**

Dated: September 21, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–24507 Filed 10–3–12; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on Monday, October 22, and Tuesday, October 23, 2012, to obtain views and advice on the topic of a proposed fee increase for permits issued by TVA pursuant to Section 26a of the TVA Act.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Introductions.

2. Updates regarding TVA's Natural Resource Plan Annual Review, including information about land condition assessments, dispersed recreation web applications, and cultural resources.

3. Presentation(s) concerning TVA's proposed fee increase for Section 26a permits

4. Public Comments.

5. Council Discussion and Advice.

The RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 9:30 a.m., EDT, on Tuesday, October 23. Persons wishing to speak are requested to register at the door by 8:30 a.m. on Tuesday, October 23 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Monday, October 22, from 1:15 p.m. to 4:45 p.m. and Tuesday, October 23, from 8:00 a.m. to noon, EDT.

ADDRESSES: The meeting will be held at the Tennessee Valley Authority, 400 West Summit Hill Drive, 37902 and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT–11 B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: September 28, 2012.

Joseph J. Hoagland,

Senior Vice President, Policy and Oversight, Tennessee Valley Authority.

[FR Doc. 2012–24485 Filed 10–3–12; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35676]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated August 10, 2012, Union Pacific Railroad Company (UP) has agreed to grant restricted temporary trackage rights to BNSF Railway Company (BNSF) over UP's lines between: (1) UP milepost 93.2, at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4, at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4, at Elsey, and UP milepost 280.7, at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles.

The transaction is scheduled to be consummated on October 18, 2012, the effective date of the exemption (30 days after the verified notice was filed).

The purpose of this transaction is to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, which is adjacent to the UP rail line. The parties' agreement provides that the trackage rights are temporary in nature and are scheduled to expire at midnight on December 31, 2012.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7).[1] If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by October 11, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35676, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: October 1, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–24519 Filed 10–3–12; 8:45 am]

BILLING CODE 4915–01–P

[1] BNSF states that the verified notice is not filed under the Board's class exemption for temporary trackage rights at 49 CFR. 1180.2(d)(8) because the trackage rights are local rather than overhead. *See R.R. Consolidation Procedures,* 6 S.T.B. 910 (2003). Instead, BNSF has filed under the trackage rights class exemption at 1180.2(d)(7) and concurrently has filed, in *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company,* Docket No. FD 35676 (Sub-No. 1), a petition for partial revocation of this exemption to permit these proposed local trackage rights to expire at midnight on December 31, 2012, as provided in the parties' agreement. The Board will address that petition in a separate decision.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9178

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 9178, Testimony or Production of Records in a Court or Other Proceeding.

DATES: Written comments should be received on or before December 3, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Testimony or Production of Records in a Court or Other Proceeding.

OMB Number: 1545–1850.

Form Number: TD 9178.

Abstract: These final regulations replace the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as

well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals and households, Not-for-Profit institutions, and Farms.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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.

Approved: September 28, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–24453 Filed 10–1–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–16, Renewal Community Depreciation Provisions.

DATES: Written comments should be received on or before December 3, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Renewal Community Depreciation Provisions.

OMB Number: 1545–2001.

Revenue Procedure Number: Revenue Procedure 2006–16.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed in service in the expanded area of a renewal community pursuant to § 1400E(g) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and businesses or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Average Time per Respondent: 2 hours, 30 min.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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.

Approved: September 28, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–24451 Filed 10–1–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule F, Part II and III (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule F, Part II and III (Form 1040), Profit or Loss From Farming.

DATES: Written comments should be received on or before December 3, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Profit or Loss From Farming.

OMB Number: 1545–1976.

Form Number: Schedule F, Part II and III (Form 1040).

Abstract: Schedule F, Part II and III (Form 1040) is used by individuals to report their Farm Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 8,495.

Estimated Time per Respondent: 5 hours 49 minutes.

Estimated Total Annual Burden Hours: 49,356.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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.

Approved: September 28, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–24448 Filed 10–1–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before December 3, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: There are currently no changes to Form 4136 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 2,441,858.

Estimated Time per Response: 1 hr., 53 min.

Estimated Total Annual Burden Hours: 4,618,145.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency'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 of information 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.

Approved: September 28, 2012.

Allan Hopkins

Tax Analyst.

[FR Doc. 2012–24450 Filed 10–1–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Phone: 202–927–3641 (not a toll-free number). Email address: **public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRPAC will be held on Wednesday, October 24, 2012 from 9 a.m. to 12 p.m. at DoubleTree by Hilton, 1515 Rhode Island Avenue NW., Washington, DC, 20005. Report recommendations on issues that may be discussed include: Cost Basis Reporting for Debt and Options, *de minimis* Threshold for Form 1099 Corrections, Foreign Account Tax Compliance Act including: Preexisting Account Definition, Reason to Know Standards, FFI Verification Process, Presumption Rules for Certain Exempt Recipients, Ordinary Course of Business Payments, and Model Intergovernmental Agreements. Other issues that may be discussed include new Forms W–8BEN, Certification of Foreign Status of Beneficial Owner for United States Tax Withholding, Coordination of Chapter 3 and Chapter 4, Short-term Debt IRC § 6050W and Form 1099–K, Payment Card and Third Party Network Transactions, Reporting Tax Credits on Form 1097–BTC, Bond Tax Credit, Third Party Agent Reporting Using Form 2678, Employer/Payer Appointment Agent, Employer and Insurer Shared Responsibilities under the Patient Protection and Affordable Care Act, Third-party Sick Pay, Proper Reporting for Flexible Spending Arrangement Improper Payments, Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, Penalty Relief, Employee Stock Ownership (ESOP) and Cash Balance Plan Prototypes, Withholding of Tax on Nonresident Aliens and Foreign Entities, Form 1098–T, Tuition Statement, Withholding and Reporting on Payments for Freight, Shipping, and Other Transportation Expenses under IRC § 1441 and § 1442, Electronic Furnishing to Recipients of Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding, Central Withholding Agreements: Addressing Needs of Venues and Foreign Artists through a Mini-CWA Program and Problems Encountered by Foreign Artists when Applying for U.S. Social Security Numbers, Form 8938, Statement of Specified Foreign Financial Assets, and Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts, Requirements. Last minute agenda changes may preclude advance notice.

Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–927–3641 or **public_liaison@irs.gov*. Should you wish the IRPAC to consider a written statement, please call 202–927–3641, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224 or email: **public_liaison@irs.gov*.

Dated: September 27, 2012.

John Lipold,

Designated Federal Official, Branch Chief, National Public Liaison.

[FR Doc. 2012–24452 Filed 10–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Proposed Information Collection (Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for the monetary allowance for natural children with certain birth defects of female veterans who served in the Republic of Vietnam during the Vietnam era.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0572'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Benefits for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0304 is used to gather the necessary information to determine a claimant's eligibility for a monetary allowance and appropriate level of payment. Under Title 38 U.S.C. 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of,

certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain birth defects resulting in permanent physical or mental disability.

Under title 38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant of parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975 or after the date the veteran first served in or near the demilitarized zone in Korea during the period September 1, 1967 to August 31, 1971. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina Bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

Affected Public: Individuals or households.

Estimated Annual Burden: 72 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 430.

Dated: September 28, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–24443 Filed 10–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Proposed Information Collection (Award Attachment for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a spina bifida child of Vietnam veterans' eligibility for ancillary benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0577'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Award Attachment for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of veterans who have spina bifida with information about a VA health care and vocational training and the steps they must take to apply for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 19 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 75.

Dated: September 28, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–24444 Filed 10–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0704]

Proposed Information Collection (VA/DOD Joint Disability Evaluation Board Claim) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an injured or ill service member's eligibility for participation in a joint DOD/VA Disability Evaluation Board and VA compensation after separation from service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to

nancy.kessinger@va.gov. Please refer to ''OMB Control No. 2900–0704'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: VA/DOD Joint Disability Evaluation Board Claim, VA Form 21–0819.

OMB Control Number: 2900–0704.

Type of Review: Extension of a currently approved collection.

Abstract: As a result of President Bush's Interagency Task Force on Returning Global War on Terror Heroes, VA and the Department of Defense (DOD) have agreed to develop a joint process in which Global War on Terror (GWOT) service members are evaluated to assign disability ratings, which will be used to determine military retention, level of disability for retirement, and VA disability compensation. VA Form 21–0819 will be used to gather the necessary information to determine the service member's eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: September 28, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–24445 Filed 10–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Proposed Information Collection (Claim for Repurchase of Loan) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to repurchase a default loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0377'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Claim for Repurchase of Loan, VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of delinquent vendee accounts guaranteed by VA complete VA Form 26–8084 to request a repurchase of a loan that has been in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments. VA notifies the obligor(s) in writing of the loan repurchased, and that the vendee account will be serviced and maintained by VA.

Affected Public: Business or other for-profit

Estimated Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20.

Dated: September 28, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–24446 Filed 10–3–12; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 77 Thursday,
No. 193 October 4, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Species Status for the Florida Bonneted Bat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0078; 4500030113]

RIN 1018–AY15

Endangered and Threatened Wildlife and Plants; Proposed Endangered Species Status for the Florida Bonneted Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Florida bonneted bat (*Eumops floridanus*), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This proposed rule, if made final, would extend the Act's protections to this species. We have found that critical habitat is prudent but not determinable at this time due to lack of knowledge of which physical and biological features are essential to the conservation of the species. The Service seeks data and comments from the public on this proposed listing rule and on the biological needs of the species that will enable the Service to define critical habitat for this species.

DATES: We will accept comments received or postmarked on or before December 3, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 19, 2012.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2012–0078, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0078; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Larry Williams, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559, by telephone 772–562–3909, ext. 285, by facsimile 772–562–4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the Florida bonneted bat as an endangered species; (2) a finding that designation of critical habitat for the species is prudent; and (3) a finding that critical habitat is not determinable at this time because the biological needs of the species are not sufficiently well known to permit identification of areas as critical habitat.

Information Requested

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

(1) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations or colonies of this species.

(2) Any information on the biological or ecological requirements of the species, especially life history information and habitat needs (e.g., preferred roosting and foraging habitat, nightly and seasonal movements, dispersal capabilities, diet, and seasonal changes in diet), and ongoing conservation measures for the species and its habitat.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Current or planned land use activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats under the five listing 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; and

(e) Other natural or manmade factors affecting its continued existence.

We are particularly interested in information regarding threats from disease; predation; climate change; impacts to prey base, including insect abundance and availability; impacts from wind energy and other land use projects; inadvertent or purposeful removal or displacement of Florida bonneted bats; use of bat exclusion devices at inappropriate times; and regulations or conservation measures that may be addressing these threats.

(6) What physical or biological features (e.g., space, food, water, cover or shelter, sites for breeding and rearing of offspring, protected habitats) are essential to the conservation of the species.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including the benefits of or possible risks of designation, including any possible adverse effects to Florida bonneted bats or roosts once their locations are published (e.g., targeted actions to discourage the use of roosts, intentional or excessive disturbance to roosts, removal of individuals from roosts, use of exclusion devices at inappropriate times, other persecution directed at the species), and any other risks associated with publication of maps designating any area on which the species may be located, now or in the future, as critical habitat.

(8) Specific information on:

(a) The amount and distribution of habitat for the Florida bonneted bat;

(b) What areas, which are occupied at the time of listing (or are currently occupied) contain features essential to the conservation of the species, should be included in a designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas, including managing for the potential effects of climate change; and

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

(9) Information on the projected and reasonably likely impacts of climate

change on the Florida bonneted bat and its habitat.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

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

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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

Executive Summary

This document consists of: (1) A proposed rule to list the Florida bonneted bat (*Eumops floridanus*) as an endangered species; (2) a finding that designation of critical habitat for the species is prudent; and (3) a finding that critical habitat is not determinable at this time due to our current lack of understanding of the physical and biological habitat features essential to the conservation of the species.

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. The Florida bonneted bat is currently a candidate species known to exist only in south Florida. The species has a small estimated population size and faces numerous and immediate threats throughout its very restricted range and, therefore, qualifies for listing. Protections under the Act can only be accomplished through issuing proposed and final rules. This document proposes the protection of the species and is based upon our careful review of the status of the species and the threats it faces, using the best available information. Additionally, we seek data and comments from peer reviewers, government agencies and Tribes, stakeholders, and the public on this proposed listing rule and on possible critical habitat for the species.

The basis for our action. Under the Act, a species may be determined to be an endangered or threatened species based on any of 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. Based on our analysis below, we have determined that the Florida bonneted bat qualifies for listing as an endangered species due to three of these five factors (Factors A, D, and E).

Peer review of our methods. We will obtain review and opinions from knowledgeable individuals with scientific expertise on our technical assumptions, analysis, adherence to regulations, and whether or not we used the best available information in developing this proposed rule. Their review will be requested during the public comment period.

Acronyms and Abbreviations Used in This Document

We use many acronyms and abbreviations throughout this proposed rule. To assist the reader, we provide a list of these here for easy reference:

Babcock-Webb WMA = Fred C. Babcock/Cecil M. Webb Wildlife Management Area
BCNP = Big Cypress National Preserve
CCSP = U.S. Climate Change Science Program
ENP = Everglades National Park
FBC = Florida Bat Conservancy
FBWG = Florida Bat Working Group
FDACS = Florida Department of Agriculture and Consumer Services
FDEP = Florida Department of Environmental Protection
FFS = Florida Forest Service
FNAI = Florida Natural Areas Inventory
FPL = Florida Power and Light
FR = Federal Register
FSPSP = Fakahatchee Strand Preserve State Park
FTBG = Fairchild Tropical Botanic Garden
FWC = Florida Fish and Wildlife Conservation Commission
IPCC = Intergovernmental Panel on Climate Change
NPS = National Park Service
OC = Organochlorine
OP = Organophospate
PSSF = Picayune Strand State Forest
SFWMD = South Florida Water Management District
WMA = Wildlife Management Area
WNS = White-nose syndrome

Previous Federal Actions

The Florida bonneted bat (*Eumops floridanus*) was previously known as the Florida mastiff bat (*Eumops glaucinus floridanus*).

On September 18, 1985, we published a Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (50 FR 37958), which included the Florida mastiff bat as a category 2 candidate species for possible future listing as an endangered or threatened species. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate, but for which additional data were needed to support a listing proposal. In a January 6, 1989, Animal Notice of Review (54 FR 554), the Florida mastiff bat continued as a category 2 candidate. On November 21, 1991, the Florida mastiff bat was upgraded from a category 2 to a category 1 species in an Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58804), characterized as having a declining trend (indicating decreasing numbers or increasing threats or both). It remained a category 1 candidate (declining trend) in the 1994 review (59 FR 58982). In 1996, the Florida mastiff bat was removed from the candidate list (61 FR 7596) because the taxon was deemed to be more abundant or widespread than previously believed or not subject to any identifiable threat.

On November 9, 2009, we recognized the Florida bonneted bat (*Eumops floridanus*) as a Federal candidate species in our annual Candidate Notice of Review (74 FR 57804) with a Listing Priority Number of 2 (threats high in magnitude and imminent). This action constituted a 12-month finding for the species in which it was determined that listing the species was warranted but precluded by other higher priority listing actions.

On January 29, 2010, we received a petition from Wild South to list the Florida bonneted bat as an endangered species and to designate critical habitat pursuant to the Act (O'Malley 2010). The petition heavily relied upon the Service's 2009 species assessment, but did not provide any new substantial

information. On February 17, 2010, we responded to the petitioner, indicating that we had previously determined that the listing of the species was warranted but precluded and that, through the Candidate Notice of Review process, we annually determine whether listing remains warranted but precluded.

On May 10, 2011, the Service announced a work plan to restore biological priorities and certainty to the Service's listing process. As part of an agreement with one of the agency's most frequent plaintiffs, the Service filed a work plan with the U.S. District Court for the District of Columbia. The work plan will enable the agency to, over a period of 6 years, systematically review and address the needs of more than 250 species listed within the 2010 Candidate Notice of Review, including the Florida bonneted bat, to determine if this species should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. This work plan will enable the Service to again prioritize its workload based on the needs of candidate species, while also providing State wildlife agencies, stakeholders, and other partners clarity and certainty about when listing determinations will be made. On July 12, 2011, the Service reached an agreement with a frequent plaintiff group and further strengthened the work plan, which will allow the agency to focus its resources on the species most in need of protection under the Act. These agreements were approved on September 9, 2011. The timing of this proposed listing is, in part, therefore, an outcome of the work plan.

The Service's decision to propose listing of the Florida bonneted bat resulted from our careful review of the status of the species and the threats it faces.

Endangered Species Status for the Florida Bonneted Bat

Background

The Florida bonneted bat is a member of the Molossidae (free-tailed bats) family within the order Chiroptera. The species is approximately 130 to 165 millimeters (mm) (5.1 to 6.5 inches [in]) in length (Timm and Genoways 2004, p. 857) and the largest bat in Florida (Owre 1978, p. 43; Belwood 1992, p. 216; Florida Bat Conservancy [FBC] 2005, p. 1). The length of the tail ranges from 46 to 57 mm (1.8 to 2.2 in), hind foot 11 to 15 mm (0.4 to 0.6 in), ear 20 to 30 mm (0.8 to 1.2 in), and forearm 60.8 to 66.0 mm (2.39 to 2.60 in) (Timm and Genoways 2004, p. 857). Masses average 39.7 grams (g) (1.4 ounces [oz]) and range from 30.2 to 46.6 grams (1.1 to 1.6 oz) (Owre 1978, p. 43; Belwood 1981, p. 412; Belwood 1992, p. 216; Timm and Genoways 2004, p. 857). A pregnant female with a single fetus weighed 55.4 g (2.0 oz) (Belwood 1981, p. 412). Males and females are not significantly different in size (Timm and Genoways 2004, p. 857). Timm and Genoways (2004, p. 857) found no pattern of size-related geographic variation in this species.

Members of the genus *Eumops* have large, rounded pinnae (ears), arising from a single point or joined medially on the forehead (Best *et al.* 1997, p. 1). The common name of ''bonneted bat'' originates from characteristic large broad ears, which project forward over the eyes (FBC 2005, p. 1). Ears are joined at the midline of the head. This feature, along with its large size, distinguish the Florida bonneted bat from the smaller Brazilian (=Mexican) free-tailed bat (*Tadarida brasiliensis*), the only other molossid to occur in Florida (Belwood 1992, p. 216).

Wings of the members of the genus *Eumops* are among the narrowest of all molossids (Freeman 1981, as cited in Best *et al.* 1997, p. 3) and are well-adapted for rapid, prolonged flight (Vaughan 1959 as cited in Best *et al.* 1997, p. 3). This wing structure is conducive to high-speed flight in open areas (Findley *et al.* 1972 as cited in Best *et al.* 1997, p. 3).

The Florida bonneted bat's fur is short and glossy, with hairs sharply bicolored with a white base (Belwood 1992, p. 216; Timm and Genoways 2004, p. 857). Like other molossids, color is highly variable; color varies from black to brown to brownish-gray or cinnamon brown with ventral pelage paler than dorsal (Owre 1978, p. 43; Belwood 1992, p. 216; Timm and Genoways 2004, p. 857). The basisphenoid pits (paired depressions in the basisphenoid bone) of the skull are ovoid (egg-shaped) and moderately deep (Timm and Genoways 2004, p. 857). The tail projects beyond the interfemoral membrane (skin that stretches between the legs) (Owre 1978, p. 43; Belwood 1992, p. 216).

Taxonomy

Allen (1932, pp. 256–259) first described a new genus and species of Pleistocene free-tailed bat, *Molossides floridanus,* from a jaw of a single specimen. Ray *et al.* (1963, pp. 373, 377–381) transferred *Molossides floridanus* to the genus *Eumops.* The genus *Eumops* was later revised (Koopman 1971, pp. 1–6; Eger 1977, pp. 1–69; Timm and Genoways 2004, p. 859). Koopman (1971, pp. 1–6) found specimens of *Eumops* from Florida that have been identified as *E. glaucinus* to be markedly larger than tropical American specimens of that species and regarded *floridanus* as a well-marked subspecies of *E. glaucinus.* Until recently, two subspecies of *E. glaucinus* had been recognized: *E. glaucinus floridanus,* which occurs in Florida, and *E. glaucinus glaucinus,* which occurs from central Mexico to southeastern Brazil and northwestern Argentina, and Cuba and Jamaica in the Greater Antilles (Eger 1977, pp. 39–43).

Timm and Genoways (2004, p. 852) reviewed and reassessed the taxonomic status of bats of the genus *Eumops.* They found considerable geographic variation among specimens of bonneted bats (then named *E. glaucinus*) and determined that *E. glaucinus* is in fact a species-group consisting of more than one species. Timm and Genoways (2004, pp. 852, 855, 859) determined that bonneted bats in Florida are significantly larger than those in all other populations and have other distinguishing skeletal morphology, including the following: proportionally shorter and deeper basisphenoid pits (bony cavities inside the nose), glenoid fossa (mandibular fossa or depression in the skull) that are broadly triangular with rounded apices (tips), and differences in shape of the baculum (penis bone) and palate. Given these differences, Timm and Genoways (2004, pp. 852, 856) indicated that the correct name for both Pleistocene and Recent Florida bonneted bats is *Eumops floridanus.* Recent studies show that morphologically, *E. floridanus* is distinct from all other populations in the *E. glaucinus* complex (R. Timm, University of Kansas, pers. comm. 2008a; McDonough *et al.* 2008, pp. 1306, 1311). Based upon their most recent work, McDonough *et al.* (2008, p. 1306) concluded that there are four species in the *E. glaucinus* complex—*E. glaucinus* (in South America east of the Andes), *E. ferox* (in the Caribbean, Mexico, and Central America), an unnamed taxon in western Ecuador (subsequently described as *E. wilsoni* (Baker *et al.* 2009, pp. 1–13)), and *E. floridanus* in south Florida.

E. floridanus is extremely similar in both the mitochondrial and nuclear genes to the populations on Cuba and Jamaica and is clearly derived from those populations (R. Timm, pers. comm. 2008a; McDonough *et al.* 2008, pp. 1309–1313). Specimens of *E. floridanus* are morphologically distinct from *E. glaucinus,* but cannot be distinguished by cytochrome-b or amplified fragment length polymorphism (AFLP) DNA data (McDonough *et al.* 2008, pp. 1312–1313). McDonough *et al.* (2008, p. 1313) suggested that morphological

distinction in *E. floridanus* has preceded establishment of either mitochondrial or nuclear distinction through their examination of mtDNA (mitochondrial DNA), nuclear AFLP, karyotypic, and morphological data within the *E. glaucinus* complex. According to McDonough (2008, p. 1313), the *floridanus-glaucinus* complex presented a unique opportunity to study the process of speciation using new techniques from the emerging field of genomics, and the use of multiple character sets (mtDNA, nuclear, and morphological) will become more prevalent in the future. McDonough *et al.* (2008, p. 1313) stated that while adherence to the genetic species concept would relegate *E. floridanus* to conspecific status (of or belonging to the same species) with *E. glaucinus,* morphological and ecological concepts clearly call for the recognition of *E. floridanus* as a distinct species.

The Florida bonneted bat (*E. floridanus*) was previously known as Florida mastiff bat, Wagner's mastiff bat, and mastiff bat (*E. glaucinus floridanus*) (Owre 1978, p. 43; Belwood 1992, p. 216; Best *et al.* 1997, p. 1). While earlier literature found the Florida bonneted bat distinct at the subspecies level (see Timm and Genoways 2004, pp. 852, 856; McDonough *et al.* 2008, p. 1307), the most current scientific information confirms that *E. floridanus* is a full species and this taxonomic change has been accepted by the scientific community (Timm and Genoways 2004, p. 861; McDonough *et al.* 2008, pp. 1306–1315; R. Timm, pers. comm. 2008b, 2009; Baker *et al.* 2009, pp. 9–10). The International Union for Conservation of Nature and Natural Resources (Timm and Arroyo-Cabrales 2008, p. 1) and the Florida Natural Areas Inventory (FNAI) (FNAI 2012, p. 24) use the name *E. floridanus.* The Florida Fish and Wildlife Conservation Commission (FWC) (FWC 2011a, pp. 1–11) also recognizes the species as *E. floridanus,* but their current threatened and endangered list uses both names, Florida bonneted (mastiff) bat, *Eumops (=glaucinus) floridanus* (see also *Factor D* below).

Life History

Relatively little is known about the Florida bonneted bat's life history. Lifespan is not known. Based upon the work of Wilkinson and South (2002, pp. 124–131), Gore *et al.* (2010, p. 1) inferred a lifespan of 10 to 20 years for the Florida bonneted bat, with an average generation time of 5 to 10 years.

The Florida bonneted bat has a fairly extensive breeding season during summer months (Timm and Genoways 2004, p. 859). The maternity season for most bat species in Florida occurs from mid-April through mid-August (Marks and Marks 2008a, p. 8). During the early portion of this period, females give birth and leave young in the roost while they make multiple foraging excursions to support lactation (Marks and Marks 2008a, pp. 8–9). During the latter portion of the season, young and females forage together until the young become sufficiently skilled to forage and survive on their own (Marks and Marks 2008a, p. 9). The Florida bonneted bat is a subtropical species, and pregnant females have been found in June through September (FBC 2005, p. 1; Marks and Marks 2008a, p. 9). Examination of limited data suggests that this species may be polyestrous (having more than one period of estrous in a year), with a second birthing season possibly in January–February (Timm and Genoways 2004, p. 859; FBC 2005, p. 1).

Information on reproduction and demography is sparse. The Florida bonneted bat has low fecundity; litter size is one (FBC 2005, p. 1; Timm and Arroyo-Cabrales 2008, p. 1). The colony studied by Belwood (1981, p. 412) consisted of eight adults and included five post-lactating females, one pregnant female with a single fetus, and one male with enlarged testicles; the other female escaped before examination. The pregnant female captured was the first record of a gestating Florida bonneted bat in September (Belwood 1981, p. 412). However, Belwood (1981, p. 412) noted that this finding is consistent with the reproductive chronology of bonneted bats in Cuba, which are polyestrous. Robson *et al.* (1989, p. 81) found an injured pregnant female in Coral Gables in late August 1988, which aborted its fetus in early September 1988. A landowner with an active colony in North Fort Myers reported that she has seen young bats appear in spring and summer, generally with only one or two births within the colony per year (S. Trokey, pers. comm. 2006a). However, four young were noted in 2004 (S. Trokey, pers. comm. 2006a). A juvenile male caught in a mist net at Picayune Strand State Forest (PSSF) on December 17, 2009, suggested breeding in the area (Smith 2010, p. 1). Age was determined by viewing the epiphyseal-diaphyseal fusion (level of bone growth and formation in the wings) under a magnifying glass and taking a photograph of the fusion, which was independently confirmed by two Florida bat experts (Smith 2010, pp. 1–2). The juvenile weighed 35 g (1.2 oz) and had a left forearm length of 64.5 mm (2.5 in) (Smith 2010, p. 1).

Based upon limited information, the species roosts singly or in colonies consisting of a male and several females (Belwood 1992, p. 221). G.T. Hubbell believed that individuals in Miami roosted singly (Belwood 1992, p. 221). However, Belwood (1981, p. 412) suggested that a colony, consisting of seven females and one male using a longleaf pine cavity as a roost site in Punta Gorda, was a harem group, based on its sex ratio. Belwood (1981, p. 412; 1992, p. 221) suggested that this behavior has been recorded in a few bat species and such social groupings may be facilitated by roosting in tree cavities, which can be defended from other males (Morrison 1979, pp. 11–15).

Information on roosting habits from artificial structures is also limited. The Florida bonneted bat colony using bat houses on private property in Lee County consisted of 8 to 25 individuals, including one albino (S. Trokey, pers. comm. 2006a, 2006b; 2008a, 2008b, 2012). After the prolonged cold temperatures killed and displaced several bats in early 2010, a total of 10 individuals remained by April 2010, with seven occupying one house and three occupying another (S. Trokey, pers. comm. 2010a, 2010b, 2010c). As of February 2012, there are 18 bats using two houses at this location (S. Trokey, pers. comm. 2012). Sex ratio is not known. Some movement between the houses has been observed; the albino individual has been observed to be in one house one day and the other house the next (S. Trokey, pers. comm. 2006a).

At the Fred C. Babcock/Cecil M. Webb Wildlife Management Area (Babcock-Webb WMA), 42 individuals are using 4 separate roosts, consisting of 7 bat houses among 4 sites (J. Myers, pers. comm. 2012a, 2012b; Marks and Marks 2012, pp. 8, 12, A61). These sites each consist of two bat houses on a single pole, with the exception of one site, which has a pole containing only one house. The most recent counts from simultaneous observations at these sites, taken at emergence on April 19, 2012, documented the following: 35 Florida bonneted bats at 2 houses, 5 at 2 houses, 1 at 2 houses, and 1 at 1 house (J. Myers, pers. comm. 2012a; Marks and Marks 2012, pp. 12, 19, A61). It is not known if there is movement between houses or among roost locations or between artificial and unknown natural roosts within Babcock-Webb WMA.

The Florida bonneted bat is active year-round and does not have periods of hibernation or torpor. The species is not migratory, but there might have been seasonal shifts in roosting sites (Timm

and Genoways 2004, p. 860). Belwood (1992, pp. 216–217) reported that, prior to 1967, G.T. Hubbell routinely obtained several individuals per year collected during the winter from people's houses.

Precise foraging and roosting habits and long-term requirements are unknown (Belwood 1992, p. 219). Active year-round, the species is likely dependent upon a constant and sufficient food supply, consisting of insects, to maintain its generally high metabolism. Based upon limited information, Florida bonneted bats feed on flying insects of the following orders: Coleoptera (beetles), Diptera (true flies), and Hemiptera (true bugs) (Belwood 1981, p. 412; Belwood 1992, p. 220; FBC 2005, p. 1). An analysis of bat guano (droppings) from the colony using the pine flatwoods in Punta Gorda indicated that the sample (by volume) contained coleopterans (55 percent), dipterans (15 percent), and hemipterans (10 percent) (Belwood 1981, p. 412; Belwood 1992, p. 220). No other similar analyses have been performed, but researchers are planning to conduct analyses of guano to determine dietary preferences and seasonal changes (Ridgley 2012, pp. 1–4; C. Marks, FBC, pers. comm. 2012; S. Snow, Everglades National Park (ENP), pers. comm. 2012). This species may prey upon larger insects, which may be less abundant than smaller prey items (S. Snow, pers. comm. 2012). Since the species can take flight from the ground like other *Eumops* spp., it may also prey upon ground insect species (Ridgley 2012, pp. 1–2).

Molossids, in general, seem adapted to fast flight in open areas (Vaughan 1966, p. 249). Various morphological characteristics (e.g., narrow wings, high wing-aspect ratios (ratio of wing length to its breadth) make *Eumops* well-adapted for efficient, rapid, and prolonged flight in open areas (Findley *et al.* 1972, pp. 429–444; Freeman 1981, pp. 96–97; Norberg and Rayner 1987, pp. 399–400; Vaughan, 1959 as cited in Best *et al.* 1997, p. 3). Barbour and Davis (1969, p. 234) noted that the species flies faster than smaller bats, but cannot maneuver as well in small spaces. Belwood (1992, p. 221) stated that *E. glaucinus* is ''capable of long, straight, and sustained flight,'' which should allow individuals to travel large distances. Norberg and Rayner (1987, p. 399) attributed long distance flights of Brazilian free-tailed bats to their high wing-aspect ratios, with that species capable of traveling 65 km (40 miles) from its roosting site to its foraging areas (Barbour and Davis 1969, p. 203). Nonetheless, average foraging distances for the Florida bonneted bat are not known (G. Marks, pers. comm. 2012). Although the species can fly long distances, it likely does not travel farther than necessary to acquire food needed for survival (G. Marks, pers. comm. 2012).

Bonneted bats are ''fast hawking'' bats that rely on speed and agility to catch target insects in the absence of background clutter, such as dense vegetation (Simmons *et al.* 1979, pp. 16–21; Belwood 1992, p. 221; Best *et al.* 1997, p. 5). Foraging in open spaces, these bats use echolocation to detect prey at relatively long range, roughly 3 to 5 meters (10 to 16 feet) (Belwood 1992, p. 221). Based upon information from G.T. Hubbell, Belwood (1992, p. 221) indicated that individuals leave roosts to forage after dark, seldom occur below 10 meters (33 feet) in the air, and produce loud, audible calls when flying; calls are easily recognized by some humans (Belwood 1992, p. 221; Best *et al.* 1997, p. 5; Marks and Marks 2008a, p. 5). On the evening of April 19, 2012, Florida bonneted bats using bat houses at Babcock-Webb WMA emerged to forage at dusk; emergence occurred from approximately 8:20 to 8:40 p.m. (J. Myers, pers. comm. 2012; P. Halupa, pers. obs. 2012).

Habitat

Relatively little is known of the ecology of the Florida bonneted bat, and long-term habitat requirements are poorly understood (Robson 1989, p. 2; Robson *et al.* 1989, p. 81; Belwood 1992, p. 219; Timm and Genoways 2004, p. 859). Habitat for the Florida bonneted bat mainly consists of foraging areas and roosting sites, including artificial structures. At present, no active, natural roost sites are known, and only limited information on historical sites is available.

Recent information on foraging habitat has been obtained largely through acoustical surveys, designed to detect and record bat echolocation calls (Marks and Marks 2008a, p. 5). Acoustical methods have generally been selected over mist netting as the primary survey methodology because this species flies and primarily forages at heights of 9 meters (30 feet) or more (Marks and Marks 2008a, p. 3). The Florida bonneted bat has a unique and easily identifiable call. While most North American bats vocalize echolocation calls in the ultrasonic range that are inaudible to humans, the Florida bonneted bat echolocates at the higher end of the audible range, which can be heard by some humans as high-pitched calls (Marks and Marks 2008a, p. 5). Most surveys conducted using acoustical equipment can detect echolocation calls within a range of 30 meters (100 feet); call sequences are analyzed using software that compares calls to a library of signature calls (Marks and Marks 2008a, p. 5). Florida bonneted bat calls are relatively easy to identify because calls are issued at frequencies well below that of other Florida bat species (Marks and Marks 2008a, p. 5).

In general, open, fresh water and wetlands provide prime foraging areas for bats (Marks and Marks 2008c, p. 4). Bats will forage over ponds, streams, and wetlands and drink when flying over open water (Marks and Marks 2008c, p. 4). During dry seasons, bats become more dependent on remaining ponds, streams, and wetland areas for foraging purposes (Marks and Marks 2008c, p. 4). The presence of roosting habitat is critical for day roosts, protection from predators, and the rearing of young (Marks and Marks 2008c, p. 4). For most bats, the availability of suitable roosts is an important, limiting factor (Humphrey 1975, pp. 341–343). Bats in south Florida roost primarily in trees and manmade structures (Marks and Marks 2008a, p. 8).

Available information on roosting sites for the Florida bonneted bat is extremely limited. Roosting and foraging areas appear varied, with the species occurring in forested, suburban, and urban areas (Timm and Arroyo-Cabrales 2008, p. 1). Data from acoustical surveys and other methods suggests that the species uses a wide variety of habitats (see Table 1) (Marks and Marks 2008a, pp. 13–14; 2008b, pp. 2–5; 2008c, pp. 1–28; 2012, pp. 1–22; R. Arwood, Inside-Out Photography, Inc., pers. comm. 2008a, 2008b, 2012; Smith 2010, pp. 1–4; S. Snow, pers. comm. 2011, 2012).

Use of Forests and Other Natural Areas

Bonneted bats are closely associated with forested areas because of their tree-roosting habits (Robson 1989, p. 2; Belwood 1992, p. 220; Eger 1999, p. 132), but specific information is limited. Belwood (1981, p. 412) found a small colony of Florida bonneted bats (seven females and one male, all adults) roosting in a longleaf pine (*Pinus palustris*) in a pine flatwoods community near Punta Gorda in 1979. The bats were roosting in a cavity 4.6 meters (15.1 feet) high, which had been excavated by a red-cockaded woodpecker (*Picoides borealis*) and later enlarged by a pileated woodpecker (*Dryocopus pileatus*) (Belwood 1981, p. 412). Belwood (1981, p. 412) suggested that the bats were permanent residents of the tree due to the considerable accumulation of fecal material,

approximately 1 meter (3.3 feet) in depth. Eger (1999, p. 132) noted that in forested areas, old, mature trees are essential roosting sites for this species. The species also uses foliage of palm trees. Based upon information from G.T. Hubbell, specimens have been found in shafts of royal palms (*Roystonea regia*) (Belwood 1992, p. 219).

Similar roosting habitats have been reported for *E. g. glaucinus* in Cuba. Nine of 19 known roost sites were located in tree cavities, including woodpecker holes and cavities in royal palms, ''dagame'' trees (*Callycophyllum candidissimum*), and mastic trees (*Bursera simaruba*) (Silva-Taboada 1979 as cited in Robson 1989, p. 2 and Belwood 1992, p. 219). Another individual was found roosting in the foliage of the palm *Copernicia vespertilionum* (Silva-Taboada 1979 as cited in Belwood 1992, p. 219). Belwood (1992, pp. 219–220) noted that the majority of the approximately 80 specimens of *E. glaucinus* from Venezuela housed in the U.S. National Museum were collected from tree cavities in heavily forested areas.

More recent acoustical data and other information indicate that the Florida bonneted bat uses forests and a variety of other natural areas. Echolocation calls have been recorded in a wide array of habitat types: pine flatwoods, pine rocklands, cypress, hardwood hammocks, mangroves, wetlands, rivers, lakes, canals, etc. (see Table 1). Table 1 lists locations and habitat types where Florida bonneted bats were recorded or observed (2003 to present) (Marks and Marks 2008a, pp. 13–14; 2008b, pp. 2–5; 2008c, pp. 1–28; 2012, pp. 1–22; R. Arwood, pers. comm. 2008a, 2008b, 2012; Smith 2010, pp. 1–4; S. Snow, pers. comm. 2011, 2012; FNAI 2012, pp. 1–28). Additional details on key sites are provided below Table 1.

TABLE 1—LOCATIONS AND HABITAT TYPES RECORDED OR OBSERVED FOR FLORIDA BONNETED BATS (2003–2012)

Site	Ownership	Counties	Management	Habitat type
Everglades National Park (ENP) (2 backcountry sites along Wilderness Waterway [Darwin's Place, Watson Place]).	public	Monroe	National Park Service (NPS).	earth midden hammocks, mangroves.
ENP (junction of Main Park Road and Long Pine Key).	public	Miami-Dade	NPS	pine rocklands, wetlands.
L–31N Florida Power and Light (FPL) corridor, eastern boundary ENP.	private	Miami-Dade	NPS and FPL	canal, mixed.
Homestead, FL	private	Miami-Dade	None	residential, urban.
Fairchild Tropical Botanic Garden (FTBG)	private	Miami-Dade	FTBG	pine rockland, hardwood hammock, water, tropical garden, residential.
Zoo Miami	private and public	Miami-Dade	Miami-Dade	urban, landscaped; pine rocklands.
Coral Gables (2 sites, including Granada Golf Course).	private	Miami-Dade	None	residential, urban.
Snapper Creek Park	public	Miami-Dade	Miami-Dade County	residential, urban.
Everglades City	private	Collier	None	residential, urban.
Naples	private	Collier	None	residential, urban.
Fakahatchee Strand Preserve State Park (FSPSP) (2 sites, including Ballard Pond, Prairie Canal Bridge).	public	Collier	Florida Department of Environmental Protection (FDEP).	lake and canal near hardwood hammock, and pine flatwoods.
Picayune Strand State Forest (PSSF)	public	Collier	FFS	canal (juvenile male caught above Faka-Union Canal).
Big Cypress National Preserve (multiple sites).	public	Collier	NPS	pine flatwoods, palmetto, cypress, mixed and hardwood hammocks, mangroves, mixed shrubs, wet prairies, river.
North Fort Myers (2 sites, including bat houses).	private	Lee	None; private landowner.	residential, urban; bat houses.
Babcock-Webb Wildlife Management Area (WMA) (3 sites, Tucker Grade east end, B/W west area, and bat houses and near red-cockaded woodpecker clusters).	public	Charlotte	Florida Fish and Wildlife Conservation Commission (FWC).	pinelands (and near red-cockaded woodpecker clusters); bat houses.
Babcock Ranch (Telegraph Swamp)	public, private	Charlotte	Private entities, FWC, FFS, and Lee County.	swamp.
Kicco	public	Polk	FWC and SFWMD	oxbow along Kissimmee River.
Kissimmee River Public Use Area (Platt's Bluff).	public	Okeechobee	FWC and SFWMD	boat ramp along Kissimmee River.

In 2006, the species was found at Babcock-Webb WMA in the general vicinity of the colony found by Belwood (1981, p. 412); this was the first documentation of the Florida bonneted bat at this location since 1979 (Marks and Marks 2008a, pp. 6, 11, 13). Major habitat types at Babcock-Webb WMA include dry prairie, freshwater marsh, wet prairie, and pine flatwoods; all calls were recorded in pinelands (Marks and Marks 2008a, pp. A7, B38–B39; 2012,

pp. 8, A61, B43). The species was also recorded at an adjacent property, Babcock Ranch in 2007; calls were recorded at Telegraph Swamp, but not in the pinelands surveyed (Marks and Marks 2008a, pp. A9, B55–B57).

The species has been found within the Fakahatchee Strand Preserve State Park (FSPSP), using this area throughout the year (D. Giardina, Florida Department of Environmental Protection (FDEP), pers. comm. 2006; C. Marks, pers. comm. 2006a, 2006b, M. Owen, FSPSP, pers. comm. 2012a, 2012b). In 2006, this species was found at a small lake and at a canal adjacent to tropical hardwood hammocks (Ballard Pond and Prairie Canal Bridge) in the FSPSP (Marks and Marks 2008a, pp. 11, A7–A9, B50–B51). Available data and observations indicate that the species was regularly heard at FSPSP from 2000 through 2012 at various locations, primarily in the main strand swamp and near royal palms (M. Owen, pers. comm. 2012a, 2012b; R. Rau, pers. comm. 2012). In November 2007, the species was observed along U.S. 41 at Collier-Seminole State Park in Collier County (S. Braem, FDEP, pers. comm. 2012). The FDEP also suggests that the species may occur at Charlotte Harbor Preserve State Park in Charlotte County and Delnor-Wiggins Pass State Park in Collier County (P. Small, FDEP, pers. comm. 2012).

The Florida bonneted bat has been found in various habitats within Big Cypress National Preserve (BCNP). During surveys conducted in a variety of habitats in 2006–2007, the majority consisting of cypress swamps and wetlands, only one call was recorded in 16 survey nights in 2007 (Marks and Marks 2008a, pp. 11, A12–A14). The call was recorded at Deep Lake along the western edge of BCNP and the eastern side of the FSPSP; the lake was surrounded by cypress and hardwood hammocks similar to the habitat around Ballard Pond in the FSPSP (see above) (R. Arwood, pers. comm. 2008b). The species was recorded again in February 2012 at another location (Cal Stone's camp) in an area of pine and palmetto with cypress domes in the surrounding area (R. Arwood, pers. comm. 2012; Marks and Marks 2012, p. 13). Data derived from recordings taken in 2003 and 2007 by a contractor and provided to the Service (S. Snow, pers. comm. 2012) and available land use covers derived from a geographic information system also suggest that the species uses a wide array of habitats within BCNP.

As noted earlier, FWC biologists and volunteers caught a free-flying juvenile male Florida bonneted bat in 2009 using a mist net in the PSSF in Collier County (Smith 2010, p. 1). Habitat composition of PSSF includes wet prairie, cypress stands, and pine flatwoods in the lowlands and subtropical hardwood hammocks in the uplands, and the individual was captured in the net above the Faka-Union Canal (Smith 2010, p. 1). This was particularly notable because it may have been the first capture of a Florida bonneted bat without a roost site being known (Smith 2010, p. 1).

In 2000, the species was found within mangroves at Dismal Key within the Ten Thousand Islands (Timm and Genoways 2004, p. 861; Marks and Marks 2008a, pp. 6, A9, B53; 2012, p. 14). Subsequent surveys in 2000, 2006, and 2007 did not document any calls at this location (Marks and Marks 2008a, pp. 6, 11, 14). In 2007, the species had been recorded at a backcountry campsite (Watson's Place) within ENP, comprised of mixed hardwoods (S. Snow, pers. comm. 2012). In 2012, the species was found within mangroves and mixed hardwoods at another backcountry campsite (Darwin's Place) along the Wilderness Waterway (Ten Thousand Island area), approximately 4.8 kilometers (km) (3 miles) east-southeast of Watson's Place within ENP (Marks and Marks 2012, pp. 8, 17, A53, B35, B38; C. Marks, pers. comm. 2012; S. Snow, pers. comm. 2012). However, the species was not located in similar habitats during 18 survey nights in 2012 (Marks and Marks 2012, p. 14).

In 2011–2012, the species was found in various natural habitats elsewhere in ENP and vicinity (S. Snow, pers. comm. 2011, 2012; Marks and Marks 2012, pp. 8, 14). It was found in wetlands and pinelands at the junction of the main park road and road to Long Pine Key (S. Snow, pers. comm. 2011, 2012; Marks and Marks 2012, p. 8, 14, 17), and also along the L–31N canal in a rural area, at the eastern boundary of ENP (S. Snow, pers. comm. 2012; Marks and Marks 2012, pp. 8, 14, 17, A59). In March 2012, one suspect (presumed, but not confirmed) call sequence was also recorded on SR 9336 in an area of rural residential and agricultural habitat in Miami-Dade County (S. Snow, pers. comm. 2012). In January 2012, another suspect call was recorded from the suburban streets of the village of Palmetto Bay in Miami-Dade (S. Snow, pers. comm. 2012).

In 2008, the Florida bonneted bat was found at two locations along the Kissimmee River during a survey of public areas contracted by FWC (J. Morse, pers. comm. 2008, 2010; Marks and Marks 2008b, pp. 2–5; 2008c, pp. 1–28). One location was at an oxbow along the Kissimmee River in a pasture in Kicco; the other was at Platt's Bluff boat ramp at a public park on the Kissimmee River (Marks and Marks 2008c, pp. 11, 17). However, despite numerous attempts, no additional calls were detected in the Lake Kissimmee areas or along the Kissimmee River during subsequent surveys designed to more completely define the northern part of its range (C. Marks, pers. comm. 2012a; Marks and Marks 2012, pp. 3, 5, 8, 10) (see *Current Distribution*).

Use of Parks, Residential, and Other Urban Areas

The Florida bonneted bat uses human structures and other nonnatural environments. In Coral Gables (Miami area), specimens have been found in the shafts of royal palm leaves (Belwood 1992, p. 219). Based upon observations from G.T Hubbell, past sightings in Miami suggest that preferred diurnal roosts may be the shingles under Spanish tile roofs (Belwood 1992, p. 219). The species also roosts in buildings (e.g., in attics, rock or brick chimneys of fireplaces, and especially buildings dating from about 1920–1930) (Timm and Arroyo-Cabrales 2008, p. 1). One individual recently reported that a single Florida bonneted bat had come down the chimney and into his residence in Coral Gables in the fall about 5 years ago (D. Pearson, pers. comm. 2012). Belwood (1992, p. 220) suggested that urban bats would appear to benefit from using Spanish tile roofs on dwellings, since the human population in south Florida is growing, and such structures are more common now than in the past. However, it is important to recognize that bats using old or abandoned and new dwellings are at significant risk; bats are removed when structures are demolished or when they are no longer tolerated by humans and eradicated or excluded from dwellings (see *Summary of Factors Affecting the Species, Factor E*).

This species may also roost in rocky crevices and outcrops on the ground, based on the discovery of an adult for which the specimen tag says ''found under rocks when bull-dozing ground'' (Timm and Genoways 2004, p. 860). A colony was found in a limestone outcropping on the north edge of the University of Miami campus in Coral Gables; the limestone contained a large number of flat, horizontal, eroded fissures in which the bats roosted (Timm and Genoways 2004, p. 860). It is not known to what extent such roost sites are suitable.

Recent acoustical surveys (2006, 2008, 2012) confirmed that the species continues to use a golf course in urban Coral Gables (Marks and Marks 2008a,

pp. 6, 11, A4; 2008b, pp. 1–6; 2012, pp. 8, 14, 16, 19, A24, B16). Despite numerous efforts, attempts to locate the roost site have been unsuccessful.

Recordings taken continuously from a balcony from a fifth floor condominium also detected presence in Naples (R. Arwood, pers comm. 2008a). Recordings taken from a house and at a boat dock along the Barron River in Everglades City also detected presence in this area (R. Arwood, pers comm. 2008a).

The species has been documented at Zoo Miami within an urban public park in Miami-Dade County (C. Marks, pers. comm. 2011; Ridgley 2012, p. 1; Marks and Marks 2012, pp. 8, 14, 16, A26). A dead specimen was found on Zoo Miami (then known as Miami Metrozoo) grounds at the Asian Elephant barn in 2004 (Marks and Marks 2008a, p. 6). Miami-Dade County biologists observed seven bats similar in size to Florida bonneted bats and heard chatter at the correct frequency a few years ago, but were unable to obtain definitive recordings (S. Thompson, Miami-Dade Park and Recreation Department, pers. comm. 2010) until a single call was recorded by FBC outside the same enclosure in September 2011 (Ridgley 2012, p. 1; Marks and Marks 2012, pp. 8, 14, 16, A26). Surrounding habitats include natural areas and horticulturally altered landscape, with a variety of manmade structures (Ridgley 2012, p. 1).

In 2011 and 2012, the species was recorded within tropical gardens at Fairchild Tropical Botanic Garden (FTBG) in Miami-Dade County (S. Snow, pers. comm. 2011, 2012; Marks and Marks 2012, pp. 8, 13–14, 17, A35, A37).

Use of Artificial Structures

The Florida bonneted bat can use artificial structures (Marks and Marks 2008a, p. 8; Morse 2008, pp. 1–14; S. Trokey, pers. comm. 2012). In fact, all of the active known roosting sites for the species are bat houses (two at a private landowner's house; four at Babcock-Webb WMA).

The species occupies bat houses on private land in North Fort Myers, Lee County; until recently, this was the only known location of an active colony roost anywhere (S. Trokey, pers. comm. 2006a, 2008b; Marks and Marks 2008a, pp. 7, 15). The Florida bonneted bat has used this property for over 9 years (S. Trokey, pers. comm. 2012). The bat houses are located near a small pond, situated approximately 5 meters (17 feet) above the ground with a south by southwest orientation (S. Trokey, pers. comm. 2012). The relatively high height of the houses may allow the large bats to fall from the roosts before flying (S. Trokey, pers. comm. 2012).

The species also occupies bat houses within pinelands at Babcock-Webb WMA in Punta Gorda, Charlotte County (Marks and Marks 2012, pp. 8, A61). In winter 2008, two colonies were found using bat houses (Morse 2008, p. 8; N. Douglass, FWC, pers. comm. 2009). In 2010, approximately 25 individuals were found at two additional bat houses, bringing the potential total at Babcock-Webb WMA to 58 individuals, occupying four houses (J. Birchfield, FWC, pers. comm. 2010; Marks and Marks 2012, pp. 12, A61). In 2012, 42 individuals were found to use four roost sites, consisting of a total of seven bat houses, situated approximately 5 meters (17 feet) above the ground with north and south orientations (J. Myers, pers. comm. 2012a; Marks and Marks 2012, pp. 12, 19, A61). Roosts at Babcock-Webb WMA are mainly in hydric and mesic pine flatwoods with depression and basin marshes and other mixed habitat in the vicinity (J. Myers, pers. comm. 2012b).

In summary, relatively little is known of the species' habitat requirements. Based upon available data above, it appears that the species can use a wide array of habitat types (see Table 1 above). Available information on roosting sites is extremely limited and particularly problematic, since the availability of suitable roosts is an important, limiting factor for most bat species. Existing roost sites need to be identified so they can be preserved and protected (Marks and Marks 2008a, p. 15). Uncertainty regarding the location of natural and artificial roost sites may contribute to the species' vulnerability (see *Summary of Factors Affecting the Species, Factors A* and *E* below). Since the location of key roost sites is not known, inadvertent impacts to and losses of roosts may be more likely to occur, placing the species at greater risk. If key roost sites are located, actions could be taken to avoid or minimize losses.

Historical Distribution

Records indicating historical range are limited. Morgan (1991, p. 200) indicated that *E. glaucinus* had been identified from four late Pleistocene (approximately 11,700 years ago) and Holocene (time period beginning 10,000 years ago) fossil sites in the southern half of the Florida peninsula. Late Pleistocene remains are known from Melbourne, Brevard County, and Monkey Jungle Hammock in Miami-Dade County (Allen 1932, pp. 256–259; Martin 1977, as cited in Belwood 1981, p. 412 and Timm and Genoways 2004, p. 857; Morgan 1991, p. 188). Holocene remains are known from Vero Beach, Indian River County (Ray 1958, Martin 1977, and Morgan 1985, 2002 as cited in Timm and Genoways 2004, p. 857; Morgan 1991, pp. 187–188, 200), and also Monkey Jungle Hammock (Morgan 1991, p. 188). The largest fossil sample (9 specimens) was reported from the Holocene stratum at Vero Beach (Morgan 1985 as cited in Morgan 1991, p. 200). The fossil records from Brevard County and Indian River County are considerably farther north than where living individuals have typically been recorded (Timm and Genoways 2004, p. 857; Marks and Marks 2008b, p.5).

Timm and Genoways (2004, p. 856) noted that *E. floridanus* is one of the few species of Recent mammals that was described from the Pleistocene fossil record before the discovery of living individuals. The type specimen (first specimen used to describe the species), described by Allen (1932, pp. 256–259) is from Melbourne in Brevard County, Florida (Morgan 1991, pp. 187, 200). The type specimen is dated from the late Rancholabrean Melbourne Bed, in Brevard County (Morgan 1991, pp. 187, 200; Timm and Genoways 2004, pp. 858, 860).

Most of the historical records and sightings for this species are several decades old from the cities of Coral Gables and Miami in extreme southeastern Florida, where the species was once believed to be common (Belwood 1992, pp. 216, 219; Timm and Genoways 2004, p. 857; Timm and Arroyo-Cabrales 2008, p. 1). G.T. Hubbell also reported a female with young from Fort Lauderdale in Broward County; all of his sightings of Florida bonneted bats were near human dwellings (Belwood 1992, p. 219). Prior to 1967, G.T. Hubbell regularly heard loud, distinctive calls at night as the bats foraged above buildings and he routinely obtained several individuals per year that were collected during the winter months from people's houses (Belwood 1992, pp. 216–217). Layne (1974, p. 389) stated, ''This bat has the most restricted range of any Florida mammal, being only known from Miami, Coral Gables, and Coconut Grove, where it inhabits buildings in residential areas with lush vegetative growth'' (Barbour, 1936; Schwartz 1952a; Jennings, 1958).

Other early literature also mentioned Fort Lauderdale as an area where the species occurred (Barbour and Davis 1969, p. 231; Belwood 1992, pp. 218–219). However, in their comprehensive review, none of the specimens examined by Timm and Genoways (2004, pp. 856–857, 864) were from

Broward County. Belwood (1981, p. 412) found a colony in Punta Gorda; however, the longleaf pine in which the bats roosted was felled during highway construction. Recent specimens are only known from extreme southern and southwestern Florida, including Miami-Dade County on the east coast and Charlotte, Collier, and Lee Counties on the Gulf coast (Timm and Genoways 2004, pp. 856–857).

As part of a status survey, Robson (1989, pp. 8–9) examined available specimens from museum collections (University of Miami, Miami-Dade Community College, and Florida Museum of Natural History) dating from 1951–1989. Of the 21 specimens examined, 11 were from Coral Gables, 4 were from Miami, 3 were from North Miami, and 3 were from Punta Gorda (Robson 1989, p. 8). As part of the same study, Robson (1989, p. 9) investigated 44 reports of bats throughout southern Florida in 1989, but did not collect or observe the Florida bonneted bat. Another 25 sites were selected for acoustical sampling as part of this study. Records of bats from the selected sites were generally scant or nonexistent; only one record from Coral Gables was found (Robson 1989, p. 9). Despite considerable effort (1,724 stops during 86.2 hours), no additional evidence of the species was found in this study (Robson 1989, pp. 9, 15).

Current Distribution

Endemic to Florida, the Florida bonneted bat has one of the most restricted distributions of any species of bat in the New World (Belwood 1992, pp. 218–219; Timm and Genoways 2004, pp. 852, 856–858, 861–862). Although numerous acoustical surveys for the Florida bonneted bat have been conducted in the past decade by various parties, the best scientific information indicates that the species exists only within a very restricted range, confined to south Florida (Timm and Genoways 2004, pp. 852, 856–858, 861–862; Marks and Marks 2008a, p. 15; 2012, pp. 10–11).

The majority of information relating to current distribution comes from the following recent studies: (1) Range-wide surveys conducted in 2006–2007, funded by the Service, to determine the status of the Florida bonneted bat following the 2004 hurricane season, and followup surveys in 2008 (Marks and Marks 2008a, pp. 1–16 and appendices; 2008b, pp. 1–6); (2) surveys conducted in 2008 along the Kissimmee River and Lake Wales Ridge, funded by the FWC, as part of bat conservation and land management efforts (Marks and Marks 2008c, pp. 1–28; 2008d, pp. 1–21; Morse 2008, p. 2); (3) surveys conducted within BCNP in 2003 and 2007, funded by the NPS (S. Snow, pers. comm. 2012); (4) surveys conducted in 2011–2012 in ENP by NPS staff (S. Snow, pers. comm. 2012); (5) surveys conducted in 2010–2012, funded by the Service, to fill past gaps and better define the northern and southern extent of the species' range (Marks and Marks 2012, pp. 1–22 and appendices); and (6) recordings taken from proposed wind energy facilities in Glades and Palm Beach Counties (C. Coberly, Merlin Environmental, pers. comm. 2012; C. Newman, Normaneau Associates, Inc, pers. comm. 2012). These survey efforts and results are described in more detail below.

(1) Range-Wide Survey

Results of range-wide acoustical surveys in 2006–2007 documented presence in Charlotte, Lee, Collier, and Miami-Dade Counties (see Table 1; Marks and Marks 2008a, p. 11). As part of this study, all previous known locations for the Florida bonneted bat and other previously unsurveyed areas were surveyed to determine presence (Marks and Marks 2008a, p. 3). In total, 50 survey nights were conducted at select locations in south Florida with 48 areas surveyed (Marks and Marks 2008a, pp. 9–10; 2012, p. 5). Echolocation calls were recorded by researchers at six of the areas surveyed (Marks and Marks 2008a, p. 10). Although Broward County was previously considered part of the species' range (Barbour and Davis 1969, p. 231; Belwood 1992, pp. 218–219; Hipes *et al.* 2001, page not numbered), Marks and Marks (2008a, p. 13) did not record any Florida bonneted bat calls in the Fort Lauderdale or surrounding areas. The species was not recorded on the east coast of Florida north of Coral Gables as part of the 2006–2007 survey (Marks and Marks 2008a, p. 10).

Following this study, Marks and Marks (2008a, p. 10) concluded that ''based on the surveys conducted to date, the full extent of the Florida bonneted bat population exists within a very limited range extending from the Babcock Webb WMA through southwest Florida to south Miami and Homestead.'' More detailed information regarding locations is provided above (see *Habitat* and Table 1 above and *Population/Status* below). Although there was no detection of presence in the Everglades region during the 2006–2007 range-wide survey, additional work within ENP was recommended because this area links the east and west portions of the range (Marks and Marks 2008a, p. 15).

(2) Surveys along the Kissimmee River

Surveys conducted for the FWC in the Lake Wales Ridge and Kissimmee River areas in 2008 indicated presence within Polk and Okeechobee Counties, at two locations along the Kissimmee River (see Table 1; Marks and Marks 2008b, p. 2; 2008c, pp. 1–28). As part of these studies, select areas in the Kissimmee River area (9 nights at 25 locations) and along the Lake Wales Ridge (6 nights at 13 locations) were surveyed for possible presence (Marks and Marks 2008c, pp. 1–28; 2008d, pp. 1–21). Detection of presence along the Kissimmee River was significant as this was the first time the species had been found north of Lake Okeechobee except in fossil records and effectively extended the known range 80 km (50 miles) north (Marks and Marks 2008b, pp. 2, 5; 2008c, pp. 1–28). Calls were recorded at Kicco and Platt's Bluff along the Kissimmee River in Polk and Okeechobee Counties in May 2008 (see Table 1) (Marks and Marks 2008b, p. 2; 2008c, pp. 11, 17). The Platt's Bluff finding is 85 km (53 miles) northeast of the nearest previously recorded location, which was in Telegraph Swamp within the Babcock Ranch (Marks and Marks 2008b, p. 3). Additional surveys to better assess the population in the Kissimmee River area were recommended as a future action (Marks and Marks 2008b, p. 5).

Other stationary and roving acoustical surveys of select public lands in the southwest region of Florida contracted by FWC in 2007–2008 did not produce any additional occurrences (Morse 2008, pp. 1–14). The bat was only found at Babcock-Webb WMA and at two WMAs along the Kissimmee River; however, it was not found at Chassahowitzka, Hilochee, or Hickory Hammock WMAs or during surveys along the Lake Wales Ridge (Morse 2008, pp. 1–14; Marks and Marks 2008b, p. 3). It was not found elsewhere in Highlands, Okeechobee, or Polk Counties (Marks and Marks 2008c, pp. 1–28; 2008d, pp. 1–21).

(3) Surveys in Big Cypress

Acoustical surveys conducted in 2003 and 2007 documented presence within BCNP at numerous locations (see Table 1; S. Snow, pers. comm. 2012). In 2003, positive calls were found at nine locations over 24 nights. In 2007, positive calls were found at 15 locations over 22 nights.

(4) Surveys in the Everglades Region

Acoustical surveys conducted on 41 nights in the Everglades region from October 2011 to May 2012 by Skip Snow (pers. comm. 2012) documented presence at several locations within

ENP and surrounding locations (see Table 1). These findings are significant since the importance of the Everglades region to the Florida bonneted bat had been previously in question. In addition, some findings (e.g., FTBG, L–31N canal) represented new occurrences within the species' known range.

(5) Surveys To Examine Extent of Range

Surveys conducted in 2010–2012 designed to specifically examine past gaps and better define the northern and southern extent of the species' range improved understanding of the species' geographic extent (Marks and Marks 2012, pp. 1–22 and appendices). As part of this study, 48 locations were surveyed, including 15 nights in the area surrounding Lake Kissimmee or along the Kissimmee River (Marks and Marks 2012, pp. 5, 9). Results of this study and additional work by researchers did not suggest presence north of Punta Gorda or east of Babcock Ranch in Charlotte County (Marks and Marks 2012, p. 10). In addition, Florida bonneted bat calls were not recorded between Lake Okeechobee and the east coast of Florida, which supports previous work indicating no evidence of the species on the east coast north of Miami (Marks and Marks 2012, p. 10). Although new findings in the southern portion of the established range were confirmed (e.g., FTBG, L–31N canal, Long Pine Key in ENP, Zoo Miami, and Darwin's place), presence was not detected in other areas (e.g., Key Largo or Card Sound Road) (Marks and Marks 2012, pp. 8–10). Consequently, researchers concluded that the proposed range map from 2008 should remain unchanged, as the previous recordings in the Kissimmee River area were unexplained outliers (Marks and Marks 2008a, p. 11; 2012, pp. 10–11). In their view, the species' range encompasses Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties, with only fractions of Glades, Hendry, and Broward Counties included (Marks and Marks 2012, p. 11).

(6) Recordings at Proposed Wind Energy Sites

In 2011, possible Florida bonneted bat calls were reported in Glades County near a proposed wind farm project, located in mixed habitat types, west of Lake Okeechobee (D. Torcolacci, HurricaneWind, Ridgeline Energy, pers. comm. 2012; C. Coberly, pers. comm. 2012). At this time, recordings (from 7 nights) are considered unconfirmed due to current disagreement between experts and are best classified as ''possible'' Florida bonneted bat calls (C. Coberly, pers. comm. 2012). If present, this would be a significant finding, as the species was not previously documented in Glades County. Recordings from another proposed wind energy facility in Palm Beach County did not confirm presence (C. Newman, pers. comm. 2012). Of 175,802 bat calls analyzed over 12 months at 4 locations at the project site in Palm Beach County, no Florida bonneted bat calls have been identified (C. Newman, pers. comm. 2012).

In summary, the Florida bonneted bat appears to be restricted to south and southwest Florida. The core range may primarily consist of habitat within Charlotte, Lee, Collier, Monroe, and Miami-Dade Counties. Recent data also suggest use of portions of Okeechobee and Polk counties and possible use of areas within Glades County. However, given available data, it is not clear to what extent areas outside of the core range may be used. It is possible that areas outside of the south and southwest Florida are used only seasonally or sporadically. Alternatively, these areas may be used consistently, but the species was not regularly detected due to the limitations of available data, survey methods, and search efforts.

Population Estimates and Status

Little information exists on historical population levels. The Florida bonneted bat was considered common in the Miami–Coral Gables area because of regular collection of specimens from 1951 to 1965 (Robson 1989, p. 2; Belwood 1992, p. 216). Jennings (1958, p. 102) indicated that the species was not abundant, noting that a total of 20 individuals had been taken from 1936 to 1958. Prior to 1967, G.T. Hubbell regularly heard loud, distinctive calls at night as the bats foraged above buildings in the Miami area, and he routinely obtained several individuals per year that were collected from people's houses (Belwood 1992, pp. 216–217). Barbour and Davis (1969, p. 234) indicated that, on average, about two individuals per year are brought to the Crandon Park Zoo in Miami, due to injuries, but no time period was specified.

Unpublished data from a survey of 100 pest control companies in 1982 on the southeastern coast of Florida showed that requests to remove ''nuisance'' bats from this area all but ceased beginning in the 1960s (Belwood 1992, p. 217), indicating a sharp decline in bats in general. Timm and Genoways (2004, p. 861) found only three records of Florida bonneted bats in the greater Miami area after 1965. The colony found near Punta Gorda in 1979 appeared to be the only recorded occurrence since 1967 (Belwood 1981, p. 412). A 6-week field trip in 1980 to locate other occurrences was unsuccessful and led to the belief that this species was ''probably extinct in Florida'' (Belwood 1992, p. 217). No new evidence of this species was found from 1979 until 1988 when Robson *et al.* (1989, p. 81) found a pregnant female in Coral Gables (Robson 1989, p. 2).

Timm and Genoways (2004, p. 861) surmised that the Florida bonneted bat may have been uncommon for several decades, based upon the work of previous researchers (Barbour 1945 as cited in Timm and Genoways 2004, p. 861; Jennings 1958, p. 102; Layne 1974, pp. 389–390), who noted the scarcity of bats in southern Florida. Owre (1978, p. 43) observed fewer than a dozen individuals in roughly 25 years and noted that few mammalogists had success in finding the species. Robson (1989, p. 5) indicated that the decline of specimens and sightings in the mid-1960s is reflected in the museum record and noted that the 1950s and 1960s was a period of rapid growth in the Miami area. Robson (1989, pp. 5–9) suggested that the resulting disturbance and destruction of native habitat may have flushed a large number of specimens out of established roosts, resulting in a high collection rate. A status survey conducted in 1989, encompassing 25 sites within natural areas within a nine-county area, found no new evidence of this species (Robson 1989, pp. 1, 3–5, 8).

Population Size Estimates

Based upon available data and information, the Florida bonneted bat occurs within a restricted range and in low abundance (Marks and Marks 2008a, p. 15; 2012, pp. 9–15; Timm and Arroyo-Cabrales 2008, p. 1; FWC 2011a, pp. 3–4; FWC 2011b, pp. 3, 6; R. Timm, pers. comm. 2012). Actual population size is not known, and no population viability analyses are available (FWC 2011a, p. 4). However, population size is thought to be less than that needed for optimum viability (Timm and Arroyo-Cabrales 2008, p. 1). As part of their evaluation of listing criteria for the species, Gore *et al.* (2010, p. 2) found that the extent of occurrence appears to have declined on the east coast, but trends on the west coast could not be inferred due to limited information.

In his independent review of the FWC's biological status report, Ted Fleming, Emeritus Professor of biology at University of Miami, noted that anecdotal evidence from the 1950s and 1960s suggests that this species was more common along Florida's southeast coast compared with the present (FWC 2011b, p. 3). Fleming stated that, ''There

can be no doubt that *E. floridanus* is an uncommon bat throughout its very small range. Its audible echolocation calls are distinctive and easily recognized, making it relatively easy to survey in the field'' (FWC 2011b, p. 3). He also stated that he does not doubt that the total State population numbers ''in the hundreds or low thousands'' (FWC 2011b, p. 3).

Similarly, in response to a request for information as part of the Service's annual Candidate Notice of Review, Robert Timm (pers. comm. 2012), Curator of Mammals at Department of Ecology and Evolutionary Biology and Biodiversity Institute at the University of Kansas, indicated that numbers are low, in his view, as documented by survey attempts. ''*Eumops* are very obvious bats where they occur because of their large size and distinctive calls. Given the efforts to locate them throughout southern Florida, if they were there in any significant numbers, they would have been located'' (R. Timm, pers. comm. 2012).

Results of the 2006–2007 range-wide survey (see *Range-wide survey* above) suggested that the Florida bonneted bat is a rare species with limited range and low abundance (Marks and Marks 2008a, p. 15). Based upon results of both the range-wide study and survey of select public lands, the species was found at 12 locations (Marks and Marks 2008b, p. 4), but the number and status of the bat at each location are unknown. Based upon the small number of locations where calls were recorded, the low numbers of calls recorded at each location, and the fact that the species forms small colonies, Marks and Marks (2008a, p. 15) stated that it is possible that the entire population of Florida bonneted bats may number less than a few hundred individuals.

Results of the 2010–2012 surveys (see *Surveys to examine extent of range*) and additional surveys by other researchers identified new occurrences within the established range (i.e., within Miami area, areas of ENP and BCNP) (S. Snow, pers. comm. 2011, 2012; R. Arwood, pers. comm. 2012; Marks and Marks 2012, p. 8), however, not in sufficient numbers to alter previous population estimates. In their 2012 report on the status of the species, Marks and Marks (2012, p. 12) provided an updated estimation of population size, based upon 120 nights of surveys at 96 locations within peninsular Florida, results of other known surveys, and personal communications with others involved in Florida bonneted bat work. Based upon an average colony size of 11 and an estimated 26 colonies within the species' range, researchers estimated the total Florida bonneted bat population at 286 bats (Marks and Marks 2012, pp. 12–15).

Similarly, the 2011 International Union for Conservation of Nature Red List of Threatened Species lists the species as ''critically endangered'' because ''its population size is estimated to number fewer than 250 mature individuals, with no subpopulation greater than 50 individuals, and it is experiencing a continuing decline'' (Timm and Arroyo-Cabrales 2008, p. 1). The FNAI (2012, pp. 24, 28) also considers the global element rank of the Florida bonneted bat to be G1, meaning it is critically imperiled globally because of extreme rarity (5 or fewer occurrences or less than 1000 individuals) or because of extreme vulnerability to extinction due to some natural or manmade factor.

Acoustical Survey Efforts as Indicators of Rarity

Results of the original 2006–2007 acoustical range-wide survey (see *Range-wide survey* above) indicated that of 4,938 calls recorded and analyzed, only 37 (0.75 percent) were from Florida bonneted bats (Marks and Marks 2008a, acoustical data). Of these, 13 were from the FSPSP, 11 from Babcock Ranch, 6 near the bat houses in Lee County, 3 from Babcock-Webb WMA, 3 from Coral Gables, and 1 from the Homestead area (Marks and Marks 2008a, p. 11, acoustical data). Although this survey had targeted areas that likely support the Florida bonneted bat (i.e., all previous known locations and other previously unsurveyed areas), the species' echolocation calls were only recorded at 6 of the 48 areas surveyed over 50 survey nights (Marks and Marks 2008a, pp. 3, 9–10).

Additional work in the Coral Gables, South Miami, and Homestead area in September 2008 helped to better determine presence in these areas and resulted in 42 additional Florida bonneted bat calls (39 in Coral Gables, 2 in Homestead, and 1 at Snapper Creek Park). However, no additional calls were recorded in five other areas searched (Marks and Marks 2008b, p. 5).

In the 2008 study of WMAs along the Kissimmee River (see *Surveys along the Kissimmee River* above), of 673 call sequences recorded and analyzed, only 10 (1.4 percent) were the Florida bonneted bat (Marks and Marks 2008c, pp. 7–17). This study involved 9 nights at 25 locations in May 2008 (Marks and Marks 2008c, pp. 1–28). Additionally, none of the 533 call sequences along the Lake Wales Ridge area were of the Florida bonneted bat (Marks and Marks 2008d, pp. 7–13). That study involved 6 nights at 13 locations along the Lake Wales Ridge in May 2008.

Recordings taken continuously (24 hours a day) from a fifth floor balcony of a condominium in Naples generated only 5 Florida bonneted bat calls in 398 nights of recording (R. Arwood, pers. comm. 2008a; Marks and Marks 2008a, p. 11). The number of Florida bonneted bat calls was exceedingly low, considering that on an average night more than 1,000 total calls (i.e., all bat species) were recorded (R. Arwood, pers. comm. 2008a). Recordings taken in Everglades City generated 33 Florida bonneted bat calls in 328 nights of sampling (R. Arwood, pers. comm. 2008a; Marks and Marks 2008a, p. 11).

Results from 42 acoustical surveys (36 mobile and 6 stationary) conducted on 41 nights (from October 2011 to May 2012) in the ENP and surrounding areas (see *Surveys in the Everglades region* above) also produced relatively few call sequences indicating presence of the Florida bonneted bat (S. Snow, pers. comm. 2012). One call sequence was recorded at the junction of Main Park Road and the road to Long Pine Key campground in an acoustic mobile survey route that was run 24 times (covering a total of 1,108.5 km (688.8 miles)). On the evening of March 29, 2012, a total of 11 call sequences were confirmed for the Florida bonneted bat along the L–31N canal FPL corridor along a 13.7-km (8.5-mile) stretch. On December 22, 2011, and January 9, 2012, a total of five call sequences were confirmed for the Florida bonneted bat at FTBG. Additional suspect calls were recorded along SR 9336 in a rural and agricultural area and along the suburban streets of the village of Palmetto Bay.

Results of the 2010–2012 study to examine the northern and southern parts of the species' range (see *Surveys to examine extent of range* above) located the species in only 8 of 48 locations, 3 of which were previously known (Marks and Marks 2012, pp. 1–22 and appendices). Given that researchers were specifically targeting areas to maximize the chances of recording the species (G. Marks, pers. comm. 2012), the number of presences recorded was extremely low. Of 5,289 calls recorded and analyzed, only 33 (0.71 percent) were from Florida bonneted bats (Marks and Marks 2012, pp. 16–18 and acoustical data).

Overall, considering existing literature and data by multiple parties and expert opinion (see above), it appears that the species has a very small population. Given so few Florida bonneted bat calls recorded with considerable survey efforts, it is not likely that abundance is appreciably

larger than the current available population estimates given above.

Estimating Colony Sizes and Locations

Actual colony sizes or locations of roosts other than bat houses are not known. However, some limited information from natural and artificial roosting sites exists (see *Life History* above). Based upon roosting information from Belwood (1981, pp. 411–413) and current bat houses (at Babcock-Webb WMA and North Fort Myers), Marks and Marks (2012, p. 12) estimated an average colony size of 11 for the species. Based upon the surveys conducted to date and experience with the species, researchers estimated 26 colonies at the following 11 locations (Marks and Marks 2012, pp. 13–14).

Babcock-Webb Wildlife Management Area—The colonies at Babcock-Webb WMA are the only known roosts on public lands and effectively tripled the number of known active colonies (N. Douglass, pers. comm. 2009). The 33 individuals recorded in 2009 appeared to be the largest single discovery of the species recorded in recent years (N. Douglass, pers. comm. 2009). In 2010, monitoring by FWC indicated approximately 25 individuals at 2 additional bat houses, bringing the potential total at Babcock-Webb WMA to 58 individuals, occupying 4 roosts (J. Birchfield, pers. comm. 2010). In 2012, researchers found 42 individuals using 4 roosts (J. Myers, pers. comm. 2012a). In addition, FWC biologists report also hearing Florida bonneted bat calls in the vicinity of red-cockaded woodpecker cavity trees on site (J. Myers, pers. comm. 2012a). Researchers counted the occupied bat houses as four colonies, but believe that there may be an additional two natural roost sites within the area for a possible total of 6 colonies (Marks and Marks 2012, p. 13, 15). In their estimation, the low numbers of calls recorded during numerous roving surveys did not support estimating more colonies in this area (Marks and Marks 2012, p. 13).

Babcock Ranch—Calls recorded at Telegraph Swamp at Babcock Ranch in 2007 are believed to represent separate colonies from those at Babcock-Webb WMA (Marks and Marks 2008a, p. A9; 2012, p. 13). Due to the property's size, more than one colony may be present; researchers estimated two colonies (based upon area), until additional survey work can be completed (Marks and Marks 2012, p. 13).

North Fort Myers—In Lee County, the Florida bonneted bat has continually used bat houses on one private property since December 2002 (S. Trokey, pers. comm. 2006a; 2012; Marks and Marks 2008a, p. 7). This was the first record of this species using a bat house as a roost and the only known location of an active colony roost located on private land (S. Trokey, pers. comm. 2006a; Marks and Marks 2008a, pp. 7–15). The colony had included approximately 20 to 24 individuals in 2 houses (S. Trokey, pers. comm. 2008a, 2008b), but only 10 remained by April 2010 after the prolonged cold temperatures in January and February 2010 (S. Trokey, pers. comm. 2010a, 2010b, 2010c) (see also *Summary of Factors Affecting the Species, Factor E* below). In May 2011, researchers found 20 Florida bonneted bats using this site (S. Trokey, pers. comm. 2011), and as of February 2012, they found 18 individuals using 2 houses (S. Trokey, pers. comm. 2012). Surveys in the area did not detect additional Florida bonneted bat calls (Marks and Marks 2008a, p. 11). Researchers counted the bat houses as two colonies (Marks and Marks 2012, p. 13).

Naples—Available data from a single fixed site suggest that the species is present in the area (R. Arwood, pers. comm. 2008a; Marks and Marks 2008a, p. 11). The few positive calls are not indicative of a large number of Florida bonneted bats in the area; however, researchers estimate that at least one colony occurs in the area (Marks and Marks 2012, p. 13).

Fakahatchee Strand Preserve State Park and Picayune Strand State Forest—A large number of Florida bonneted bat calls have been reported in recent years in the FSPSP and vicinity (Marks and Marks 2008a, pp. 6, 11). A juvenile male was captured in a mist net above a canal in PSSF in 2009, but no other Florida bonneted bats were captured during additional trapping efforts (14 trap nights) (K. Smith, pers. comm. 2010; Smith 2010, p. 1). Researchers suspect that there are at least two and possibly three colonies using this area; they estimated three colonies, based upon the large number of calls recorded consistently at these adjacent sites (Marks and Marks 2012, p. 13).

Big Cypress National Preserve—Calls have been recorded at various locations (e.g., Deep Lake, Cal Stone's camp, Loop Road) by multiple parties (R. Arwood, pers. comm. 2008b, 2012; S. Snow, pers. comm. 2012; Marks and Marks 2008a, pp. 11, A12–A14; 2012, pp. 13–14). Survey efforts from 2003 and 2007 by one contractor (Fly-By-Night) recorded presence at several locations (S. Snow, pers. comm. 2012). However, results of the rangewide survey in 2006–2008 recorded only one call at Deep Lake in 12 nights of surveys (R. Arwood, pers. comm. 2008b; Marks and Marks 2008a, pp. 11, A12–A14). In 2012, five calls were recorded at Cal Stone's camp during 2 nights of survey (R. Arwood, pers. comm. 2012; Marks and Marks 2012, pp. 13–14). Based upon their experience of calls recorded on only two occasions with considerable effort, researchers estimate there are three colonies using this area (Marks and Marks 2012, pp. 13–14). However, since the area is large and protected, additional colonies may also exist in this area.

Everglades City—Available data suggest that the species is present in the area (R. Arwood, pers. comm. 2008a), but due to the paucity of positive calls, researchers estimate that one colony occurs in the area (Marks and Marks 2012, p. 14).

Everglades National Park (mainland)—Despite significant effort (see above) in 2011 and 2012, only one call sequence was recorded at the junction of main park road and Long Pine Key campground road in an acoustic mobile survey route run 24 times (S. Snow, pers. comm. 2012). Results of the 2006–2008 survey did not detect Florida bonneted bat calls in the Long Pine Key area, which was thought to be the most likely location for the species (Marks and Marks 2008a, p. 10; 2012, p. 14). Researchers estimate one colony at Long Pine Key, given the few calls detected and considerable survey effort (Marks and Marks 2012, p. 14). Other areas of marshland are not likely to support colonies, due to lack of suitable roosting sites (Marks and Marks 2012, p. 14).

Ten Thousand Islands area—The Florida bonneted bat was found at Dismal Key in Ten Thousand Islands National Wildlife Refuge in 2000 (Timm and Genoways 2004, p. 861; B. Nottingham, pers. comm. 2006; T. Doyle, pers. comm. 2006; C. Marks, pers. comm. 2006c; Marks and Marks 2008a, p. 6). Calls were not recorded during the 2006–2007 survey in areas searched by boat from Dismal Key to Port of the Islands (Marks and Marks 2008a, pp. 11, 14, A9). In 2012, only one call was recorded at Darwin's Place in ENP in 18 survey nights in areas searched from Flamingo to Everglades City (Marks and Marks 2012, pp. 8, 14, A50). Darwin's Place is approximately 4.8 km (3 miles) from Watson's Place, where another researcher (Laura Finn, Fly-By-Night) had recorded 10 Florida bonneted bat calls in 2007 (Marks and Marks 2012, p. 14; S. Snow, pers. comm. 2012). Researchers estimate that there is one colony near Dismal Key and one colony in the Watson/Darwin area of ENP (Marks and Marks 2012, p. 14).

Homestead area—Calls recorded in the Homestead area in 2006 and in 2008 suggest that one colony exists, possibly located east of U.S. 1 (Marks and Marks 2008a, pp. 11, A6–A7; 2008b, p. 5; 2012, p. 14).

Coral Gables and Miami area—Florida bonneted bat calls have been consistently recorded in acoustical surveys at the Granada Golf Course in Coral Gables, but not elsewhere in the vicinity (Marks and Marks 2008a, p. 6, A4; 2008b, pp. 1–6; 2012, p. 14). Since calls are recorded so shortly after sunset, the species may be roosting on or adjacent to the golf course (Marks and Marks 2012, p. 14). Calls recorded at Snapper Creek Park in south Miami in 2008, Zoo Miami in 2011, FTBG in 2011 and 2012, and the L31–N canal in 2012 suggest that colonies are at or near these locations (Marks and Marks 2008b, pp. 1–2; 2012, pp. 1–22 and appendices; Ridgley 2012, p. 1; S. Snow, pers. comm. 2011, 2012). Overall, researchers estimate four colonies in southwestern Miami and Coral Gables (Marks and Marks 2012, pp. 14–15).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss and alteration in forested and urban areas are major threats to the Florida bonneted bat (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). In natural areas, this species may be impacted when forests are converted to other uses or when old trees with cavities are removed (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). In urban settings, this species may be impacted when buildings with suitable roosts are demolished (Robson 1989, p. 15; Timm and Arroyo-Cabrales 2008, p. 1) or when structures are modified to exclude bats. Although the species' habitat preferences and extent of range are not well understood, significant land use changes have occurred in south Florida and additional habitat losses are expected in the future, placing the species at risk. Uncertainty regarding the species' specific habitat needs and requirements arguably contributes to the degree of this threat. Without information on key roosting sites and foraging areas, inadvertent impacts to and losses of habitat may be more likely to occur through various sources and stressors (see below), and habitat losses will likely be more difficult to avoid.

Land Use Changes and Human Population Growth

Significant land use changes have occurred through time in south Florida, including major portions of the species' historical and current range. In his examination of Florida's land use history, Solecki (2001, p. 350) stated that tremendous land use changes took place from the early 1950s to the early and mid-1970s. During this time, ''an almost continuous strip of urban development became present along the Atlantic coast'' and urban land uses became well established in the extreme southeastern portion of the region, particularly around the cities of Miami and Fort Lauderdale and along the entire coastline northward to West Palm Beach (Solecki 2001, p. 350). Similarly, Solecki (2001, p. 345) found tremendous urban expansion within the Gulf coast region, particularly near Ft. Myers since the 1970s, with the rate of urban land conversion superseding the rate of agricultural conversion in recent decades.

In another examination, the extent of land use conversions for southwest Florida (Collier, Lee, Hendry, Charlotte, and Glades Counties) between 1986 and 1996 was estimated using a change detection analysis performed by Beth Stys (FWC, unpublished data) (Service 2008, p. 37). The area of disturbed lands increased 31 percent in these five counties between 1986 and 1996, with the greatest increases in disturbed lands occurring in Hendry and Glades Counties. Most (66 percent) of the land use change over the 10-year period was due to conversion to agricultural uses. Forest cover types accounted for 42 percent of land use conversions, dry prairies accounted for 37 percent, freshwater marsh accounted for 9 percent, and shrub and brush lands accounted for 8 percent.

In another analysis, Stys calculated the extent of seminatural and natural lands that were converted to agricultural and urban or developed areas in Florida between 1985–1989 and 2003 (B. Stys, pers. comm. 2005; Service 2008, p. 38). Based upon this analysis, approximately 1,476 km^2 (570 mi^2) of natural and seminatural lands in Glades, Hendry, Lee, Collier, Broward, Monroe, and Miami-Dade Counties were converted during this time period (FWC, unpublished data). Of these, approximately 880 km^2 (340 mi^2) were conversions to agricultural uses and 596 km^2 (230 mi^2) to urban uses. In Charlotte County, 26,940 acres (10,902 hectares) (9.6 percent of the county) were converted to agriculture, and 21,712 acres (8,787 hectares) (7.8 percent) were converted to urban uses in the time period examined. In Lee County, 16,705 acres (6,760 hectares) (6.3 percent) were converted to agriculture, and 44,734 acres (18,103 hectares) (16.8 percent) were developed. In Collier County, 34,842 acres (14,100 hectares) (3.1 percent) were converted to agriculture, and 38,331 acres (15,512 hectares) (3.4 percent) were developed.

Habitat loss and human population growth in south Florida are continuing. The human population in south Florida has increased from fewer than 20,000 people in 1920 to more than 4.6 million by 1990 (Solecki 2001, p. 345). The population of Miami–Dade County, one area where the Florida bonneted bat was historically common, increased from fewer than 500,000 people in 1950 to nearly 2.5 million in 2010 (*http://quickfacts.census.gov*). In one projection, all counties with current Florida bonneted bat occurrences were forecasted to increase in human population density, with most counties expected to grow by more than 750 people per square mile by 2060 (Wear and Greis 2011, pp. 26–27).

In another model, three counties with current known occurrences of the Florida bonneted bat—Charlotte, Lee, and Collier—are expected to reach buildout (fully develop) before 2060 (Zwick and Carr 2006, pp. 12–13, 16). For the period between 2040 and 2060, the population of Lee and Collier Counties is projected to exceed the available vacant land area, so the population was modeled to allow spillover into adjacent counties (Zwick and Carr 2006, p. 13). According to human population distribution models, south Florida is expected to become mostly urbanized, with the exception of some of the agricultural lands north and south of Lake Okeechobee (Zwick and Carr 2006, p. 2). Even the central Florida region, at what would be the northern limit of this species' distribution, will be almost entirely urbanized (Zwick and Carr 2006, p. 2). In an independent

review of the FWC's biological status report for the species, Fleming stated, ''Continued urbanization of south Florida will undoubtedly have a negative impact on this bat'' (FWC 2011b, p. 3).

Loss of Forested Habitat

Loss of native forested habitat and roost sites are major threats to the Florida bonneted bat. A highway construction project in Punta Gorda in 1979 destroyed a roost tree (Belwood 1981, p. 412; 1992, p. 220). One museum specimen was originally discovered under a rock that was turned over by a bulldozer clearing land (Robson 1989, p. 9). Robson (1989, pp. 1–18) attributed the loss of native forested habitat, reduced insect abundance (see *Factor E*), and the ''active persecution of bats by humans'' (see *Factor E*) as the likely major impacts on the Florida bonneted bat in Miami-Dade County. Similarly, Belwood (1992, pp. 217, 220) indicated that bats in south Florida, including this species, appear to have declined drastically in numbers in recent years due to loss of roosting sites and effects of pesticides (see *Factor E*). More recently, Timm and Genoways (2004, p. 861) stated that habitat loss from development, in combination with other threats (i.e., pesticides and hurricanes, see *Factor E*), may have had a significant impact upon the already low numbers of Florida bonneted bats.

Belwood (1992, p. 220) stated that forested areas are becoming rare as a result of human encroachment and that this will severely affect the forest occurrences of this species. Similarly, Robson (1989, p. 15) indicated that pine rockland, live oak, and tropical hardwood hammocks constituted most of the remaining, natural forest in the Miami area and that these communities are essential to this species' survival. Belwood (1992, p. 220) argued that tree cavities are rare in southern Florida and competition for available cavities (e.g., southern flying squirrel [*Glaucomys volans*], red-headed woodpecker [*Melanerpes erythrocephalus*], corn snake [*Elaphe guttata guttata*]) is intense. She suggested that nonurban natural areas such as ENP, Big Cypress/Fakahatchee areas, and State WMAs may be the only areas where this species may be found in the future, provided old trees with hollows and cavities are retained (Belwood 1992, p. 220) (see *Land Management Practices*).

Approximately 90 percent of the forested habitats in Florida have been altered or eliminated, and losses are expected to continue (Wear and Greis 2002, p. 56). In the Southern Forest Resource Assessment, Florida was identified as one of the areas expected to experience substantial losses of forest in response to human population and changes in income (Wear and Greis 2002, p. 164). In the Southern Forest Futures Project, peninsular Florida is forecasted to lose the most forest land (34 percent) of any of the 21 sections analyzed in the south (Wear and Greis 2011, p. 35).

Land Management Practices

Although species occurrences on conservation lands are inherently more protected than those on private lands, habitat alteration during management practices may impact natural roosting sites because the locations of such sites are unknown. Removal of old or live trees with cavities during activities associated with forest management (e.g., thinning, pruning), prescribed fire, exotic species treatment, or trail maintenance may inadvertently remove roost sites, if such sites are not known. Loss of an active roost or removal during critical life-history stages (e.g., when females are pregnant or rearing young) can have severe ramifications, considering the species' small population size and low fecundity (see *Factor E*).

Overall, occupied and potential habitat for the Florida bonneted bat on forested or wooded lands, both private and public, continues to be at risk due to habitat loss, degradation, and fragmentation from a variety of sources. Additional searches for potential roosting sites in forested and other natural areas are especially needed.

Loss of Artificial Structures

Since the Florida bonneted bat will use human dwellings and other artificial structures, it is also vulnerable to habitat loss and alteration in urban environments (Belwood 1992, p. 220; Timm and Arroyo-Cabrales 2008, p. 1). Owre (1978, p. 43) stated that all recent specimens had been collected within the suburbs of greater Miami from structures built in the 1920s and 1930s. Owre (1978, p. 43) indicated that three specimens were taken on the ground, one in a rocky field that was being bulldozed, one next to sewer conduits piled near freshly dug excavations, and one on a lawn near a university building in which the bats roosted. Removal of buildings with spaces suitable for roosting is a threat to this species (Timm and Arroyo-Cabrales 2008, p. 1). Robson (1989, p. 15) stated that seemingly innocuous activities like destroying abandoned buildings and sealing barrel-tile roof shingles may have a severe impact on remaining populations in urban areas. Cyndi and George Marks (pers. comm. 2008) stated that Florida bonneted bats can move into new buildings as well and ''the fact that they adapt well to manmade structures has most likely been a large factor in their decline'' (see *Factor E*). The use of buildings or other structures inhabited by or near humans places bats at risk of inadvertent or purposeful removal and displacement (see *Factor E*).

Climate Change and Sea Level Rise

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean (average) and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Climatic changes, including sea level rise, are major threats to south Florida, including the Florida bonneted bat and its habitat. In general, the IPCC reported that the warming of the world's climate system is unequivocal based on documented increases in global average air and ocean temperatures, unprecedented melting of snow and ice, and rising average sea level (IPCC 2007, p. 2; 2008, p. 15). On a global scale, sea level rise results from the thermal expansion of warming ocean water, water input to oceans from the melting of ice sheets, glaciers, and ice caps, and the addition of water from terrestrial systems (United Nations (UN) 2009, p. 26). Sea level rise is the largest climate-driven challenge to low-lying coastal areas and refuges in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program [CCSP]

2008, pp. 5–31, 5–32). Loss of land due to sea level rise in south Florida is expected to increase development pressure inland and to the north, which may accelerate urbanization and exacerbate fragmentation from development (CCSP 2008, p. 5–32).

In a technical paper following its 2007 report, the IPCC (2008, p. 28) emphasized it is very likely that the average rate of sea level rise during the 21st century will exceed that from 1961 to 2003, although it was projected to have substantial geographical variability. Partial loss of the Greenland and Antarctic ice sheets could result in many feet (several meters) of sea level rise, major changes in coastlines, and inundation of low-lying areas (IPCC 2008, pp. 28–29). Low-lying islands and river deltas will incur the largest impacts (IPCC 2008, pp. 28–29). According to CCSP (2008, p. 5–31), much of low-lying, coastal south Florida ''will be underwater or inundated with saltwater in the coming century.'' This means that some occupied, suitable, and potential roosting and foraging habitat for the Florida bonneted bat in low-lying areas (e.g., Everglades and other coastal areas) will likely be either submerged or affected by increased flooding.

The IPCC (2008, pp. 87, 103) concluded that climate change is likely to increase the occurrence of saltwater intrusion as sea level rises. Since the 1930s, increased salinity of coastal waters contributed to the decline of cabbage palm forests on the west coast of Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 108, 110–111), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). Such changes will likely impact the species, since the Florida bonneted bat uses forested areas and coastal habitats.

Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from salt to brackish to freshwater species. Human developments will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; CCSP 2008, p. 7–6). Climate change, human population growth, forest management, and land use changes are also expected to increase water stress (water demand exceeding availability) within areas of the south, and south Florida is considered a hot spot for future water stress (Wear and Greis 2011, pp. 46–50). For the Florida bonneted bat, this means that some habitat in coastal areas will likely change as vegetation changes and additional human developments encroach. Any deleterious changes to important roosting sites or foraging areas could further diminish the likelihood of the species' survival and recovery.

Scientific evidence that has emerged since the publication of the IPCC Report (2007) indicates an acceleration in global climate change. Important aspects of climate change seem to have been underestimated previously, and the resulting impacts are being felt sooner. For example, early signs of change suggest that the 1 °C of global warming the world has experienced to date may have already triggered the first tipping point of the Earth's climate system—the disappearance of summer Arctic sea ice. This process could lead to rapid and abrupt climate change, rather than the gradual changes that were forecasted. Other processes to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity) (see *Factor E*).

In the southeast, drier conditions and increased variability in precipitation associated with climate change are expected to hamper successful regeneration of forests and cause shifts in vegetation types through time (Wear and Greis 2011, p. 58). In their study on the impact and implications of climate change on bats, Sherwin *et al.* (2012, p. 8) suggested that bats specialized in individual roost sites (i.e., cave and tree roosts) at distinct life-history stages are at great risk from changing vegetation and climatic conditions. Rebelo *et al.* (2010, pp. 561–576) found that tree-roosting bats in Europe may face a reduction in suitable roosts if the rate of climate change is too rapid to allow the development of equivalent areas of mature broadleaf forests in new 'climatically suitable areas' as their range extends northward. Decreases in forest regeneration may further limit available roosting sites for the Florida bonneted bat or increase competition for them.

Drier conditions and increased variability in precipitation are also expected to increase the severity of wildfire events. Climate changes are forecasted to extend fire seasons and the frequency of large fire events throughout the Coastal Plain (Wear and Greis 2011, p. 65). Increases in the scale, frequency, or severity of wildfires could also have severe ramifications on the Florida bonneted bat, considering its forest-dwelling nature and general vulnerability due to its small population size, restricted range, few colonies, low fecundity, and relative isolation (see *Factor E*).

The ranges of recent projections of global sea level rise (Pfeffer *et al.* 2008, p. 1340; Vermeer and Rahmstorf 2009, p. 21530; Grinsted *et al.* 2010, pp. 469–470; Jevrejeva *et al.* 2010, Global Climate Change Impacts in the United States 2009, pp. 25–26) all indicate substantially higher levels than the projection by the IPCC in 2007, suggesting that the impact of sea level rise on south Florida could be even greater than indicated above. These recent studies also show a much larger difference (approximately 0.9 to 1.2 meters (3 to 4 feet)) from the low to the high ends of the ranges, which indicates the magnitude of global mean sea level rise at the end of this century is still quite uncertain.

Alternative Future Landscape Models

Various model scenarios developed at the Massachusetts Institute of Technology have projected possible trajectories of future transformation of the south Florida landscape by 2060 based upon four main drivers: climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation (Vargas-Moreno and Flaxman 2010, pp. 1–6). The Service used various MIT scenarios in combination with available acoustical data to predict what may occur with Florida bonneted bat colonies in the future, assuming that all colonies are known, that acoustical data represented approximate location of a colony's roosting site in the future, and that projected impacts to a colony are solely tied to assumed roosting location. Potential impacts to foraging habitat could not be analyzed, since foraging distance is not known.

In the best-case scenario, which assumes low sea level rise, high financial resources, proactive planning, and only trending population growth, analyses suggest that three colonies may be lost. Based upon the above assumptions, colonies in North Fort Myers, the Ten Thousand Islands area, and the Miami area appear to be most susceptible to future losses, with losses attributed to increases in sea level and human population. In the worst-case scenario, which assumes high sea level rise, low financial resources, a 'business as usual' approach to planning, and a doubling of human population, six colonies may be lost—the colonies noted in the areas above and also some in Homestead and BCNP. Actual impacts may be greater or less than anticipated based upon high variability of factors involved (e.g., sea level rise, human population growth) and assumptions made.

Summary of Factor A

We have identified a number of threats to the habitat of the Florida bonneted bat which have operated in the past, are impacting the species now, and will continue to impact the species in the future. Habitat loss, fragmentation, and degradation, and associated pressures from increased human population are major threats; these threats are expected to continue, placing the species at greater risk. In natural or undeveloped areas, the Florida bonneted bat may be impacted when forests are converted to other uses or when old trees with cavities are removed. Routine land management activities (e.g., thinning, prescribed fire) may also cause impacts to roost sites. In urban areas, suitable roost sites may also be lost when buildings are demolished or when structures are modified to exclude bats. Uncertainty regarding the species' specific habitat needs and requirements (i.e., location of roost sites) arguably contributes to these threats, by increasing the likelihood of inadvertent impacts to and losses of habitat. The effects resulting from climatic change, including sea level rise, are expected to become severe in the future and result in additional habitat losses, including the loss of roost sites and foraging habitat. Although efforts are being made to conserve natural areas, the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future. Therefore, based on our analysis of the best available information, present and future loss and modification of the species' habitat is a threat to the Florida bonneted bat throughout all of its range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is a general lack of information about the species. Few individuals appear to have studied the species, and the majority of recent data comes from nonintrusive acoustical recordings. To our knowledge, those individuals who have studied or are actively studying the Florida bonneted bat are sensitive to its rarity and endemism (restricted range). Consequently, collection for scientific and educational purposes is extremely limited. We are not aware of any known commercial or recreational uses for the species. For these reasons, we find that overutilization for commercial, recreational, scientific, or educational purposes does not pose a threat to the species or is likely to become so in the future.

Factor C. Disease or Predation

The effects of disease or predation are not well known. Because the Florida bonneted bat is known from only a few locations and population size appears small, both disease and predation could pose threats to its survival.

Disease

White-nose syndrome (WNS) is an emerging infectious disease affecting insectivorous, cave-dwelling bats. It was first documented in 2006 in caves west of Albany, New York. Since its discovery, WNS has spread rapidly throughout the eastern and central United States and southeastern Canada, killing millions of bats. It is expected to continue spreading westward and southward. By May 2012, WNS had been confirmed in well over 200 caves and mines within 20 states and 4 Canadian provinces (J. Coleman, pers. comm. 2012). It has not yet been documented in Florida.

WNS is caused by the cold-loving fungus *Geomyces destructans,* a newly described fungus, and is named after the white fungal growth that often occurs on the muzzle of affected bats (Gargas *et al.* 2009, pp. 147–154; Lorch *et al.* 2011, pp. 376–379). In North America, *G. destructans* appears to infect bats only during winter hibernation. Mortality rates have been observed to vary by species and site, but have been as high as 100 percent at some hibernacula (winter bat roosts).

WNS has been recorded in seven North American bat species, all of which are known to hibernate in caves and mines. WNS and *G. destructans* have not been detected in bats that typically live outside of caves, such as eastern red-bats (*Lasiurus borealis*), and the fungus is believed to need the cave environment to survive. Because the Florida bonneted bat spends its entire life cycle outside of caves and mines, and in subtropical environments where no torpor or hibernation is required, we do not anticipate that it will be adversely affected by WNS.

Prior to the discovery of WNS, infectious diseases had rarely been documented as a large-scale cause of mortality in bat populations and had not been considered a major issue (Messenger *et al.* 2003 as cited in Jones *et al.* 2009, p. 108). Jones *et al.* (2009, pp. 108–109) contended that, because increased environmental stress can suppress the immune systems of bats and other animals, increased prevalence of diseases may be a consequence of altered environments (i.e., bats may be more susceptible to disease if they are stressed by other threats). These authors contended that bats are excellent potential bioindicators because they are reservoirs of a wide range of emerging infectious diseases whose epidemiology may reflect environmental stress. Jones *et al.* 2009 (p. 109) suggested that an increased incidence of disease in bats may be an important bioindicator of habitat degradation in general. Sherwin *et al.* (2012, p. 14) suggest that warming temperatures associated with climate change may increase the spread of disease (along with other impacts, see *Factor E*), which could cause significant mortalities to bat populations in general.

At this time, it is difficult to assess whether disease is currently or likely to become a threat to the Florida bonneted bat. With anticipated climatic changes and increased environmental stress, it is possible that disease will have a greater impact on the Florida bonneted bat in the future.

Predation

In general, animals such as owls, hawks, raccoons, skunks, and snakes prey upon bats (Harvey *et al.* 1999, p. 13). However, few animals consume bats as a regular part of their diet (Harvey *et al.* 1999, p. 13). There is only one record of natural predation on this species (Timm and Genoways 2004, p. 860). A skull of one specimen was found in a regurgitated owl pellet at the FSPSP in June 2000 (Timm and Genoways 2004, pp. 860–861; C. Marks, pers. comm. 2006a; Marks and Marks 2008a, p. 6; M. Owen, pers. comm. 2012a, 2012b). Our review of the best available information does not suggest that predation is impacting the species at this time.

Summary of Factor C

Disease and predation have the potential to impact the Florida bonneted bat's continued survival, given its few colonies, low abundance, and restricted range. However, our review of the best available information does not indicate that disease (including WNS) and predation are threats to the Florida bonneted bat at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Despite the fact that regulatory mechanisms provide several protections for the Florida bonneted bat, Federal, State, and local laws have not been sufficient to prevent past and ongoing impacts to the species and its habitat within its current and historical range.

The taxon was originally listed as endangered in the State of Florida as the Florida mastiff bat (*Eumops glaucinus floridanus*) (Florida Administrative Code, Chapter 68). As such, it is

afforded protective provisions specified in Chapter 68A–27 rules (68A–27.0011 and 68A–27.003). This designation prohibits any person from pursuing, molesting, harming, harassing, capturing, possessing, or selling this species, or parts thereof, except as authorized by specific permit, with permits being issued only when the permitted activity will clearly enhance the survival potential of the species. The protection currently afforded the Florida bonneted bat by the State of Florida primarily prohibits direct take of individuals (J. Gore, pers. comm. 2009). However, there is no substantive protection of habitat or protection of potentially suitable habitat at this time.

As a consequence of the revision of the FWC's listing classification system, the Florida bonneted bat's status (and the status of other imperiled species) in Florida was changed to ''threatened'' on November 8, 2010. However, the species' original protective measures remained in place (68A–27.003, amended). As part of the FWC's revision of its classification system, biological status review reports were prepared for numerous imperiled species in Florida, including the Florida bonneted bat. Based upon a literature review and the biological review group's findings, FWC staff recommended that the Florida bonneted bat remain listed as a threatened species (FWC 2011a, p. 5). The biological status review recognized the taxon as the Florida bonneted bat, and the State's current threatened and endangered list uses both names, Florida bonneted (mastiff) bat, *Eumops (=glaucinus) floridanus.*

As part of the FWC's revision to Florida's imperiled species rule, management plans will be developed for all species (68A–27), including the Florida bonneted bat. One component of these management plans is to include needed regulations and protections that are not provided in the current rule (M. Tucker, *in litt.* 2012). A first draft for the Florida bonneted bat management plan is in development (M. Tucker, *in litt.* 2012; J. Myers, pers. comm. 2012). When completed, the management plan should allow for tailored protections for the species, which may improve the ability of FWC to address habitat issues in addition to take of individuals (M. Tucker, *in litt.* 2012).

Humans often considered bats to be ''nuisance'' species when they occur in or around human dwellings or infrastructure (see *Factor E*). The rules for taking of nuisance wildlife are provided under Florida Administrative Code Chapter 68A–9.010. Under these rules, property owners can take nuisance wildlife or may authorize another person to take nuisance wildlife on their behalf. Although these rules do not authorize the taking of species listed under Chapter 68A–27 (without an incidental take permit from the State), these rules do allow other bat species to be taken under certain circumstances. These include when: (1) the take is incidental to the use of an exclusion device, a device which allows escape from and blocks reentry into a roost site located within a structure, or incidental to the use of a registered chemical repellant, at any time from August 15 to April 15; or (2) the take is incidental to permanent repairs that prohibit the egress of bats from a roost site located within a structure, provided an exclusion device is used as above for a minimum of 4 consecutive days or nights for which the low temperature is forecasted to remain above 10 °C (50 °F) prior to repairs and during the time period specified. Chapter 68A–9.010 provides the methods that may not be used to take nuisance wildlife, including any method prohibited pursuant to Section 828.12 of the Florida Statutes (Florida Cruelty to Animals Statutes).

Use of bat exclusion devices or any other intentional device or materials at a roost site that may prevent or inhibit the free ingress or egress of bats is prohibited from April 16 through August 14. While these restrictions help to limit potential impacts during the maternity season for many bat species in Florida, regulations do not require definitive identification of the bat species to be excluded prior to the use of the device. In addition, it is not clear if this time period is broad enough to prevent potential impacts to the Florida bonneted bat, which is possibly polyestrous and more tropical in nature, with a potentially prolonged sensitive time window where females and young are especially vulnerable. Pregnant Florida bonneted bats have been found in June through September (Marks and Marks 2008a, p. 9), and a second birthing season can occur possibly in January–February (Timm and Genoways 2004, p. 859; FBC 2005, p. 1). During the early portion of the maternal period, females may give birth to young and leave them in the roost while making multiple foraging excursions to support lactation (Marks and Marks 2008a, pp. 8–9). Therefore, despite regulations restricting the use of exclusion devices, it is still possible that use of such devices can affect the species during sensitive time periods, including possible impacts to pregnant females, newborns, or juvenile pups.

The FWC, FBC, Bat Conservation International, and other groups maintain a list of qualified exclusion devices, but it is not clear how often work is performed by recommended personnel or if it is in accordance with State regulations. It is also not clear if those who install exclusion devices can readily distinguish between Florida bonneted bats and other bat species in Florida (M. Tucker, pers. comm. 2012). Despite regulations, in some cases, nuisance bats are likely being removed by nuisance wildlife trappers through methods that are not approved (e.g., removed from roosts with vacuum cleaner-like apparatuses) or excluded during time periods that are not permitted (e.g., inside the maternity season) (A. Kropp, FWC, pers. comm. 2009).

In addition, there is conflict between legislation passed by the Florida Department of Agriculture and Consumer Services (FDACS), which classifies bats as rodents, and the current FWC nuisance wildlife regulations above (Florida Bat Working Group [FBWG] 2009, p. 3). According to FDACS Chapter 482, bats may be considered pests, and pest control including methods to prevent, destroy, control, or eradicate pests in, on, or under a structure, lawn, or ornamental are allowable under certain rules and provisions. Bat advocacy groups are concerned over the lack of awareness of the regulations among people paid to perform exclusions (FBWG 2009, p. 3). Education is needed about the dates during which exclusion is prohibited for nuisance wildlife trappers, pest control companies, law enforcement, county health departments, and local animal control (FBWG 2010, p. 3). FDACS is currently developing a limited license for those individuals or companies that conduct wildlife removal services in or near structures (M. Tucker, *in litt.* 2012). To obtain this license, operators will be required to complete an educational program and pass a test based on a training manual in development by staff with the University of Florida-Institute of Food and Agricultural Sciences (M. Tucker, *in litt.* 2012). The manual will include information on proper exclusion techniques and existing regulations protecting bats during the maternity season (M. Tucker, *in litt.* 2012).

Additional educational efforts are underway. To better address violations of the maternity season and exclusion rule, FWC is training Law Enforcement officers (M. Tucker, *in litt.* 2012). Training on the importance of bats and the rules relating to exclusions has been provided to some officers in the northern part of the State, and an online training module is being developed as

part of the FWC law enforcement educational curriculum that all officers must complete (M. Tucker, *in litt.* 2012). The Service and other agencies and partners are also planning to increase awareness among land managers, environmental professionals, pest control operators, and others who may be in a position to have an impact on bat habitat or bat roosts. It is not clear to what extent training programs will be supported in the future or how effective efforts to raise awareness will be in reducing violations.

The Florida bonneted bat's presence on Federal, State, and county lands provides some protection, but does not insulate it from many threats (e.g., see *Factor A* and *Factor E*). The NPS manages the natural resources on their lands in accordance with NPS-specific statutes, including the NPS Organic Act, as well as other general environmental laws and applicable regulations. Similarly, all property and resources owned by FDEP are generally protected from harm in Chapter 62D–2.013(2), and animals are specifically protected from unauthorized collection in Chapter 62D–2.013(5) of the Florida Statutes. Despite these protections, risks to the Florida bonneted bat on conservation lands remain. For example, routine land management practices can cause the loss of roost sites, especially since locations of natural roosts are unknown (see *Factor A*). Use of pesticides may increase the likelihood of direct exposure or may impact the prey base (see *Factor E*).

Collecting permits can be issued ''for scientific or educational purposes.'' Permits are required from the FWC for scientific research on the Florida bonneted bat. For work on Federal lands (e.g., ENP, BCNP), permits are required from the NPS or the Service, if work is on National Wildlife Refuges. For work on State lands, permits are required from FDEP. Permits are also required for work on county-owned lands.

Summary of Factor D

Despite existing regulatory mechanisms, the Florida bonneted bat remains at risk due to the effects of a wide array of threats (see *Factors A* and *E*). Based on our analysis of the best available information, we find that existing regulatory measures, due to a variety of constraints, do not provide adequate protection, and, in some instances, may be harmful (i.e., taking of bats as ''nuisance'' wildlife). Educational efforts and training should help to raise awareness and address some violations of existing regulations. When finalized, the FWC's Florida bonneted bat management plan may contain additional measures that can help protect habitat. However, we do not have information to indicate that the aforementioned regulations and programs, which currently do not offer adequate protection to the Florida bonneted bat, will be revised and sufficiently supported, so that they would be adequate to provide protection for the species in the future. Therefore, we find that the existing regulatory mechanisms are inadequate to address threats to the species throughout all of its range.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

In general, bat populations are in decline due to their sensitivity to environmental stresses and other factors, such as slow reproductive rates (Jones *et al.* 2009, pp. 93–115). The Florida bonneted bat is likely affected by a wide array of natural and anthropogenic threats, operating singly or synergistically, and in varying immediacy, severity, and scope.

Inadvertent and Purposeful Impacts From Humans

In general, bats using old or abandoned and new dwellings are at significant risk. Bats are often removed when they are no longer tolerated by humans or inadvertently killed or displaced when structures are demolished. Adverse human impacts on bats involve direct killing, persecution, vandalism, and disturbance of hibernating and maternity colonies (Harvey *et al.* 1999, p. 13). Unpublished data from a survey of 100 pest control companies on the southeastern coast of Florida showed that requests to remove ''nuisance'' bats from this area all but ceased in the 1960s (Belwood 1992, p. 217), indicating a sharp decline in bats. Homeowners and professionals use a variety of methods to remove bats, including lethal means (C. Marks and G. Marks, pers. comm. 2008). Even when attempts are made to remove bats humanely, bats may be sealed into buildings (C. Marks and G. Marks, pers. comm. 2008). Despite regulations (see *Factor D* above), in some situations, bats are still likely removed through inhumane and prohibited methods (e.g., removed from roosts with vacuum cleaner-like apparatuses) and excluded from artificial roost sites during sensitive time periods (e.g., inside the maternity season before young are volant (capable of flying)) (A. Kropp, pers. comm. 2009). Such activities can result in direct mortality or injury of adults, juveniles, dependent newborn pups, or fetuses, if pregnant females are affected. In some cases, excluded individuals may not be able to readily locate other suitable roosts (due to competition with other species, lack of availability, or other factors).

In his dissertation on the ecological distribution of bats in Florida, Jennings (1958, p. 102) stated that Florida bonneted bats are encountered more often by humans than other bat species known to frequent the Miami area. He attributed this to the species' habits, which make it more conducive to discovery by humans. Jennings (1958, p. 102) noted, ''Some individuals were taken in shrubbery by gardners [sic], some flew into houses at dusk and other isolated individuals were taken under conditions indicating injury of some kind.'' The Florida bonneted bat's ability to adapt well to manmade structures contributes to its vulnerability and has likely been a factor in its decline (C. Marks and G. Marks, pers. comm. 2008). Since roosting sites are largely unknown, the potential to remove and exclude Florida bonneted bats from human dwellings and artificial structures, either inadvertently or accidentally, is high. Despite regulatory protections provided under Florida law (see *Factor D* above), direct and indirect threats from humans continue, especially in urban, suburban, and residential areas.

Similarly, Robson (1989, p. 15) stated that urban development has resulted in the persecution of bats wherever they come in contact with humans. ''Seemingly innocuous activities like removing dead pine or royal palm trees, pruning landscape trees (especially cabbage palms), sealing barrel-tile roof shingles with mortar, destroying abandoned buildings, and clearing small lots of native vegetation cumulatively may have a severe impact on remaining populations in urban areas'' (Robson 1989, p. 15). Harvey *et al.* (1999, p. 13) indicated that disturbance to summer maternity colonies of bats is extremely detrimental. In general, maternity colonies of bats do not tolerate disturbance, especially when flightless newborns are present (Harvey *et al.* 1999, p. 13). Newborns or immature bats may be dropped or abandoned by adults if disturbed (Harvey *et al.* 1999, p. 13). Disturbance to maternity colonies of the Florida bonneted bat may be particularly damaging because of this species' low fecundity and low abundance. In short, wherever this species occurs in or near human dwellings or structures, it is at risk of inadvertent or purposeful removal, displacement, and disturbance.

Routine maintenance and repair of bridges and overpasses is a potential

threat. The Florida bonneted bat has not been documented to use these structures. However, a large colony of Brazilian free-tailed bats uses the I–75 overpass at the entrance of Babcock-Webb WMA and a single Florida bonneted bat call was recorded within 1.6 km (1.0 mile) of this overpass; given the species' flight capabilities and roosting behavior, the Florida bonneted bat could be using this overpass (S. Trokey, pers. comm. 2008c; C. Marks and G. Marks, pers. comm. 2008). When bridges and overpasses are cleaned (typically by the Florida Department of Transportation), bats are subjected to high water pressure from hoses, which likely results in death or injury (C. Marks, pers. comm. 2007). Bats using the I–75 overpass at the entrance of Babcock-Webb WMA are at risk (C. Marks, pers. comm. 2007). During the fall of 2009, the FWC constructed a community bat house near the overpass to provide an alternate roost site; while it is not known if Florida bonneted bats will use community bat houses, space was included to accommodate larger-bodied bats in that structure (J. Morse, pers. comm. 2010). To date, the species has not been found in the large community bat house at this site.

Proposed Wind Energy Facilities

Wind power is one of the fastest growing sectors of the energy industry (Horn *et al.* 2008, p. 123; Cryan and Barclay 2009, p. 1330), and the development of wind energy facilities in Florida may be of particular concern for the Florida bonneted bat.

Migratory, tree-dwelling, and insectivorous bat species are being killed at wind turbines in large numbers across North America (Kunz *et al.* 2007, pp. 317–320; Cryan and Barclay 2009, pp. 1330–1340). Although it is not clear why such species are particularly susceptible (Boyles *et al.* 2011, p. 41), Kunz *et al.* (2007, pp. 315–324) proposed 11 hypotheses for the large numbers of fatalities at wind energy facilities. Some of these include: attraction to tall structures as potential roost sites, attraction to enhanced foraging opportunities (e.g., insects attracted to heat of turbines), echolocation failure, electromagnetic field disorientation, and decompression (rapid pressure changes causing internal injuries or disorientation of bats while foraging). Similarly, Cryan and Barclay (2009, pp. 1330–1340) categorized the causes of fatalities into two categories: proximate, which explain the direct means by which bats die, and ultimate, which explain why bats come close to turbines.

Based upon data modified from Johnson (2005 as cited in Arnett *et al.* 2008, p. 64), researchers found that the Brazilian free-tailed bat comprised 85.6 percent of bat mortalities noted at a wind energy facility in Woodward, Oklahoma, and 41.3 percent of bat mortalities at a High Wind, California, wind energy facility. Since the Florida bonneted bat is also a free-tailed bat, it may demonstrate some similar behaviors that place it at risk when encountering wind energy facilities.

Bat mortalities at wind energy facilities may be seasonal in nature (Johnson 2005, as cited in Kunz *et al.* 2007, p. 317). Most documented mortalities in North America occurred between late summer and early fall (Johnson 2005, as cited in Arnett *et al.* 2008, p. 66); Kunz *et al.* 2007, p. 317; Arnett *et al.* 2008, pp. 65–66). Taller turbines with greater rotor-swept areas may be responsible for more bat mortalities than shorter turbines with smaller rotor-swept areas (Arnett *et al.* 2008, p. 68). Bat mortalities are absent where turbines are not spinning, indicating that bats do not strike stationary blades or towers (Kerns *et al.* 2005, p. 91). Fatalities at wind energy facilities tend to occur when wind speeds are <6 meters/second (19.7 feet/second) (Kerns *et al.* 2005, p. 76). Bat mortalities were also negatively correlated with rain (Kerns *et al.* 2005 p. 76). It should be noted, however, that mortality monitoring at wind energy facilities is not standardized, and there is a paucity of data for analysis. Most studies include less than a full field season and may miss significant bat mortality events. Differences between sites including scavenging rates, carcass detection, and observer bias may all contribute to variations in bat mortality records (Arnett *et al.* 2008, pp. 71–72).

The cause of bat mortality at wind energy facilities is not a simple one of direct contact with blades or towers. Baerwald *et al.* (2008, pp. 695–696) found that barotrauma is the cause of death in a high proportion of bats found at wind energy facilities. Barotrauma involves tissue damage to air-containing structures (such as lungs) caused by rapid or excessive pressure change; wind turbine blades may create zones of low pressure as air flows over them. In their examination, Baerwald *et al.* (2008, pp. 695–696) found 90 percent of the bat fatalities involved internal hemorrhaging consistent with barotrauma, while direct contact with turbine blades only accounted for about half of the fatalities. Baerwald *et al.* (2008, pp. 695–696) suggested that the differences in respiratory anatomy between bats and birds may explain the higher incidence of bat fatalities from wind energy facilities (see also Barclay *et al.* 2007, pp. 381–387). In short, the large pliable lungs of bats expand when exposed to sudden drop in pressure, causing tissue damage, whereas birds' compact, rigid lungs do not respond in the same manner (Baerwald *et al.* 2008, pp. 695–696).

Wind turbine facilities are being planned for sites east and west of Lake Okeechobee, and these may have an impact on the Florida bonneted bat (M. Tucker, *in litt.* 2012). One proposed facility in Glades County is roughly 14.5 km (9 miles) south of locations where the species was recorded on the Kissimmee River in 2008 (M. Tucker, *in litt.* 2012). In 2011, ''possible'' Florida bonneted bat calls were also recorded on the proposed project site (C. Coberly, pers. comm. 2012). Potential impacts from this proposed facility cannot be accurately assessed at this time because it is not clear that the species uses the site (i.e., occurs on site or moves to it during activities such as foraging). The other proposed facility in Palm Beach County has not recorded Florida bonneted bat calls on site (C. Newman, pers. comm. 2012), and this county is not part of the species' known historical or current range. Both wind energy development companies have indicated that areas around Lake Okeechobee are the most suitable sites in Florida for wind development, and if successfully developed, additional sites could be proposed, increasing the risk of impacts from wind energy to the Florida bonneted bat (M. Tucker, *in litt.* 2012).

While bat fatalities from wind energy facilities are well documented, potential impacts to the Florida bonneted bat are difficult to evaluate at this time, partly due to the uncertainty involving many factors (e.g., location of facilities, operations, foraging distance). Certain aspects of the species' status and life history may increase vulnerability to this threat. The species' small population and low fecundity make any additional potential sources of mortality cause for concern. The species' high and strong flight capabilities and fast-hawking foraging behavior may increase risk. Conversely, since the species is nonmigratory, potential impacts from wind energy facilities may not be as great in magnitude as perhaps other bat species that are migratory. Implementation of the Service's new land-based wind energy guidelines may also help to avoid and minimize some impacts (Service 2012, pp. 1–71).

Pesticides and Contaminants

The life history of the Florida bonneted bat may make it susceptible to

both direct and indirect impacts from mosquito control and other pesticide application activities. Mosquito control spraying activities commonly begin at dusk when mosquitoes are most active (*http://www.miamidade.gov/pubworks/spraying_insecticides.asp*). Because the Florida bonneted bat forages at dusk and after dark, the possibility exists for individuals to be directly exposed to airborne mosquito control chemicals or to consume invertebrates containing pesticide residues from recent applications. Additionally, because the Florida bonneted bat has been documented to roost in residential areas (Belwood 1992, pp. 219–220), it is possible for individuals to be exposed, either directly or through diet, to a variety of undocumented, localized pesticide applications conducted by homeowners.

Organochlorine (OC) pesticides have been linked to lethal effects in bats (Clark *et al.* 1978, p. 1358; Clark *et al.* 1983, pp. 215–216; O'Shea and Clark 2002, p. 239). Such pesticides have not been registered for use in the United States for several decades, but due to the extreme ability of OCs to persist in the environment, residues are still detectable in soil and sediment in some locations in south Florida. The possibility exists that the Florida bonneted bat may consume invertebrates with elevated OC concentrations in areas with substantial OC environmental concentrations, though this scenario would be limited to specific sites and would not be expected to be a widespread threat. No studies have been conducted that attempt to assess the historical impact of OC pesticides on the Florida bonneted bat.

Currently, OC pesticides have largely been replaced with organophosphate (OP), carbamate, and pyrethroid pesticides. Carbamate and OP pesticides act as cholinesterase inhibitors and are generally more toxic to mammals than OC pesticides. However, they are not as persistent in the environment and do not tend to bioaccumulate in organisms. Despite this lack of persistence, Sparks (2006, pp. 3–4, 6–7) still found OP residues in both bats and guano in Indiana and suspected that the residues originated from consuming contaminated insects. Pyrethroids, one of which is permethrin, are commonly used mosquito control pesticides in south Florida and interfere with sodium channel function and display greater persistence than OP and carbamate pesticides, but still degrade much more rapidly than OC pesticides and are believed to exhibit low toxicity to mammals.

Grue *et al.* (1997, pp. 369–388) reviewed the sublethal effects of OPs and carbamates on captive small mammals and birds and found impaired thermoregulation, reduced food consumption, and reproductive alterations. Clark (1986, p. 193) observed a depression in cholinesterase activity in little brown bats following both oral and dermal application of the OP pesticide methyl parathion. Bats with reduced cholinesterase activity may suffer loss of coordination, impaired echolocation, and elongated response time. Alteration of thermoregulation could have serious ramifications to bats, given their high metabolic and energy demands (Sparks 2006, pp. 1–2). Reduced reproductive success would be of concern because the Florida bonneted bat already displays a low reproductive rate (Sparks 2006, p. 2). In order to accurately evaluate the impact of such pesticides on the Florida bonneted bat, additional work characterizing both pesticide exposure and effects in bats is needed.

In addition to pesticide exposure, mercury represents another potential threat to the Florida bonneted bat that has not been investigated. According to the National Atmospheric Deposition Program, the mercury deposition rate in south Florida is among the highest in the United States (*http://nadp.isws.illinois.edu*). The movement of mercury through the aquatic system and into the terrestrial food web through emergent invertebrates has been documented in other areas (Konkler and Hammerschmidt 2012, p. 1659; Cristol *et al.* 2008, p. 335). Assuming that a similar mechanism is occurring in south Florida coupled with high mercury deposition rates, the consumption of such invertebrates may constitute a pathway for the Florida bonneted bat to be exposed to mercury. Nam *et al.* (2012, pp. 1096–1098) documented mercury concentrations in brain, liver, and fur in little brown bats near a mercury-contaminated site in Virginia that were significantly greater than mercury concentrations in the same tissues of little brown bats at a reference site, indicating the potential for bats to be exposed to and accumulate mercury near mercury-impacted systems. It is likely that the Florida bonneted bat experiences some degree of mercury exposure when foraging to a large extent above mercury-impacted water bodies. While no known studies have attempted to evaluate the impact of mercury on bat populations in south Florida, the neurotoxic effects of mercury on mammals in general have been well characterized in the scientific literature.

A reduction in the number of flying insects is a potential secondary effect to consider when evaluating the impact of pesticides, and mosquito control chemicals in particular, on the Florida bonneted bat. In his status survey for the Florida bonneted bat, Robson (1989, p. 15) suggested that mosquito control programs are contributing to reduced food supplies for bats. Robson (1989, p. 14) attributed the general reduced activity of bats along the southeastern coastal ridge to the reduction of forested habitat and reduced insect abundance. Although insect activity was not measured, Robson (1989, p. 14) noted that the ''lack of insects on the southeastern coastal ridge was striking when contrasted to all other areas.'' While it is reasonable to suggest that reduced food supply or increased exposure to pesticides may have led to the decline of the population in the Miami area, this link is only speculative because no rigorous scientific studies or direct evidence exists. Timm and Genoways (2004, p. 861) indicated that the extant, although small, population of the bat in the Fakahatchee-Big Cypress area of southwest Florida is located in one of the few areas of south Florida that has not been sprayed with pesticides. Marks and Marks (2008a, p. 15) contended that if the species' rarity and vulnerability are due to a dependence on a limited food source or habitat, then the protection of that food source or habitat is critical.

In summary, the effects of pesticides and contaminants on bat populations in general have not been studied thoroughly. In the case of the Florida bonneted bat, data concerning the effects of pesticides and other contaminants is virtually nonexistent. Despite this lack of data, the possibility certainly exists for the Florida bonneted bat to be exposed to a variety of compounds through multiple routes of exposure. Additionally, areas with intensive pesticide activity may not support an adequate food base for the species. Pesticides and contaminants might be impacting the Florida bonneted bat, but further studies are required to fully assess whether they are impacting the species at the population level and are, therefore, posing a threat.

Effects of Small Population Size, Isolation, and Other Factors

The Florida bonneted bat is vulnerable to extinction due to its small population size, restricted range, few colonies, low fecundity, and relative isolation. The Florida bonneted bat only occurs in south Florida and only in limited numbers (Timm and Genoways 2004, pp. 861–862; Marks and Marks

2008a, pp. 11, 15; 2008b, p. 4; 2012, pp. 12–15). Based on the small number of locations where calls were recorded, the low numbers of calls recorded at each location, and the fact that the species forms small colonies, Marks and Marks (2008a, p. 15) stated that it is possible that the entire population of Florida bonneted bats may number less than a few hundred individuals. Due to its small population size and restricted range, the species is considered to be one of the most critically endangered mammals in North America (Timm and Genoways 2004, p. 861). In general, species with restricted ranges are often characterized by small population sizes and high habitat specialization and are, therefore, more vulnerable to stochastic, demographic, and environmental processes (Lande *et al.* 2003 as cited in Lee and Jetz 2010, p. 5).

In a vulnerability assessment, the FWC's biological status review team determined that the species met criteria or listing measures for geographic range, population size and trend, and population size and restricted area (Gore *et al.* 2010, pp. 1–2). For geographic range, the review team estimated that the species occurs in a combined area of roughly 17,632 km^2 (6,808 mi^2), well below the criterion of < 20,000 km^2 (7,722 mi^2). The review team also estimated potentially three subpopulations in a fragmented range, all of which occur in coastal locations susceptible to hurricanes and other losses in habitat (see *Climate Change and Sea Level Rise* and *Land Use Changes and Human Population Growth* above). The review team also inferred continuing decline in both extent of occurrence and area, extent, or quality of habitat. For population size and trend, the review team estimated <100 individuals known in roosts, with an assumed total of mature individuals, well below the criterion of 10,000. Similarly, for population size and restricted area, the review team estimated a total population of mature individuals at <1,000, with <100 individuals in known roosts, and all three subpopulations were located in at-risk coastal zones.

Slow reproduction and low fecundity are also serious concerns because this species produces only one young at a time and roosts singly or in small groups (FBC 2005, p. 1; Timm and Arroyo-Cabrales 2008, p. 1). Assuming a lifespan of 10 to 20 years for bats of this size (Wilkinson and South 2002, pp. 124–131), the average generation time is estimated to be 5 to 10 years (Gore *et al.* 2010, p. 7). The small numbers within localized areas may also make the Florida bonneted bat vulnerable to extinction due to genetic drift (loss of unique genes through time), inbreeding depression (reduced fitness or survival due to low genetic diversity), extreme weather events (e.g., hurricanes), and random or chance changes to the environment (Lande 1988, pp. 1455–1459; Smith 1990, pp. 310–321) that can significantly impact its habitat (see *Environmental Stochasticity* below). Information on the extent of genetic diversity in historical or current populations is lacking.

In general, isolation, whether caused by geographic distance, ecological factors, or reproductive strategy, will likely prevent the influx of new genetic material and can result in low diversity, which may impact viability and fecundity (Chesser 1983, pp. 66–77). Distance between subpopulations or colonies, the small sizes of colonies, and the general low number of bats may make recolonization unlikely if any site is extirpated. Isolation of habitat can prevent recolonization from other sites and potentially result in extinction. The probability of extinction increases with decreasing habitat availability (Pimm *et al.* 1988, pp. 758–762, 776; Noss and Cooperrider 1994, pp. 162–165; Thomas 1994, pp. 373–378; Kale 1996, pp. 7–11). Although changes in the environment may cause populations to fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (i.e., the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval) (Shaffer 1981, pp. 131–134; Shaffer and Samson 1985, pp. 146–151; Gilpin and Soulé 1986, pp. 19–34). If populations become fragmented, genetic diversity will be lost as smaller populations become more isolated (Rossiter *et al.* 2000, pp. 1131–1135). Fragmentation and aspects of the species' natural history (e.g., reliance on availability of suitable roost sites, constant supply of insects) can contribute to and exacerbate other threats facing the species.

Overall, the Florida bonneted bat is vulnerable to a wide array of factors, including small population size, restricted range, few occurrences, low fecundity, and relative isolation. These threats are significant and expected to continue or possibly increase.

Environmental Stochasticity

Natural events such as severe hurricanes may cause the loss of old trees with roosting cavities (Timm and Genoways 2004, p. 861). In August 1992, Hurricane Andrew, a category 5 hurricane, struck southern Miami-Dade County with sustained surface windspeeds of more than 145 mph and gusts exceeding 175 mph (Timm and Genoways 2004, p. 861). The winds destroyed the majority of older trees within several kilometers of the coast that were potentially available as roost trees (Timm and Genoways 2004, p. 861). Timm and Genoways (2004, p. 861) indicated that habitat loss from development (see *Factor A*), increased use of pesticides, and Hurricane Andrew may have had a significant impact on an already small population of the Florida bonneted bat.

Several less intense hurricanes have impacted both coasts of Florida during the past decade. Acoustical surveys conducted in south Florida prior to the hurricane season of 2004 (from 1997 through 2003) were compared with results after the hurricanes (Marks and Marks 2008a, pp. 12, D1–D6, E1–E26). The limited number of locations and low number of recorded calls suggested that the species was rare before the 2004 storm season and that the population remained low afterward (Marks and Marks 2008a, pp. 12–15). Prior to the 2004 hurricane season, calls were recorded at 4 of 10 locations; after the hurricane season, calls were recorded at 9 of 44 locations (Marks and Marks 2008a, pp. 12–15). Actions taken by a private landowner to reinforce bat houses prior to Hurricane Charlie in 2004 and Hurricane Wilma in 2005 likely prevented the only known extant roost site (at that time) from being destroyed; these storms caused significant damage to both trees and other property on the site (S. Trokey, pers. comm. 2008c).

Major impacts of intense storms may include mortality during the storm, exposure to predation immediately following the storm, loss of roost sites, and impacts on foraging areas and insect abundance (Marks and Marks 2008a, pp. 7–9). In general, bats could be blown into stationary objects or impacted by flying debris, resulting in injury or mortality (Marks and Marks 2008a, p. 7). Trees with cavities can be snapped at their weakest point, which for the Florida bonneted bat may have the most severe impact since the species uses cavities (Marks and Marks 2008a, p. 8), competition for available cavities in south Florida is intense (Belwood 1992, p. 220), and suitable roosting sites in general are often limiting factors (Humphrey 1975, pp. 341–343). Displaced bats may be found on the ground or other unsuitable locations and exposed to natural predators, domestic pets, and humans (Marks and Marks 2008a, p. 8). As pregnant females have been found in June through September, hurricanes in Florida can

occur at critical life-history stages—when females are pregnant or rearing young—possibly resulting in losses of pregnant females, newborns, or juvenile pups (Marks and Marks 2008a, pp. 7–9). Because the entire population may be less than a few hundred individuals (Marks and Marks 2008a, p. 15; 2012, pp. 12–15), the Florida bonneted bat may not be able to withstand losses from intense storms or storms at a critical life-history stage. Alternatively, less intense hurricanes or mild, isolated storms may create roosting opportunities, if tree snags (dead trees) are left in place.

According to the Florida Climate Center, Florida is by far the most vulnerable State in the United States to hurricanes and tropical storms (*http://coaps.fsu.edu/climate_center/tropicalweather.shtml*). Based on data gathered from 1856 to 2008, Klotzbach and Gray (2009, p. 28) calculated the climatological and current-year probabilities for each State being impacted by a hurricane and major hurricane. Of the coastal States analyzed, Florida had the highest climatological probabilities for hurricanes and major hurricanes, with a 51 percent probability of a hurricane and a 21 percent probability of a major hurricane over a 152-year timespan. Of the States analyzed, Florida also had the highest current-year probabilities, with a 45 percent probability of a hurricane and an 18 percent probability of a major hurricane (Klotzbach and Gray 2009, p. 28). Based upon data from the period 1886–1998, Neumann *et al.* (1999, pp. 29–30) also found that the number of tropical cyclones within south Florida is high; analyses suggested that areas within the species' range (e.g., Fort Myers, Miami) are expected to experience more than 50 occurrences (tropical cyclones) per 100 years. In addition, the analyses suggested that the incidence of hurricanes in south Florida was roughly 30 per 100 years, higher than any other area except for North Carolina (Neumann *et al.* 1999, pp. 29–30). The number of major hurricanes (roughly 14 per 100 years) was higher than any other area examined (Neumann *et al.* 1999, p. 30).

If hurricanes and tropical storms increase in severity, frequency, or distribution, vulnerable, tropical tree-roosting bat species may be heavily impacted (Gannon and Willig 2009, pp. 281–301). Given the Florida bonneted bat's tree-roosting habits, small population size, few isolated colonies, and use of coastal areas, the species is at risk from hurricanes, storms, or other extreme weather. Depending on the location and intensity of a hurricane or other severe weather event, it is possible that multiple colonies could become extirpated, even from one storm event. Due to the bat's overall vulnerability, intense hurricanes are a significant threat, which is expected to continue or increase in the future.

Other processes to be affected by climate change include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to rise approximately 2 °C to 5 °C (3.6 °F to 9 °F) for North America by the end of this century (IPCC 2007, pp. 7–9, 13). Based upon modeling, Atlantic hurricane and tropical storm frequencies are expected to decrease (Knutson *et al.* 2008, pp. 1–21). By 2100, there should be a 10–30 percent decrease in hurricane frequency due to more wind shear impeding initial hurricane development. However, the intensity of hurricanes is expected to increase, with a 5–10 percent increase in wind. This is due to more hurricane energy available for intense hurricanes. In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4–7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact severity, direction, and distribution of all of these changes at the regional level are difficult to project.

This species is also vulnerable to prolonged extreme cold weather events. Air temperatures dropped to below freezing and reached a low of −2.0 °C (28 °F) in ENP on January 11, 2010; air temperatures at Royal Palm for the first 2 weeks of January marked the coldest period recorded over the previous 10 years (Hallac *et al.* 2010, p. 1). The effects of this severe and prolonged cold event on the Florida bonneted bats or other bats in Florida are not known, but some mortality was observed. At least 8 Florida bonneted bats were lost from the North Fort Myers colony during the event, before 12 remaining bats were brought into captivity, warmed, and fed (S. Trokey, pers. comm. 2010). Those rescued were emaciated and in poor condition. Initially, only 9 individuals appeared to survive after this event, although 10 individuals were still alive at this site in April 2010 (S. Trokey, pers. comm. 2010a, 2010b, 2010c). Approximately 30 Brazilian free-tailed bats were found dead below a bat house in Everglades City during this event (R. Arwood, pers. comm. 2010). Overall, approximately 100 Brazilian free-tailed bats using bat houses were found dead following this severe cold event (C. Marks, pers. comm. 2011). South Florida again experienced cold temperatures in December 2010. Temperatures in December 2010 were among the coldest on record within ENP (J. Sadle, NPS, pers. comm. 2011). In the short term, the severe and prolonged cold events in south Florida resulted in mortality of at least several adult Florida bonneted bats at one observed site. However, it is not known if the species persisted at all sites previously documented following the prolonged and repeated cold temperatures in 2010. Overall, the long-term effects of prolonged and repeated cold events on the species are not known.

Molossids, the family of bats which includes the Florida bonneted bat, appear to be an intermediate between tropical and temperate zone bat families (Arlettaz *et al.* 2000, pp. 1004–1014). Members of this family that inhabit the warmer temperate and subtropical zones incur much higher energetic costs for thermoregulation during cold weather events than those inhabiting northern regions (Arlettaz *et al.* 2000, pp. 1004–1014). At such temperatures, bats are likely unable to find food, and cannot re-warm themselves. Such a stochastic, but potentially severe, event poses a significant threat to the entire population. Impacts of the cold weather event are evident, but the effect on all colonies is not known. Additional extreme weather events are anticipated in the future, and such extremes can turn into ''disasters for small populations of mammals'' (R. Timm, pers. comm. 2012).

Aspects of the Species' Life History and Climate Change Implications

For bats in general, climate changes can affect food availability, timing of hibernation, frequency of torpor, rate of energy expenditure, reproduction, and development rate (Sherwin *et al.* 2012, pp. 1–18). Although increased temperatures may lead to benefits (e.g., increased food supply, faster development, range expansion), other negative outcomes may also occur (e.g., extreme weather, reduced water availability, spread of disease) (Sherwin *et al.* 2012, p. 14). Food abundance is a fundamental factor influencing bat activity (Wang *et al.* 2010, pp. 315–323). Insectivorous bats are dependent upon ectothermic (cold-blooded) prey, whose activity is affected by climate conditions (Burles *et al.* 2009, pp. 132–138). Aerial-hawking species such as the Florida bonneted bat are likely highly sensitive to climatic changes due to their dependence on a food supply that is highly variable in both time and space (Sherwin *et al.* 2012, p. 3). In assessing

implications of climate change, Sherwin *et al.* (2012, p. 4) identified two risk factors directly related to foraging: bats inhabiting water-stressed regions and aerial-hawking species, reliant on spatially variable food sources. Bats generally have higher rates of evaporative water loss than other similarly sized terrestrial mammals and birds (Herreid and Schmidt-Nielsen 1966, Studier 1970 as cited in Chruszcz and Barclay 2002, p. 24 and Webb *et al.* 1995, p. 270). Due to their high surface area to volume ratios and large, naked flight membranes (wings), the potential for loss of evaporative water is generally high (Webb *et al.* 1995, pp. 269–278). Travelling farther to access water and food entails more energy expenditure and may affect reproductive success (Sherwin *et al.* 2012, p. 4). Considering foraging risk alone, the Florida bonneted bat may be especially susceptible to climate changes since it is an insectivorous, aerial-hawking species restricted to south Florida, a region expected to become water-stressed in the future (see *Factor A* above).

Summary of Factor E

Based on our analysis of the best available information, we have identified a wide array of natural and manmade factors affecting the continued existence of the Florida bonneted bat. Inadvertent or purposeful impacts by humans caused by intolerance or lack of awareness (e.g., removal, landscaping activities, bridge maintenance) can lead to mortality or disturbances to maternity colonies. The Florida bonneted bat's ability to adapt well to manmade structures has likely been a factor in its decline because the bat tends to inhabit structures that place it at risk from inadvertent or purposeful harm by humans. Proposed wind energy facilities in the species' habitat can cause mortalities. The species may be exposed to a variety of chemical compounds through multiple routes of exposure, and intensive pesticide use may alter insect prey availability. Small population size, restricted range, low fecundity, and few and isolated colonies are serious ongoing threats. Catastrophic and stochastic events are of significant concern. All colonies are at risk due to hurricanes, which can cause mortality, loss of roost sites, and other impacts. Extreme cold weather events can also have severe impacts on the population and increase risks from other threats by extirpating colonies or further reducing colony sizes. Collectively, these threats have operated in the past, are impacting the species now, and will continue to impact the Florida bonneted bat in the future.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Florida bonneted bat. The species occurs in limited numbers in a restricted range in south Florida. Habitat loss, degradation, and modification from human population growth and associated development and agriculture have impacted the Florida bonneted bat and are expected to further curtail its limited range (see *Factor A*). Environmental effects from climatic change, especially sea level rise, are expected to become severe in the future, resulting in additional habitat losses that are expected to place the species at greater risk (see *Factor A*).

The Florida bonneted bat is also currently threatened by a wide array of natural and manmade factors (see *Factor E*). Effects of small population size, restricted range, few colonies, slow reproduction, low fecundity, and relative isolation contribute to the species' vulnerability. Other aspects of the species' natural history (e.g., aerial-hawking foraging, tree-roosting habits) and environmental stochasticity may also contribute to its imperilment. Multiple anthropogenic factors (e.g., impacts or intolerance by humans, wind energy projects) are also threats of varying severity. As an insectivore, the species is also likely exposed to a variety of pesticides and contaminants through multiple routes of exposure; pesticides may also affect its prey base. Given its vulnerability, disease and predation (see *Factor C*) have the potential to impact the species. Finally, existing regulatory mechanisms (see *Factor D*), due to a variety of constraints, do not provide adequate protection for the species. Overall, impacts from increasing threats, operating singly or in combination, place the species at risk of extinction.

Section 3 of the Act 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 ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' By all indications, the species occurs only in limited numbers within a restricted range and faces considerable and immediate threats, which place it at risk of extinction. Aspects of the species' natural history may also contribute to and exacerbate threats and increase its vulnerability to extinction. Since immediate and ongoing significant threats to the Florida bonneted bat extend throughout its entire range, we have determined that the species is currently in danger of extinction throughout all of its range. Because threats extend throughout the entire range, it is unnecessary to determine if the Florida bonneted bat is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined that the Florida bonneted bat meets the definition of an endangered species under the Act. In other words, we find that a threatened species status is not appropriate for the Florida bonneted bat because of the severity and immediacy of the threats, the restricted range of the species, and its small population size. Consequently, we propose to list the Florida bonneted bat as an endangered species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as

significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Florida bonneted bat. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Florida bonneted bat is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to: management and any other landscape-altering activities on Federal lands administered by the Department of Defense, Fish and Wildlife Service, National Park Service, and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; permitting of construction and management of gas pipeline, power line rights-of-way, and wind energy facilities by the Federal Energy Regulatory Commission; and construction and maintenance of roads, highways, or bridges by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. The Florida bonneted bat is listed by the State of Florida; therefore, certain State laws also apply. Listing would also require Federal agencies to avoid actions that might jeopardize the species (16 U.S.C. 1536(a)(2)), and would provide opportunities for funding of conservation measures and land acquisition that would not otherwise be available to them (16 U.S.C. 1534, 1535(d)).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

We estimate that the following activities would be likely to result in a violation of section 9 of the Act; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming or attempting any of these actions, of Florida bonneted bats (research activities where Florida bonneted bats are handled, captured (e.g., netted, trapped), tagged, or collected will require authorization pursuant to the Act).

(2) Incidental take of the Florida bonneted bat without authorization pursuant to section 7 or section 10 (a)(1)(B) of the Act.

(3) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(4) Unauthorized destruction or alteration of Florida bonneted bat habitat (including unauthorized grading, leveling, plowing, mowing, burning,

herbicide spraying, or other destruction or modification of occupied or potentially occupied habitat or pesticide application in known occupied habitat) in ways that kills or injures individuals by significantly impairing the species' essential breeding, foraging, sheltering, or other essential life functions.

(5) Unauthorized release of biological control agents that attack any life stage of this taxon.

(6) Unauthorized removal or destruction of cavity trees and other natural structures being utilized as roosts by the Florida bonneted bat that results in take of the species.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized maintenance or repair of bridges or overpasses that are being used as roost sites by the Florida bonneted bat that result in take of the species.

(9) Unauthorized building and operation of wind energy facilities within areas used by the Florida bonneted bat, which results in take of the species.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive, and we provide them as information to the public.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Service's South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404–679–7313; Fax 404–679– 7081).

Critical Habitat

Background

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Critical Habitat Prudency

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

We have carefully considered all known threats to the species to determine the prudency of critical habitat for the species. Because humans may be intolerant of bats in general, some individual Florida bonneted bats may be threatened by taking or other human activity in instances where they reside in conflict with humans (e.g., roosting in an occupied human dwelling). However, we are not aware of any current situations where this is the case, and we do not have any evidence that this was a major threat previously. Based upon available information, taking by humans does not appear to be a primary threat to the species. Furthermore, as discussed in *Summary of Factors Affecting the Species, Factors A* and *E,* Florida bonneted bats could be inadvertently killed or displaced if their roost sites are not known, and the species could possibly benefit from having additional roosting and foraging locations identified. Therefore, we do

not anticipate that identification of critical habitat would be expected to increase the degree of threat to the species, and designation of essential habitat, particularly roosting sites, could actually reduce the degree of threat to the species.

Designation of critical habitat would offer other benefits to the species. The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects of a proposed project on critical habitat is separate and different from that of the effects of a proposed project on the species itself. The jeopardy analysis evaluates the action's impact to survival and recovery of the species, while the destruction or adverse modification analysis evaluates the action's effects to the designated habitat's contribution to conservation. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. This will, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than those provided solely by listing.

Designation of critical habitat for the Florida bonneted bat may also benefit the species by focusing conservation efforts on the restoration and maintenance of ecosystem functions that are essential for attaining short- and long–term viability and recovery. The designation of critical habitat can also serve to inform management and conservation decisions by identifying any additional physical and biological features of the ecosystem that may be essential for the conservation of the species. Critical habitat designation can also help raise awareness and educate landowners about the potential conservation value of the area.

We, therefore, find that designation of critical habitat for the Florida bonneted bat is prudent, because once determined, critical habitat would be beneficial, and there is no evidence that the designation of critical habitat would result in an increased threat from taking or other human activity for this species.

Critical Habitat Determinability

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform the required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When we find that critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features essential to the conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

We have done a preliminary evaluation to find if the designation of critical habitat for the Florida bonneted bat is prudent and determinable at this time. Based on that evaluation, we are currently unable to identify the physical and biological features essential for the conservation of the Florida bonneted bat because information on those features for this species is not known at this time. The apparent poor viability of the species recorded in recent years indicates that current conditions are not sufficient to meet the basic biological requirements of the species in most areas of its current range. Because the Florida bonneted bat has not been found for decades in many of its historical locations, and much of the habitat in which it still persists has been drastically altered, the optimal conditions that would provide the biological or ecological requisites of this species are not known. Although we can surmise that habitat loss and degradation from a variety of factors has contributed to the decline of the species, we do not know specifically what essential physical or biological features of that habitat are currently lacking.

Key features of the basic life history, ecology, reproductive biology, and habitat requirements of many bats, including the Florida bonneted bat, are unknown. Species-specific ecological requirements have not been determined (e.g., natural roost sites, seasonal changes in roosting habitat, dietary needs, seasonal changes in diet, prime foraging habitat). Population dynamics, such as species interactions and community structure, population trends, and population size and age class structure necessary to maintain long-term viability, have not been determined. As we are unable to identify many physical and biological features essential to the conservation of the Florida bonneted bat, we are unable to identify areas that contain features necessary for long-term viability. Therefore, we find that critical habitat is not determinable at this time.

We are, therefore, seeking information from the public regarding which physical or biological features or specific areas may be essential to the conservation of the Florida bonneted bat. Please see Information Requested above for specific information we are seeking to assist us in trying to identify the biological requirements for the Florida bonneted bat. We are particularly in need of information on location of natural roosts, roosting and foraging habitat preferences, dietary requirements, and foraging distance. Information gleaned from the public comment period, as well as from ongoing research efforts we are employing with the help of our partners (new survey technologies, computer modeling, etc.), will hopefully yield sufficient new information on those physical and biological features essential to the species to allow us to propose critical habitat.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed listing determination is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our proposal to list the Florida bonneted bat as an endangered species.

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

Public Hearings

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

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the emergency rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email the comments to this address: *Exsec@ios.goi.gov.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the South Florida Ecological Services Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h) add an entry for ''Bat, Florida bonneted'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Bat, Florida bonneted.	*Eumops floridanus*	U.S.A. (FL)	U.S.A. (FL)	E	.....	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: September 20, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–24300 Filed 10–3–12; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Coquí Llanero Throughout Its Range and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0022]

RIN 1018–AX68

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Coquí Llanero Throughout Its Range and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the coquí llanero (*Eleutherodactylus juanariveroi*), and designate critical habitat. In total, we are designating approximately 615 acres (249 hectares) of a freshwater wetland in Sabana Seca Ward, Municipality of Toa Baja, Puerto Rico, as critical habitat. The effect of this regulation is to conserve the coquí llanero and its habitat under the Act.

DATES: This rule becomes effective on November 5, 2012.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km 5.1, Boquerón, PR 00622; by telephone, 787–851–7297; or by facsimile, 787–851–7440.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at (*http://www.fws.gov/caribbean/es/Endangered-Main.html*), *http://www.regulations.gov* at Docket No. FWS–R4–ES–2009–0022, and at the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km 5.1, Boquerón, PR 00622; by telephone, 787–851–7297, extension 206; or by facsimile, 787–851–7440. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, the Service shall designate critical habitat for any species or subspecies that is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. On October 12, 2011, we published the proposed rule to list the coquí llanero as an endangered species (76 FR 63420). In that document, we explained that the species currently exists in a freshwater wetland at Sabana Seca, faces numerous threats, and therefore warrants listing under the Act as an endangered species. Additionally, we proposed the designation of the coquí llanero's critical habitat and discussed our criteria for the designation. This rule finalizes the protection proposed for the coquí llanero as an endangered species and the designation of 615 acres (249 hectares) in Sabana Seca Ward, Toa Baja, Puerto Rico, as critical habitat, following careful consideration of all comments we received during the public comment period.

The basis for our action. Under the Act, a species may be determined to be an endangered or threatened species based on any of the 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. Coquí llanero is determined to be an endangered species due to three of these five factors. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Peer review and public comment. When we published the proposed rule on October 12, 2011, we opened a 60-day comment period on the proposed listing and critical habitat designation for the coquí llanero. On June 19, 2012, we reopened the comment period for an additional 30 days. During the comment periods, we sought comments from independent specialists (peer reviewers) on the specific assumptions and conclusions in our listing proposal to ensure that the designation of critical habitat is based on scientifically sound data, assumptions, and analyses. In addition, we sought comments from interested parties and the general public. We considered all comments and information received during the comment periods.

Background

This document consists of: (1) A final rule to list the coquí llanero as an endangered species; and (2) a final critical habitat designation for the coquí llanero.

Previous Federal Actions

On May 22, 2007, we received a petition, dated May 11, 2007, from the Caribbean Primate Research Center (CPRC) (CPRC 2007, pp. 1–29) requesting that the coquí llanero be listed as an endangered species under the Act. The petition also requested that we designate critical habitat concurrently with listing, if listing occurs. In a letter to the petitioner dated July 23, 2007, we acknowledged receipt of the petition and stated that (1) we would not be able to address the petition until funding became available, and (2) actions requested by this petition were precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for the current (2007) fiscal year.

On January 22, 2009, we received an amended petition dated January 13, 2009. The amended petition included updated information on current threats to the species and its habitat (CPRC 2009, pp. 1–19). On July 8, 2009, we published in the **Federal Register** (74 FR 32510) our finding that the petition to list the coquí llanero presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the species.

On October 12, 2011, we published in the **Federal Register** (76 FR 63420) our 12-month finding on the petition, combined with a proposed rule to list the species as an endangered species

and designate critical habitat. Publication of the proposed rule opened a 60-day public comment period.

On June 19, 2012, we published in the **Federal Register** (77 FR 36457) our evaluation of the potential economic impacts of the proposed critical habitat designation, and we reopened the public comment period for the proposed rule and critical habitat designation for 30 days.

Species Information

The coquí llanero, an endemic Puerto Rican frog, was first collected by Neftalí Ríos-López and Richard Thomas in 2005, from a freshwater herbaceous wetland on the closed U.S. Naval Security Group Activity Sabana Seca (USNSGASS) property and the Caribbean Primate Research Center (CPRC), Toa Baja, Puerto Rico (PR). This wetland area is considered as the ''type locality'' (similar location) because the species was first collected and described from this area. When discovered, the coquí llanero was only known to occur at the Ingenio Sector in the Sabana Seca Ward, Toa Baja, PR, located on the northern coast, north of Toa Alta and Bayamón, east of Dorado, and west of Cataño, approximately 12 miles (mi) (20 kilometers (km)) from San Juan, PR.

Taxonomy and Species Description

In 2007, the coquí llanero was described as a new species of the genus *Eleutherodactylus,* family *Leptodactylidae.* Although the coquí llanero is similar to *Eleutherodactylus gryllus* (cricket coquí or green coquí), differences in morphological ratios, body coloration, call frequency and structure, deoxyribonucleic acid (DNA), and habitat association indicate that it is a well-differentiated species (Ríos-López and Thomas 2007, pp. 53–60; CPRC 2009, p. 1). The coquí llanero is the smallest and only known herbaceous wetland specialist within the genus *Eleutherodactylus* in Puerto Rico (Ríos-López and Thomas 2007, p. 62). It has a mean snout-vent length of 0.58 inches (in) (14.7 millimeters (mm)) in males and 0.62 in (15.8 mm) in females. The nares (nasal passages) are prominent and a ridge connects them behind the snout tip, giving the tip a somewhat squared appearance. The species has well-developed glands throughout its body; its dorsal coloration is yellow to yellowish brown with a light, longitudinal, reversed comma mark on each side; and its mid-dorsal zone is broadly bifurcated (divided into two branches) (Ríos-López and Thomas 2007, p. 55). The species' communication call consists of a series of short, high-pitched notes, with call duration varying from 4 to 21 seconds. The advertisement call has the highest frequency among all Puerto Rican *Eleutherodactylus,* between 7.38 and 8.28 kilohertz (Ríos-López and Thomas 2007, p. 61). The calling activity starts at approximately 4:30 p.m. and decreases significantly before midnight.

Distribution

The coquí llanero is found only on a palustrine herbaceous wetland at Sabana Seca Ward. When the species was first discovered and described, the author estimated that the coquí llanero occurs on approximately 445 acres (ac) (180 hectares (ha)) (Ríos-López and Thomas 2007, p. 60). Joglar (2007, p. 2) conducted additional surveys and estimated that the distribution of the species to occur on approximately 504.5 ac (204 ha). The Service has estimated the palustrine herbaceous wetland area where the coquí llanero is now found to be about 615 ac (249 ha) (Service 2011, unpublished data).

Vega-Castillo (2011) conducted diurnal and nocturnal surveys in wetland areas and channels located between PR Road–867 and PR Road–165 to the north of where the coquí llanero was found while evaluating the proposed alignment for a natural gas pipeline. These surveys were conducted during January 2011, using recorded male calling (Vega-Castillo 2011, pp. 9–12). During this period, Vega-Castillo (2011) detected at least 6 individual coquí llanero vocalizing at the edge of a vegetated drainage channel that is a tributary of the Cocal River. The locality where these individuals were reported is about 1.7 mi (2.7 km) northwest from the type locality. This area is mainly dominated by pasture (Vega-Castillo 2011, p. 12). In March 2011, Service biologists conducted several site visits to the area to confirm the report. In addition, the Service installed a recorder for a 24-hour period during March 2011, to detect individuals vocalizing in the area. However, the Service did not detect the species in this area. Based on the Service's observations, the area is highly degraded, dominated by lands cleared (burned) and converted to pastureland.

Habitat

The habitat for the coquí llanero comprises an area of approximately 615 ac (249 ha) that includes approximately 97 ac (39 ha) of Commonwealth land and 518 ac (209 ha) of Federal land (Geo-Marine 2002, pp. 2–13; Ríos-López and Thomas 2007, p. 60; Joglar 2007, p. 2; Tec Inc. and AH Environmental 2008, p. 3–2; PR Land Authority 2011, unpublished data; Service 2011, unpublished data).

The habitat of the coquí llanero is located within the subtropical moist forest life zone (tropical and subtropical forest ecosystems) (Ewel and Whitmore 1973, pp. 20–38). This life zone (areas with similar plant and animal communities) covers about 60.5 percent of the total area of Puerto Rico (Ewel and Whitmore 1973, p. 9). The species appears to be an obligate marsh dweller (Ríos-López 2007, p. 195). The coquí llanero has been found only in freshwater, herbaceous wetland habitat at an elevation of 55.8 ft (17 m) (Ríos-López and Thomas 2007, p. 60). The National Wetland Inventory (NWI) classifies the majority of this wetland as palustrine emergent persistent seasonally flooded, an area with surface water present for extended periods during the growing season. The soils of this wetland consist of swamp and marsh organic deposits from Pleistocene or recent origin or both (Ríos-López and Thomas 2007, p. 60). The species' habitat may represent a relic of an endemic seasonally to permanently flooded, herbaceous wetland habitat type (Ríos-López and Thomas 2007, p. 63). Herbaceous vegetation in this habitat shows a species composition consisting of *Blechnum serrulatum* (toothed midsorus fern), *Thelypteris interrupta* (willdenow's maiden fern), *Sagittaria lancifolia* (bulltongue arrowhead), *Cyperus* sp. (flatsedges), *Eleocharis* sp. (spike rushes), and vines and grasses (Ríos-López and Thomas 2007, p. 60). The majority of coquí llanero have been found perching and calling on the toothed midsorus fern and willdenow's maiden fern. At discovery, all the individuals collected were perching, sitting, or calling on herbaceous vegetation, mainly on ferns.

Biology

The coquí llanero is insectivorous (feeds on small insects). The species has been observed to reproduce only on *Sagittaria lancifolia* (bulltongue arrowhead) (CPRC 2009, p. 4). Egg clutches were found on leaf axils (21 egg clutches) or leaf surfaces (3 egg clutches) of only *Sagittaria lancifolia* (Ríos-López and Thomas 2007, p. 60) within the wetland area. Egg clutches comprise one to five eggs and are found on leaf axils or leaf surfaces between 1.3 feet (ft) (0.4 meters (m)) and 3.9 ft (1.2 m) above water level (Ríos-López and Thomas 2007, pp. 53–62). Observers did not witness parental care in the field (CPRC 2009, p. 5).

Summary of Comments and Recommendations

Due to the nature of the proposed rule, we received combined comments from the public on the listing action and the critical habitat designation. We have addressed these issues in a single comment section.

We requested written comments from the public during two comment periods on the proposed listing of the coquí llanero and the proposed designation of critical habitat for the coquí llanero. The first comment period associated with the publication of the proposed rule (76 FR 63420) opened on October 12, 2011, and closed on December 12, 2011. We also requested comments on the proposed critical habitat designation and our evaluation of the potential economic impacts during a comment period that opened June 19, 2012, and closed on July 19, 2012 (77 FR 36457). We also contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule and our evaluation of the potential economic impacts during these comment periods.

During the first comment period, we received 11 comment letters directly addressing either the proposed listing or proposed critical habitat designation. During the second comment period, we received 14 comment letters addressing the proposed critical habitat designation or the evaluation of the potential economic impacts. We did not receive any requests for a public hearing.

Substantive comments we received were grouped into four general issues specifically relating to the proposed listing determination or proposed critical habitat designation for the coquí llanero. These comments are addressed in the following summary and incorporated into the final rule, as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six individuals with knowledge and scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of those individuals.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the proposed listing and critical habitat for the coquí llanero. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewers' comments are addressed in the following summary and are incorporated into this final rule, as appropriate.

Peer Reviewer Comments

(1) *Comment:* The peer reviewers and others commenters suggested various editorial changes to the final rule.

Our Response: We evaluated all of the suggested editorial changes, and we incorporated them into this final rule, as appropriate.

(2) *Comment:* A commenter suggests that ''tree frog'' is not a correct name for the coquí llanero (*Eleutherodactylus* sp.). He recommends that a generic name for the Puerto Rican *Eleutherodactylus* should be coquíes or frogs. Frogs known as ''tree frogs'' are usually members of the *Hylidae* or *Centrolenidae* taxonomic families.

Our Response: We acknowledge this recommendation and agree with the observation. The recommendation is incorporated into this final rule.

(3) *Comment:* A peer reviewer states that there have been very few publications and reports on this species. The peer reviewer suggested that more research is needed. The peer reviewer stated that since the species' description in 2007, there have been no peer-reviewed publications on this species. All information related to the species' conservation and its habitat is based on anecdotal information, such as personal communications, presentations, and non-published reports.

Our Response: The Service agrees that there is limited information and peer-reviewed publications on the coquí llanero. However, in accordance with section 4 of the Act, the Service is required to use, and has used, the best available scientific and commercial information in this rulemaking. We relied upon primary and original sources of information in order to meet the ''best available scientific and commercial information'' standard. We evaluated information from many different sources, including articles in peer-reviewed journals, former rules and habitat designations developed by the Commonwealth of Puerto Rico, scientific surveys and studies, other unpublished materials, and experts' opinions or personal knowledge. Also, in accordance with the peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from knowledgeable individuals with scientific expertise that included familiarity with the species. Additionally, we requested comments or information from other concerned governmental agencies, the scientific community, and any other interested parties.

(4) *Comment:* Peer reviewers and commenters state that the proposed natural gas pipeline project ''Via Verde'' will be a serious threat to the coquí llanero and its habitat by adversely affecting the hydrology of the occupied wetland.

Our Response: Via Verde's proposed right-of-way alignment through Toa Baja is approximately 1.5 miles (2.4 kilometers) northwest of the known wetland habitat supporting the coquí llanero (PRDNER 2007b, p. 16). The topography of the Sabana Seca has an east-to-west inclination (Morris 2007, p. 5); therefore, the project of concern will be located downstream of the coquí llanero's habitat.

We do not consider the proposed natural gas pipeline project a threat to the coquí llanero or its habitat because the best available scientific information does not indicate that it is a threat. If additional information becomes available on the impacts of the Via Verde project on the coquí llanero, we will reevaluate the threats and could, if appropriate, revise the designation.

(5) *Comment:* A peer reviewer and other interested parties petitioned the Service to exercise its authority under section 4(b)(7) of the Act to emergency list the coquí llanero as an endangered species. The petition was based on the species' severely limited geographic range, small population size, and several imminent threats to the ecosystem it depends upon for reproduction and survival.

Our Response: The Act at 16 U.S.C. 1533(b)(3)(A) establishes a single petition process for listing a species as an endangered or threatened species. There is no separate process in the Act or its implementing regulations for requesting an ''emergency listing'' as opposed to a ''non-emergency'' listing. Therefore, we treat a petition requesting emergency listing solely as a petition to list a species under the Act. Furthermore, although 16 U.S.C. 1533(b)(7) does empower the Secretary to list a species based upon an ''emergency posing a significant risk to the well-being of [that] species,'' that type of listing is expressly committed to the Secretary's discretion, the exercise of which is not structured by any statutorily prescribed criteria or procedures.

Our initial review of this emergency petition did not indicate that an emergency listing was warranted because, at the time of the petition, the species was protected by the

Commonwealth of Puerto Rico and because the Service was in the process of listing the coquí llanero and designating critical habitat under the Act. On May 30, 2012, the protection given the coquí llanero by Puerto Rico's Commonwealth Law 241 and Regulation 6766 was overturned by the Supreme Court of Puerto Rico. However, the Service has continued to proceed with its final rule to list the coquí llanero as an endangered species and to designate critical habitat, which will provide the species protection under the Act.

As a result, the Commonwealth of Puerto Rico will also grant protection to the coquí llanero under the authority of the 1984 Cooperative Agreement between the Service and the Puerto Rico Department of Natural and Environmental Resources (PRDNER) under section 6 of the Act and under Puerto Rico's Regulation 6766. Under the cooperative agreement and Regulation 6766, if the Federal Government makes a designation of critical habitat or lists a species under the jurisdiction of the Commonwealth of Puerto Rico, the PRDNER will assure both the addition of the species to the Commonwealth list and the designation of critical habitat. After this final rule is effective, the coquí llanero will be protected by both entities, the Federal Government and the Commonwealth of Puerto Rico.

(6) *Comment:* A peer reviewer provided a new estimated mean population size for the coquí llanero, 473.3 ± 186 individuals per hectare (or 192 per acre). This information was based on counts performed on 5 transects of 90 square meters each within the occupied wetland. The peer reviewer cautioned how these estimates may be misleading because the species is not evenly distributed throughout the landscape.

Our Response: We acknowledge the new estimated mean population size for the coquí llanero. In the proposed rule, we stated the estimated mean population size of the coquí llanero was approximately 181 individuals per ac (453 per ha). The new estimated mean population provided by the peer reviewer is based on the analysis of data collected from 5 transects of 90 square meters (area of 450 square meters) and, therefore, we consider it accurate. This data will be updated in this final rule based on the new information provided.

(7) *Comment:* A peer reviewer states that areas within the designated critical habitat are classified by the Toa Baja Municipality as urban soils (designated for urban development) and, if development occurred, it would affect the hydrology of the wetland occupied by the coquí llanero.

Our Response: The Service recognizes that areas within the critical habitat designation are threatened by urban development (see *Summary of Factors Affecting the Species* section). The selection of sites to be included in the critical habitat designation is based on the needs of the species. Before we consider land ownership, we determine what is needed for the species' conservation based on the best available scientific and commercial information. The Service will always work on actions to support the recovery of the coquí llanero wherever possible. However, the designation of critical habitat does not impose a legally binding duty on private parties. The section entitled *Critical Habitat Designation for Coquí Llanero* will provide information on how critical habitat was determined and how development activities will be considered and evaluated.

(8) *Comment:* A peer reviewer and the Commonwealth of Puerto Rico suggest that the delimitation of critical habitat needs to be expanded east (the Commonwealth of Puerto Rico suggested at least 50 m (164 feet) passing over the maintenance dirt road, as any negative impact to this structure (e.g., oil spill, heavy sedimentation with water run-off) will directly impact the species.

Our Response: The Service has found no scientific justification for expanding critical habitat to the suggested area. The Service is designating areas as defined in section 3 of the Act. The Service has articulated a basis for designating the unit as critical habitat under the unit description in the *Final Critical Habitat Designation* section.

The Secretary could revise the designation, as appropriate and as resources allow, in the future if new information becomes available.

(9) *Comment:* Peer reviewers, the Commonwealth of Puerto Rico, and other commenters recommend that although the nearby limestone hills are not occupied by, nor provide habitat for, the species, the limestone hills should be included in the critical habitat designation. Some commenters have witnessed strong water run-off flooding in the wetland after significant rain events. Others suggest viewing the limestone hills as an ecosystem and considering them as part of the watershed because it is clear that they are essential for the conservation of the species. Although some reviewers are aware of the Navy's intention to protect the limestone hills in perpetuity, they still recommend including the hills as part of the critical habitat designation, stating that the hydrological connection of the limestone hills with the wetland is essential for the protection of the coquí llanero. Some also request that the Service adopt the former designation of Critical Essential Natural Habitat by the PRDNER.

Our Response: The Service has determined that hydrology is one of the primary constituent elements (PCEs) specific to the conservation of the coquí llanero and has recognized that changes in hydrology may result in changes in the wetland function and vegetation composition, as well as affect the connectivity with nearby habitats, all with serious effects to the coquí llanero. However, the available hydrological study for this area only describes the limits of the watersheds that, based on surface topography, are tributary to the wetland (i.e., surface water drainage patterns, not groundwater flow patterns). Hence, no information is available as to what extent the surface water patterns and quantities are essential in maintaining the actual conditions of the wetland (i.e., maintaining the PCEs), or if there are other water sources (e.g., groundwater) with an equivalent or more positive impact on the wetland other than surface water. Nonetheless, the Service has information indicating that ownership of the limestone hills is to be transferred by the U.S. Navy to the University of Puerto Rico for perpetual protection.

The Service acknowledges the recommendation of expanding the critical habitat designation. However, additional information is needed to determine the importance of the limestone hills to the conservation of the species and the additional area needed to maintain the hydrology of the wetland (i.e., the PCEs of the occupied habitat). If data become available in the future that justify the addition of the limestone hills and any other suitable areas to critical habitat, the Secretary may revise the designation, as appropriate and as resources allow, under the authority of section 4(a)(3)(A)(ii) of the Act.

(10) *Comment:* A peer reviewer and several commenters state that the Service should include Caño Campanero and Cocal River in the critical habitat designation because these water bodies are responsible for maintaining the wetland and may be natural corridors for individual coquí llanero migrating from the existing wetland, thus contributing to the species' persistence in Toa Baja.

Our Response: Although we recognize the importance of Caño Campanero and the Cocal River as drainage outlets for

the wetland, the best available scientific information does not indicate that these water bodies are essential for the conservation of the coquí llanero. Therefore, Caño Campanero and the Cocal River do not meet the definition of critical habitat under the Act and are not included in this final designation.

Comments From the States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' The only comment received from the Commonwealth of Puerto Rico was from a peer reviewer, who supported the listing and designation of critical habitat and recommended that the critical habitat for the coquí llanero be expanded. (See comments (8) and (9) and our responses).

Public Comments

General Comment Issue 1 Critical Habitat

(11) *Comment:* A commenter understands our conclusion that the limestone hills are important for the water supply of the wetland, but states that we should focus instead on the fact that contamination, hazardous substance release, or direct human impact (construction) of any virgin land within the watershed will likely affect the water amount and condition within the entire watershed.

Our Response: The Service agrees that contamination might constitute a threat to the species (see *Summary of Factors Affecting the Species*). However, the Service does not have sufficient information to determine the impacts to the watershed, and how those impacts would influence the wetland. The Service does have information on the surface water runoff towards the wetland (Gregory Morris 2007), but there is a lack of information to clearly understand the groundwater, water distribution, and contaminants that would enter the wetland. The Service considered both the importance of space for individual and population growth and for normal behavior, as well as sites for breeding, reproduction, or rearing (or development) of offspring when developing the PCEs. The PCEs in this final rule represent the best current understanding of the habitat requirements for the coquí llanero.

(12) *Comment:* A commenter requested that approximately 30 ac (12.1 ha) of an upland non-flooded area be excluded from the proposed critical habitat. The commenter's rationale is that *Sagittaria lancifolia,* an essential PCE for the conservation of the species, is clearly absent given that the parcel is a non-wetland.

Our Response: The approximate area being described occurs within the geographical area occupied by the species at the time of listing. Reports confirm that the coquí llanero occupies the area. The Service acknowledges that the area is between manmade structures, but those structures (e.g., buildings, houses, roads, and other paved areas) are not included because they do not contain the PCEs and because they do not meet the definition of critical habitat under the Act. The 30-ac area (12.1-ha), on the other hand, does not contain any structures and is connected to the main wetland area.

The fact that there is no *Sagittaria lancifolia* in the area only means that the coquí llanero will not lay their eggs there; however, the area contains other vegetation that is part of the same PCE. Therefore, we have determined that these lands meet the definition of critical habitat under the Act and remain within this final designation.

General Comment Issue 2 Outreach and Education

(13) *Comment:* A commenter recommends development of a public educational campaign to support the decision (listing and critical habitat designation).

Our Response: The Service agrees and will promote outreach for this final rule via a variety of media.

General Comment Issue 3 General Information

(14) *Comment:* A commenter clarified information regarding the entity that will be handling the disposal of the Navy Base's lands. The proposed rule indicated that the Navy is conveying approximately 2,075 ac (840 ha) of the property to Sabana Seca Land Management (SSLM). However, the entity that will be marketing and selling the Base is named Sabana Seca Partners, LLC (SSPL), which is an entity different from SSLM.

Our Response: We acknowledge this comment and we have made the correction in this final rule.

Summary of Changes From Proposed Rule

The Service reviewed and fully considered all comments received from the public and peer reviewers in response to the proposed rule of October 12, 2011 (76 FR 63420), to list the coquí llanero as an endangered species and to designate its critical habitat. The Service also considered all comments received in response to the reopened comment period on June 19, 2012 (77 FR 36457), and has made minor corrections, as appropriate, including the deletion of the reference to the coquí llanero as a tree frog as acknowledged in the response to comment (2), above.

Status Assessment for the Coquí Llanero

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The coquí llanero was discovered in 2005. Additional on-the-ground surveys based upon habitat characteristics revealed no additional populations. As a result, we do not know if the historical range of the species may be different from its present, known range. Therefore, we present and discuss only factors that may affect the current habitat or range of coquí llanero in this section, including: (1) Urban development; (2) operation and possible expansion of a go-kart and motorbike racetrack in coquí llanero wetland habitat; (3) contamination from the Toa Baja Municipal Landfill (TBML); (4) habitat degradation for flood control projects; and (5) competition from invasive wetland plant species.

Urban Development

Large-scale residential projects that are currently planned within and around the site where the species is known to occur pose a threat to the coquí llanero and its habitat (González 2010, pers. comm.; Ríos-López 2010, pers. comm.). The most significant portion of this habitat falls within the southern portion of the USNSGASS. Its land comprises approximately 2,195 ac (888.3 ha), which is divided into two

large areas: the North and South Tracts. The North Tract accounts for approximately 1,330 ac (538.2 ha), with the majority of land currently leased to a local cattle farmer. The South Tract comprises approximately 865 ac (350.1 ha) and is where the coquí llanero is known to occur on 260 ac (105 ha).

The USNSGASS is disposing of the property in accordance with section 2801 of the National Defense Authorization Act (NDAA) for Fiscal Year 1996 (FY1996), Public Law 104–106, 110 Stat. 186 (10 U.S.C. 2871–2885), as amended. Section 2801 of NDAA provides the authority to the Department of Defense (DOD) to work with the private sector nationwide, in order to build and renovate family housing and ancillary facilities in key areas of need. The Navy is conveying approximately 2,075 ac (840 ha) of the property to a private entity, Sabana Seca Partners (SSPL), LLC, which is associated with the Navy's Public Private Venture partnership for military family housing (Tec Inc. and AH Environmental 2008, p. ES–1). SSPL will market and sell the closed Navy base property to non-Federal entities through Forest City Enterprises, Inc.

The environmental assessment (EA) for the transfer-disposal of USNSGASS property states that the property disposed of by the Navy would be redeveloped in a manner similar to surrounding areas (Tec Inc. and AH Environmental 2008, p. 4–1). According to the EA, the preferred alternative for the wetland area that contains occupied coquí llanero habitat is residential use (Tec Inc. and AH Environmental 2008, p. 2–2). Furthermore, coquí llanero wetland habitat is not within the areas that would be zoned for conservation by the Toa Baja municipality, and, according to their land-use plan, they intend to zone the area for residential development. Also, coquí llanero wetland habitat is not within the parcels conveyed to the University of Puerto Rico for the purpose of protection in perpetuity.

The ultimate reuse of the USNSGASS property would be determined by the non-Federal entities receiving the property from SSLM and Forest City Enterprise, Inc. The EA explains that the development within wetlands and the magnitude of the impacts that could occur, if such development was permitted, would be dependent upon the actual placement of new residential areas and the amount of wetland removal or alteration allowed for site development (Tec Inc. and AH Environmental 2008, p. 4–15). Possible impacts (approximately 221 ac (89 ha) of the palustrine emergent wetland (Tec Inc. and AH Environmental 2008, p. 4–16)) could occur by draining and filling these wetlands, which are occupied by the coquí llanero, leaving little to no suitable habitat for the coquí llanero to carry out its life-history processes. In addition, filling the wetland for future development could require Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) section 404 permits from the U.S. Army Corp of Engineers (Corps). If the development would likely adversely affect the species once it is federally listed, consultation under section 7 of the Act should be conducted between the Corps and the Service.

Nevertheless, prior to the discovery of the coquí llanero, land-use history for this area has shown that urban and commercial development has adversely impacted wetland resources, and, although not documented, presumably affected coquí llanero individuals and habitat. An example of those impacts is the fill of a freshwater emergent wetland for residential housing at the western end of coquí llanero habitat (Zegarra and Pacheco 2010, pers. obs.). The wetland where coquí llanero is currently present was previously impacted by the construction and maintenance of Redman Road. This road was constructed in an area identified in the NWI maps as freshwater emergent and forested shrub wetlands habitat, and the road's construction interrupted the natural flow of water and affected the hydrology of the wetland. Further adverse effects to the same wetland habitat can be observed in the residential community that exists on the boundary of the closed USNSGASS property near the intersection of PR Road 867 and Redman Road. This community has expanded over the past 40 years and presently consists of approximately 50 houses, 20 of which are on Navy property (U.S. Navy 2000 in Tec Inc. and AH Environmental 2008, p. 3–4). Prior to the closure of the USNSGASS, the Navy was planning to construct a new fence on the property to eliminate further encroachment on its land holdings (Tec Inc. and AH Environmental 2008, p. 3–6).

Implementing the preferred alternative of the EA for the disposal of the USNSGASS may result in the destruction of approximately 416 ac (168 ha) of wetlands, including coquí llanero habitat (Tec Inc. and AH Environmental 2008, p. 4–5). Additionally, implementing the preferred alternative would most likely result in new residential development (Tec Inc. and AH Environmental 2008, p. 4–6). According to the Puerto Rican Planning Board (PRPB) Web site, 11 development projects are under evaluation around the southern section of the wetland type locality, possibly impacting 1,087 ac (440 ha) (*http://www.jp.gobierno.pr,* accessed February 2010). Urban development adjacent to the wetland type locality would fragment and directly impact suitable habitat for the coquí llanero and would limit the species' population expansion in the area. In addition, with the creation of new residential projects, traffic would be expected to increase, and, thus, the three primary roadways surrounding the USNSGASS would likely require some improvements (Tec Inc. and AH Environmental 2008, p. 4–6). Vehicle traffic on roads within the essential habitat of amphibian species can be a direct source of mortality and, in some instances, can be catastrophic and should not be underestimated (Glista *et al.* 2007, p. 85). According to Janice González, Director of the Caribbean Primate Research Center (CPRC), approximately 30 CPRC employees drive vehicles on Redman Road daily, as it is currently the main access road to the CPRC (González 2010, pers. comm.). Any improvement of the road or increase in traffic may affect the suitability of the wetland. The biological effects to the coquí llanero from the existing road network around the southern section of the wetlands are not well understood. The combination of habitat fragmentation and high vehicle use of the roads may negatively impact the coquí llanero and its habitat through loss of habitat connectivity, degradation of water quality, direct mortality, edge effects of the road and wetland, and changes in hydrology.

For the above reasons, we conclude that urban development and associated infrastructure and human use are a threat to the coquí llanero by direct mortality and due to permanent loss, fragmentation, or alteration of its habitat.

Go-Kart and Motorbike Racetrack

Although the Service does not have information regarding the specific date of the construction of the existing racetrack, we estimate that approximately 29 ac (11.6 ha) of freshwater emergent and forested shrub wetlands were impacted. These data were quantified using Geographic Information Systems analysis with aerial photography and the NWI layers. The Puerto Rico Department of Natural and Environmental Resources (PRDNER) provided a photograph of the coquí llanero's habitat that was filled by the construction of the racetrack (PRDNER 2007b, p. 25). It is also evident that the racetrack floods during heavy rain events and serves as a

potential source of contamination with oil, gasoline, and other pollutants, affecting the suitability of the coquí llanero's habitat (PRDNER 2007b, p. 25). The possible effects of waterborne contaminants on the coquí llanero are discussed under Factor E.

Comments submitted by SSLM (2009, p. 4) expressed concern regarding the operators of the racetrack removing soil to expand the parking lot. The soil was deposited on the USNSGASS grounds, affecting coquí llanero habitat by filling part of the wetland. Joglar (2007, p. 2) identified the wetland area contiguous to the racetrack as occupied by the coquí llanero.

Based on the above information, we conclude that any further expansion of the racetrack or its operation may potentially impact the coquí llanero through permanent loss, alteration, or contamination of its habitat.

Toa Baja Municipal Landfill (TBML)

The current operation of the TBML constitutes a threat to the coquí llanero. The landfill is located inland on top of a limestone hill 0.5 mi (0.8 km) south of the known coquí llanero habitat. The polluted discharge or runoff waters from the continued operation of the landfill may pose a threat to the species because underground contaminated waters and leachates reaching the wetlands may change water quality, soils, and consequently plant composition (CPRC 2009, pp. 6–9). See discussion below under Factor E.

The legal representative for the Toa Baja Municipal Administration sent a letter to the Service dated September 8, 2009, supporting the listing of the coquí llanero as an endangered species and supporting the PRDNER Essential Critical Natural Habitat delineation, except for one 83-ac (33.6-ha) parcel necessary for the implementation of TBML closure activities ordered by the U.S. Environmental Protection Agency (EPA). According to a PRDNER technical assistance letter dated February 26, 2010 (PRDNER 2010, pp. 1–6), another area on the north side of the TBML is also being considered for use in closure activities. The area identified as Area B by the Puerto Rico Environmental Quality Board (EQB) is located within the area formerly designated by PRDNER as Essential Critical Natural Habitat for the coquí llanero. Activities identified in the closure procedures will direct the TBML storm water drainages towards the wetland. Storm water that drains from the TBML currently flows into coquí llanero habitat and is contaminated with leachate (see Factor E discussion). In addition, the TBML closure measures would modify the hydrology of the area and could adversely affect the hydrology of the wetland by affecting part of the limestone hills, which supply water to the wetland and affect the suitability of habitat for the species.

Based on the above information, we conclude that the current operation and possible closure measures of the TBML are a threat to the coquí llanero by potentially altering the hydrology of its wetland habitat and by contaminating the wetland with landfill runoff.

Channel-Clearing Activities for Flood Control

The municipality of Toa Baja periodically removes riparian vegetation along the main drainage channel within the wetland where the species is known to occur. These flood control measures are implemented during the rainy season to facilitate water flow and prevent flooding of nearby communities such as Ingenio, Villas del Sol, and Brisas de Campanero. However, channel-clearing activities may facilitate drainage and drying of the wetland, and accelerate colonization of invasive, herbaceous vegetation along the edges of the channel towards the wetland (Ríos-López 2009, p. 3). Preliminary studies on the reproductive biology of the coquí llanero suggest that wetland areas subjected to prolonged dry periods (e.g., towards the edges of wetland) are characterized by greater vegetation cover of grasses instead of the native ferns and arrowheads that the coquí llanero depends on for reproduction and survival. These areas also have a disproportionate abundance of coquí llanero egg clutch predators, both native and exotic mollusks and insects (Ríos-López 2009, pp. 3, 11).

Based on the above information, we conclude that channel-clearing activities may be an indirect threat to the coquí llanero because they prolong dryer conditions along the edges of the wetland, allowing invasive plants and predators to colonize the wetland.

Invasive Wetland Plant Species

Invasive native wetland plants such as *Typha domingensis* (Southern cattail) may invade and alter diverse native wetland communities, often resulting in plant monocultures that support few wildlife species (Houlahan and Findlay 2004, p. 1132). Southern cattail may alter the wetland attributes, including geomorphology, fire regime, hydrology, microclimate, nutrient cycling, and productivity (Woo and Zedler 2002, p. 509). Based on our previous experience in the Laguna Cartagena National Wildlife Refuge, the southern cattail colonized disturbed areas faster than other native wetland plants, thereby excluding the native plants. The southern cattail is currently found in patches within coquí llanero wetland habitat (Service 2011, pers. obs.). If the southern cattail continues to spread and colonizes coquí llanero wetland habitat, it could replace all *Sagittaria lancifolia* and the ferns that the coquí llanero depends on for reproduction and normal behavior.

Therefore, we conclude that invasive wetland species are a threat to the coquí llanero due to changes in the wetland hydrology and plant species composition the coquí llanero needs for survival.

Summary of Factor A

Based on the best scientific and commercial information available, we find that urban development, the operation of the existing race track, activities associated with the operation and future closure of the TBML, channel-clearing activities for flood control, and invasive plant species pose a threat to the species. The scope of this factor is exacerbated because the only known population of coquí llanero occurs on land that is slated for development and surrounded by lands subject to urban development. Because these threats are already occurring, and are expected to continue into the future, on the extremely localized known range of the coquí llanero, they are having or are likely to have a significant impact on the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The coquí llanero is not a commercially valuable species or a species sought after for recreational or educational purposes. However, this recently discovered species could be actively sought for scientific purposes. Forty-five coquí llanero specimens were collected for scientific purposes in 2005 to describe the species, and some specimens have been deposited in universities and private collections (Ríos-López and Thomas 2007, p. 54). In addition, an undisclosed number of eggs and individuals were collected for scientific research of the species' reproductive biology, potential captive breeding capability, and pathogen sampling. Despite scientific collection having been identified as a possible contribution to the decline of other coquí species in Puerto Rico, scientific collection had not previously been identified as a threat to this species because the coquí llanero had legal protection under Commonwealth Law 241 and PRDNER Regulation 6766,

promulgated in 2007. Commonwealth Law 241 and PRDNER Regulation 6766 prohibited collection of the coquí llanero without authorization of the Secretary of the PRDNER (PRDNER 2007a, p. 9). However, on May 30, 2012, the Supreme Court of Puerto Rico overturned the protection and critical habitat designation established by the PRDNER for the coquí llanero (*Municipio de Toa Alta, et al.* v. *PRDNER,* 2012 TSPR 94), leaving the species without legal protection. This issue is discussed under Factor D.

As a recently discovered species, the coquí llanero is recognized for its rarity and restricted range. However, there is no regulation limiting its collection, making the species more attractive to collectors and scientists. Currently, only a few researchers are conducting studies on the species. Although collection could be a significant threat to the species due to its restricted range and because collection could potentially occur at any time, we do not have information indicating that the coquí llanero is being collected. Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the coquí llanero.

C. Disease or Predation

The effects of diseases or predation on the coquí llanero are not well known. Because the species is known from only one location, and population size is not well estimated, disease and predation could pose a threat to its survival.

Disease

The pathogenic chytrid fungus, *Batrachochytrium dendrobatidis* (*Bd*), is a widespread pathogen that is hypothesized to be the cause of mass mortality in some amphibian populations (Pilliod *et al.,* 2009, p. 1260). Chytridiomycosis (disease caused by the fungus) results when *Bd* invades keratinized tissue (tissue that makes the outside of the skin tough and resistant to injury) of an amphibian, disrupting cutaneous functions, compromising the host's immune system, and affecting the amphibian's behavior (Pilliod *et al.,* 2009, p. 1260). In Puerto Rico, the fungus appears to be endemic above 1968.5 ft (600 m), occurring from east of Luquillo Mountain (El Yunque National Forest) throughout the Central Cordillera up to Maricao (Burrowes *et al.* 2008, p. 322). This occurrence is outside of the coquí llanero's known range (see *Species Information*). Additionally, five coquí llanero individuals have been sampled for *Bd,* with negative results (Burrowes *et al.* 2008, p. 323). Although *Bd* has been detected at lower elevations in other tropical environments, the best scientific and commercial information available for coquí llanero indicates that this fungus is not a current threat to this species, nor is it likely to become so in the near future, even taking into consideration changing environmental conditions due to climate change (see discussion under Factor E). Based on the above information, we conclude that disease is not currently a threat to the coquí llanero.

Predation is a threat to the coquí llanero, particularly at the dryer edges of the wetland. The eggs are preyed on by ants and by a terrestrial invertebrate. Information provided by Ríos-López (2009, p. 11) indicates that natural predation pressure may be strong and that interspecific competition for breeding sites may be significant. Preliminary data indicated that the coquí llanero has the lowest reproductive output of any coquí species in Puerto Rico, averaging three eggs per clutch (PRDNER 2007a, p. 3; Ríos-López and Thomas 2007, p. 60; Ríos-López 2009, p. 5). Egg predation by native and exotic invertebrates was observed, with some predators consuming entire egg masses in 3 days. However, the information available suggests that flooded conditions may limit predation pressure against the coquí llanero. Predators of the coquí llanero rarely invade more permanent flooded areas of the wetland, suggesting that predation could be exacerbated by the destruction, modification, or curtailment of the species' habitat (see discussion under Factor A).

Based on the best scientific and commercial information available, we have determined that disease is not a threat to the coquí llanero. However, predation is a threat to the continued existence of the species.

D. The Inadequacy of Existing Regulatory Mechanisms

PRDNER designated the coquí llanero as Critically Endangered and designated its habitat as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766 in July 2007 (PRDNER 2007a and 2007b). Article 2 of Regulation 6766 included all prohibitions and stated the designation as ''critically endangered,'' which prohibited any person from taking the species; it prohibited harm, possession, transportation, destruction, or import or export of individuals, nests, eggs, or juveniles without previous authorization from the Secretary of PRDNER (PRDNER 2007a, p. 9). Article 2.06 also prohibited collecting, harassing, hunting, and removing, among other activities, of listed animals within the jurisdiction of Puerto Rico (PRDNER 2007a, p. 9).

The PRDNER designated approximately 1,602 ac (648 ha) as ''Essential Critical Natural Habitat'' under Regulation 6766 (PRDNER 2007b, p. 28). The coquí llanero's habitat was the first designated essential critical natural habitat under Commonwealth Law 241 and Regulation 6766. Article 4.05 of this regulation specifies that an area designated as Essential Critical Natural Habitat cannot be modified unless scientific studies determine that such designation should be changed.

SSLM brought a lawsuit against the PRDNER, alleging that the agency designated as critical habitat of the coquí llanero areas in excess of what is required for the conservation of the species. SSLM challenged the PRDNER designation, arguing the area does not reflect the presence of the coquí llanero or physical and biological characteristics that sustain the species.

On May 30, 2012, the Supreme Court of Puerto Rico held that PRDNER did not follow the designation process required by Commonwealth Law 170 (Ley de Procedimientos Administrativos Uniformes del Estado Libre Asociado de Puerto Rico, del 12 de Agosto de 1988, 3 L.P.R.A. sec. 2101, *et seq.*), and overturned the PRDNER designation of the coquí llanero as ''critically endangered'' and the designated ''essential critical natural habitat'' (*Municipio de Toa Alta, et al.* v. *PRDNER,* 2012 TSPR 94). Therefore, presently, PRDNER's designations for the coquí llanero as critically endangered and its essential critical natural habitat, are invalid, and Commonwealth Law 241 and Regulation 6766 provide no protection for the species and its habitat. Additionally, the coquí llanero is not currently on the Commonwealth list of endangered and threatened species.

The Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.,* administered by the Corps, establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources. The CWA has a stated goal that ''* * * wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.'' States are responsible for setting and

implementing water quality standards that align with the requirements of the CWA. Overall, implementation of the CWA could benefit the coquí llanero through the point and nonpoint source programs.

Nonpoint source (NPS) pollution comes from many diffuse sources, unlike pollution from industrial and sewage treatment plants. NPS pollution is caused by rainfall (water) moving over and through the ground. As the runoff moves, it transports natural and human-made pollutants to lakes, rivers, wetlands, coastal waters and ground waters. States report that nonpoint source pollution is the leading remaining cause of water quality problems. The effects of nonpoint source pollutants on specific waters vary and may not always be fully assessed. However, these pollutants have harmful effects on fisheries and wildlife (*http://www.epa.gov/owow_keep/NPS/whatis.html*).

Sources of NPS pollution within the watershed that feed the wetland occupied by the coquí llanero include clearing of riparian vegetation, urbanization, road construction, and other practices that allow bare earth to enter streams. The Service does not have any specific information about the sensitivity of the coquí llanero to common NPS pollutants likely released from the activities discussed under Factor A, above. Because there is very little information known about water quality parameters necessary to fully protect the coquí llanero, it is difficult to determine whether the CWA is adequately addressing the habitat and water quality threats to the species. However, based on the information currently available, the Service does not believe that the current water quality conditions are a threat to the species.

Similarly, the CWA has mechanisms in place to protect the integrity of wetlands such that water quality is maintained. The Service currently consults with the Corps on wetland fill permits, and we anticipate that this process will adequately protect the integrity of the emergent wetland occupied by the coquí llanero. Therefore, we do not find that inadequate implementation of the CWA is a threat to the species at this time.

Summary of Factor D

The sole regulatory mechanisms that protected the coquí llanero, Commonwealth Law 241 and Regulation 6766, have been invalidated by the court and are no longer in effect. Further, after evaluating the CWA, we determined that it provides adequate protection to the wetland occupied by the species and, therefore, inadequate implementation to the CWA is not a threat to the coquí llanero at this time. We are not aware of any other existing regulatory mechanisms that address the threats to the species and its habitat identified under the other factors. In summary, we do not find that the inadequacy of existing regulatory mechanisms is a threat to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In the following section, we discuss the highly specialized ecological requirements of the species, as well as water and soil pollution, use of herbicides, brush fires, competition, climate change, and human use of and access to the wetland area.

Highly Specialized Ecological Requirements

Because of its highly specialized ecological requirements for reproduction, the coquí llanero's vulnerability to other threats discussed in this rule is exacerbated. As mentioned in the *Background* section, the coquí llanero is known to exist in only one freshwater wetland in the municipality of Toa Baja, and after several searches in other similar locations (apparently there are few or no wetlands with similar plant composition), the species was not detected. Ríos-López and Thomas (2007, p. 60) found that the breeding events of the coquí llanero were limited to one plant species, *Sagittaria lancifolia*. This plant is an obligate wetland indicator species. A general description of the major substrate types of the wetland that the coquí llanero currently inhabits indicates a 7.4 percent vegetation cover of *S. lancifolia* (Ríos-López 2009, p. 9). The coquí llanero may also be selecting an intermediate *S. lancifolia* size class for egg laying, which suggests further specialization (Ríos-López 2010, unpubl. data, p. 8). Also, current research by Ríos-López (2010, unpubl. data, p. 11) suggests that reproduction may not occur randomly in space, but rather seems to be limited to plants located in areas of little disturbance, in areas that are permanently flooded, and in areas that are away from the wetland's edges.

We find that the highly specialized ecological requirements of the coquí llanero exacerbate its vulnerability to other threats, such that the continued existence of the species is likely to be impacted.

Water and Soil Pollution

CPRC (2009, p. 6), PRDNER (2007b, p. 24), EGIS, Inc. (2007, p. 4), and Joglar (2007, p. 6) identify the TBML leachates as a threat to the coquí llanero. This landfill is located on the limestone hills to the south of the wetland known to be occupied by the coquí llanero. The CPRC submitted to EGIS a photograph of contaminated leachates draining towards that wetland. The leachate study submitted by EGIS described the hydrology of the area as typical of karst zones (area of limestone soil characterized by sinks, ravines, and underground streams) near the coast in which the runoff generated in the limestone hills, including at the TBML, flows at or near the surface through a series of channels and small valleys that ultimately reach the marshes and wetlands areas (including coquí llanero habitat) to the north of the TBML (EGIS 2007, Appendix B, p. 7). The study specifies that a dark-colored leachate is currently flowing from the TBML towards the closed USNSGASS property, and that even during periods of drought, the leachate flows continuously towards the USNSGASS property, with flows increasing during rain events (EGIS 2007, Appendix B, p. 23). The leachate study identified high levels of arsenic, cyanide, sodium, lead, and chromium, among other elements. There did not appear to be much indication of petroleum-related pollutants, although sampling more strategically near the racetrack could more accurately assess this contamination impact relative to the coquí llanero's habitat (EGIS 2007, p. 5).

Additional analytical laboratory results from other threat zones associated with the wetland indicated elevated levels of certain heavy metals, coliform bacteria, chemical oxygen demand, and pesticides (EGIS 2007, p. 18). High coliform bacteria counts could be from several sources (e.g., septic systems) or the CPRC (EGIS 2007, p. 5). Of particular concern is the possibility of bioaccumulation of toxins throughout the wetland food chain (PRDNER 2007b, p. 24). It is highly probable that the contaminated conditions of the soil and standing water would not be hospitable to a sensitive amphibian species, such as the coquí llanero, that absorbs chemicals through the skin (EGIS 2007, p. 5). Such chemicals could directly affect the coquí llanero's development, cause abnormalities, or act indirectly by increasing its susceptibility to other environmental stressors such as infectious diseases and predation (Taylor *et al.,* 2005, p. 1497). We have no information indicating any negative response of the species to soil and water pollution. However, we consider water

and soil pollution a potential threat to the species at this time.

Herbicides

The CPRC (2009, p. 7) identified the use of herbicides for maintenance of green areas in the closed USNSGASS as a current threat to the species. However, SSLM (2009, p. 9) claims they do not use herbicides on the borders of the wetland as part of maintenance work on the USNSGASS property, and that the practice of using herbicides is not in accordance with its institutional environmental policies and the activities authorized to SSLM at the USNSGASS by the Navy. During a site visit by the Service, there were no signs of the use of herbicides along Redman Road within the area where coquí llanero occurs at the USNSGASS. Moreover, a conversation with Ríos-López (2011 pers. comm.) confirmed that practice had apparently ceased.

Nevertheless, herbicides may still be able to enter into the wetland because of possible herbicide use in the urban housing areas near the coquí llanero's habitat. These herbicides could cause developmental abnormalities (e.g., limb malformations) to the coquí llanero. In fact, pesticides have been known to be dispersed through precipitation and wind (Sparling *et al.* 2001, p. 1595; Fellers *et al.* 2004, p. 2176). Other research suggests that important changes in an ecological community's food web resulted from pesticide and herbicide exposure, which influence the susceptibility of amphibian species to contaminants (Boone and James 2003, p. 829). We have no information indicating any negative response of the species to herbicides. However, we consider the use of herbicides in the surrounding area as a potential threat to the species at this time.

Brush Fires

Brush fires have been identified as a current threat to the species (CPRC 2009, p. 6). SSLM (2009, p. 9) mentioned that the only fire incidents reported since 2007 have occurred on the North Tract of the USNSGASS and were limited to two or three incidents per year during the drought season. The habitat of the coquí llanero is surrounded by several developments (e.g., race track and urban housing) that facilitate exposure and invasion of any accidental or deliberate fires into the wetland footprint and adjacent forest. This could exacerbate the entrance of invasive plants such as southern cattail and change the vegetation composition of the wetland (see discussion under Factor A). Changes to the wetland could create an environment where the cattail dominates the vegetation make-up and converts the wetland to a monotypic vegetation environment. This would reduce the plants that coquí llanero depends on. In addition, these brush fires may encroach on the coquí llanero's current limited habitat. A possibly extinct coquí species in Puerto Rico (i.e., *Eleutherodactylus jasperi*) with limited distribution and highly specialized ecological requirements is known to have been adversely affected by fires in its type locality (Díaz 1984, p. 4).

Therefore, we believe that brush fires may be a threat to the coquí llanero and its habitat.

Competition

A common, and more widespread, coquí species of Puerto Rico (i.e., *Eleutherodactylus cochranae*) can utilize the same habitats as the coquí llanero, specifically the *S. lancifolia* egg-laying locations, displacing and damaging the coquí llanero's eggs. These competitors rarely invade more permanently flooded areas of the wetland, suggesting a synergism between hydrology alteration and competition that may result in magnified, negative biological interactions against the coquí llanero (Ríos-López 2009, p. 4).

Competition is a threat to the coquí llanero, particularly at the dryer edges of the wetland. This threat could be exacerbated by the destruction, modification, or curtailment of the species habitat (see discussion under Factor A). The available information suggests that flooded conditions may limit competition pressure against the coquí llanero. Therefore, based on the best scientific and commercial information available to us, we conclude that competition is a threat to the continued existence of the species.

Climate Change

''Climate'' refers to an area's long-term average weather statistics (typically from at least 20 or 30 year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind; ''climate change'' refers to a change in the mean or variability or both of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional, and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North America and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2 °F (1.1 °Celsius) across the United States since 1960 (Global Climate Change Impacts in the United States (GCCIUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea-ice (e.g., Comiso *et al.* 2008, p. 1); and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (e.g., GCCIUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). The projections include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate changes) have some uncertainty associated with projections due to assumptions used, data available, and features of the models. With regard to climate change, this includes factors such as assumptions related to emissions scenarios, internal climate variability, and differences among models. However, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current

conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of Arctic sea-ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000, the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid- to higher levels of the various emissions scenarios developed in the late 1990s and used by the IPPC for making projections (e.g., Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicate that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (e.g., Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is an endangered or threatened species as defined under the Act. If a species is listed as endangered or threatened, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While projections from global climate model simulations are informative and in some cases are the only or the best scientific information available, various downscaling methods are being used to provide higher-resolution projections that are more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al.* 2011, pp. 58–61). The effects of climate change on coastal wetlands could be significant if sea level rises. Changes in precipitation patterns and warmer temperatures can likewise have detrimental effects on wetland function (Mitsch and Gosselink 2007, p. 313). Climate-linked amphibian population declines in Puerto Rico have been explained by a possible synergistic interaction between drought and the pathological effect of the chytrid fungus (Burrowes *et al.* 2004, p. 141) (see Factor C discussion). While we do not have specific information for the coquí llanero and its habitat, information in the literature suggests that changes in environmental conditions that may result from climate change can influence the spread of nonnative, invasive species; fire; and precipitation levels, thereby potentially impacting the coquí llanero.

Human Access or Use

Although we currently do not have any information on the visitor use of the wetland where the coquí llanero is known to occur, Ríos-López (2009, p. 3) suggests that visitation for educational, research, or recreational purposes may have significant impact on the unique vegetation assemblage of the wetland. These activities could result in vegetation destruction from the development of research transects and observation trails. Up to a 4-month delay of vegetation regeneration was documented after a transect was established for these activities and up to an 8-month delay of vegetation regeneration after a helicopter hovered approximately 30 ft (9 m) above a section of the wetland. Afterwards, short-term results included reduced calling by male coquí llanero and invasion by another edge-associated coquí species, *Eleutherodactylus antillensis,* on the bent vegetation that had formed a raft-like area (Ríos-López 2009, p. 3). However, because the wetland area is generally closed to visitors and research limited and only by permit, human impact from these activities is expected to be minimal.

Therefore, we conclude that human access or use is currently not a significant threat to the coquí llanero and its habitat.

Summary of Factor E

In summary, the coquí llanero may be threatened by a variety of natural and manmade factors that may affect the continued existence of the species. The primary natural or manmade factors affecting the species are its highly specialized ecological requirements, which exacerbate the threats posed by other factors to the coquí llanero, and competition with other coquí species for egg-laying sites. Other potential threats that may affect the species are landfill leachate pollution, the use of herbicides, the threat of fire to the species' habitat, and changes in environmental conditions resulting from climate change. We determined that human access or use is not currently a significant threat to the coquí llanero and its habitat. Based on the best available information, we conclude that the coquí llanero may be threatened by other natural or manmade factors affecting its continued existence. Factors including the coquí llanero's highly specialized ecological requirements, landfill leachate pollution, the use of herbicides, brush fires, competition, and environmental effects resulting from climate change are potential threats that may be expected to increase in the future depending on activities surrounding the species' habitat, placing the coquí llanero at risk.

Cumulative Impacts

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact coquí llanero beyond the scope of the combined threats that we have already analyzed.

Summary of Factors

The main factors from section 4(a)(1) of the Act that threaten coquí llanero are Factors A, C, and E. The primary threat to the species is from habitat modification (Factor A) in the form of urban development and ongoing threats of habitat destruction and modification. Predation may also present a current threat to the coquí llanero, particularly at the dryer edges of the wetland, and its isolation makes it particularly susceptible to disease and predation (Factor C). Other natural or manmade factors affecting its continued existence, particularly its specialized ecological requirements, also may be threats to the species (Factor E). Further, there are no existing regulatory mechanisms in place that address the threats to the species or its habitat (Factor D). These factors pose

imminent threats to the species because they are currently occurring. Depending on the intensity and immediacy of such threats, these factors, either by themselves or combined, are operative threats that act on the species and its habitat.

Determination

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the coquí llanero, and have determined that the continued existence of the coquí llanero is threatened by urban development and associated activities, changes in hydrology, surface and ground pollution, use of herbicides, invasion of nonnative species, predation, climate change, brush fires, and competition. Significant threats are occurring now and are likely to continue in the foreseeable future, at a high intensity, and across the species' limited range and not limited to or concentrated in any significant portion of its range; therefore, we have determined the species is currently on the brink of extinction. Because these threats are placing the species in danger of extinction now and not only at some point in the foreseeable future, we find this species meets the definition of an endangered species, not a threatened species. Hence, on the basis of the best available scientific and commercial information, we determined the coquí llanero as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Significant Portion of the Range

We evaluated the current range (one known population occupying approximately 615 acres (248.8 ha) of wetland) of the coquí llanero to determine if there is any apparent geographic concentration of potential threats for the species. The coquí llanero is highly restricted in its range and the threats occur throughout its range. We considered the potential threats due to urban development, changes in hydrology, surface and ground pollution, invasion of nonnative species, brush fires, competition, predation, the inadequacy of existing regulatory mechanisms, chemical contaminants, and climate change. We found no concentration of threats because of the species' limited and curtailed range, and the uniformity of the threats throughout its entire range. Having determined that the coquí llanero is in danger of extinction throughout its entire range, it is not necessary to evaluate whether there are any significant portions of its range. Therefore, we find that factors affecting the species are essentially uniform throughout its range, indicating no portion of the range of the species warrants further consideration of possible endangered or threatened species status under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this species is listed (see **DATES**), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the Commonwealth of Puerto Rico will be eligible for Federal funds to implement management actions that promote the protection or recovery of the coquí llanero. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include: Federal activities that may affect the coquí llanero including, but not limited to, the carrying out or the issuance of permits for discharging fill material on wetlands for road or highway construction; installation of pipelines; development of residential, tourism, or commercial facilities; farming; channeling or stream alterations; discharge of contaminated waters; wastewater facility development; and renewable energy projects. Additional detail is provided below:

(1) Actions that would significantly alter the structure and function of the wetland. Such actions or activities could include, but are not limited to, the filling or excavation of the wetland. The filling or excavation of the wetland would alter the hydrology of the site and would destroy the vegetation where the coquí llanero spends all of its life stages. The filling or excavation of wetlands could result in the direct mortality of the species because it will destroy the only known population and locality where the coquí llanero is found.

(2) Actions that would significantly alter the vegetation structure in and around the wetland. Such actions or activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, construction of new roads, and development of new residences or commercial establishments. The alteration of the vegetation structure may change the wetland characteristics by changing the microhabitat (e.g., change in temperature and humidity levels) and could result in direct mortality of individuals and egg clutches through desiccation from sun exposure.

(3) Actions that may alter the natural flow of water. Such actions or activities could include, but are not limited to, changes in the limestone hills located to the south of the wetland. The alteration of these limestone hills may affect the integrity of the wetland (e.g., change in hydrology, replenishment of water, sedimentation deposition or erosion). These activities could reduce the wetland composition, including the vegetation, and could result in direct or cumulative adverse effects to the species.

(4) Actions that would significantly degrade water quality (for example, contaminants and excess nutrients). Such actions or activities could include, but are not limited to, landfill discharges, heated effluents into surface water or connected groundwater, and the spill of petroleum-based products by the nearby go-kart race track. These activities could alter water conditions that can consequently alter the plant composition in the wetland by exposing the species to more competition and result in direct or cumulative adverse effects to the species and its life cycle.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Critical Habitat Designation for Coquí Llanero

Background

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are

essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

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

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing (2012) to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the coquí llanero from studies of this species' habitat, ecology, and life history as described in the *Critical Habitat* section of the proposed rule to designate critical habitat published in the **Federal Register** on October 12, 2011 (76 FR 63420), and in the information presented below.

Unfortunately, little is known of the specific habitat requirements for coquí llanero other than it requires a palustrine herbaceous wetland and a specific vegetation composition. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the species exists and the limited information available on this species. We have determined that coquí llanero requires the following physical or biological features.

Space for Individual and Population Growth and for Normal Behavior

Coquí llanero is restricted to a palustrine (freshwater) herbaceous wetland located on both Commonwealth and Federal lands in the Sabana Seca Ward, Toa Baja, Puerto Rico. The Service has estimated the palustrine herbaceous wetland area occupied by the species to cover approximately 615 ac (249 ha).

These wetland areas are within the subtropical moist forest life zone (Ewel and Whitmore 1973, p. 72). The variables used to delineate any given life zone are mean annual precipitation and mean annual temperature. The life zones and associations of which they are composed only define the potential vegetation or range of vegetation types that might be found in an area (Ewel and Whitmore 1973, p. 5). The mean annual precipitation for Puerto Rico is about 55 to 65 in (21.7 to 25.6 cm) a year (NOAA Web site 2009, *http://www.srh.noaa.gov/sju/?n=climo_annual01*), and the temperature is 79.4 °F (26.3 °C) (Geo-Marine 2002, p. 2–1). The palustrine herbaceous wetland is where the non-tidal water regime may be seasonal to permanently flooded (NWI

Maps, Cowardin *et al.*1979, pp. 10–22) and found at low elevations up to approximately 56 ft (17 m) (Ríos-López and Thomas 2007, p. 61). As of today, the coquí llanero has not been found in areas outside the marsh. However, based on current knowledge, it appears to be an obligate marsh-dwelling species (Ríos-López and Thomas 2007, p. 62).

The current herbaceous vegetation in these wetlands consists of *Blechnum serrulatum* and *Thelypteris interrupta* (ferns), *Sagittaria lancifolia* (bulltongue arrowhead), *Cyperus* sp. (flatsedges), *Eleocharis* sp. (spike rushes), and vines and grasses. Although several of these plants have been documented at other sites in Puerto Rico, the vegetation composition (combination and abundance of each plant) is a unique ecosystem not found in other places in Puerto Rico (PRDNER 2007b, p. 11). Studies indicate that the coquí llanero perch, sit, or call on or from the herbaceous vegetation and mainly on the ferns (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9). Wetlands are maintained by water quantity, channel slope, and sediment input to the system through periodic flooding. Changes in one or more of these parameters can result in changes in the wetland function and vegetation composition, with serious effects to coquí llanero. In addition, hydrology (the occurrence, circulation, and distribution of waters) is also an important factor to the wetland because it will connect areas that are separated by roads and other structures, hence making available nearby habitats for coquí llanero.

Hydrology connects the areas of currently known habitat of the species. Although the areas have several manmade drainage ditches used for agricultural purposes in the past, these have not modified the watershed boundaries (G.L. Morris Eng. 2007, p. 3; PRDNER 2007b, p. 19). The topography of the Sabana Seca–Ingenio area, in general, has an east to west inclination where the surface and ground water from the limestone hills to the south of PR Road–867 discharges into the wetland, and eventually goes north and northwest connecting to Caño Campanero, and then to Cocal River, ending in the Atlantic Ocean (PRDNER 2007b, p. 15). Factors that might threaten the water quality or the water flow of these drainages may affect the currently known population of coquí llanero.

Hydrologic conditions are important for the maintenance of a wetland structure and function. Hydrology includes the transport of energy (water) and nutrients to and from wetlands through pathways such as precipitation, surface run-off, groundwater, tides, and flooding rivers. This could affect species composition and richness, primary conductivity (salinity), organic accumulation, and nutrient cycling within the wetlands (Mitsch and Gosselink 2007, p. 107). Wetlands are sometimes referred to as ''the kidneys of the landscape'' because they filter the downstream waters and waste received from natural and human sources (Mitsch and Gosselink 2007, p. 4). Polluted waters that enter the wetland through its hydrology may affect the habitat of coquí llanero. For example, an increase in the current polluted waters from the continued operation of the landfill pose a threat to the species and its habitat because underground contaminated waters and leachates may change water quality, soils, and consequently plant composition in the wetland. In addition, nonpoint source run-off from adjacent land surfaces (e.g., pesticides, herbicides, fertilizers, and sediments), and random spills or unregulated discharge events (e.g., petroleum-based substances from the nearby go-kart race track) may threaten the species and its habitat (see discussion under Factor A above). This could be particularly harmful during drought conditions when water flows are low and pollutants are more concentrated.

On the basis of the information above, the palustrine herbaceous wetland located in the Sabana Seca–Ingenio area provides space for normal behaviors of the coquí llanero. In addition, hydrology is essential to the maintenance, structure, and function of the wetland. The water quality and water flow that discharges onto the wetland allows the growth of the required vegetation composition on which the coquí llanero depends for normal behavior, growth, and viability during most of its life stages. Therefore, we have identified the palustrine herbaceous wetland, and particularly the hydrology and vegetation of this area, to be physical or biological features for this species.

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

Although the life history of the coquí llanero has not been studied, the life histories of other amphibians in the *Eleutherodactylus* genus indicate that amphibians are opportunistic feeders where diets reflect the availability of food of appropriate size (Duellman and Trueb 1994, p. 229; Joglar, 2005, p. 73). The wetland provides a variety of food sources (insects) for the coquí llanero. Food availability might be affected by water quality and contamination of the wetland. Contaminated waters may change water quality, soils, and consequently plant composition in the wetland. These changes can open an opportunity to other species (plants or animals) to overshadow the current species present in the wetland, forcing the coquí llanero to compete for available food sources or to move to other less competitive sites.

Therefore, based on the information above, we identify food availability provided by the palustrine herbaceous wetland to be a physical or biological feature for this species.

Cover or Shelter

The coquí llanero appears to be an obligate marsh-dwelling species because it has not been found in areas outside of the marsh (Ríos-López and Thomas 2007, p. 62). The palustrine herbaceous wetland provides cover and shelter for coquí llanero. The vegetation found in the palustrine wetland consists of herbaceous emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants (Cowardin *et al.* 1979, p. 19), like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9). Studies on the species show normal behavior (e.g., perching, sitting, or calling) occurs on the herbaceous vegetation (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9) (see ''*Space for Individual and Population Growth and for Normal Behavior''*).

Therefore, based on the information above, we identify the vegetation (i.e., plant species, structure, and composition) of the palustrine herbaceous wetland located in the Sabana Seca–Ingenio area to be a physical or biological feature for this species.

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

Callings or sound production by animals is a method of advertising the presence of one individual to others of the same species. It is common in animals that have low density dispersal and in animals that jump or fly. Anurans (any amphibian of the Order Anura, comprising the frogs and toads) have well-developed vocal structures capable of producing sounds that serve to attract mates, advertise territories, or express distress (Duellman and Trueb 1994, p. 87). It has been documented that the coquí llanero uses the herbaceous vegetation in the wetland, especially the ferns, as calling areas.

In addition, it has been determined that the species deposits their egg clutches only in the leaf axis of *Sagittaria lancifolia,* and it appears that the species does not provide parental care (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, pp. 5, 9). Also, the coquí llanero has direct development (embryos do not have an intermediate phase like tadpoles or aquatic larvae) where they develop directly to terrestrial amphibians (miniatures of the adults); hence the vegetation provides the only protection that egg clutches and the offspring might receive.

Therefore, based on the information above, we identify the herbaceous vegetation, especially *Sagittaria lancifolia* and the ferns, of the palustrine wetland to be an important physical or biological feature for this species.

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

The palustrine herbaceous wetland area where the coquí llanero currently exists consists of Federal lands, part of which are lands previously managed by the U.S. Naval Security Group Activity (NSGA) and areas owned by the Commonwealth of Puerto Rico (University of Puerto Rico, PR Land Authority). The area previously managed by the NSGA had restricted access to people; thus, the coquí llanero had experienced little disturbance from the military operations. The NSGA was managed as a high-frequency, direction-finding facility and provided communications and related support, including communications relay, communications security, and communication manpower assistance, to components of the U.S. Navy and other Department of Defense (DOD) elements (Geo-Marine 2002, p. 1–3). All DOD installations have to complete and implement an integrated natural resources management plan (INRMP) to ensure that all natural resources on the site are managed. However, the NSGA ceased operations in 2005, when technological advances and changes eliminated the need to continue the operations at the site. The area is no longer managed as a military base, and the INRMP implementation does not apply anymore. At present, the area is proposed for transfer or disposal, or a combination of both, and is currently leased to a private party to sell the area for private development (see *Exemptions* below).

In 2007, the PRDNER designated Essential Critical Natural Habitat for the coquí llanero that includes the palustrine herbaceous wetland and the limestone hills found south of the wetland area. As part of the designation process, the PRDNER contracted a third party to conduct a study to determine the surface water drainage pattern of the area. The study concluded that the limestone hills located south of the palustrine wetland contribute to the hydrology that maintains the wetland (PRDNER 2007b, p. 28). However, the limestone hills runoff is not the only water source feeding the wetland. Furthermore, it is unknown to what extent the surface water patterns and quantity are essential to maintain the actual conditions of the wetland (i.e., PCEs), or if there are other water sources (e.g., groundwater) with equal or more significant impact on the wetland than surface water. Although the hills might be important for contributing to the hydrology of the wetland, they do not provide habitat for the coquí llanero. In addition, current information indicates the limestone hills will be protected in perpetuity and managed by the University of Puerto Rico for conservation because other Federal and Commonwealth listed species occur in that habitat.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the coquí llanero in areas occupied at the time of listing (2012), focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the coquí llanero are:

(1) Primary Constituent Element 1—*Palustrine herbaceous wetland.* Palustrine emergent persistent wetlands that are seasonally to permanently flooded. Ocean-derived salts need to be less than 0.5 parts per thousand (ppt) salinity.

(2) Primary Constituent Element 2—*Vegetation and vegetation composition of the palustrine herbaceous wetland.* Emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. In addition to the combination of vegetation, at least 25 percent of the vegetation should be ferns and *S. lancifolia.*

(3) Primary Constituent Element 3—*Hydrology.* A hydrologic flow regime (i.e., the pathways of precipitation, surface run-off, groundwater, tides, and flooding of rivers and canals [manmade ditches]) that maintains the palustrine herbaceous wetland.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing (2012) contain features that are essential to the conservation of the species and which may require special management considerations or protection.

We find that the essential features within the area occupied at the time of listing (2012) may require special management consideration or protection due to threats to the coquí llanero and or its habitat. The area is adjacent to roads, homes, or other manmade structures in which various activities may affect one or more of the primary constituent elements. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats or potential threats that may result in changes in the composition and abundance of vegetation inside the wetland: Fill of wetlands for development projects, degradation of water quality from underground contaminated waters and leachates from the nearby landfill, residential uses (e.g., use of pesticides and fertilizers), and road maintenance (e.g., use of herbicides).

Management activities that could ameliorate these threats or potential threats include, but are not limited to: Establishing permanent conservation easements or land acquisition to protect the species on private lands; establishing conservation agreements on private and Federal lands to identify and reduce threats to the species and its features; minimizing habitat disturbance, fragmentation, and destruction; preventing the destruction of the limestone hills that supply water to the wetland; minimizing water quality degradation of the wetland; and minimizing the effects of fires and droughts.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate

critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. Although additional (not occupied) habitat has been recommended to be added to the actual proposed designation, we are not including additional acreage outside the geographical area occupied by the species. At this time, no scientific information is available as to whether or not adjacent upland areas are considered essential for the continued existence of primary constituent elements of the species.

We have defined occupied critical habitat as palustrine emergent persistent wetland with an herbaceous vegetation composition dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines and grasses occupied by the coquí llanero at the time of listing. We used information from site visits to the area, researchers, reports from the PRDNER, and consultants to identify the specific locations occupied by the coquí llanero. All occurrence records of the coquí llanero were plotted on maps in a geographic information system as points and polygons. Once we determined which area of the wetland was occupied, we focused on aerial photographs of the area and the NWI maps to delineate the palustrine emergent persistent wetlands used by the coquí llanero. We estimated the area using the limits of the boundaries of the palustrine emergent persistent wetland.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PBFs for the coquí llanero. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential for the conservation of the species.

The critical habitat designation is defined by the map, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2009–0022, on our Internet sites (*http://www.fws.gov/caribbean/es/Endangered-Main.html*), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating one unit as critical habitat for the coquí llanero. The critical habitat area we describe below constitutes our best assessment at this time of areas that meet the definition of critical habitat. The one area we are designating as critical habitat is Sabana Seca, and it is occupied by the coquí llanero at the time of listing (2012) and contains sufficient physical and biological features to support life-history processes essential for the conservation of the species.

We present a brief description of the unit, and reasons why it meets the definition of critical habitat for the coquí llanero, below.

Sabana Seca Unit

The unit includes approximately 615 ac (249 ha) located south of State Road PR–867, west of Ramón Ríos Román Avenue, east of José Julián Acosta Road, and north of the limestone hills located north of Highway PR–22 in the municipality of Toa Baja, Puerto Rico. This unit contains a palustrine herbaceous wetland with emergent vegetation that includes ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. This unit is known to be currently occupied (that is, occupied at the time of listing) (Ríos-López and Thomas 2005; PRDNER 2007b; Service 2011, unpublished data). All the essential physical and biological features are found within the unit. The presence of the species and the physical and biological features at the site were confirmed by the Service during site visits conducted in January and March of 2011.

The essential features within this unit may require special management considerations or protection to insure maintenance or improvement of, and to address any changes that could affect, the existing palustrine herbaceous wetland, such as filling in of the wetland to develop the land; water diversion or water withdrawal; alteration of water hydrology or degradation of water quality; and changes in vegetation composition that might be caused by changes in hydrology or development, inappropriate management practices on the farmlands, or contamination from the underground polluted waters and leachates from the landfill.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under

section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those physical and biological features that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the coqui llanero. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the coquí llanero include, but are not limited to:

(1) Actions that would significantly alter the structure and function of the wetland. Such actions or activities could include, but are not limited to, the filling or excavation of the wetland. The filling or excavation of the wetland could alter the hydrology of the site and destroy or remove the vegetation where the only known population of the coquí llanero is found. The filling or excavation of wetlands could result in elimination or alteration of the coquí llanero's habitat necessary for all life stages of the species.

(2) Actions that would significantly alter the vegetation structure in and around the wetland. Such actions or activities could include, but are not limited to, removing or cutting the vegetation for expanding or maintaining roads, construction of new roads, development of new or maintenance of residences, and development of commercial establishments. The alteration of the vegetation structure may change the wetland characteristics by changing the microhabitat (e.g., change in temperature and humidity levels) and thereby negatively affect whether the coquí llanero is able to complete all normal behaviors and necessary life functions or may allow invasion of competitors or predators.

(3) Actions that may alter the natural flow of water to the wetlands occupied by the coquí llanero. Such actions or activities could include, but are not limited to, alteration to the adjacent lands that may affect the integrity of the wetland (e.g., change in hydrology, replenishment of water, sedimentation deposition or erosion). These activities could reduce the natural cycling and functioning of the wetland; change its composition, including the vegetation types the species depends on; or result in direct or cumulative adverse effects to the species from the alteration of the wetland's hydrology.

(4) Actions that would significantly degrade water quality (for example, actions that would add contaminants and excess nutrients). Such actions or activities could include, but are not limited to, landfill discharges or leachates from landfill, heated effluents into surface water or connected groundwater, or the spill of petroleum-based products at the nearby go-kart race track. These activities could alter water conditions that can consequently alter the plant composition in the wetland and result in less suitable habitat for the coquí llanero or the opening of the wetland to the coquí llanero competitors.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented

to provide for these ecological needs; and

• A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The majority of the designated critical habitat is located in a closed military installation formerly managed by the NSGA, and the land had an INRMP (Geo-Marine 2002, pp. 1–5–4), which provided for the conservation of the natural resources inside the installation. The property was declared excess to the Navy in 2001, and the installation ceased operations in 2005, before the discovery of the species. Currently, the land is being leased to a private entity by the Military Housing Privatization Initiative as part of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, section 2801, 110 Stat. 186 (10 U.S.C. 2871–2885), as amended. Currently there is no INRMP in place that would provide a benefit to coquí llanero occurring in habitats within or adjacent the closed NSGA of Sabana Seca.

Therefore, we are not exempting these lands from this final designation of critical habitat for the coquí llanero under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The statute on its face, as well as the legislative history, is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor in making that determination.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to identify and consider these potential economic impacts, we evaluate those impacts which are determined to be probable and incremental as a result of the proposed critical habitat designation. We announced the availability our evaluation of the probable incremental impacts of the designation of critical habitat for coquí llanero in the **Federal Register** on June 16, 2012, (77 FR 36457) and opened a 30-day public comment period on the proposed rule and our evaluation.

In our evaluation, we used our October 12, 2011, Incremental Effects Memorandum to identify potential effects associated with the following activities: (1) Species and habitat management; (2) residential, commercial, or industrial development; (3) agriculture; (4) construction of new, or maintenance of, roads and highways; (5) maintenance (including vegetation removal or alteration) of drainage ditches; (6) construction or maintenance of recreational facilities; (7) construction and maintenance of telecommunication towers; (8) renewable wind power energy; (9) gas pipeline; (10) closure of landfill; and (11) transfer of Federal lands (Navy).

The intent of the economic evaluation was to consider the potential economic impacts of all reasonably likely conservation efforts for the coquí llanero. The economic impact of the critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider when evaluating the potential economic impacts resulting from the final designation of critical habitat.

If a Federal action may affect a listed species or its designated critical habitat, the action agency is required pursuant to section 7(a)(2) of the Act, and its implementing regulations, to enter into consultation with the Service. In consultation, the Service must analyze whether the proposed action is likely to jeopardize the continued existence of the species or adversely modify or destroy critical habitat. Many conservation efforts for listed species result from this consultation process and we, therefore, focus our efforts on estimating costs on this process. We clarified the difference between the jeopardy and adverse modification standards for the coquí llanero critical habitat. Because the designation of critical habitat for coquí llanero is being proposed concurrently with the listing, it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species; (2) the current range of the coquí llanero is limited to the specific area identified as critical habitat; and (3) any actions that may affect the species or its habitat would also affect designated critical habitat. The Incremental Effects Memorandum

outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the potential incremental economic impacts of this designation of critical habitat.

Following the close of the comment period, we re-evaluated the potential economic impacts of the designation taking into consideration the public comments and any new information. On the basis of our further evaluation, public comment and new information we confirmed that potential incremental impacts resulting from the designation are anticipated to be limited due to the reasons stated above. We identified that as a result of the listing and designation of critical habitat, there may be an increase in the number of technical reviews and informal and formal consultations with Federal agencies under section 7 of the Act, specifically an increase of 23 technical reviews and consultations in Toa Baja. However, based on the consultation history associated with other listed species, the majority of the reviews were technical assistance and only a minority resulted in informal or formal consultations. We anticipate that the situation for coquí llanero will be comparable and that most effects (e.g., project modifications) would result from the species listing as an endangered species. Therefore, we expect that the incremental impacts due to the designation would be limited to administrative costs to address an adverse modification analysis in these reviews and consultations with Federal action agencies.

On the basis of our evaluation of potential economic impacts that may result from the designation of critical habitat for coquí llanero, we have found that incremental impacts and therefore costs would be limited to administrative costs to address adverse modification in technical reviews, informal and formal consultations. If we assume approximately the cost to address critical habitat in a technical review or consultation to be $10,000 (an approximate average for a comparable situation) and an increase of 23 technical reviews and consultations resulting from the listing and critical habitat, then the upper bound of potential economic impacts resulting from the designation would be approximately $230,000. This cost would be borne primarily by the Federal action agencies involved in the technical review or consultation and with the Service and would be spread across the reviews and consultations. As a result, we do not find that there would be disproportionate economic impacts resulting from this designation or that effects of this designation approach the $100 million threshold for being an economically significant rule under Executive Order 12866. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the coquí llanero based on potential economic impacts.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that most of the lands within the designation of critical habitat for the coquí llanero are owned by the Department of Defense. These lands are no longer used by the Department of Defense and are for sale through a property management agency. Therefore, we anticipate no impact on national security. Consequently, the Secretary is not exerting his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

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

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the coquí llanero, and the final designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the coquí llanero will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents; as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., residential, commercial or industrial development, along with the accompanying infrastructure associated with such projects, including construction and maintenance of roads and drainage ditches, development of renewable wind power energy, gas pipeline, closure of landfill and transfer of Federal lands). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the coquí llanero. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In our evaluation of the potential economic impacts that may result from the proposed designation of critical habitat for the coquí llanero, first we identified, in an Incremental Effects Memorandum dated October 12, 2011, potential incremental costs associated with the following categories of activity: (1) Species and habitat management; (2) residential, commercial, or industrial development; (3) agriculture; (4) construction of new, or maintenance of, roads and highways; (5) maintenance (including vegetation removal or alteration) of drainage ditches; (6) construction or maintenance of recreational facilities; (7) construction and maintenance of telecommunication towers; (8) renewable wind power energy; (9) gas pipeline; (10) closure of landfill; and (11) transfer of Federal lands (Navy).

Because the designation of critical habitat for the coquí llanero is occurring concurrently with the listing, it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, (2) the current range of the coquí llanero is limited to the specific area identified as critical habitat, and (3) any actions that may affect the species or its habitat would also affect designated critical habitat. The Incremental Effects Memorandum outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the potential incremental economic impacts of the designation of critical habitat.

On the basis of our evaluation of the potential incremental effects, we have determined that almost all conservation-related efforts and activities will result from the protections afforded the species through State and Federal law once the species is federally listed. In other words, specific actions or efforts, or project modifications that may be recommended to conserve the species or its habitat, will be recommended because the species is protected under both State and Federal law. While it has been suggested (Vermont Law School, 2012) that the proposed Via Verde pipeline would adversely affect the coquí llanero and its critical habitat, at this time the proposed alignment is not anticipated to cross or affect the habitat of the coquí llanero. Only in those cases where an action may affect the designated critical habitat and there is a Federal nexus (i.e., a Federal agency that is authorizing, funding, or permitting the action) will there be the additional requirement that the Federal action agency evaluate whether the action may adversely modify the designated critical habitat. This additional analysis by the Federal action agency is considered to be an incremental effect of the designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs will predominantly be administrative in nature and also will not be significant. Because, in this circumstance, we believe that the incremental impacts of the designation, and therefore the potential economic impacts, will be limited to these administrative actions, we have determined that this rule will not result in a significant economic impact in any given year or result in a disproportionate economic impact to any particular sector.

In summary, we considered whether this designation will result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the coquí llanero will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that

outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

We do not expect the designation of this critical habitat to significantly affect energy supplies, distribution, or use. The Sabana Seca unit is located approximately 1.4 mi (2.3 km) away from the proposed alignment of a natural gas pipeline project. Thus, possible construction and operation of the proposed energy project will not be affected by the designation of critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

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

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act does not apply, nor does critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. In addition, adjacent upland properties are owned by private entities or State partners. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the coquí llanero in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. According to the economic analysis and the taking implication assessment, the costs associated with the critical habitat designation are insignificant because virtually all of the costs associated are confined to an increase in workload (additional analysis) by the Federal action agency. The takings implications assessment concludes that this designation of critical habitat for the coquí llanero does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Puerto Rico. We received no comments responsive to the listing and critical habitat designation from a State agency except for a response from one of the peer reviewers who is employed by the State agency. The peer reviewer's comments were incorporated in this final rule (see *Summary of Comments and Recommendations*). The designation of critical habitat in areas currently occupied by the coquí llanero may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the coquí llanero within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands occupied by the coquí llanero at the time of listing (2012) that contain the features essential for conservation of the species, and no tribal lands unoccupied by the coquí llanero that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the coquí llanero on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by adding an entry for ''Coquí llanero,'' in alphabetical order under ''AMPHIBIANS,'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Coquí llanero	*Eleutherodactylus juanariveroi.*	U.S.A. (PR)	Entire	E	810	17.95(d)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (d) by adding an entry for ''Coquí Llanero (*Eleutherodactylus juanariveroi*)'' in the same alphabetical order that this species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Coquí Llanero (*Eleutherodactylus juanariveroi*)

(1) Critical habitat unit is depicted for Toa Baja, Puerto Rico, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of coquí llanero consist of three components:

(i) *Palustrine herbaceous wetland.* Palustrine emergent persistent wetlands that are seasonally to permanently flooded. Ocean-derived salts need to be less than 0.5 parts per thousand (ppt) salinity.

(ii) *Vegetation and vegetation composition of the palustrine herbaceous wetland.* Emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. In addition to the combination of vegetation, at least 25 percent of the vegetation should be ferns and *S. lancifolia.*

(iii) *Hydrology.* A hydrologic flow regime (i.e., the pathways of precipitation, surface run-off, groundwater, tides, and flooding of rivers and canals [manmade ditches]) that maintains the palustrine herbaceous wetland.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on November 5, 2012.

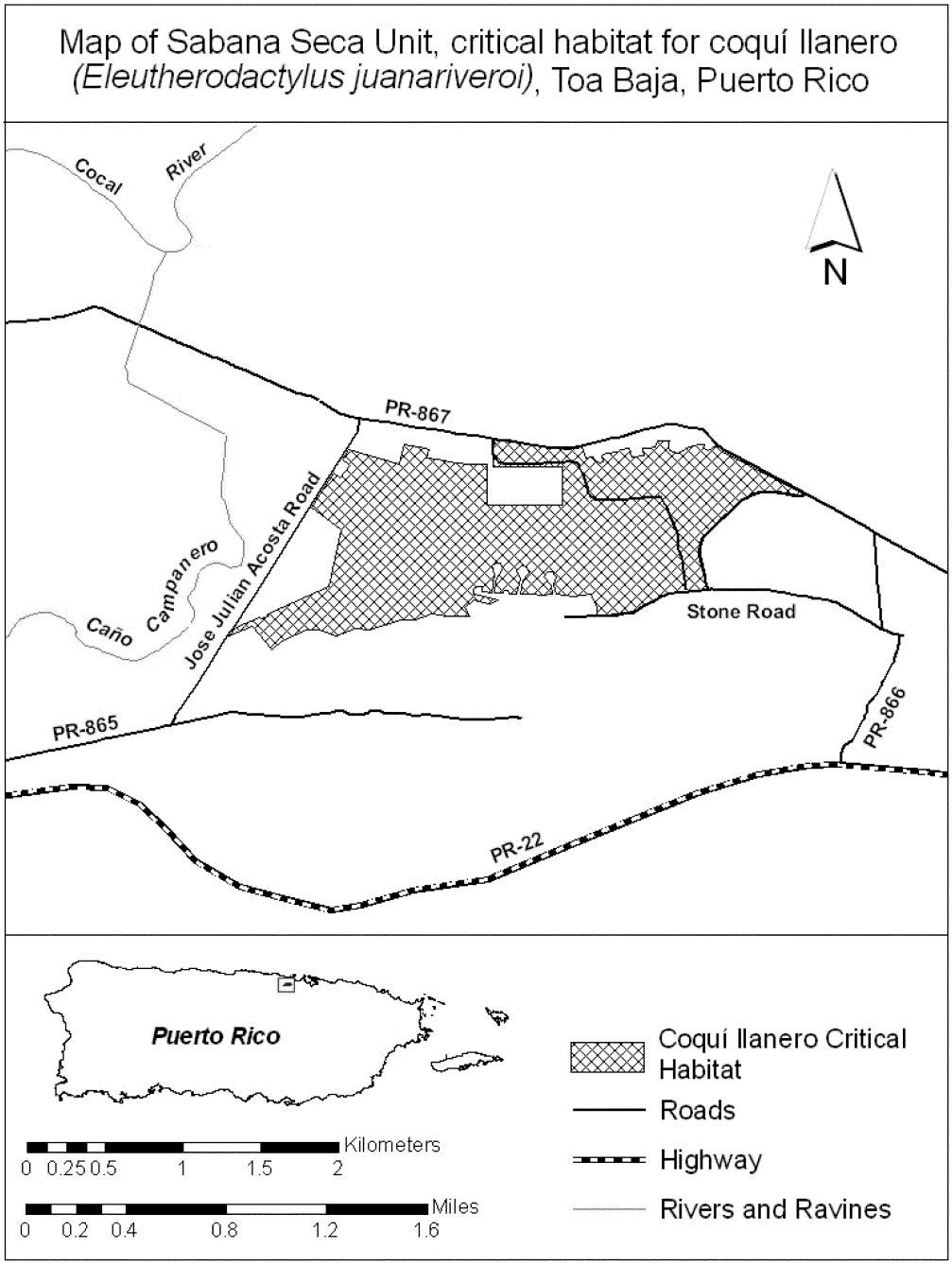
(4) *Critical habitat map units.* Data layers defining map units were created by delineating habitats that contain at least one or more of the primary constituent elements defined in paragraph (2) of this entry, over a base of USGS digital topographic map quadrangle (Bayamón) and a USDA 2007 digital ortho-photo mosaic, in addition to the National Wetland Inventory maps. The resulting critical habitat unit was then mapped using State Plane North American Datum (NAD) 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site, (*http://www.fws.gov/caribbean/es/Endangered-Main.html*), (*http://www.regulations.gov* at Docket No. FWS–R4–ES–2009–0022 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Sabana Seca Unit, Toa Baja, Puerto Rico.

(i) *General Description:* The Sabana Seca Unit consists of approximately 615 ac (249 ha) located south of State Road PR–867, west-southwest of Ramón Ríos Román Avenue, east of José Julián Acosta Road, and north of the limestone hills located north of Highway PR–22 in the municipality of Toa Baja, Puerto Rico.

(ii) Map of Sabana Seca Unit follows:

BILLING CODE 4310–55–P



* * * * *

Dated: September 19, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–23999 Filed 10–3–12; 8:45 am]

BILLING CODE 4310–55–C



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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Fluted Kidneyshell and Slabside Pearlymussel and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2012–0004; 4500030113]

RIN 1018–AY06

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Fluted Kidneyshell and Slabside Pearlymussel and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*) as endangered species under the Endangered Species Act of 1973, as amended (Act), and we propose to designate critical habitat for both species. These two species are endemic to portions of the Cumberland and Tennessee River systems of Alabama, Kentucky, Mississippi, Tennessee, and Virginia. In total, approximately 2,218 river kilometers (1,380 river miles) are being proposed for designation as critical habitat. The proposed critical habitat for fluted kidneyshell is located in Limestone County, Alabama; Jackson, Laurel, McCreary, Pulaski, Rockcastle, and Wayne Counties, Kentucky; Bedford, Claiborne, Cocke, Fentress, Franklin, Giles, Grainger, Greene, Hamblen, Hancock, Hickman, Humphreys, Jefferson, Knox, Lincoln, Marshall, Maury, Moore, Morgan, Overton, Perry, Pickett, Polk, Scott, and Sevier Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia. The proposed critical habitat for slabside pearlymussel is located in Colbert, Jackson, Limestone, Madison, and Marshall Counties, Alabama; Tishomingo County, Mississippi; Bedford, Bledsoe, Claiborne, Cocke, Franklin, Giles, Greene, Hamblen, Hancock, Hickman, Humphreys, Lincoln, Marion, Marshall, Maury, Moore, Perry, Polk, and Sequatchie Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

DATES: We will accept comments received or postmarked on or before December 3, 2012. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 19, 2012.

ADDRESSES: *Document availability:* This proposed rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/cookeville/. Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R4–ES–2012–0004, which is the docket number for this rulemaking. Then, click the Search button. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0004; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/cookeville, http://www.regulations.gov* at Docket No. [FWS–R4–ES–2012–0004], and at the Tennessee Ecological Services Field Office) (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the above locations.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*) as endangered species; and (2) proposed critical habitat designations for these two species.

Executive Summary

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is an endangered or threatened species throughout all or a significant portion of its range. Both species have been eliminated from more than 50 percent of the streams from which they were historically known, and are now limited to a handful of viable populations, all of which are facing a variety of threats, including impoundments, mining, poor water quality, excessive sedimentation, and environmental contaminants.

The basis for our action. Under the Act, a species may be determined to be endangered or threatened based on any of five factors: (A) Destruction, modification, or curtailment of its habitat or range; (B) overutilization; (C) disease or predation; (D) inadequate existing regulatory mechanisms; or (E) other natural or manmade factors. These two mussel species are facing threats due to three of these five factors (A, D, and E). The Act also requires that the Service designate critical habitat at the time of listing provided that it is prudent and determinable. We have determined that designating critical habitat is both prudent and determinable (see Critical Habitat for the Fluted Kidneyshell and Slabside Pearlymussel section below), and propose a total of approximately 2,218 river kilometers (rkm) (1,380 river miles (rmi)) of critical habitat in five States. Twenty-four units covering approximately 1,899 river kilometers (rkm) (1,181 river miles (rmi)) of critical habitat are being proposed for the fluted kidneyshell in Alabama, Kentucky, Tennessee, and Virginia. Thirteen units covering approximately 1,562 rkm (970 rmi) of critical habitat are being proposed for the slabside pearlymussel in Alabama, Mississippi, Tennessee, and Virginia.

We will seek peer review. In addition to seeking public comments, we will solicit peer review of this proposal from at least three experts knowledgeable in mussel biology and basic conservation biology principles and concepts. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or

information from other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of either of these species, including the locations of any additional populations.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for the species and their habitat.

(4) Any information regarding water quality data that may be helpful in determining the water quality parameters necessary for the fluted kidneyshell and the slabside pearlymussel.

(5) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

(6) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(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.

(7) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(8) Specific information on:

(a) The amount and distribution of habitat for the fluted kidneyshell and slabside pearlymussel;

(b) What areas, that were occupied at the time of the proposed listing and that contain features essential to the conservation of these species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

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

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

(10) Information on the projected and reasonably likely impacts of climate change on these species and proposed critical habitat.

(11) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

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

(13) Any impact that critical habitat designation would have, positive or negative, on conservation efforts associated with designated nonessential experimental populations for other listed species in the lower Holston and French Broad river systems in Tennessee, or the North Fork Holston River in Virginia.

(14) Information on habitat suitability for these two mussels in the proposed units that are not occupied at the time of the proposed listing, including the Rockcastle River, Kentucky, and the Sequatchie River, Tennessee.

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

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

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

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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

Previous Federal Actions

The fluted kidneyshell was first identified as a candidate for protection under the Act in the October 25, 1999, **Federal Register** (64 FR 57534). Candidate species are those taxa for which the Service has sufficient information on their biological status and threats to list as an endangered or threatened species under the Act but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. Candidates are assigned listing priority numbers (LPNs) based on immediacy and the magnitude of threat, as well as their taxonomic status. A lower LPN corresponds to a higher conservation priority, and we consider the LPN when prioritizing and funding conservation actions. In our 1999 (64 FR 57534), 2001 (66 FR 54808), 2002 (67 FR 40657), 2004 (69 FR 24876), 2005 (70 FR 24870), and 2006 (71 FR 53756) **Federal Register** Candidate Notices of Review, we identified the species as having an LPN of five, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). An LPN of five reflects threats that are nonimminent and high in magnitude, as well as the taxonomic classification of the fluted kidneyshell as a full species. We also determined that publication of a proposed rule to list the fluted kidneyshell was precluded by our work on higher priority listing actions. On May 11, 2004, we received a petition to list the fluted kidneyshell as an

endangered species. We published our petition finding in the 2005 Candidate Notice of Review (70 FR 24869), and have done so annually in subsequent years.

On December 6, 2007 (72 FR 69034), we changed the LPN for the fluted kidneyshell from five to two. A listing priority of two reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of the fluted kidneyshell as a full species. In our 2008 (73 FR 75176), 2009 (74 FR 57804), 2010 (75 FR 69222), and 2011 (76 FR 66370) Candidate Notices of Review, we retained a listing priority number of two for this species.

The slabside pearlymussel was first identified as a candidate for protection under the Act in the May 22, 1984, **Federal Register** (49 FR 21664). As a candidate, it was assigned a ''Category 2'' designation, which was given to those species with some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as endangered or threatened. In our 1989 (54 FR 554), 1991 (56 FR 58804), and 1994 (59 FR 58982) **Federal Register** Candidate Notices of Review, we retained a Category 2 designation for this species. Assigning categories to candidate species was discontinued in our Candidate Notice of Review dated February 28, 1996, and only species for which the Service had sufficient information on biological vulnerability and threats to support issuance of a proposed rule were retained as candidate species (61 FR 7596).

On October 25, 1999, we identified the slabside pearlymussel in the **Federal Register** as a candidate species with a listing priority number of five (64 FR 57534). In our 2001 (66 FR 54808), 2002 (67 FR 40657), 2004 (69 FR 24876), 2005 (70 FR 24870), 2006 (71 FR 53756), and 2007 (72 FR 69034) Candidate Notices of Review, we determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions and retained a listing priority number of five for this species, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). We published a petition finding for slabside pearlymussel in the 2005 Candidate Notice of Review (70 FR 24870) in response to a petition received on May 11, 2004, and have published annual petition findings in subsequent Candidate Notices of Review.

On December 10, 2008 (73 FR 75176), we changed the listing priority number for the slabside pearlymussel from five to two. In our 2009 (74 FR 57804), 2010 (75 FR 69222), and 2011 (76 FR 66370) Candidate Notices of Review, we retained a listing priority number of two for this species.

Background

It is our intent to discuss only those topics directly relevant to the listing and critical habitat designations for the fluted kidneyshell and slabside pearlymussel in this proposed rule. A summary of topics relevant to this proposed rule is provided below. Additional information on both species may be found in the most recent Candidate Notice of Review, which was published October 26, 2011 (76 FR 66370).

Introduction

North American mussel fauna are more biologically diverse than anywhere else in the world, and historically numbered around 300 species (Williams *et al.* 1993, p. 6). Mussels are in decline, however, and in the past century have become more imperiled than any other group of organisms (Williams *et al.* 2008, p. 55). Approximately 72 percent of North America's mussel species are considered vulnerable to extinction or possibly extinct (Williams *et al.* 1993, p. 6). Within North America, the southeastern United States is the hot spot for mussel diversity. Seventy-five percent of southeastern mussel species are in varying degrees of rarity or possibly extinct (Neves *et al.* 1997, pp. 47–51). The central reason for the decline of mussels is the modification and destruction of their habitat, especially from dams, degraded water quality, and sedimentation (Neves *et al.* 1997, p. 60; Bogan 1998, p. 376). These two mussels, like many other southeastern mussel species, have undergone considerable reductions in total range and population density.

Most studies of the distribution and population status of the fluted kidneyshell and slabside pearlymussel presented below were conducted after the early 1960s. Gordon and Layzer (1989, entire), Winston and Neves (1997, entire), and Parmalee and Bogan (1998, pp. 204–205) give most of the references for regional stream surveys. In addition to these publications, we have obtained more current, unpublished distribution and status information from State heritage programs, agency biologists, and other knowledgeable individuals.

These two species are bivalve mussels and are endemic to the Cumberland and Tennessee River drainages. The Cumberland River drainage originates in southeastern Kentucky and flows southwest across Tennessee before turning north and reentering Kentucky to empty into the lower Ohio River. The Cumberland River drainage spans the Appalachian Plateaus and Interior Low Plateaus Physiographic Provinces. The Tennessee River originates in southwest Virginia and western North Carolina, eastern Tennessee, and northern Georgia and flows southwesterly into western Tennessee and Alabama, then turns north and flows into Kentucky, before emptying into the Ohio River. The larger Tennessee River drainage spans five physiographic provinces, including the Blue Ridge, Valley and Ridge, Appalachian Plateaus, Interior Low Plateaus, and Coastal Plain.

Fluted Kidneyshell

Taxonomy and Species Description

The fluted kidneyshell, *Ptychobranchus subtentum* (Say, 1825), is in the family Unionidae (Turgeon *et al.* 1998, p. 36). The following description, biology, and life history of the fluted kidneyshell is taken from Parmalee and Bogan (1998, pp. 204–205) and Williams *et al.* (2008, pp. 627–629). The fluted kidneyshell is a relatively large mussel that reaches about 13 centimeters (cm) (5 inches (in)) in length. The shape of the shell is roughly oval elongate, and the solid, relatively heavy valves (shells) are moderately inflated. A series of flutings (parallel ridges or grooves) characterizes the posterior slope of each valve. Shell texture is smooth and somewhat shiny in young specimens, becoming duller with age. Shell color is greenish yellow, becoming brownish with age, with several broken, wide green rays. Internally, there are two types of teeth, which are raised, interlocking structures used to stabilize opposing shell halves. The pseudocardinal teeth are stumpy and triangular in shape. The lateral teeth are relatively heavy and nearly straight, with two in the left valve and one in the right valve. The color of the nacre (mother-of-pearl) is bluish-white to dull white with a wash of salmon in the older part of the shell (beak cavity).

Habitat and Life History

Mussels generally live embedded in the bottom of rivers and other bodies of water. They siphon water into their shells and across four gills that are specialized for respiration, food collection, and brooding larvae in females. Food items include detritus (disintegrated organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431). Adult mussels can obtain their food by deposit feeding, pulling in food from the sediment and its interstitial (pore) water, and pedal-

feeding directly from the sediment (Yeager *et al.* 1994, pp. 217–221; Vaughn and Hakenkamp 2001, 1432–1438). Adults are filter feeders and generally orient themselves on or near the substrate surface to take in food and oxygen from the water column. Juveniles typically burrow completely beneath the substrate surface and are deposit or pedal (foot) feeders, meaning that they bring food particles that adhere to the foot while it is extended outside the shell inside the shell for ingestion, until the structures for filter feeding are more fully developed (Yeager *et al.* 1994, pp. 200–221; Gatenby *et al.* 1996, p. 604). However, adults are also capable of deposit feeding and may do so depending on the availability of food resources (Nichols *et al.* 2005, pp. 90–93).

Mussels tend to grow relatively rapidly for the first few years; then growth slows appreciably after sexual maturity, when energy is being diverted from growth to reproductive activities. Mussel longevity varies tremendously among species (from 4 to 5 years to well over 100 years), but most species live 10 to 50 years (Haag and Rypel 2011, pp. 230–236). Relatively large, heavy-shelled riverine species tend to be slower growing and have longer life spans. By thin-sectioning the valves, various authors have aged fluted kidneyshell from the Clinch River at 26 and 55 years (Henley *et al.* 2002, p. 19; Davis and Layzer 2012, p. 92). Females can become sexually mature at age 5 (Davis and Layzer 2012, p. 79).

The gametogenic cycle (annual cycle in the development of reproductive cells or gametes) of fluted kidneyshell, like most mussels, is probably regulated by annual temperature regimes (Davis and Layzer, p. 90). Most mussels, including the fluted kidneyshell, have separate sexes. Males expel sperm into the water column, which are drawn in by females through their incurrent apertures or siphons. It has been hypothesized that pheromones might trigger synchronous sperm release among males, because all fertilization observed by females from the Clinch River occurred in fewer than 5 days (Davis and Layzer 2012, p. 90). Fertilization takes place internally, and the resulting zygotes develop into specialized larvae, termed glochidia, inside the water tubes of the females' gills. The fluted kidneyshell, along with other members of its genus, is unique in that the marsupial portion of the outer gills (portion of a brooding female's gill which holds embryos and glochidia) are folded in a curtain-like fashion. The fluted kidneyshell is thought to have a late summer or early fall fertilization period with the glochidia overwintering. Davis and Layzer (2012, p. 90) observed embryo development within the marsupium (brood pouch) at 4 weeks after fertilization. The following spring or early summer, glochidia are released as conglutinates, which are similar to cold capsules or gelatinous containers with scores of glochidia within. Davis and Layzer (2012, p. 86) report an average of 208 conglutinates and an average fecundity (total reproductive output) of 247,000 glochidia per female. Davis and Layzer (2012, p. 92) report a skewed adult sex ratio of 1.9 females per 1 male in the Clinch River, in Tennessee, although the cause of the skewed ratio is unknown. Using the observed sex ratio and percent of females that were gravid, Davis and Layzer (2012, p. 92) hypothesized that some females go through reproductive ''pausing'' periods to acquire the energy reserves needed to produce gametes in subsequent years.

Glochidia must come into contact with a specific host fish(es) quickly in order for their survival to be ensured. Without the proper species of host fish, the glochidia will perish. Conglutinate masses often mimic food items of glochidial fish hosts in order to attract and infest potential host fishes. Fluted kidneyshell conglutinates are shaped like black fly (Simuliidae) pupae and have an adhesive end that sticks to silt-free stones on the stream bottom, with an orientation that is also similar to that of blackfly pupae (Barnhart and Roberts 1997, p. 17; Barnhart *et al.* 2008, p. 377; Williams *et al.* 2008, p. 628). Insects are common food items of many stream fishes, including the fluted kidneyshell's host fishes, which include the barcheek darter (*Etheostoma obeyense*), fantail darter (*E. flabellare*), rainbow darter (*E. caeruleum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), and banded sculpin (*Cottus carolinae*). These fishes are tricked into thinking that they have an easy insect meal when in fact they have infected themselves with parasitic mussel glochidia (Parmalee and Bogan 1998, p. 205; Davis and Layzer 2012, p. 88).

After a few weeks parasitizing the host fish's gill, newly metamorphosed juveniles drop off to begin a free-living existence on the stream bottom. Unless they drop off in suitable habitat, they will perish. Thus, the complex life history of the fluted kidneyshell and other mussels has many critical steps that may prevent successful reproduction or recruitment of juveniles into existing populations or both.

The fluted kidneyshell occurs in medium-sized creeks to large rivers, inhabiting sand and gravel substrates in relatively shallow riffles and shoals with moderate to swift current (Williams *et al.* 2008, p. 628). In comparison to some co-occurring species, the fluted kidneyshell demonstrates strong habitat specificity by being associated with faster flows, greater shear stress (force of water pressure and velocity on the substrate), and low substrate embeddedness (Ostby 2005, pp. 51, 142–3).

Historical Range and Distribution

The fluted kidneyshell is a Cumberlandian Region mussel, meaning it is restricted to the Cumberland (in Kentucky and Tennessee) and Tennessee (in Alabama, Kentucky, Tennessee, and Virginia) River systems. Historically, this species occurred in the Cumberland River mainstem from below Cumberland Falls in southeastern Kentucky downstream through the Tennessee portion of the river to the vicinity of the Kentucky-Tennessee State line. In the Tennessee River mainstem it occurred from eastern to western Tennessee. Records are known from the following Cumberland River tributaries: Horse Lick Creek [KY], Middle Fork Rockcastle River [KY], Rockcastle River [KY], Buck Creek [KY], Rock Creek [KY], Kennedy Creek [KY], Little South Fork [KY], Big South Fork [KY, TN], Pitman Creek [KY], Otter Creek [KY], Wolf River [TN], Town Branch [TN], West Fork Obey River [TN], Obey River [TN], Caney Fork [TN], South Harpeth River [TN], and West Fork Red River [KY]. In addition, it is known from the following Tennessee River tributaries: South Fork Powell River [VA], Powell River [TN, VA], Indian Creek [VA], Little River [VA], Clinch River [TN, VA], Copper Creek [VA], North Fork Holston River [TN, VA], Big Moccasin Creek [VA], Middle Fork Holston River [VA], South Fork Holston River [TN, VA], Holston River [TN], Nolichucky River [TN], West Prong Little Pigeon River [TN], Tellico River [TN], French Broad River [TN], Little Tennessee River [TN], Hiwassee River [TN], Flint River [AL], Limestone Creek [AL], Elk River [AL, TN], Shoal Creek [AL], Buffalo River [TN], and Duck River [TN] (Gordon and Layzer 1989, entire; Winston and Neves 1997, entire; Parmalee and Bogan 1998, pp. 204–205; Layzer and Scott 2006, p. 481). The fluted kidneyshell's known historical and current occurrences, by water body and county, are shown in Table 1 below.

TABLE 1—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE FLUTED KIDNEYSHELL

Water body	Drainage	County	State	Historical or current
Cumberland River	Cumberland	McCreary, Pulaski, Russell	KY	Historical.
Cumberland River	Cumberland	Stewart	TN	Historical.
Middle Fork Rockcastle River	Cumberland	Jackson	KY	Historical and Current.
Horse Lick Creek	Cumberland	Jackson, Rockcastle	KY	Historical and Current.
Rockcastle River	Cumberland	Laurel, Pulaski, Rockcastle	KY	Historical.
Buck Creek	Cumberland	Pulaski	KY	Historical and Current.
Big South Fork Cumberland River	Cumberland	McCreary, Pulaski	KY	Historical and Current.
Big South Fork Cumberland River	Cumberland	Fentress, Morgan, Scott	TN	Historical and Current.
Rock Creek	Cumberland	McCreary	KY	Historical and Current.
Little South Fork Cumberland River	Cumberland	McCreary, Wayne	KY	Historical and Current.
Kennedy Creek	Cumberland	Wayne	KY	Historical.
Pitman Creek	Cumberland	Pulaski	KY	Historical.
Otter Creek	Cumberland	Wayne	KY	Historical.
Wolf River	Cumberland	Fentress, Pickett	TN	Historical and Current.
Town Branch	Cumberland	Pickett	TN	Historical and Current.
Obey River	Cumberland	?	TN	Historical.
West Fork Obey River	Cumberland	Overton	TN	Historical and Current.
Caney Fork River	Cumberland	?	TN	Historical.
South Harpeth River	Cumberland	Davidson	TN	Historical.
West Fork Red River	Cumberland	Todd	KY	Historical.
South Fork Powell River	Tennessee	Wise	VA	Historical.
Powell River	Tennessee	Claiborne, Hancock	TN	Historical and Current.
Powell River	Tennessee	Campbell, Union	TN	Historical.
Powell River	Tennessee	Lee	VA	Historical and Current.
Indian Creek	Tennessee	Tazewell	VA	Historical and Current.
Clinch River	Tennessee	Hancock	TN	Historical and Current.
Clinch River	Tennessee	Anderson, Claiborne, Grainger, Roane, Union.	TN	Historical.
Clinch River	Tennessee	Russell, Scott, Tazewell, Wise	VA	Historical and Current.
Little River	Tennessee	Russell, Tazewell	VA	Historical and Current.
Copper Creek	Tennessee	Scott	VA	Historical and Current.
North Fork Holston River	Tennessee	Hawkins, Sullivan	TN	Historical.
North Fork Holston River	Tennessee	Bland, Scott, Smyth, Washington	VA	Historical and Current.
Big Moccasin Creek	Tennessee	Scott	VA	Historical and Current.
Middle Fork Holston River	Tennessee	Smyth	VA	Historical and Current.
South Fork Holston River	Tennessee	Sullivan	TN	Historical.
South Fork Holston River	Tennessee	Washington	VA	Historical.
Holston River	Tennessee	Grainger, Hamblen, Jefferson, Knox	TN	Historical.
French Broad River	Tennessee	?	TN	Historical.
Tennessee River	Tennessee	Colbert, Jackson, Lauderdale	AL	Historical.
Tennessee River	Tennessee	Decatur, Knox, Meigs, Rhea	TN	Historical.
Nolichucky River	Tennessee	Greene	TN	Historical and Current.
West Prong Little Pigeon River	Tennessee	Sevier	TN	Historical.
Tellico River	Tennessee	Monroe	TN	Historical.
Little Tennessee River	Tennessee	Monroe	TN	Historical.
Hiwassee River	Tennessee	Polk	TN	Historical.
Flint River	Tennessee	Madison	AL	Historical.
Limestone Creek	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Coffee, Franklin	TN	Historical.
Shoal Creek	Tennessee	Limestone	AL	Historical.
Duck River	Tennessee	Bedford, Marshall, Maury	TN	Historical and Current.
Buffalo River	Tennessee	Lewis	TN	Historical.

Note: A ? represents a lack of specific locational information in the museum and literature record.

Prior to 1980, the fluted kidneyshell was fairly widespread and common in many Cumberlandian Region streams based on collections in museums and from the literature record. The extirpation of this species from numerous streams within its historical range indicates that substantial population losses and range reductions have occurred.

Current Range and Distribution

In this document, populations of the fluted kidneyshell are generally considered extant (current) if live individuals or fresh dead specimens have been collected since circa 1980. This criterion (circa 1980) was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems and due to the longevity of these species (40–55 years), they are still thought to occur in these areas.

Some of the historical occurences have not been surveyed since the 1980s. Based on this criterion, the species appears to be limited to Horse Lick Creek [KY], Middle Fork Rockcastle River [KY], Buck Creek [KY], Rock Creek [KY], Little South Fork Cumberland River [KY], Big South Fork Cumberland River [KY, TN], Wolf River [TN], Town Branch [TN], and West Fork Obey River [TN] in the Cumberland River system; and the Powell River [TN, VA], Indian Creek [VA], Little River

[VA], Clinch River [TN, VA], Copper Creek [VA], North Fork Holston River [VA], Big Moccasin Creek [VA], Middle Fork Holston River [VA], Nolichucky River [TN], and Duck River [TN] in the Tennessee River system (see Table 1). Where two or more stream populations occur contiguously with no barriers, such as impoundments or long reaches of unoccupied habitat, they are considered single population segments or clusters. Multi-stream population segments include the Wolf River and its tributary Town Branch in the Cumberland River system, and Clinch River and Copper Creek (but not the other two upper Clinch tributaries, Indian Creek and Little River) in the Tennessee River system. Thus, we consider 17 of 40 populations of fluted kidneyshell to be extant. The fluted kidneyshell has been eliminated from more than 50 percent of streams from which it was historically known.

Other populations considered extant at the time this species was elevated to candidate status in 1999 (e.g., Rockcastle River, Kennedy Creek) are now considered to be extirpated. In addition, the population in the upper North Fork Holston River, although still large, has declined substantially since circa 2000. The North Fork Holston River population is predominately composed of large individuals, unlike the Clinch River population, which is skewed towards smaller size classes (Ostby *et al.* 2010, pp. 7, 22–24). These differences in population characteristics are a clear indication that recruitment in the Clinch River population is more observable than the population in the North Fork Holston River.

Resource managers have been making attempts to reintroduce the fluted kidneyshell into historical habitat over the past decade. In Tennessee, thousands of individuals of the species have been reintroduced into three sites in the upper Duck River, and into two sites in the Nolichucky River, by Tennessee Wildlife Resource Agency (TWRA) biologists translocating adult individuals from the Clinch River (Hubbs 2011, unpubl. data). In 2010, six individuals were collected during a quantitative survey at Lillard's Mill in the Duck River, confirming some level of survival and persistence of the reintroduced population (Hubbs 2011, unpubl. data). The individuals collected appeared in good condition and had grown noticeably since their release (as evidenced by external shell marks), but recruitment has yet to be documented (Hubbs 2011, unpubl. data). In 2008, the Kentucky Department of Fish and Wildlife Resources (KDFWR) translocated 144 individuals from the Clinch River into the Big South Fork of the Cumberland River, Kentucky (Hubbs 2011, unpubl. data). It is not known if the Nolichucky or Big South Fork reintroductions have been successful. Approximately 691 adult individuals of the species have been translocated from the Clinch River, Tennessee, into the Little Tennessee River bypass reach below Calderwood Dam, Tennessee (Moles 2012, pers. comm.). The Virginia Department of Game and Inland Fisheries (VDGIF) reintroduced 58 adults into Indian Creek, a tributary to the Clinch River, using Clinch River stock. They have also propagated and released 562 juveniles into the North Fork Holston River (Duncan 2012, pers. comm.).

The extant fluted kidneyshell populations (including the potentially reintroduced populations) in the Cumberlandian Region generally represent small, isolated occurrences. Only in the Clinch River is a population of the fluted kidneyshell known to be large, stable, and viable, but in a relatively short reach of river primarily in the vicinity of the Tennessee-Virginia State line. Jones (2012, unpub. data) estimates 500,000 to 1,000,000 individuals occur in the Clinch River from just a 32-river-kilometer (rkm) (20-river-mile (rmi)) reach (rkm 309 to 277 (rmi 172 to 192)). Live adults and juveniles have been observed over the past 10 years in shoal habitats in the upper Clinch River, Virginia, particularly at and above Cleveland Islands, and many more fresh dead shells have been collected in muskrat middens in this reach. Eckert and Pinder (2010, pp. 23–30) collected 18 individuals in quantitative samples and 11 individuals in semi-quantitative samples in the Clinch River at Cleveland Island in 2008, and 15 individuals in quantitative samples and 62 individuals in semi-quantitative samples in the Clinch River at Cleveland Island in 2002. Ostby and Angermeier (2011, entire) found two live individuals in the Little River (tributary to Clinch River). Henley *et al.* (1999, pp. 20, 22) collected live individuals at 6 of 25 sites surveyed in the Middle Fork Holston River in 1997 and 1998. The fluted kidneyshell was found in Copper Creek between creek rkm 2 and 31 (rmi 1 and 19) (Hanlon *et al.* 2009, pp. 15–17). Petty *et al.* (2006, pp. 4, 36) found the species between Copper Creek rkm 24 and 31 (rmi 15 and 19) and reported evidence of reproduction and recruitment of the species at these locations. In 2008–09, 35 live individuals were found at 5 of 21 sites sampled in the Powell River, in both Tennessee and Virginia, and there was some indication of relatively recent recruitment (Johnson *et al.* in press, Table 4). Ostby *et al.* (2010, pp. 16–20) observed 772 individuals during qualitative surveys and 10 individuals in quantitative surveys in the North Fork Holston River, Virginia.

Live fluted kidneyshell have not been collected in the Middle Fork Rockcastle River since the mid-1980s (Layzer and Anderson 1992, p. 64). Haag and Warren (2004, p. 16) collected only fresh dead shell material in Horse Lick Creek, and reported that a small, extremely vulnerable population of the fluted kidneyshell may exist there, but at very low levels that they were not able to detect. Warren and Haag (2005, pp. 1384, 1388–1396) reported a vast reduction of the once sizable Little South Fork population since the late 1980s. Live fluted kidneyshell have not been collected in the Big South Fork since the mid-1980s (Ahlstedt *et al.* 2003–2004, p. 65). In 2010, two individuals were found in Buck Creek and collected for future propagation efforts (McGregor 2010, unpub. data). Live fluted kidneyshell have not been collected in Rock Creek since 1988 (Layzer and Anderson 1992, p. 68). Layzer and Anderson (1992, p. 22) collected fluted kidneyshell at two sites in the West Fork Obey River. A small but recruiting population occurs in the Wolf River, Tennessee, based on 2005–06 sampling (Moles *et al.* 2007, p. 79). This may be the best population remaining in the entire Cumberland River system, where most populations are very restricted in range and are highly imperiled. Given its longevity, small populations of this long-lived species may persist for decades despite total recruitment failure. Therefore, at least 5 of the extant populations may be functionally extirpated (e.g., Horse Lick Creek, Middle Fork Rockcastle River, Little South Fork Cumberland River, Rock Creek, West Fork Obey River).

Population Estimates and Status

Extirpated from both the Cumberland and Tennessee River mainstems, the fluted kidneyshell has been eliminated from approximately 50 percent of the total number of streams from which it was historically known. Population size data gathered during the past decade or two indicate that the fluted kidneyshell is rare in nearly all extant populations, the Clinch River being a notable exception. The fluted kidneyshell is particularly imperiled in Kentucky. Haag and Warren (2004, p. 16) reported that a small, extremely vulnerable population of the fluted kidneyshell may exist in Horse Lick Creek, but at

extremely low levels that they were not able to detect. They only collected fresh dead shell material in Horse Lick Creek. The vast reduction of the once sizable Little South Fork population since the late 1980s (Warren and Haag 2005, pp. 1384, 1388–1396) and the tenuous status of the other Cumberland River system populations put the species at risk of total extirpation from that Cumberland River system. In addition, the populations in the Powell River (post-1980) and the Middle Fork (post-1995) and upper North Fork (post-2000) Holston Rivers in Virginia have declined in recent years based on recent survey efforts (Henley *et al.* 1999, p. 23; Ahlstedt *et al.* 2005, p. 9; Jones and Neves 2007, p. 477; Johnson *et al.* in press). Populations of the fluted kidneyshell remain locally abundant in certain reaches of the North Fork Holston River but are reduced in overall range within the river (Ostby and Neves 2005, 2006a, and 2006b, entire; Dinkins 2010a, p. 3–1). Declines in mussel community abundance in the North Fork Holston River have been in the form of several die-offs. The cause for the observed die-offs is unknown (Jones and Neves 2007, p. 479), but may be related to agricultural runoff (Hanlon *et al.* 2009, p. 11).

In summary, the fluted kidneyshell has been eliminated from approximately 50 percent of the total number of streams from which it was historically known. Populations in Buck Creek, Little South Fork, Horse Lick Creek, Powell River, and North Fork Holston River have clearly declined over the past two decades. Based on recent information, the overall population status of the fluted kidneyshell rangewide is declining. A few populations are considered to be viable (e.g., Wolf, Clinch, Little, North Fork Holston Rivers). However, all other populations are of questionable viability, with some on the verge of extirpation (e.g., Horse Lick and Rock Creeks). Newly reintroduced populations will hopefully begin to reverse the overall downward trend of this species.

The fluted kidneyshell was considered a species of special concern by Williams *et al.* (1993, p. 14), but two decades later is considered endangered in a reassessment of the North American mussel fauna by the Endangered Species Committee of the American Fisheries Society (Butler 2012, pers. comm.). The fluted kidneyshell is listed as a species of Greatest Conservation Need (GCN) in the Kentucky, Tennessee, and Virginia State Wildlife Action Plans (KDFWR 2005; TWRA 2005; VDGIF 2005).

Slabside Pearlymussel

Taxonomy and Species Description

The taxonomic status of the slabside pearlymussel (family Unionidae) as a distinct species is undisputed within the scientific community. The species is recognized as *Lexingtonia dolabelloides* (I. Lea, 1840) in the ''Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Mollusks, Second Edition'' (Turgeon *et al.* 1998, p. 35). However, there are currently differing opinions on the appropriate genus to use for the species. Genetic analyses by Bogan *et al.* (unpublished data), as cited by Williams *et al.* (2008, p. 584), suggests that the type genus of *Lexingtonia, Unio subplana* Conrad, 1837, is synonymous with *Fusconaia masoni* (Conrad, 1834). *Lexingtonia* is therefore a junior synonym of *Fusconaia,* making *Lexingtonia* no longer available as a valid genus of mussel under the rules of the International Code of Zoological Nomenclature (Williams 2011, pers. comm.). Analyses by Campbell *et al.* (2005, pp. 141, 143, 147) and Campbell and Lydeard (2012a, pp. 3–6, 9; 2012b, pp. 25–27, 30, 34) suggest that ''*Lexingtonia'' dolabelloides,* ''*Fusconaia'' barnesiana,* and ''*Pleurobema'' gibberum* do not correspond to their currently assigned genera but form a closely related group. Williams *et al.* (2008, pp. 584–593) and Campbell and Lydeard (2012b, pp. 30, 34) picked the next available genus name for *dolabelloides,* which appears to be *Pleuronaia* (Frierson 1927). Based on this latest information, we currently consider *Pleuronaia* to be the most appropriate generic name for the slabside pearlymussel.

The following description, biology, and life history of the slabside pearlymussel is taken from data summarized in Parmalee and Bogan (1998, pp. 150–152). The slabside pearlymussel is a moderately sized mussel that reaches about 9 cm (3.5 in) in length. The shape of the shell is subtriangular, and the very solid, heavy valves are moderately inflated. Shell texture is smooth and somewhat shiny in young specimens, becoming duller with age. Shell color is greenish yellow, becoming brownish with age, with a few broken green rays or blotches, particularly in young individuals. Internally, the pseudocardinal teeth are triangular or blade-like in shape. The lateral teeth are slightly curved, with two in the left valve and one in the right valve. The color of the nacre is white, or rarely, straw-colored.

Habitat and Life History

General life history information for the slabside pearlymussel is similar to that given for the fluted kidneyshell above. Samples from approximately 150 shells of the slabside pearlymussel from the North Fork Holston River were thin-sectioned for age determination. The maximum age exceeded 40 years (Grobler *et al.* 2005, p. 65).

The slabside pearlymussel utilizes all four gills as a marsupium for its glochidia. It is thought to have a spring or early summer fertilization period with the glochidia being released during the late summer in the form of conglutinates. Slabside pearlymussel conglutinates have not been described. The slabside pearlymussel's host fishes include 11 species of minnows (popeye shiner, *Notropis ariommus;* rosyface shiner, *N. rubellus;* saffron shiner, *N. rubricroceus;* silver shiner, *N. photogenis;* telescope shiner, *N. telescopus;* Tennessee shiner, *N. leuciodus;* whitetail shiner, *Cyprinella galactura;* striped shiner, *Luxilus chrysocephalus;* warpaint shiner, *L. coccogenis;* white shiner, *L. albeolus;* and eastern blacknose dace, *Rhinichthys atratulus*) (Kitchel 1985 and Neves 1991 *in* Parmalee and Bogan 1998, pp. 150–152; Jones and Neves 2002, pp. 18–20).

The slabside pearlymussel is primarily a large creek to large river species, inhabiting sand, fine gravel, and cobble substrates in relatively shallow riffles and shoals with moderate current (Parmalee and Bogan 1998, p. 152; Williams *et al.* 2008, p. 590). This species requires flowing, well-oxygenated waters to thrive.

Historical Range and Distribution

Historically, the slabside pearlymussel occurred in the lower Cumberland River mainstem from the vicinity of the Kentucky State line downstream to the the Caney Fork River, Tennessee, and in the Tennessee River mainstem from eastern Tennessee to western Tennessee. Records are known from two Cumberland River tributaries, the Caney Fork [TN] and Red Rivers [KY, TN]. In addition, it is known from 30 Tennessee River system tributaries, including the South Fork Powell River [VA], Powell River [TN, VA], Puckell Creek [VA], Clinch River [TN, VA], North Fork Holston River [TN, VA], Big Moccasin Creek [VA], Middle Fork Holston River [VA], South Fork Holston River [TN], Holston River [TN], Nolichucky River [TN], West Prong Little Pigeon River [TN], French Broad River [TN], Tellico River [TN], Little Tennessee River [TN], Hiwassee River [TN], Sequatchie River [TN],

Larkin Fork [AL], Estill Fork [AL], Hurricane Creek [AL], Paint Rock River [AL], Flint River [AL], Flint Creek [AL], Limestone Creek [AL], Elk River [AL, TN], Sugar Creek [AL], Bear Creek [AL, MS], North Fork Creek [TN], Big Rock Creek [TN], Buffalo River [TN], and Duck River [TN] (Gordon and Layzer 1989, entire; Winston and Neves 1997, entire; Parmalee and Bogan 1998, pp. 150–152). The slabside pearlymussel's known historical and current occurrences, by water body and county, are shown in Table 2 below.

TABLE 2—KNOWN HISTORICAL AND CURRENT OCCURRENCES FOR THE SLABSIDE PEARLYMUSSEL

Water body	Drainage	County	State	Historical or current
Cumberland River	Cumberland	Davidson, Smith	TN	Historical.
Caney Fork River	Cumberland	?	TN	Historical.
Red River	Cumberland	Logan	KY	Historical.
Red River	Cumberland	?	TN	Historical.
South Fork Powell River	Tennessee	Wise	VA	Historical.
Powell River	Tennessee	Claiborne	TN	Historical.
Powell River	Tennessee	Hancock	TN	Historical and Current.
Powell River	Tennessee	Lee	VA	Historical and Current.
Puckell Creek	Tennessee	Lee	VA	Historical.
Clinch River	Tennessee	Hancock	TN	Historical and Current.
Clinch River	Tennessee	Anderson, Campbell, Claiborne, Knox	TN	Historical.
Clinch River	Tennessee	Russell, Scott, Tazewell, Wise	VA	Historical and Current.
North Fork Holston River	Tennessee	Hawkins, Sullivan	TN	Historical.
North Fork Holston River	Tennessee	Bland, Scott, Smyth, Washington	VA	Historical and Current.
Big Moccasin Creek	Tennessee	Russell, Scott	VA	Historical and Current.
Middle Fork Holston River	Tennessee	Smyth, Washington, Wythe	VA	Historical and Current.
South Fork Holston River	Tennessee	Sullivan	TN	Historical.
Holston River	Tennessee	?	TN	Historical.
French Broad River	Tennessee	Sevier	TN	Historical.
Tennessee River	Tennessee	Colbert, Jackson, Lauderdale	AL	Historical.
Tennessee River	Tennessee	Hamilton, Hardin, Knox, Meigs, Rhea	TN	Historical.
Nolichucky River	Tennessee	Cocke, Greene, Hamblen	TN	Historical and Current.
West Prong Little Pigeon River	Tennessee	Sevier	TN	Historical.
Tellico River	Tennessee	Monroe	TN	Historical.
Little Tennessee River	Tennessee	Monroe	TN	Historical.
Hiwassee River	Tennessee	Polk	TN	Historical and Current.
Sequatchie River	Tennessee	Sequatchie	TN	Historical and Current.
Larkin Fork	Tennessee	Jackson	AL	Historical and Current.
Estill Fork	Tennessee	Jackson	AL	Historical and Current.
Hurricane Creek	Tennessee	Jackson	AL	Historical and Current.
Paint Rock River	Tennessee	Jackson, Madison, Marshall	AL	Historical and Current.
Flint River	Tennessee	Madison	AL	Historical.
Flint Creek	Tennessee	Morgan	AL	Historical.
Limestone Creek	Tennessee	Limestone	AL	Historical.
Elk River	Tennessee	Limestone	AL	Historical and Current.
Elk River	Tennessee	Lincoln	TN	Historical and Current.
Elk River	Tennessee	Coffee, Franklin, Moore	TN	Historical.
Sugar Creek	Tennessee	Limestone	AL	Historical.
Bear Creek	Tennessee	Franklin	AL	Historical and Current.
Bear Creek	Tennessee	Tishomingo	MS	Historical and Current.
Duck River	Tennessee	Bedford, Hickman, Marshall, Maury	TN	Historical and Current.
Duck River	Tennessee	Coffee	TN	Historical.
North Fork Creek	Tennessee	Bedford	TN	Historical.
Big Rock Creek	Tennessee	Marshall	TN	Historical.
Buffalo River	Tennessee	Humphreys, Perry	TN	Historical and Current.
Buffalo River	Tennessee	Lewis	TN	Historical.

Based on collections made in the early 1900s, the slabside pearlymussel was historically fairly widespread and common in many Cumberlandian Region streams. However, its decline in certain streams may have begun before European colonization. The slabside pearlymussel was considered rare by mussel experts as early as 1970 (Stansbery 1971, p.13), which represents the first attempt to compile such a list. The extirpation of this species from numerous streams within its historical range indicates that substantial population losses and range reductions have occurred.

Current Range and Distribution

In this document, populations of the slabside pearlymussel are generally considered extant (current) if live individuals or fresh dead specimens have been collected since circa 1980. This criterion (circa 1980) was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems and due to the longevity of these species (40–55 years), they are still thought to occur in these areas.

Some of the historical occurences have not been surveyed since the 1980s. Based on this criterion, extant populations remain in the Powell River [TN, VA], Clinch River [TN, VA], North Fork Holston River [VA], Nolichucky River [TN], Big Moccasin Creek [VA], Middle Fork Holston River [VA], Hiwassee River [TN], Sequatchie River [TN], Paint Rock River [AL], Larkin Fork [AL], Estill Fork [AL], Hurricane Creek [AL], Elk River [AL, TN], Buffalo River [TN], Duck River [TN], and Bear Creek

[AL, MS] (see Table 2). Where two or more stream populations occur contiguously with no absolute barriers (e.g., large impoundments) or long reaches of unoccupied habitat, they are considered to represent a single population segment. The Paint Rock River system (including Larkin Fork, Estill Fork, and Hurricane Creek) is considered a single population segment or cluster but it occurs only in the lower mile or so of the three tributary streams. Thus, we consider 13 of 30 populations of the slabside pearlymussel to be extant. The slabside pearlymussel has been eliminated from more than 50 percent of streams from which it was historically known.

The extant occurrences in the Tennessee River system represent 11 isolated populations. Population size data gathered during the past two decades indicate that the slabside pearlymussel is rare (experienced surveyors may find four or fewer specimens per site of occurrence) in about half of its extant populations. Only a few individuals have been found in the Powell River since 1988; therefore, this population is considered extremely rare (Ahlstedt *et al.* 2005, p. 9). In 2009, 4 individuals were collected in the Powell River (Johnson 2010, p. 39). A single live individual was found in 2006 in Big Moccasin Creek, Virginia (Ostby *et al.* 2006, p. 3). The slabside pearlymussel is uncommon to rare in the Clinch River, with only a few individuals found per effort (Ahlstedt *et al.* 2005, p. 8). Eckert and Pinder (2010, pp. 23–30) collected 1 individual in quantitative samples and 5 individuals in semi-quantitative samples in the Clinch River at Cleveland Island in 2008, and 2 individuals in quantitative samples and 13 individuals in semi-quantitative samples in the Clinch River at Cleveland Island in 2002. In 2005, approximately 20 individuals were found near Harms Mill (one of five sites surveyed) in the Elk River, Tennessee, and 13 individuals (at two of five survey sites, spanning approximately 48 rkm (30 rmi)) were found in 2008 (Howard 2009, pers. comm.; Tennessee Valley Authority (TVA) 2009, p. 59). In 2002, one live individual was found in the Hiwassee River (Ahlstedt 2003, p. 3). The slabside pearlymussel was last found in the Sequatchie River 2 miles north of Dunlap, Tennessee, in 1980 (Hatcher and Ahlstedt 1982, p. 9). A small population is limited to Bear Creek in Mississippi, its only occurrence in that State (Jones 2012, pers. comm.). In 2009, TVA collected 9 individuals at one site in Bear Creek (TVA 2010, p. 69). This population is recruiting as evidenced by collection of fresh dead juvenile shells in 2011 (Johnson 2011, pers. comm.). Given its longevity, small populations of this long-lived species may persist for decades despite total recruitment failure. The species has undergone decline in the North and Middle Forks of the Holston River (Jones and Neves 2005, pp. 8–9). This is especially true for the North Fork, where the species has been nearly eliminated (Hanlon 2006, unpub. data). The cause for the observed die-offs is unknown (Jones and Neves 2007, p. 479). Ostby *et al.* (2010, pp. 16–20) observed 8 individuals in qualitative surveys at one site, but did not observe the species in quantitative surveys in the Upper North Fork Holston River. Slabside pearlymussels have declined at 3 of 4 survey sites on the Middle Fork Holston River (Henley 2011, pers. comm.). A single valve of a fresh dead specimen was found in the Nolichucky River in 2011 (Dinkins 2010b, p. 2–1). In 2011, TVA collected one live individual in the Buffalo River (Wales 2012, pers. comm.).

The Duck and Paint Rock Rivers appear to have the best populations remaining rangewide based on population size and the evidence of recent recruitment. The slabside pearlymussel is found at numerous sites in the Duck River within a 64-rkm (40-rmi) reach, and is found at numerous sites within a 72-rkm (45-rmi) reach of the Paint Rock River (Ahlstedt *et al.* 2004, p. 84; Fobian *et al.* 2008, pp. 15–16). A 2010 quantitative survey of the Duck River found the slabside pearlymussel present but rare at 4 of 6 sites sampled (Hubbs *et al.* 2011, pp. 19–25).

Population Estimates and Status

A recent study of major population centers concluded that all populations of the species were fairly similar in genetic structure (Grobler *et al.* 2005, p. 1). However, the population in the Duck River was deemed relatively distinct enough from those in the middle (i.e., Paint Rock River) and upper (i.e., Clinch, North and Middle Forks Holston Rivers) Tennessee River system to warrant recognition as a distinct management unit.

Current status information for most of the 13 extant populations is available from recent periodic sampling efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks Holston River, Paint Rock River, and Duck River in the past several years. Based on this information, the overall population of the slabside pearlymussel appears to be declining rangewide, and the species remains in relatively good numbers and appears viable in just two streams (Duck and Paint Rock Rivers). Two of the four largest populations in the mid-1990s have undergone drastic recent declines (i.e., North and Middle Forks Holston Rivers), especially in the North Fork. Most of the other populations are of questionable viability and may be on the verge of extirpation (e.g., Powell and Hiwassee Rivers; Big Moccasin Creek).

The slabside pearlymussel was considered threatened by Williams *et al.* (1993, p. 13), but two decades later is considered endangered in a reassessment of the North American mussel fauna by the Endangered Species Committee of the American Fisheries Society (Butler 2012, pers. comm.). The slabside pearlymussel is listed as a species of Greatest Conservation Need (GCN) in the Alabama, Mississippi, Tennessee, and Virginia State Wildlife Action Plans (Alabama Department of Conservation and Natural Resources, Division of Wildlife and Freshwater Fisheries, 2005; KDFWR 2005; Mississippi Department of Wildlife, Fisheries and Parks, 2005; TWRA 2005; VDGIF 2005).

Summary of Factors Affecting the Species

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The decline of the fluted kidneyshell and slabside pearlymussel in the Cumberlandian Region and other mussel species in the eastern United States is primarily the result of habitat loss and degradation. Chief among the causes of decline are impoundments, gravel and coal mining, sedimentation, water pollution, and stream channel alterations (Neves 1993, pp. 4–5;

Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 60–78).

Impoundments

Impoundments result in the dramatic modification of riffle and shoal habitats and the resulting loss of mussel resources, especially in larger rivers. Impoundment impacts are most profound in riffle and shoal areas, which harbor the largest assemblages of mussel species, including the fluted kidneyshell and slabside pearlymussel. Mussels are relatively immobile and, therefore, require a stable substrate to survive and reproduce, and are particularly susceptible to channel instability (Neves *et al.* 1997, p. 23) and alteration in the dynamic processes involved in maintaining stream stability. Dams interrupt most of a river's ecological processes by modifying flood pulses; controlling impounded water elevations; altering water flow, sediments, nutrients, energy inputs, and outputs; increasing depth; decreasing habitat heterogeneity; and decreasing bottom stability due to subsequent sedimentation. In addition, dams can also seriously alter downstream water quality and riverine habitat and negatively impact tailwater mussel populations. These changes include thermal alterations immediately below dams; changes in channel characteristics, habitat availability, and flow regime; daily discharge fluctuations; increased silt loads; and altered host fish communities. For these above-mentioned reasons, the reproductive process of riverine mussels is generally disrupted by impoundments, making them unable to successfully reproduce and recruit under reservoir conditions. Coldwater releases from large non-navigational dams and scouring of the river bed from highly fluctuating, turbulent tailwater flows have also been implicated in the demise of mussel faunas (see critical habitat descriptions for Units FK19 and FK20, below).

The damming of rivers has been a major factor contributing to the demise of mussels (Bogan 1993, p. 604). Dams eliminate or reduce river flow within impounded areas, trap silts and cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of mussels and their host fishes (Bogan 1993, p. 604; Vaughn and Taylor 1999, pp. 915–917; Watters 1999, pp. 261–264; McAllister *et al.* 2000, p. iii; Marcinek *et al.* 2005, pp. 20–21). Below dams, mollusk declines are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels, reduced food availability, water temperature alteration, and changes in resident fish assemblages (Williams *et al.* 1993, p. 7; Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 20–21; Moles and Layzer 2008, p. 220). Because rivers are linear systems, these alterations can cause mussel declines for many miles below the dam (Moles and Layzer 2008, p. 220; Vaughn and Taylor 1999, p. 916).

Population losses due to impoundments have probably contributed more to the decline of the fluted kidneyshell, slabside pearlymussel, and other Cumberlandian Region mussels than has any other single factor. The majority of the Cumberland and Tennessee River mainstems and many of their largest tributaries are now impounded, and therefore, are unsuitable for Cumberlandian Region mussels. For example, approximately 90 percent of the 904-rkm (562-rmi) length of the Cumberland River downstream of Cumberland Falls is either impounded (three locks and dams and Wolf Creek Dam) or otherwise adversely impacted by coldwater discharges from Wolf Creek Dam. Other major U.S. Army Corps of Engineers (Corps) impoundments on Cumberland River tributaries (e.g., Obey River, Caney Fork) have inundated over 161 rkm (100 rmi) of riverine habitat for the fluted kidneyshell and the slabside pearlymussel. Layzer *et al.* (1993, p. 68) reported that 37 of the 60 mussel species present in the Caney Fork River pre-impoundment have been extirpated. By 1971, approximately 3,700 rkm (2,300 rmi) (about 20 percent) of the Tennessee River and its tributaries with drainage areas of 65 square rkm (25 square rmi) or greater were impounded by the TVA (TVA 1971, p. 5). The subsequent completion of additional major impoundments on tributary streams (e.g., Duck River in 1976, Little Tennessee River in 1979) significantly increased the total river kilometers (miles) impounded behind the 36 major dams in the Tennessee River system.

Given projected population increases and the need for municipal water supply, other proposals for small impoundment construction are likely in the future within the Cumberland and Tennessee River systems.

Mining and Commercial Navigation

Instream gravel mining has been implicated in the destruction of mussel populations. Negative impacts associated with gravel mining include stream channel modifications (e.g., altered habitat, disrupted flow patterns, sediment transport), water quality modifications (e.g., increased turbidity, reduced light penetration, increased temperature), macroinvertebrate population changes (e.g., elimination, habitat disruption, increased sedimentation), and changes in fish populations (e.g., impacts to spawning and nursery habitat, food web disruptions) (Kanehl and Lyons 1992, pp. 26–27).

Gravel mining activities negatively impact the habitat of the fluted kidneyshell in Buck Creek, one of the few remaining populations of this species in the entire Cumberland River system. Gravel mining activities also negatively impact the habitat of the slabside pearlymussel in the Powell and Elk Rivers in the Tennessee River system.

Channel modification for commercial navigation has been shown to increase flood heights (Belt 1975, p. 684), partly as a result of an increase in stream bed slope (Hubbard *et al.* 1993, p. 137). Flood events are exacerbated, conveying large quantities of sediment, potentially with adsorbed contaminants, into streams. Channel maintenance often results in increased turbidity and sedimentation that often smothers mussels (Stansbery 1970, p. 10).

Heavy metal-rich drainage from coal mining and associated sedimentation has adversely impacted upper Cumberland and Tennessee River system streams with historically diverse mussel faunas. Strip mining continues to threaten mussel habitats in coal field drainages of the Cumberland Plateau, including streams harboring small fluted kidneyshell populations (e.g., Horse Lick Creek, Little South Fork, Powell River, Indian Creek). Portions of the upper Tennessee River system are also influenced by coal mining activities. Powell River mussel populations were inversely correlated with coal fines in the substrate; when coal fines were present, decreased filtration times and increased movements were noted in laboratory-held mussels (Kitchel *et al.* 1981, p. 25). In a quantitative study in the Powell River, a decline of federally listed mussels and the long-term decrease in overall species composition since about 1980 was attributed to general stream degradation due primarily to coal mining activities in the headwaters (Ahlstedt and Tuberville 1997, pp. 74–76). Numerous gray-water and black-water spill events have been documented in the Powell and Clinch River drainages over the past several years. The habitats of Fluted

kidneyshell, slabside pearlymussel, and other mussels in the Clinch and Powell rivers are increasingly being threatened by coal mining activities.

Oil and Natural Gas Development

Oil and natural gas resources are present in some of the watersheds that are known or historically were known to support the fluted kidneyshell and slabside pearlymussel, including the Clinch, Powell, and Big South Fork Rivers. Exploration and extraction of these energy resources has the potential to result in increased siltation, a changed hydrograph (flow regime), and altered water quantity and quality even at a distance from the mine or well field. Although oil and natural gas extraction generally occurs away from the river, extensive road and pipeline networks are required to construct and maintain wells and transport the extracted resources. These road and pipeline networks frequently cross or occur near tributaries, contributing sediment to the receiving waterway. In addition, the construction and operation of wells may result in the illegal discharge of chemical contaminants and subsurface minerals.

Sedimentation

Sedimentation is one of the most significant pollution problems for aquatic organisms (Waters 1995, pp. 2–3), and has been determined to be a major factor in mussel declines (Ellis 1936, pp. 39–40). Sources of silt and sediment include poorly designed and executed timber harvesting operations and associated activities; complete clearing of riparian vegetation for agricultural, silvicultural, or other purposes; and those construction, mining, and other practices that allow exposed earth to enter streams. Agricultural activities, specifically an increase in cattle grazing and the resultant nutrient enrichment and loss of riparian vegetation along the stream, are responsible for much of the sediment (Fraley and Ahlstedt 2000, p. 193; Hanlon *et al.* 2009, pp. 11–12).

Heavy sediment loads can destroy mussel habitat, resulting in a corresponding shift in mussel fauna (Brim Box and Mossa 1999, p. 100). Excessive sedimentation can lead to rapid changes in stream channel position, channel shape, and bed elevation (Brim Box and Mossa 1999, p. 102). Sedimentation has also been shown to impair the filter feeding ability of mussels, and high amounts of suspended sediments can dilute their food source (Dennis 1984, p. 212). We will describe the detrimental actions of sedimentation in Factor E, below.

Chemical Contaminants

Chemical contaminants are ubiquitous throughout the environment and are considered a major threat in the decline of mussel species (Richter *et al.* 1997, p. 1081; Strayer *et al.* 2004, p. 436; Wang *et al.* 2007a, p. 2029; Cope *et al.* 2008, p. 451). Chemicals enter the environment through both point and nonpoint discharges including spills, industrial sources, municipal effluents, and agricultural runoff. These sources contribute organic compounds, heavy metals, pesticides, and a wide variety of newly emerging contaminants to the aquatic environment. As a result, water and sediment quality can be degraded to the extent that mussel habitats and populations are adversely impacted. We will describe the detrimental actions of chemicals in Factor E, below.

Other Stream Channel Alterations

Other stream channel alterations that can impact mussel habitats include bridges, other road crossing structures, and activities that lower water tables (withdrawals). Culverts can act as barriers to fish passage (Wheeler *et al.* 2005, p. 149), particularly by increasing flow velocity (Warren and Pardew 1998, p. 637). Stream channels become destabilized when improperly designed culverts or bridges change the morphology and interrupt the transport of woody debris, substrate, and water (Wheeler *et al.* 2005, p. 152). Water withdrawals for irrigation, municipal, and industrial water supplies are an increasing concern. U.S. water consumption doubled from 1960 to 2000, and is likely to increase further (Naiman and Turner 2000, p. 960). Therefore, we anticipate road crossings, water withdrawals, and potential stream dewatering to be threats to the habitat of the fluted kidneyshell and slabside pearlymussel.

Summary of Factor A

Habitat loss and degradation negatively impact the fluted kidneyshell and slabside pearlymussel. Severe degradation from impoundments, gravel and coal mining, oil and natural gas development, sedimentation, chemical contaminants, and stream channel alterations threaten the stream habitat and water quality on which these species depend. Contaminants associated with coal mining (metals, other dissolved solids), municipal effluents (bacteria, nutrients, pharmaceuticals), and agriculture (fertilizers, pesticides, herbicides, and animal waste) cause degradation of water quality and habitats through increased acidity and conductivity, instream oxygen deficiencies, excess nutrification, and excessive algal growths. Furthermore, these threats faced by the fluted kidneyshell and slabside pearlymussel are imminent; the result of ongoing projects that are expected to continue indefinitely, therefore perpetuating these impacts. As a result of the imminence of these threats, combined with the vulnerability of the remaining small, isolated populations to extirpation from natural and manmade threats, we have determined that the present or threatened destruction, modification, or curtailment of the habitat and range of these species represents a threat to both the fluted kidneyshell and slabside pearlymussel.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The fluted kidneyshell and slabside pearlymussel are not commercially valuable species, but may be increasingly sought by collectors, due to their increasing rarity. Although scientific collecting is not thought to represent a significant threat, localized populations could become impacted, and possibly extirpated, by overcollecting, particularly if regulations governing collection activity (currently scientific collection is controlled by the States through the issuance of collection permits; see Factor D below) are not enforced.

In summary, the fluted kidneyshell and slabside pearlymussel are not commercially utilized but might be increasingly sought for scientific or educational purposes as their rarity becomes known. We do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to either species now or likely to become a threat in the future.

C. Disease or Predation

Little is known about diseases in mussels (Grizzle and Brunner 2007, p. 6). Several mussel dieoffs have been documented during the past 20 years (Neves 1987, pp. 8–11). Although the ultimate cause is unknown, some researchers believe that disease may be a factor. Warren and Haag (2005, p. 1394) hypothesized that declines in the Little South Fork Cumberland River, Kentucky, mussel fauna, including the once abundant fluted kidneyshell population, may have been at least partially attributed to disease, but no definitive cause has been determined. We have no specific documentation indicating that disease poses a threat to slabside pearlymussel populations.

Juvenile and adult mussels are prey items for some invertebrate predators and parasites (for example, nematodes and mites), and are prey for a few vertebrate species (for example, raccoons, muskrats, otters, and turtles) (Hart and Fuller 1974, pp. 225–240). Mussel parasites include water mites, trematodes, oligochaetes, leeches, copepods, bacteria, and protozoa (Grizzle and Brunner 2007, p. 6). Generally, parasites are not suspected of being a major limiting factor (Oesch 1984, p. 16); however, Gangloff *et al.* (2008, pp. 28–30) found that reproductive output and physiological condition were negatively correlated with mite and trematodes abundance, respectively. Stressors that reduce fitness may make mussels more susceptible to parasites (Butler 2007, p. 90).

Muskrat predation on the fluted kidneyshell represents a localized threat, as determined by Neves and Odum (1989, entire) in the upper North Fork Holston River in Virginia. They concluded that muskrat predation could limit the recovery potential of endangered mussel species or contribute to the local extirpation of already depleted mussel populations. Although other mammals (e.g., raccoon, mink) occasionally feed on mussels, the threat from these predators is not considered to be significant. Predation does occur, but it is considered to be a normal aspect of the species' population dynamics.

In summary, there is little information on disease in mussels, and disease is not currently considered to be a threat to the fluted kidneyshell or slabside pearlymussel and it is not likely to become so in the future. Although predation does occur and impacts local populations, we conclude that predation is not a threat to these species as a whole or likely to become so in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

The objective of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*), is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources. The CWA has a stated goal that ''* * * wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.'' States are responsible for setting and implementing water quality standards that align with the requirements of the CWA. Overall, implementation of the CWA could benefit both mussel species through the point and nonpoint programs.

Nonpoint source (NPS) pollution comes from many diffuse sources, unlike pollution from industrial and sewage treatment plants. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it transports natural and human-made pollutants to lakes, rivers, wetlands, coastal waters and ground waters. States report that nonpoint source pollution is the leading remaining cause of water quality problems. The effects of nonpoint source pollutants on specific waters vary and may not always be fully assessed. However, these pollutants have harmful effects on fisheries and wildlife (*http://www.epa.gov/owow_keep/NPS/whatis.html*).

Sources of NPS pollution within the watersheds occupied by both mussels include agriculture, clearing of riparian vegetation, urbanization, road construction, and other practices that allow bare earth to enter streams. The Service has no information concerning the implementation of the CWA regarding NPS pollution specific to protection of both mussels. However, insufficient implementation could become a threat to both mussel species if they continue to decline in numbers.

The fluted kidneyshell and slabside pearlymussel continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. However, there is no specific information known about the sensitivity of these mussels to common point source pollutants like industrial and municipal pollutants and very little information on other freshwater mussels. Because there is very little information known about water quality parameters necessary to fully protect freshwater mussels, such as the fluted kidneyshell and slabside pearlymussel, it is difficult to determine whether the CWA is adequately addressing the habitat and water quality threats to these species. However, given that a goal of the CWA is to establish water quality standards that protect shellfish and given that documented declines of these mussel species still continue due to poor water quality and other factors, we take a conservative approach in favor of the species and conclude that the CWA has been insufficient to significantly reduce or remove the threats to the fluted kidneyshell and slabside pearlymussel. We invite public comment on this matter, and solicit information especially regarding water quality data that may be helpful in determining the water quality parameters necessary for these species' survival (see Information Requested, item #4).

Summary of Factor D

In summary, the CWA has a stated goal to establish water quality standards that protect aquatic species, including the fluted kidneyshell and slabside pearlymussel. However, the CWA has generally been insufficient at protecting mussels, and adequate water quality criteria that are protective of all life stages, particularly glochidia and juveniles, may not be established. Little information is known about specific sensitivities of mussels to various pollutants, but both species continue to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. Based on our analysis of the best available scientific and commercial data, we conclude that the current implementation of the provisions under the CWA to protect water quality for aquatic species is inadequate to reduce or remove threats to the fluted kidneyshell and slabside pearlymussel throughout all of their range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Altered Temperature Regimes

Natural temperature regimes can be altered by impoundments, water releases from dams, industrial and municipal effluents, and changes in riparian habitat. Critical thermal limits for survival and normal functioning of many mussel species are unknown. High temperatures can reduce dissolved oxygen concentrations in the water, which slows growth, reduces glycogen stores, impairs respiration, and may inhibit reproduction (Hart and Fuller 1974, pp. 240–241). Low temperatures can significantly delay or prevent metamorphosis (Watters and O'Dee 1999, pp. 454–455). Water temperature increases have been documented to shorten the period of glochidial encystment, reduce the speed in which they turn upright, increase oxygen consumption, and slow burrowing and movement responses (Hart and Fuller 1974, pp. 240–241; Bartsch *et al.* 2000, p. 237; Watters *et al.* 2001, p. 546; Schwalb and Pusch 2007, pp. 264–265). Several studies have documented the influence of temperature on the timing of aspects of mussel reproduction (for example, Gray *et al.* 2002, p. 156; Allen *et al.* 2007, p. 85; Steingraeber *et al.* 2007, pp. 303–309). Peak glochidial

releases are associated with water temperature thresholds that can be thermal minimums or thermal maximums, depending on the species (Watters and O'Dee 2000, p. 136). Abnormal temperature changes may cause particular problems to mussels whose reproductive cycles may be linked to fish reproductive cycles Young and Williams 1984, entire).

Chemical Contaminants

Chemical spills can be especially devastating to mussels because they may result in exposure of a relatively immobile species to extremely elevated contaminant concentrations that far exceed toxic levels and any water quality standards that might be in effect. Some notable spills that released large quantities of highly concentrated chemicals resulting in mortality to mussels and host fish include a kill on the Clinch River at Carbo, Virginia, from a power plant alkaline fly ash pond spill in 1967, and a sulfuric acid spill in 1970 (Crossman *et al.* 1973, p. 6). Approximately 18,000 mussels of several species, including the fluted kidneyshell and 750 individuals from three endangered mussel species (tan riffleshell, *Epioblasma florentina walkeri;* purple bean, *Villosa perpurpurea;* and rough rabbitsfoot, *Quadrula cylindrica strigillata*), were eliminated from the upper Clinch River near Cedar Bluff, Virginia, in 1998, when an overturned tanker truck released approximately 6,100 liters (1,600 gallons) of a chemical used in rubber manufacturing (Jones *et al.* 2001, p. 20; Schmerfeld 2006, p. 12). These are not the only instances where chemical spills have resulted in the loss of high numbers of mussels (Neves 1991, p. 252; Jones *et al.* 2001, p. 20; Brown *et al.* 2005, p. 1457; Schmerfeld 2006, pp. 12–13), but are provided as examples of the serious threat chemical spills pose to mussel species, such as the fluted kidneyshell and slabside pearlymussel.

Cope *et al.* (2008, p. 451) evaluated the pathways of exposure to environmental pollutants for all four mollusk life stages (free glochidia, encysted glochidia, juveniles, and adults) and found that each life stage has both common and unique characteristics that contribute to observed differences in contaminant exposure and sensitivity. Very little is known of the potential mechanisms and consequences of waterborne toxicants on sperm viability. However, Watters (2011) demonstrated that the spermatozeugmata (sperm ball) produced and released by male mussels are sensitive to varying levels of salinity. When exposed to high enough salinity levels, the spermatozeugmata disassociate and can be rendered nonviable if they disassociate prior to entering a female mussel. This may pose yet another significant challenge for mussels to successfully fertilize eggs and promote recruitment if exposed to elevated salinity or conductivity levels in the ambient water column.

In the female mollusk, the marsupial region of the gill currently is thought to be physiologically isolated from respiratory functions, and this isolation may provide some level of protection from contaminant interference with a female's ability to achieve fertilization or brood glochidia (Cope *et al.* 2008, p. 454). A major exception to this assertion is with chemicals that act directly on the neuroendocrine pathways controlling reproduction (see discussion below). Nutritional and ionic exchange is possible between a brooding female and her glochidia, providing a route for chemicals (accumulated or waterborne) to disrupt biochemical and physiological pathways (such as maternal calcium transport for construction of the glochidial shell).

Juvenile mussels typically remain burrowed beneath the sediment surface for 2 to 4 years. Residence beneath the sediment surface necessitates deposit (pedal) feeding and a reliance on interstitial (pore) water for dissolved oxygen (Watters 2007, p. 56). The relative importance of juvenile fluted kidneyshell and slabside pearlymussel exposure to contaminants in overlying surface water, interstitial (pore) water, whole sediment, or food has not been adequately assessed. Exposure to contaminants from each of these routes varies with certain periods and environmental conditions (Cope *et al.* 2008, pp. 453, 457).

The primary routes of exposure to contaminants for adult fluted kidneyshell and slabside pearlymussel are surface water, sediment, interstitial (pore) water, and diet; adults can be exposed when either partially or completely burrowed in the substrate (Cope *et al.* 2008, p. 453). Adult mussels have some ability to detect certain toxicants in the water and close their valves to avoid exposure (Van Hassel and Farris 2007, p. 6). Adult mussel toxicity and relative sensitivity (exposure and uptake of toxicants) may be reduced at high rather than at low toxicant concentrations because uptake is affected by the prolonged or periodic toxicant avoidance responses (when the avoidance behavior can no longer be sustained for physiological reasons) (Cope *et al.* 2008, p. 454). Toxicity results based on low-level exposure of adults are similar to estimates for glochidia and juveniles for some toxicants (for example, copper). The duration of any toxicant avoidance response by an adult mussel is likely to be affected by several variables, such as species, age, shell thickness and gape, properties of the toxicant, and water temperature. There is a lack of information on toxicant response(s) specific to adult mussels (including the fluted kidneyshell and slabside pearlymussel), but results of tests using glochidia and juveniles may be valuable for protecting adults (Cope *et al.* 2008, p. 454).

Exposure to lower concentrations of contaminants, more likely to be found in aquatic environments, can also adversely affect mussels and result in the decline of mussel species. Such concentrations may not be immediately lethal, but over time, can result in mortality, reduced filtration efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Frequently, procedures that evaluate the 'safe' concentration of an environmental contaminant (e.g., national water quality criteria) do not have data for mussel species or exclude data that is available for mussels (March *et al.* 2007, pp. 2066–2067, 2073).

Current research is now focusing on the contaminant sensitivity of mussel glochidia and newly-released juvenile mussels (Goudreau *et al.* 1993, pp. 219–222; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, pp. 1244–1245; Valenti *et al.* 2006, pp. 2514–2517; March *et al.* 2007, pp. 2068–2073; Wang *et al.* 2007b, pp. 2041–2046) and juveniles (Augspurger *et al.* 2003, p. 2569; Bartsch *et al.* 2003, p. 2561; Mummert *et al.* 2003, p. 2549; Valenti *et al.* 2005, pp. 1244–1245; Valenti *et al.* 2006, pp. 2514–2517; March *et al.* 2007, pp. 2068–2073; Wang *et al.* 2007b, pp. 2041–2046; Wang *et al.* 2007c, pp. 2053–2055) to such contaminants as ammonia, metals, chlorine, and pesticides.

One chemical that is particularly toxic to early life stages of mussels is ammonia. Sources of ammonia include agriculture (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augspurger *et al.* 2007, p. 2026) as well as precipitation and natural processes (i.e., decomposition of organic nitrogen) (Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Augspurger *et al.* 2003, p. 2569; Newton 2003, p. 1243). Therefore, ammonia is considered a limiting factor for survival and recovery of some mussel species

due to its ubiquity in aquatic environments and high level of toxicity, and because the highest concentrations typically occur within microhabitats inhabited by mussels (Augspurger *et al.* 2003, p. 2574). In addition, studies have shown that ammonia concentrations increase with increasing temperature and low flow conditions (Cherry *et al.* 2005, p. 378; Cooper *et al.* 2005, p. 381), which may be exacerbated by the effects of climate change, and may cause ammonia to become more problematic for juvenile mussels.

Mussels are also affected by heavy metals (Keller and Zam 1991, p. 543) such as cadmium, chromium, copper, mercury, and zinc, which can negatively affect biological processes such as growth, filtration efficiency, enzyme activity, valve closure, and behavior (Keller and Zam 1991, p. 543; Naimo 1995, pp. 351–355; Jacobson *et al.* 1997, p. 2390; Valenti *et al.* 2005, p. 1244). Heavy metals occur in industrial and wastewater effluents and are often a result of atmospheric deposition from industrial processes and incinerators. Glochidia and juvenile mussels have recently been studied to determine the acute and chronic toxicity of copper to these life stages (Wang *et al.* 2007b, pp. 2036–2047; Wang *et al.* 2007c, pp. 2048–2056). The chronic values determined for copper for survival and growth of juveniles are below the Environmental Protection Agency (EPA) 1996 chronic water quality criterion for copper (Wang *et al.* 2007c, pp. 2052–2055). March (2007, pp. 2066 and 2073) identified that copper water quality criteria and modified State water quality standards may not be protective of mussels.

Mercury is another heavy metal that has the potential to negatively affect mussel populations, and it is receiving attention due to its widespread distribution and potential to adversely impact the environment. Mercury has been detected throughout aquatic environments as a product of municipal and industrial waste and atmospheric deposition from coal burning plants. Valenti *et al.* (2005, p. 1242) determined that for rainbow mussel, *Villosa iris,* glochidia were more sensitive to mercury than juvenile mussels, and that reduced growth in juveniles is seen when observed concentrations are higher than EPA's criteria for mercury. Based on these data, we believe that EPA's water quality standards for mercury should be protective of juvenile mussels and glochidia, except in cases of illegal dumping, permit violations, or spills. However, impacts to mussels from mercury toxicity may be occurring in some streams. According to the National Summary Data reported by States to the EPA, 4,716 monitored waters do not meet EPA standards for mercury in the United States (*http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T,* accessed 6/28/2012). Acute mercury toxicity was determined to be the cause of extirpation of a diverse mussel fauna for a 112-rkm (70-rmi) portion of the North Fork Holston River (Brown *et al.* 2005, pp. 1455–1457).

In addition to ammonia, agricultural sources of chemical contaminants include two broad categories that have the potential to adversely impact mussel species: nutrients and pesticides. Nutrients (such as nitrogen and phosphorus) can impact streams when their concentrations reach levels that cannot be assimilated, a condition known as over-enrichment. Nutrient over-enrichment is primarily a result of runoff from livestock farms, feedlots, and heavily fertilized row crops (Peterjohn and Correll 1984, p. 1471). Over-enriched conditions are exacerbated by low-flow conditions, such as those experienced during typical summer-season flows and that might occur with greater frequency and magnitude as a result of climate change. Bauer (1988, p. 244) found that excessive nitrogen concentrations can be detrimental to the adult pearl mussel (*Margaritifera margaritifera*), as was evident by the positive linear relationship between mortality and nitrate concentration. Also, a study of mussel life span and size (Bauer 1992, p. 425) showed a negative correlation between growth rate and eutrophication, and longevity was reduced as the concentration of nitrates increased. Nutrient over-enrichment can result in an increase in primary productivity, and the subsequent respiration depletes dissolved oxygen levels. This may be particularly detrimental to juvenile mussels, which inhabit the interstitial spaces in the substrate, where lower dissolved oxygen concentrations are more likely than on the sediment surface where adults tend to live (Sparks and Strayer 1998, pp. 132–133).

Elevated concentrations of pesticide frequently occur in streams due to runoff, overspray application to row crops, and lack of adequate riparian buffers. Agricultural pesticide applications and the reproductive and early life stages of mussels often coincide in the spring and summer, and thus impacts to mussels due to pesticides may be increased (Bringolf *et al.* 2007c, p. 2094). Little is known regarding the impact of currently used pesticides to mussels even though some pesticides, such as glyphosate (e.g., Roundup™), are used globally. Recent studies tested the toxicity of glyphosate, its formulations, and a surfactant (MON 0818) used in several glyphosate formulations, to early life stages of the fatmucket (*Lampsilis siliquoidea*) (Bringolf *et al.* 2007c, p. 2094). Studies conducted with juvenile mussels and glochidia determined that the surfactant (MON 0818) was the most toxic of the compounds tested and that fatmucket glochidia were the most sensitive of organisms tested to date (Bringolf *et al.* 2007c, p. 2094). Roundup™), technical grade glyphosate isopropylamine salt, and isopropylamine were also acutely toxic to juveniles and glochidia (Bringolf *et al.* 2007c, p. 2097). The impacts of other pesticides including atrazine, chlorpyrifos, and permethrin on glochidia and juvenile life stages have also recently been studied (Bringolf *et al.* 2007a, p. 2101). This study determined that chlorpyrifos was toxic to both fatmucket glochidia and juveniles (Bringolf *et al.* 2007a, p. 2104). The above results indicate the potential toxicity of commonly applied pesticides and the threat to mussel species as a result of the widespread use of these pesticides. All of these pesticides are commonly used throughout the range of the fluted kidneyshell and slabside pearlymussel.

Pharmaceutical chemicals used in commonly consumed drugs are increasingly found in surface waters downstream from municipal effluents. A recent nationwide study sampling 139 stream sites in 30 States detected the presence of numerous pharmaceuticals, hormones, and other organic wastewater contaminants downstream from urban development and livestock production areas (Kolpin *et al.* 2002, pp. 1208–1210). Exposure to waterborne and, potentially to sediment, toxicant chemicals that act directly on the neuroendocrine pathways controlling reproduction can cause premature release of viable or nonviable glochidia. For example, the active ingredient in many human prescription anti-depressant drugs belonging to the class of selective serotonin reuptake inhibitors may exert negative reproductive effects on mussels because of their action on serotonin and other neuroendocrine pathways (Cope *et al.* 2008, pp. 455). These waterborne chemicals alter mussel behavior and influence successful attachment of glochidia on fish hosts and, therefore, may have population level implications for the fluted kidneyshell and slabside pearlymussel.

This information indicates it is likely that chemical contaminants have contributed to declining fluted

kidneyshell and slabside pearlymussel populations, and will likely continue to be a threat to these species in the future. These threats result from spills that are immediately lethal to species, as well as chronic contaminant exposure, which results in death, reduced growth, or reduced reproduction of fluted kidneyshell and slabside pearlymussel.

Sedimentation

Impacts resulting from sediments have been noted for many components of aquatic communities. For example, sediments have been shown to abrade or suffocate periphyton (organisms attached to underwater surfaces); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995, pp. 173–175). When in high silt environments, mussels may keep their valves closed more often, resulting in reduced feeding activity (Ellis 1936, p. 30).

Increased turbidity from suspended sediment can reduce or eliminate juvenile mussel recruitment (Negus 1966, p. 525; Box and Mossa 1999, pp. 101–102). Many mussel species use visual cues to attract host fishes; such a reproductive strategy depends on clear water for success. For example, increased turbidity may impact the southern sandshell, *Hamiota australis,* life cycle by reducing the chance that a sight-feeding host fish will encounter the visual display of its superconglutinate lure (Haag *et al.* 1995, p. 475; Blalock-Herod *et al.* 2002, p. 1885). If the superconglutinate is not encountered by a host within a short time period, the glochidia will become nonviable (O'Brien and Brim Box 1999, p. 133). Also, evidence suggests that conglutinates of the southern kidneyshell (another species of *Ptychobranchus, P. jonesi*), once released from the female mussel in an attempt to lure potential host fish, must adhere to hard surfaces in order to be seen by its fish host. If the surface becomes covered in fine sediments, the conglutinate cannot attach and is swept away (Hartfield and Hartfield 1996, p. 373).

Population Fragmentation and Isolation

Population isolation prohibits the natural interchange of genetic material between populations, and small population size reduces the reservoir of genetic diversity within populations, which can lead to inbreeding depression (Allendorf and Luikart 2007, pp. 117–146). Small, isolated populations, therefore, are more susceptible to environmental pressures, including habitat degradation and stochastic events, and thus are the most susceptible to extinction (Primack 2008, pp. 151–153). It is likely that some populations of the fluted kidneyshell and slabside pearlymussel are below the effective population size (Soulé 1980, pp. 162–264; Allendorf and Luikart 2007, pp. 147–170) required to maintain long-term genetic and population viability.

The present distribution and status of the fluted kidneyshell in the upper Cumberland River system in Kentucky may provide an excellent example of the detrimental bottleneck effect resulting when a minimum viable population size is not maintained. A once large population of this species occurred throughout the upper Cumberland River mainstem below Cumberland Falls and in several larger tributary systems. In this region, there were no absolute barriers to genetic interchange among its subpopulations (and those of its host fishes) that occurred in various streams. With the completion of Wolf Creek Dam in the late 1960s, the mainstem population was soon extirpated, and the remaining populations isolated by the filling of Cumberland Reservoir. Whereas small, isolated, tributary populations of imperiled short-lived species (e.g., most fishes) would have died out within a decade or so after impoundment, the long-lived fluted kidneyshell would potentially take decades to expire post-impoundment. Without the level of genetic interchange the species experienced historically (i.e., without the reservoir barrier), isolated populations may be slowly dying out. The fluted kidneyshell and slabside pearlymussel were similarly isolated by the completion of multiple reservoirs in the Tennessee River system. Even given the improbable absence of anthropogenic impacts, we may lose smaller isolated populations of the fluted kidneyshell and slabside pearlymussel to the devastating consequences of below-threshold effective population size (the minimum population size that is needed for the population to reproduce and continue to be viable). In reality, degradation of these isolated stream reaches and the resulting decline in suitable habitat is contributing to the decline of both species.

Random Catastrophic Events

The remaining populations of the fluted kidneyshell and slabside pearlymussel are generally small and geographically isolated. The patchy distribution pattern of populations in short river reaches makes them much more susceptible to extirpation from single catastrophic events, such as toxic chemical spills. Such a spill occurred in the upper Clinch River in 1998, killing many fluted kidneyshell and thousands of specimens of other mussel species, including three federally listed species (Henley *et al.* 2002, entire). High levels of isolation makes natural recolonization of any extirpated population impossible.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean (average) and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Specific effects of climate change to mussels, their habitat, and their fish hosts could include changes in stream temperature regimes, the timing and levels of precipitation causing more frequent and severe floods and droughts, and nonindigenous species introductions. Increases in temperature and reductions in flow may also lower dissolved oxygen levels in interstitial habitats which can be lethal to juveniles (Sparks and Strayer 1998, pp. 131–133). Effects to mussel populations from these environmental changes could include reduced abundance and biomass, altered species composition, and reduced host fish availability (Galbraith *et al.* 2010, pp. 1180–1182). The present conservation status, complex life

histories, and specific habitat requirements of mussels suggest that they may be quite sensitive to the effects of climate change (Hastie *et al.* 2003, p. 45).

During high flows, flood scour can dislodge mussels where they may be injured, buried, swept into unsuitable habitats, or stranded and perish when flood waters recede (Vannote and Minshall 1982, p. 4105; Tucker 1996, p. 435; Hastie *et al.* 2001, pp. 107–115; Peterson *et al.* 2011, unpaginated). During drought, stream channels may become disconnected pools where mussels are exposed to higher water temperatures, lower dissolved oxygen levels, and easier collection by predators, or channels may become dewatered entirely. Increased human demand and competition for surface and ground water resources for irrigation and consumption during drought can cause drastic reductions in stream flows and alterations to hydrology (Golladay *et al.* 2004, p. 504; Golladay *et al.* 2007, unpaginated). Extended droughts occurred in the Southeast during 1998 to 2002, and again in 2006 to 2008. The effects of these recent droughts on these mussels are unknown; however, substantial declines in mussel diversity and abundance as a direct result of drought have been documented in southeastern streams (Golladay *et al.* 2004, pp. 494–503; Haag and Warren 2008, p. 1165).

Nonindigenous Species

The Asian clam (*Corbicula fluminea*) has been introduced to the Cumberland and Tennessee River drainages and may be adversely affecting the fluted kidneyshell and slabside pearlymussel through direct competition for space and resources. The Asian clam may pose a direct threat to native mussels, particularly as juveniles, as a competitor for resources such as food, nutrients, and space (Neves and Widlak 1987, p. 6). Dense populations of Asian clams may ingest large numbers of unionid sperm, glochidia, and newly metamorphosed juveniles, and may actively disturb sediments, reducing habitable space for juvenile native mussels or displacing them downstream (Strayer 1999, p. 82; Yeager *et al.* 2000, pp. 255–256).

Asian clam densities vary widely in the absence of native mussels or in patches with sparse mussel concentrations, but Asian clam density is rarely observed to be high in dense mussel beds, indicating that the clam is unable to successfully invade small-scale habitat patches with high unionid biomass (Vaughn and Spooner 2006, pp. 334–335). The invading clam, therefore, appears to preferentially invade sites where mussels are already in decline (Strayer 1999, pp. 82–83; Vaughn and Spooner 2006, pp. 332–336) and does not appear to be a causative factor in the decline of mussels in dense beds. However, an Asian clam population that thrives in previously stressed, sparse mussel populations might exacerbate unionid imperilment through competition and impeding mussel population expansion (Vaughn and Spooner 2006, pp. 335–336).

Summary for Factor E

We have determined that other natural and manmade factors, such as alteration of natural temperature regimes; chemical contaminants; sedimentation; small, isolated populations; and low genetic diversity, combined with localized extinctions from point source pollution or accidental toxic chemical spills, habitat modification and progressive degradation by nonpoint source pollutants, natural catastrophic changes to habitat through flood scour or drought, and nonindigenous species are threats to remaining populations of the fluted kidneyshell and slabside pearlymussel across their respective ranges.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the fluted kidneyshell and slabside pearlymussel. Section 3(6) of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and section 3(20) of the Act defines a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' As described in detail above, these two species occupy only portions of their historical ranges, are limited to a handful of viable populations, and are currently at risk throughout all of their respective ranges due to ongoing threats of habitat destruction and modification (Factor A), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting their continued existence (Factor E). Specifically, these threats include impoundments, mining, oil and gas exploration, sedimentation, chemical contaminants, temperature regime alterations, recurring drought and flooding, population fragmentation and isolation, loss of fish hosts, and the introduced Asian clam. We believe these threats are currently impacting these species and are projected to continue and potentially worsen in the future.

Species with small ranges, few populations, and small or declining population sizes are the most vulnerable to extinction (Primack 2008, p. 137). The effects of certain factors, particularly habitat degradation and loss, catastrophic events, and introduced species, increase in magnitude when population size is small (Soulé 1987, pp. 33, 71; Primack 2008, pp. 133–135, 152). We believe that, when combining the effects of historical, current, and future habitat loss and degradation; historical and ongoing drought; and the exacerbating effects of small and declining population sizes and curtailed ranges, the fluted kidneyshell and slabside pearlymussel are in danger of extinction throughout all of their ranges. In addition, any factor (i.e., habitat loss or natural and manmade factors) that results in a further decline in habitat or individuals may be problematic for the long-term recovery of these species.

Therefore, based on the best available scientific and commercial information, we propose to list the fluted kidneyshell and slabside pearlymussel as endangered species throughout all of their ranges. We believe that, when combining the effects of historical, current, and future habitat loss and degradation; historical and ongoing drought; and the exacerbating effects of small and declining population sizes and curtailed ranges, the fluted kidneyshell and slabside pearlymussel are in danger of extinction throughout all of their ranges. Furthermore, we examined both species to analyze if any significant portions of their ranges may warrant a different status. However, because of their limited and curtailed ranges, and uniformity of the threats throughout their entire respective ranges, we find there are no significant portions of any of the species' ranges that may warrant a different determination of status.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed

species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed wildlife are discussed in Effects of Critical Habitat Designation and are further discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, States would be eligible for Federal funds to implement management actions that promote the protection and recovery of these two species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the fluted kidneyshell and slabside pearlymussel are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management of and any other landscape altering activities on Federal lands administered by the U.S. Forest Service; issuance of section 404 CWA permits by the U.S. Army Corps of Engineers; licensing of hydroelectric dams, and construction and management of gas pipeline and power line rights-of-way approved by the Federal Energy Regulatory Commission; issuance of 26a permits by the Tennessee Valley Authority; construction and maintenance of roads or highways funded by the Federal Highway Administration; and land management practices administered by the U.S. Department of Agriculture. It has been the experience of the Service from consultations on other species, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of

section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Introduction of nonnative species that compete with or prey upon these mussel species, such as the zebra mussel (*Dreissena polymorpha*) and Asian clam (*Corbicula fluminea*).

(3) Unauthorized modification of the channel, substrate, temperature, or water flow of any stream or water body in which these species are known to occur.

(4) Unauthorized discharge of chemicals or fill material into any waters in which the fluted kidneyshell and slabside pearlymussel are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; telephone: 404–679–7140; facsimile: 404–679–7081.

Critical Habitat for the Fluted Kidneyshell and Slabside Pearlymussel

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the fluted kidneyshell and slabside pearlymussel in this section of the proposed rule.

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

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it is listed must contain physical or biological features (PBFs) which are (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those PBFs that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of PBFs that provide for a species' life-history processes.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326).

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas

that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools would continue to contribute to recovery of these species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation would not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed above under Factor B, there is currently no imminent threat of take attributed to collection or vandalism for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the fluted kidneyshell and slabside pearlymussel.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the two species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

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

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

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that critical habitat is determinable for these two species.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the PBFs essential to the conservation of the species which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PBFs required for the fluted kidneyshell and slabside pearlymussel based on their biological needs. Little is known of the specific habitat requirements of these two mussel species other than they require flowing water, stable stream channels, adequate water quality, and fish hosts for development of larva to metamorphose into juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the species survive, the limited information available on these two mussels and their close relatives, and factors associated with the decline and extirpation of these and other mussels from portions of the Cumberland and Tennessee River systems. Additional information can be found in the Background section of this proposed rule. We have determined that the following PBFs are essential for the fluted kidneyshell and slabside pearlymussel.

Space for Individual and Population Growth and for Normal Behavior

The fluted kidneyshell and slabside pearlymussel are historically associated with the Cumberland and Tennessee River drainages in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Mussels generally live embedded in the bottom of stable streams and other bodies of water, and within riffle areas of sufficient current velocities to remove finer sediments and provide well-oxygenated waters. The fluted kidneyshell is primarily a medium-sized creek to large river species, inhabiting sand and gravel substrates in relatively shallow riffles and shoals with moderate to swift current (Parmalee and Bogan 1998, p. 205). In comparison to co-occurring species, the fluted kidneyshell demonstrates strong habitat specificity. It is associated with faster flows, greater baseflow shear stress, and low substrate embeddedness (Ostby 2005, pp. 51, 142–143). The slabside pearlymussel is primarily a large creek to large river species, inhabiting sand, fine gravel, and cobble substrates in relatively

shallow riffles and shoals with moderate current (Parmalee and Bogan 1998, p. 152).

Fluted kidneyshell and slabside pearlymussel, similar to other mussels, are dependent on areas with flow refuges where shear stress is relatively low, although the fluted kidneyshell is more tolerant of shear stress than other species, and sediments remain stable during flood events (Layzer and Madison 1995, p. 341; Strayer 1999, pp. 468 and 472; Hastie *et al.* 2001, pp. 111–114). Flow refuges conceivably allow relatively immobile mussels such as the fluted kidneyshell and slabside pearlymussel to remain in the same general location throughout their entire lives.

Natural river or creek channel stability are achieved by allowing the river or creek to develop a stable dimension, pattern, and profile such that, over time, channel features are maintained and the river or creek system neither aggrades nor degrades. Channel instability occurs when the scouring process leads to degradation, or excessive sediment deposition results in aggradation. Stable rivers and creeks consistently transport their sediment load, both in size and type, associated with local deposition and scour (Rosgen 1996, p. 1–3). Sedimentation has been determined to be a major factor in habitat destruction, resulting in corresponding shift in mussel fauna (Brim Box and Mossa 1999, p. 102). Stable stream bottom substrates not only provide space for populations of these mussel species, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring.

Habitat conditions described in the previous paragraphs provide space, cover, shelter, and sites for breeding, reproduction, and growth of offspring for the fluted kidneyshell and slabside pearlymussel. These habitats are dynamic and are formed and maintained by water quantity, channel features (dimension, pattern, and profile), and sediment input to the system through periodic flooding, which maintains connectivity and interaction with the flood plain. Changes in one or more of these parameters can result in channel degradation or aggradation, with serious effects to mussels.

Therefore, based on the information above, we identify riffles of large creeks and rivers with sand, gravel, and cobble substrates; areas of moderate to high amount of flow, but with refugia of low shear stress; stream channel stability; and floodplain connectivity to be PBFs for both of these species.

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

Mussels, such as these two species, siphon water into their shells and across four gills that are specialized for respiration, food collection, and brooding larvae in females. Food items include detritus (disintegrated organic debris), algae, diatoms, and bacteria (Strayer *et al.* 2004, pp. 430–431). Encysted glochidia are nourished by their fish hosts and feed for a period of one week to several months. Nutrient uptake by glochidia is not well understood, but probably occurs through the microvillae of the mantle (Watters 2007, p. 55). For the first several months, juvenile mussels partially employ pedal (foot) feeding, extracting bacteria, algae, and detritus from the sediment, although they also may filter interstitial (pore) water (Yeager *et al.* 1994, pp. 217–221). However, their gills are rudimentary and generally incapable of filtering particles (Watters 2007, p. 56). Adult mussels also can obtain their food by deposit feeding, pulling in food from the sediment and its interstitial (pore) water and pedal feeding directly from the sediment (Yeager *et al.* 1994, pp. 217–221; Vaughn and Hakenkamp 2001, pp. 1432–1438). Food availability and quality for the fluted kidneyshell and slabside pearlymussel in their habitats are affected by habitat stability, floodplain connectivity, flow, and water and sediment quality. Excessive sedimentation has been shown to impair the filter feeding ability of mussels. When in high silt environments, mussels may keep their valves closed more often, resulting in reduced feeding activity (Ellis 1936, p. 30), and high amounts of suspended sediments can dilute their food source (Dennis 1984, p. 212). Adequate food availability and quality is essential for normal behavior, growth, and viability during all life stages of these two species. Excessive sedimentation often results in fine silt particles culminating within interstitial spaces, embedding and even concretizing the substrate and virtually altering habitat to such a degree that it becomes uninhabitable for mussels, particularly juveniles.

The fluted kidneyshell and slabside pearlymussel are riverine species that depend upon adequate water flow. Continuously flowing water is a habitat feature associated with both of these species. Flowing water maintains the stream bottom habitats where these species are found, transports food items to the sedentary juvenile and adult life stages, removes wastes, and provides oxygen for respiration. A natural flow regime that includes periodic flooding and maintains connectivity and interaction with the floodplain is critical for the exchange of nutrients, movement of and spawning activities for potential fish hosts, and maintenance of flow refuges in riffle and run habitats. Further, riffle areas are often defined by an abundance and diversity of organisms that likely have dependent and competitive interactions yet unknown, but that are important for riffle-dwelling mussel species such as the fluted kidneyshell and slabside pearlymussel.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the two species have not been investigated or are poorly understood. However, as relatively sedentary animals, mussels must tolerate the full range of such parameters that occur naturally within the streams where they persist. The pathways of exposure to a variety of environmental pollutants for all four mussel life stages (free and encysted glochidia, juveniles, and adults) and differences in exposure and sensitivity were previously discussed (see Factor A). Environmental contamination is a causal (contributing) factor in the decline of mussel populations.

We currently believe that most numeric standards for pollutants and water quality parameters (for example, dissolved oxygen, pH, and heavy metals) that have been adopted by the States under the CWA represent levels that are essential to the conservation of both mussels. The Service is currently in consultation with the EPA to evaluate the protectiveness of criteria approved in EPA's water quality standards for endangered and threatened species and their critical habitats as described in the Memorandum of Agreement that our agencies signed in 2001 (66 FR 11201, February 22, 2001). Other factors that can potentially alter water quality are droughts and periods of low flow, nonpoint source runoff from adjacent land surfaces (for example, excessive amounts of sediments, nutrients, and pesticides), point source discharges from municipal and industrial wastewater treatment facilities (for example, excessive amounts of ammonia, chlorine, and metals), thermal and flow modifications resulting from hydropower generation, and random spills or unregulated discharge events. This could be particularly harmful during drought conditions, when flows are depressed and pollutants are more concentrated.

Both the amount (flow) and the physical and chemical conditions (water quality) where both species currently exist vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across their historical ranges vary even more due to watershed size, geology, geography, and differences in human population densities and land uses. In general, both of the species survive in areas where the magnitude, frequency, duration, and seasonality of water flow are adequate to maintain stable habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, based on the information above, we identify adequate food items for all life stages, sufficient water flow, and adequate water quality to be PBFs for both of these species.

Sites for Breeding, Reproduction, or Rearing

Mussels require a host fish for transformation of larval mussels (glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68). Thus, the presence of the appropriate host fishes to complete the reproductive life cycle is essential to the conservation of these two mussels. The known host fishes of the fluted kidneyshell include: barcheek darter (*Etheostoma obeyense*), fantail darter (*E. flabellare*), rainbow darter (*E. caeruleum*), redline darter (*E. rufilineatum*), bluebreast darter (*E. camurum*), dusky darter (*Percina sciera*), and banded sculpin (*Cottus carolinae*). The known host fishes of the slabside pearlymussel include: popeye shiner (*Notropis ariommus*), rosyface shiner (*N. rubellus*), saffron shiner (*N. rubricroceus*), silver shiner (*N. photogenis*), telescope shiner (*N. telescopus*), Tennessee shiner (*N. leuciodus*), whitetail shiner (*Cyprinella galactura*), striped shiner (*Luxilus chrysocephalus*), warpaint shiner (*L. coccogenis*), white shiner (*L. albeolus*), and eastern blacknose dace (*Rhinichthys atratulus*). There are likely other suitable host fishes that have not yet been studied or confirmed.

Juvenile mussels require stable bottom habitats for growth and survival. Fluted kidneyshell and slabside pearlymussel juveniles require stable habitats with adequate water quantity and quality as previously described for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996, pp. 372–374). Geomorphic instability can result in the loss of interstitial habitats and juvenile mussels due to scouring or deposition (Hartfield 1993, pp. 372–373). Water quality, sediment quality, stable habitat, health of fish hosts, and diet (of all life stages) all influence survival of each life stage and subsequent reproduction and recruitment (Cope *et al.* 2008, p. 452).

Periodic floodplain connectivity that occurs during wet years provides habitats for spawning and foraging activities for fish hosts that require floodplain habitats for successful reproduction and recruitment to adulthood. Barko *et al.* (2006, pp. 252–256) found that several fish host or potential host species (none of which are documented hosts for the fluted kidneyshell or slabside pearlymussel) benefited from resource exploitation of floodplain habitats that were not typically available for use during years of normal flows. Furthermore, Kwak (1988, pp. 243–247) and Slipke and Maceina (2005, p. 289) indicated that periodic inundation of floodplain habitats increased successful fish reproduction, which leads to increased availability of native host fishes for mussel reproduction. However, Rypel *et al.* (2009, p. 502) indicated that mussels tended to exhibit minimal growth during high flow years. Therefore, optimal flooding of these habitats would not be too frequent and may need to occur at similar frequencies to that of the natural hydrologic regime of the rivers and creeks inhabited by the fluted kidneyshell and slabside pearlymussel.

Natural temperature regimes can be altered by impoundments, water releases from dams, industrial and municipal effluents, and changes in riparian habitat. Critical thermal limits for survival and normal functioning of many mussel species are unknown. High temperatures can reduce dissolved oxygen concentrations in the water, which slows growth, reduces glycogen stores, impairs respiration, and may inhibit reproduction (Hart and Fuller 1974, pp. 240–241). Low temperatures can significantly delay or prevent metamorphosis (Watters and O'Dee 1999, pp. 454–455). Water temperature increases have been documented to shorten the period of glochidial encystment, reduce the speed in which they turn upright, increase oxygen consumption, and slow burrowing and movement responses (Hart and Fuller 1974, pp. 240–241; Bartsch *et al.* 2000, p. 237; Watters *et al.* 2001, p. 546; Schwalb and Pusch 2007, pp. 264–265). Several studies have documented the influence of temperature on the timing of aspects of mussel reproduction (for example, Gray *et al.* 2002, p. 156; Allen *et al.* 2007, p. 85; Steingraeber *et al.* 2007, pp. 303–309). Peak glochidial releases are associated with water temperature thresholds that can be thermal minimums or maximums, depending on the species (Watters and O'Dee 2000, p. 136). Abnormal temperature changes may cause particular problems to mussels whose reproductive cycles may be linked to fish reproductive cycles (for example, Young and Williams 1984, entire). Therefore, based on the information above, we identify health of fish hosts, water quality, sediment quality, stable habitat, food for all life stages, periodic flooding of floodplain habitat, and a natural temperature regime to be PBFs for both of these species.

Primary Constituent Elements for the Fluted Kidneyshell and Slabside Pearlymussel

Under the Act and its implementing regulations, we are required to identify the PBFs essential to the conservation of these mussel species in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be the elements of PBFs that provide for a species' life-history processes and are essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs for the fluted kidneyshell and slabside pearlymussel are:

(1) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(3) A natural hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(4) Water quality with low levels of pollutants and including a natural temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams per liter (mg/L)), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(5) The presence of abundant fish hosts necessary for recruitment of the fluted kidneyshell and slabside pearlymussel.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The 29 occupied units we are proposing for designation as critical habitat for the fluted kidneyshell (16) and slabside pearlymussel (13) will require some level of management to address the current and future threats to the PBFs of the species. Of the 29 total occupied units, a portion of 5 units are located on the Daniel Boone National Forest (DBNF), 14 are almost entirely on private land, 1 is located on the Big South Fork National River and Recreational Area (BSFNRRA), 1 is located on the Cherokee National Forest (CNF), and 8 units have mixed ownership with private, State park, and national wildlife refuge lands.

Due to their location on the DBNF, at least a portion of 5 of the 29 occupied proposed critical habitat units are being managed and protected under DBNF's Land and Resource Management Plan (LRMP), and the Hiwassee River unit is protected under CNF's LRMP (United States Forest Service (USFS) 2004a, pp. 1–14; 2004b, entire). The LRMPs are implemented through a series of project-level decisions based on appropriate site-specific analysis and disclosure. The LRMPs do not contain a commitment to select any specific project; rather, they set up a framework of desired future conditions with goals, objectives, and standards to guide project proposals. Projects are proposed to solve resource management problems, move the forest environment toward desired future conditions, and supply goods and services to the public (USFS 2004a, pp. 1–14). The LRMPs contain a number of protective standards that in general are designed to avoid and minimize potential adverse effects to the fluted kidneyshell, slabside pearlymussel, and federally listed species; however, the DBNF and CNF would continue to conduct project-specific section 7 consultations under the Act when their activities may adversely affect the fluted kidneyshell, slabside pearlymussel, and other federally listed species or adversely modify their designated critical habitats.

Fourteen of the 29 occupied proposed critical habitat units are located almost entirely on private property and are not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species.

One of the 29 occupied proposed critical habitat units (Big South Fork Cumberland River) is located almost entirely on Federal lands within the BSFNRRA. Land and resource management decisions and activities within the BSFNRRA are guided by the National Park Service General Management Plan, Field Management Plan, and Draft Non-Federal Oil and Gas Management Plan (NPS 2005, entire; NPS 2006, pp. 1–12; NPS 2011, entire).

Eight of the 29 occupied proposed critical habitat units (Clinch and Duck Rivers) have mixed ownership with private, State park, and national wildlife refuge lands. These lands are operated under various plans that may or may not provide the special management or protection provided by a legally operative plan or agreement for the conservation of these species.

Various activities in or adjacent to each of the occupied critical habitat units described in this proposed rule may affect one or more of the PCEs. Some of these activities include, but are not limited to, those discussed in the Summary of Factors Affecting the Species, above (e.g., impoundments, gravel and coal mining, water pollution, invasive species; see Factors A, D, and E, above). Other activities that may affect PBFs in the proposed critical habitat units include those listed in Available Conservation Measures above.

Management activities that could ameliorate threats on both Federal and non-Federal lands include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and stream bank alteration; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as occupied critical habitat for the fluted kidneyshell and slabside pearlymussel contain the PBFs necessary for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the PBFs of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we use the best scientific and commercial data to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing (if listing occurs before designation of a species' critical habitat)—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographic area currently occupied by the species. We also are proposing to designate specific areas outside the geographic area currently occupied by the species, which were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

We began our analysis by considering historical and current ranges of both species. We used various sources including published literature and museum collection databases, as well as surveys, reports, and field notes prepared by biologists (see Background section). We then identified the specific areas that are occupied by both mussels and that contain one or more of the PBFs. We defined occupied habitat as those stream reaches known to be currently occupied by either of the two species. To identify the currently occupied stream reaches, we used post-1980 survey data. To identify the unoccupied stream reaches, we used survey data between the late 1800s and 1979. Therefore, if a species was known to occur in an area prior to 1980, but was not collected since then, the stream reach is considered unoccupied. This criterion was chosen because a large number of collections were conducted in the 1980s in the Cumberland and Tennessee River systems. Some of the historical occurrences have not been surveyed since the 1980s. However, because of the longevity of these species

(40–55 years), they are still thought to occur in these areas.

We then evaluated occupied stream reaches to delineate the probable upstream and downstream extent of each species' distribution. Known occurrences for some mussel species are extremely localized, and rare mussels can be difficult to locate. In addition, stream habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat.

We then considered whether this essential area was adequate for the conservation of both species. Small, isolated, aquatic populations are subject to chance catastrophic events and to changes in human activities and land use practices that may result in their elimination. Larger, more contiguous populations can reduce the threat of extinction due to habitat fragmentation and isolation. For these reasons, we believe that conservation of the fluted kidneyshell, but not the slabside pearlymussel, requires expanding its range into currently unoccupied portions of its historical habitat. Given that threats to the fluted kidneyshell are compounded by its limited distribution and isolation, it is unlikely that currently occupied habitat is adequate for its conservation. The range of the fluted kidneyshell has been severely curtailed, occupied habitats are limited and isolated, and population sizes are generally small (see Summary of Factors Affecting the Species). For example, the fluted kidneyshell is no longer believed to occur in the Rockcastle, Hiwassee, Elk, Holston, or French Broad rivers. The inclusion of essential unoccupied areas will provide habitat for population reintroduction and will decrease the risk of extinction. Based on the best scientific data available, we believe these areas not currently occupied by the fluted kidneyshell are essential for their conservation.

However, we eliminated from consideration as unoccupied critical habitat the Red and Harpeth River drainages; the Caney Fork, mainstem Cumberland, mainstem Tennessee, Tellico, Obey, South Fork Powell, South Fork Holston, West Prong Little Pigeon, Little Tennessee Rivers; and Kennedy, Pittman, Otter, Flint, Sugar, Limestone, Shoal, Puckell, North Fork, and Big Rock Creeks for both of these mussels. These areas are not essential for the conservation of the mussels and were eliminated from consideration because of stream channel alterations, a limited amount of available habitat coupled with being isolated from other populations, a lack of a native mussel fauna, poor habitat or water quality, or a lack of available fish hosts.

All of the stream habitat areas proposed as unoccupied critical habitat have sufficient water quality and fish hosts necessary for the fluted kidneyshell. The stream reaches also lack major anthropogenic disturbances, and have potential for reoccupation by the species through future reintroduction efforts. Based on the above factors, all unoccupied stream reaches included in the proposed designations for the fluted kidneyshell are essential for its conservation.

Following the identification of occupied and unoccupied stream reaches, the next step was to delineate the probable upstream and downstream extent of each species' distribution. We used USGS 1:100,000 digital stream maps to delineate these boundaries of proposed critical habitat units according to the criteria explained below. The upstream boundary of a unit in a stream is the first perennial, named tributary confluence, a road-crossing bridge, or a permanent barrier to fish passage (such as a dam) above the upstream-most current occurrence record. The confluence of a tributary typically marks a significant change in the size of the stream and is a logical and recognizable upstream terminus. When a named tributary was not available, a road-crossing bridge was used to mark the boundary. Likewise, a dam or other barrier to fish passage marks the upstream extent to which mussels may disperse via their fish hosts. The downstream boundary of a unit in a stream is the confluence of a named tributary, or the upstream extent of an impoundment, below the downstream-most occurrence record. In the unit descriptions, distances between landmarks marking the upstream or downstream extent of a stream segment are given in river kilometers and equivalent miles, as measured tracing the course of the stream, not straight-line distance.

Because mussels are naturally restricted by certain physical conditions within a stream reach (i.e., flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. We recognize that both historical and recent collection records upon which we relied are incomplete, and that there may be river segments or small tributaries not included in this proposed designation that harbor small, limited populations of one or both species considered in this designation, or that others may become suitable in the future. The exclusion of such areas does not diminish their potential individual or cumulative importance to the conservation of these species. However, we believe that, with proper management, each of the 37 critical habitat units (24 fluted kidneyshell units, and 13 slabside pearlymussel units; 10 overlap between the two species) are capable of supporting one or both of these mussel species, and that populations within occupied units will serve as source populations for artificial reintroduction into unoccupied units, as well as assisted or natural migration into adjacent undesignated or designated streams within each river drainage. The habitat areas contained within the units described below constitute our best evaluation of areas needed for the conservation of these species at this time. Critical habitat may be revised for any or all of these species should new information become available.

The areas proposed for critical habitat below include only stream channels within the ordinary high-water line, and do not contain developed areas or structures. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0004, on our Internet site at *http://www.fws.gov/cookeville,* and at

the Fish and Wildlife office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

In total, we are proposing a total of 37 critical habitat units encompassing approximately 2,218 rkm (1,380 rmi) in Alabama, Kentucky, Mississippi, Tennessee, and Virginia—10 of the units overlap and are proposed as critical habitat for both species. For the fluted kidneyshell, we are proposing 24 critical habitat units encompassing approximately 1,899 rkm (1,181 rmi) of stream channel in Alabama, Kentucky, Tennessee, and Virginia. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the fluted kidneyshell. The 24 areas we propose as critical habitat are as follows: (1) Horse Lick Creek, KY; (2) Middle Fork Rockcastle River, KY; (3) Rockcastle River, KY; (4) Buck Creek, KY; (5) Rock Creek, KY; (6) Little South Fork Cumberland River, KY; (7) Big South Fork Cumberland River, KY, TN; (8) Wolf River and Town Branch, TN; (9) West Fork Obey River, TN; (10) Indian Creek, VA; (11) Little River [tributary to the Clinch River], VA; (12) North Fork Holston River, VA; (13) Middle Fork Holston River, VA; (14) Big Moccasin Creek, VA; (15) Copper Creek, VA; (16) Clinch River, TN, VA; (17) Powell River, TN, VA; (18) Nolichucky River, TN; (19) Holston River, TN; (20) French Broad River, TN; (21) Hiwassee River, TN; (22) Elk River, AL, TN; (23) Duck River, TN; and (24) Buffalo River, TN.

We are proposing 13 critical habitat units encompassing approximately 1,562 rkm (970 rmi) of stream channel in Alabama, Mississippi, Tennessee, and Virginia for the slabside pearlymussel. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the slabside pearlymussel. The 13 areas we propose as critical habitat are as follows: (1) North Fork Holston River, VA; (2) Middle Fork Holston River, VA; (3) Big Moccasin Creek, VA; (4) Clinch River, TN, VA; (5) Powell River, TN, VA; (6) Nolichucky River, TN; (7) Hiwassee River, TN; (8) Sequatchie River, TN; (9) Paint Rock River, AL; (10) Elk River, AL, TN; (11) Bear Creek, AL, MS; (12) Duck River, TN; and (13) Buffalo River, TN.

Unit name, location, and the approximate stream length of each proposed critical habitat unit are shown in Table 3 for the fluted kidneyshell and Table 4 for the slabside pearlymussel. The proposed critical habitat units include the stream channels within the ordinary high-water line only. For this purpose, we have applied the definition found at 33 CFR 329.11, and consider the ordinary high-water mark on nontidal rivers to be the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

States were granted ownership of lands beneath navigable waters up to the ordinary high-water line upon achieving Statehood (*Pollard* v. *Hagan,* 44 U.S. (3 How.) 212 (1845)). Prior sovereigns or the States may have made grants to private parties that included lands below the ordinary high-water mark of some navigable waters that are included in this proposal. We believe that most, if not all, lands beneath the navigable waters included in this proposed rule are owned by the States. The lands beneath most nonnavigable waters included in this proposed rule are in private ownership. In Alabama, the riparian landowner owns the stream to the middle of the channel for non-navigable streams. Riparian lands along the waters are either in private ownership, or are owned by county, State, or Federal entities. Lands under county, State, and Federal ownership consist of managed conservation areas, and are considered to have some level of protection.

TABLE 3—FLUTED KIDNEYSHELL OCCUPANCY STATUS AND RIPARIAN LANDS OWNERSHIP ADJACENT TO THE PROPOSED CRITICAL HABITAT UNITS

Unit	Location	Occupied by species	Private ownership rkm (rmi)	Federal, state, county, city ownership rkm (rmi)	Total length rkm (rmi)
FK1	Horse Lick Creek, KY	Yes	3.6 (2.3)	15.8 (10.1)	19.4 (12.4)
FK2	Middle Fork Rockcastle River, KY	Yes	6.0 (3.7)	6.5 (4.0)	12.5 (7.7)
FK3	Rockcastle River, KY	No	11.7 (7.3)	58.2 (36.2)	69.9 (43.5)
FK4	Buck Creek, KY	Yes	59.7 (37.1)	1.3 (0.8)	61.0 (37.9)
FK5	Rock Creek, KY	Yes	1.5 (0.9)	17.7 (11.0)	19.2 (11.9)
FK6	Little South Fork Cumberland River, KY	Yes	61.1 (38.0)	4.4 (2.7)	65.5 (40.7)
FK7	Big South Fork Cumberland River, KY, TN	Yes	1.5 (1.0)	90.0 (55.9)	91.5 (56.9)
FK8	Wolf River and Town Branch, TN	Yes	38.7 (24.0)	5.7 (3.5)	44.4 (27.5)
FK9	West Fork Obey River, TN	Yes	19.3 (12.0)	0	19.3 (12.0)
FK10	Indian Creek, VA	Yes	6.7 (4.2)	0	6.7 (4.2)
FK11	Little River, VA	Yes	50.4 (31.3)	0	50.4 (31.3)
FK12	North Fork Holston River, VA	Yes	66.4 (41.3)	0.9 (0.5)	67.3 (41.8)
FK13	Middle Fork Holston River, VA	Yes	89.0 (55.3)	0	89.0 (55.3)
FK14	Big Moccasin Creek, VA	No	33.1 (20.6)	0	33.1 (20.6)
FK15	Copper Creek, VA	Yes	55.5 (34.5)	0	55.5 (34.5)
FK16	Clinch River, TN, VA	Yes	256.3 (159.2)	6.4 (4.0)	262.7 (163.2)
FK17	Powell River, TN, VA	Yes	152.4 (94.7)	0.3 (0.2)	152.7 (94.9)
FK18	Nolichucky River, TN	No	50.9 (31.6)	0.9 (0.6)	51.9 (32.2)
FK19	Holston River, TN	No	85.1 (52.9)	0	85.1 (52.9)
FK20	French Broad River, TN	No	54.4 (33.8)	1.7 (1.1)	56.1 (34.9)
FK21	Hiwassee River, TN	No	0	24.4 (15.2)	24.4 (15.2)
FK22	Elk River, AL, TN	No	162.8 (101.2)	1.5 (0.9)	164.3 (102.1)
FK23	Duck River, TN	Yes	284.0 (176.5)	63.5 (39.4)	347.5 (215.9)
FK24	Buffalo River, TN	No	50.0 (31.0)	0	50.0 (31.0)
Total					1,899.4 (1,180.5)

TABLE 4—OCCUPANCY AND OWNERSHIP OF RIPARIAN LANDS ADJACENT TO THE PROPOSED CRITICAL HABITAT UNITS FOR THE SLABSIDE PEARLYMUSSEL

Unit	Location	Occupied	Private ownership rkm (rmi)	Federal, state, county, city ownership rkm (rmi)	Total length rkm (rmi)
SP1	North Fork Holston River, VA	Yes	66.4 (41.3)	0.9 (0.5)	67.3 (41.8)
SP2	Middle Fork Holston River, VA	Yes	89.0 (55.3)	0	89.0 (55.3)
SP3	Big Moccasin Creek, VA	Yes	33.1 (20.6)	0	33.1 (20.6)
SP4	Clinch River, TN, VA	Yes	256.3 (159.2)	6.4 (4.0)	262.7 (163.2)
SP5	Powell River, TN, VA	Yes	152.4 (94.7)	0.3 (0.2)	152.7 (94.9)
SP6	Nolichucky River, TN	Yes	50.9 (31.6)	0.9 (0.6)	51.9 (32.2)
SP7	Hiwassee River, TN	Yes	0	24.4 (15.2)	24.4 (15.2)
SP8	Sequatchie River, TN	Yes	151.5 (94.1)	0	151.5 (94.1)
SP9	Paint Rock River, AL	Yes	119.2 (74.1)	5.8 (3.6)	125.0 (77.7)
SP10	Elk River, AL, TN	Yes	162.8 (101.2)	1.5 (0.9)	164.3 (102.1)
SP11	Bear Creek, AL, MS	Yes	36.3 (22.5)	6.1 (3.8)	42.4 (26.3)
SP12	Duck River, TN	Yes	284.0 (176.5)	63.5 (39.4)	347.5 (215.9)
SP13	Buffalo River, TN	Yes	50.0 (31.0)	0	50.0 (31.0)
Total					1,561.8 (970.3)

Eleven critical habitat units proposed for both the fluted kidneyshell and slabside pearlymussel are currently designated as critical habitat under the Act for other species, including the purple bean (*Villosa perpurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*E. brevidens*), Cumberland elktoe (*Alasmidonta atropurpurea*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), slender chub (*Erimystax cahni*), and yellowfin madtom (*Noturus flavipinnis*) (42 FR 45526, 42 FR 47840, 69 FR 53136), or are proposed as critical habitat under the Act for the rabbitsfoot (*Q. c. cylindrica*) (see Table 5). The proposed units for the fluted kidneyshell and slabside pearlymussel completely or partially overlap existing units in the Powell, Clinch, Nolichucky, Big South Fork Cumberland, Duck, and Paint Rock Rivers and in the Buck, Rock, Indian, Copper, and Bear Creeks; however, the exact unit descriptions (lengths) differ due to mapping refinement since the earlier designations. No other critical habitat units proposed for these species have been designated or proposed as critical habitat for other species under the Act.

Three critical habitat units proposed for the fluted kidneyshell and slabside pearlymussel are currently designated under section 10(j) of the Act as nonessential experimental populations for other species, including the yellowfin madtom in the North Fork Holston River, VA; and 15 mussels, 1 snail, and 5 fishes in the lower Holston and French Broad Rivers, TN (53 FR 29335, 72 FR 52434, see Table 5).

All of the critical habitat units proposed for the fluted kidneyshell and slabside pearlymussel contain historical or extant records of federally listed or proposed species, except for the Wolf River and Town Branch and West Fork Obey River, TN (see Table 6).

TABLE 5—CRITICAL HABITAT UNITS PROPOSED FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL WHICH ARE CURRENTLY DESIGNATED OR PROPOSED AS CRITICAL HABITAT FOR OTHER FEDERALLY LISTED SPECIES

Unit (Unit No.)	Species	Critical habitat	Nonessential experimental population	Length of overlap rkm (rmi)
Buck Creek (FK4)	Oyster mussel, Cumberlandian combshell.	69 FR 53136		61 (38)
Rock Creek (FK5)	Cumberland elktoe	69 FR 53136		19 (12)
Big South Fork Cumberland River (FK7).	Oyster mussel, Cumberlandian combshell, Cumberland elktoe.	69 FR 53136		92 (57)
Indian Creek (FK10)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot.	69 FR 53136		7 (4)
North Fork Holston River (FK12, SP1).	Yellowfin madtom		53 FR 29335	58 (36)
Copper Creek (FK15)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840		21 (13) 56 (35) 56 (35)
Clinch River (FK16, SP4)	Purple bean, Oyster mussel, Cumberlandian combshell, Rough rabbitsfoot, Slender chub, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840		263 (163) 263 (163) 263 (163)
Powell River (FK17, SP5)	Purple bean, Cumberlandian combshell, Oyster mussel, Rough rabbitsfoot, Slender chub, Yellowfin madtom.	69 FR 53136, 42 FR 45526, 42 FR 47840		153 (95) 153 (95) 153 (95)

TABLE 5—CRITICAL HABITAT UNITS PROPOSED FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL WHICH ARE CURRENTLY DESIGNATED OR PROPOSED AS CRITICAL HABITAT FOR OTHER FEDERALLY LISTED SPECIES—Continued

Unit (Unit No.)	Species	Critical habitat	Nonessential experimental population	Length of overlap rkm (rmi)
Nolichucky River (FK18, SP6)	Oyster mussel, Cumberlandian combshell.	69 FR 53136		8 (5)
Holston River (FK19)	15 Mussels, 1 Snail, and 5 Fishes		72 FR 52434	85 (53)
French Broad River (FK20)	15 Mussels, 1 Snail, and 5 Fishes		72 FR 52434	56 (35)
Paint Rock River (SP9)	Rabbitsfoot	TBD		80 (50)
Bear Creek (SP11)	Oyster mussel, Cumberlandian combshell, Rabbitsfoot.	69 FR 53136		42 (26) 234 (136)
Duck River (FK23, SP12)	Oyster mussel, Cumberlandian combshell, Rabbitsfoot.	69 FR 53136		74 (46) 234 (146)
Total				1221 (760)

TABLE 6—FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE PROPOSED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL

Unit	Location	Federally listed or proposed species present	
FK1	Horse Lick Creek, KY	Cumberland bean	*Villosa trabalis.*
		littlewing pearlymussel	*Pegias fabula.*
FK2	Middle Fork Rockcastle River, KY	Cumberland bean	*Villosa trabalis.*
FK3	Rockcastle River, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
FK4	Buck Creek, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		snuffbox	*Epioblasma triquetra.*
		yellow blossom	*Epioblasma florentina florentina.*
FK5	Rock Creek, KY	Cumberland elktoe	*Alasmidonta atropurpurea.*
FK6	Little South Fork Cumberland River, KY	Cumberland bean	*Villosa trabalis.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		snuffbox	*Epioblasma triquetra.*
		palezone shiner	*Notropis albizonatus.*
FK7	Big South Fork Cumberland River, KY	Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland elktoe	*Alasmidonta atropurpurea.*
		dromedary pearlymussel	*Dromus dromas.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		duskytail darter	*Etheostoma percnurum.*
FK8	Wolf River and Town Branch, TN	None.	
FK9	West Fork Obey River, TN	None.	
FK10	Indian Creek, VA	purple bean	*Villosa perpurpurea.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
FK11	Little River, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
FK12, SP1	North Fork Holston River, VA	littlewing pearlymussel	*Pegias fabula.*
		purple bean	*Villosa perpurpurea.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spotfin chub	*Erimonax monachus.*
FK13, SP2	Middle Fork Holston River, VA	littlewing pearlymussel	*Pegias fabula.*
		shiny pigtoe	*Fusconaia cor.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		yellow blossom	*Epioblasma florentina florentina.*
		spotfin chub	*Erimonax monachus.*

TABLE 6—FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE PROPOSED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

Unit	Location	Federally listed or proposed species present	
FK14, SP3	Big Moccasin Creek, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
FK15	Copper Creek, VA	finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		purple bean	*Villosa perpurpurea.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		shiny pigtoe	*Fusconaia cor.*
		duskytail darter	*Etheostoma percnurum*
.....	.....	yellowfin madtom	*Noturus flavipinnis.*
FK16, SP4	Clinch River, TN, VA	Appalachian monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		littlewing pearlymussel	*Pegias fabula.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		purple bean	*Villosa perpurpurea.*
		rayed bean	*Villosa fabalis.*
		rough pigtoe	*Pleurobema plenum.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		yellow blossom	*Epioblasma florentina florentina.*
		pygmy madtom	*Noturus stanauli.*
		slender chub	*Erimystax cahni.*
FK17, SP5	Powell River, TN, VA	Appalachian monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		oyster mussel	*Epioblasma capsaeformis.*
		purple bean	*Villosa perpurpurea.*
		rayed bean	*Villosa fabalis.*
		rough rabbitsfoot	*Quadrula cylindrica strigillata.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		white wartyback	*Plethobasus cicatricosus.*
		yellow blossom	*Epioblasma florentina florentina.*
		slender chub	*Erimystax cahni.*
		yellowfin madtom	*Noturus flavipinnis.*
FK18, SP6	Nolichucky River, TN	Cumberlandian combshell	*Epioblasma brevidens.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		pink mucket	*Lampsilis abrupta.*
		rayed bean	*Villosa fabalis.*
		spectaclecase	*Cumberlandia monodonta.*
		snail darter	*Percina tanasi.*
FK19	Holston River, TN	Appalachian Monkeyface	*Quadrula sparsa.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*

TABLE 6—FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE PROPOSED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

Unit	Location	Federally listed or proposed species present	
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		green blossom pearlymussel	*Epioblasma torulosa gubernaculum.*
		oyster mussel	*Epioblasma capsaeformis.*
		ring pink	*Obovaria retusa.*
		sheepnose	*Plethobasus cyphyus.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		white wartyback	*Plethobasus cicatricosus.*
		yellow blossom	*Epioblasma florentina florentina.*
		slender chub	*Erimystax cahni.*
		snail darter	*Percina tanasi.*
FK20	French Broad River, TN	cracking pearlymussel	*Hemistena lata.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		orangefoot pimpleback	*Plethobasus cooperianus.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
		ring pink	*Obovaria retusa.*
		rough pigtoe	*Pleurobema plenum.*
		sheepnose	*Plethobasus cyphyus.*
		shiny pigtoe	*Fusconaia cor.*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		yellow blossom	*Epioblasma florentina florentina.*
		snail darter	*Percina tanasi.*
FK21, SP7	Hiwassee River, TN	Appalachian monkeyface	*Quadrula sparsa.*
		Cumberland bean	*Villosa trabalis.*
		dromedary pearlymussel	*Dromus dromas.*
		orangefoot pimpleback	*Plethobasus cooperianus.*
		oyster mussel	*Epioblasma capsaeformis.*
		rough pigtoe	*Pleurobema plenum.*
		sheepnose	*Plethobasus cyphyus.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		yellow blossom	*Epioblasma florentina florentina.*
SP8	Sequatchie River, TN	Anthony's riversnail	*Athearnia anthonyi.*
		snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		snail darter	*Percina tanasi.*
SP9	Paint Rock River, AL	Alabama lampmussel	*Lampsilis virescens.*
		Cumberland bean	*Villosa trabalis.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		pale lilliput	*Toxolasma cylindrellus.*
		pink mucket	*Lampsilis abrupta.*
		shiny pigtoe	*Fusconaia cor.*
		snuffbox	*Epioblasma triquetra.*
		yellow blossom	*Epioblasma florentina florentina.*
		palezone shiner	*Notropis albizonatus.*
		snail darter	*Percina tanasi.*
		rabbitsfoot	*Quadrula cylindrica cylindrica.*
FK22, SP10	Elk River, AL, TN	Alabama lampmussel	*Lampsilis virescens.*
		birdwing pearlymussel	*Lemiox rimosus.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		dromedary pearlymussel	*Dromus dromas.*
		fanshell	*Cyprogenia stegaria.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		littlewing pearlymussel	*Pegias fabula.*
		pale lilliput	*Toxolasma cylindrellus.*
		rabbitsfoot	*Quadrula c. cylindrica.*
		rayed bean	*Villosa fabalis.*
		shiny pigtoe	*Fusconaia cor.*

TABLE 6—FEDERALLY LISTED OR PROPOSED SPECIES WITH HISTORICAL OR EXTANT RECORDS FROM THE PROPOSED CRITICAL HABITAT UNIT STREAMS FOR THE FLUTED KIDNEYSHELL AND SLABSIDE PEARLYMUSSEL—Continued

Unit	Location	Federally listed or proposed species present	
SP11	Bear Creek, AL, MS	snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		yellow blossom	*Epioblasma florentina florentina.*
		boulder darter	*Etheostoma wapiti.*
		snail darter	*Percina tanasi.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		finerayed pigtoe	*Fusconaia cuneolus.*
		oyster mussel	*Epioblasma capsaeformis.*
		pink mucket	*Lampsilis abrupta.*
FK23, SP12	Duck River, TN	snuffbox	*Epioblasma triquetra.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		yellow blossom	*Epioblasma florentina florentina.*
		rabbitsfoot	*Quadrula c. cylindrica.*
		birdwing pearlymussel	*Lemiox rimosus.*
		clubshell	*Pleurobema clava.*
		cracking pearlymussel	*Hemistena lata.*
		Cumberlandian combshell	*Epioblasma brevidens.*
		Cumberland monkeyface	*Quadrula intermedia.*
		littlewing pearlymussel	*Pegias fabula.*
		orangefoot pimpleback	*Plethobasus cooperianus.*
		oyster mussel	*Epioblasma capsaeformis.*
		pale lilliput	*Toxolasma cylindrellus.*
		pink mucket	*Lampsilis abrupta.*
		rayed bean	*Villosa fabalis.*
		sheepnose	*Plethobasus cyphyus.*
FK24, SP13	Buffalo River, TN	snuffbox	*Epioblasma triquetra.*
		spectaclecase	*Cumberlandia monodonta.*
		tan riffleshell	*Epioblasma florentina walkeri (=E. walkeri).*
		tubercled blossom pearlymussel	*Epioblasma torulosa torulosa.*
		turgid blossom pearlymussel	*Epioblasma turgidula.*
		winged mapleleaf	*Quadrula fragosa.*
		yellow blossom	*Epioblasma florentina florentina.*
		pygmy madtom	*Noturus stanauli.*
		rabbitsfoot	*Quadrula c. cylindrica.*
		pale lilliput	*Toxolasma cylindrellus.*
		spotfin chub	*Erimonax monachus.*
		rabbitsfoot	*Quadrula c. cylindrica.*

For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise definitions are provided in the Proposed Regulation Promulgation at the end of this proposed rule. Fluted kidneyshell and slabside pearlymussel status and distribution for each critical habitat unit was previously described in the **Background** section.

Fluted Kidneyshell and Slabside Pearlymussel Proposed Critical Habitat

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed must contain PBFs which are (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For those units occupied by either the fluted kidneyshell, slabside pearlymussel, or both species, we describe the principal PCEs essential to the conservation of the species and the special management considerations or protections that may be needed for each unit below.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For those units unoccupied by the fluted kidneyshell, or slabside pearlymussel, we are proposing to designate these units because we have determined that they are essential for the conservation of the species due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events.

For five of the units (Big Moccasin Creek, Nolichucky, Hiwassee, Elk, and Buffalo Rivers), we are designating critical habitat for the slabside pearlymussel under prong one of the Act (occupied), while at the same time designating the unit under prong two of the Act for the fluted kidneyshell species (unoccupied). Therefore, the principal PCEs and special management considerations or protections given for these units only apply to the species for which the unit is occupied critical habitat (slabside pearlymussel).

Unit FK1: Horse Lick Creek, Rockcastle and Jackson Counties, Kentucky

Proposed Unit FK1 encompasses approximately 19 rkm (12 rmi) of Horse Lick Creek, in Rockcastle and Jackson Counties, KY. It includes the mainstem of Horse Lick Creek from its confluence with the Rockcastle River upstream to Clover Bottom Creek. The unit is within the Cumberland River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the fluted kidneyshell at the time of listing. This unit is located almost entirely on private lands; however, approximately 16 rkm (10 rmi) are federal lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within proposed Unit FK1 is relatively stable, with an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within proposed Unit FK1, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with legacy coal mines and coal mining activities, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK2: Middle Fork Rockcastle River, Jackson County, Kentucky

Proposed Unit FK2 includes 12.5 rkm (7.7 rmi) of the Middle Fork Rockcastle River from its confluence with the Rockcastle River upstream to its confluence with Indian Creek and Laurel Fork in Jackson County, KY. The unit is within the Cumberland River system and is proposed as occupied critical habitat for the fluted kidneyshell. About half of this unit (approximately 6 rkm (4 rmi)) is in public ownership (DBNF), and half is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within proposed Unit FK2 is relatively stable and has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock wooly adelgid, *Adelges tsugae,* an invasive pest threatening eastern hemlock trees (*Tsuga canadensis*) in the eastern United States. Hemlocks are an important component of riparian vegetation throughout the range of the two mussels.

Unit FK3: Rockcastle River, Pulaski, Laurel, and Rockcastle Counties, Kentucky

Proposed Unit FK3 includes approximately 70 rkm (43 rmi) of the Rockcastle River from the backwaters of Lake Cumberland near its confluence with Cane Creek along the Laurel and Pulaski County line, KY, upstream to its confluence with Horse Lick Creek along the Laurel and Rockcastle County line, KY. The unit is within the Cumberland River system and is considered unoccupied by the fluted kidneyshell at the time of listing, but within the species' historical range. Live fluted kidneyshell have not been collected within proposed Unit 3 since 1911; however, it persists in adjacent tributaries such as Horse Lick Creek and shell material has been found as recently as 1985 (Wilson and Clark 1914 and Thompson 1985 *in* Cicerello 1993, p. 12). In 2010, surveys of the Rockcastle River showed that the river had a diverse mussel fauna, including the federally endangered Cumberland bean (McGregor 2010, unpubl. data).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Therefore, this unit is proposed as unoccupied critical habitat for the fluted kidneyshell. A portion of this unit (approximately 12 rkm (7 rmi)) is in private ownership, but the majority is in public ownership (DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

Unit FK4: Buck Creek, Pulaski County, Kentucky

Proposed Unit FK4 includes approximately 61 rkm (38 rmi) of Buck Creek from State Route 192 upstream to Route 328, Pulaski County, KY. The unit is within the Cumberland River basin and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (1.3 rkm (0.8 rmi)) is in public ownership (DBNF), but the majority is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14). The unit completely overlaps existing critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136).

The channel within proposed Unit FK4 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with instream gravel mining, silviculture-related activities, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution from agricultural and developmental activities.

Unit FK5: Rock Creek, McCreary County, Kentucky

Proposed Unit FK5 includes approximately 19 rkm (12 rmi) of Rock Creek from its confluence with White Oak Creek upstream to the low water crossing at rkm 25.6 (rmi 15.9) in McCreary County, KY. The unit is within the Cumberland River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (1.5 rkm (0.9 rmi)) is in private ownership, but the majority is in public ownership (DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14). The unit completely overlaps existing critical habitat for the Cumberland elktoe (69 FR 53136).

The channel within proposed Unit FK5 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1),

with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock wooly adelgid.

Unit FK6: Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky

Proposed Unit FK6 includes 65.5 rkm (40.7 rmi) of the Little South Fork Cumberland River from its confluence with the Big South Fork Cumberland River, where it is the dividing line between Wayne and McCreary Counties, upstream to its confluence with Dobbs Creek in Wayne County, KY. The unit is within the Cumberland River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (4.4 rkm (2.7 rmi)) is in public ownership (DBNF), but the majority is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004a, pp. 1–14).

The channel within proposed Unit FK6 is relatively stable, with an abundance of riffle habitats (PCE 1), relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potentially canopy loss caused by infestations of the hemlock wooly adelgid.

Unit FK7: Big South Fork Cumberland River, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky

Proposed Unit FK7 includes a combined total of 92.0 rkm (57.1 rmi) of the Big South Fork of the Cumberland River, Clear Fork of the New River, and the New River in Tennessee and Kentucky. Proposed Unit FK7 includes approximately 45 rkm (28 rmi) of the Big South Fork Cumberland River from its confluence with Laurel Crossing Branch downstream of Big Shoals, McCreary County, KY, upstream to its confluence with Clear Fork and of the New River, Scott County, TN. This unit also includes 32.3 rkm (20.0 rmi) of Clear Fork from its confluence with the Big South Fork and New River in Scott County, TN, upstream to its confluence with Crooked Creek along the Fentress and Morgan County line, TN. This unit also includes 14.7 rkm (9.1 rmi) of the New River from its confluence with the Big South Fork upstream to the Highway 27 Bridge crossing in Scott County, TN. The unit is within the Cumberland River system and is proposed as occupied critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (92 rkm (57 rmi)) has been designated as critical habitat for the Cumberlandian combshell, oyster mussel, and Cumberland elktoe (69 FR 53136).

This unit is located almost entirely on federal lands within the BSFNRRA. Land and resource management decisions and activities within the BSFNRRA are guided by the National Park Service General Management Plan, Field Management Plan, and Draft Non-Federal Oil and Gas Management Plan (NPS 2005, entire; NPS 2006, pp. 1–12; NPS 2011, entire).

The channel within proposed Unit FK7 is relatively stable, with relatively silt-free sand and gravel substrates (PCE 2) and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (coal mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of roads, recreational horse riding, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and potential canopy loss caused by infestations of the hemlock wooly adelgid.

Unit FK8: Wolf River and Town Branch, Pickett and Fentress Counties, Tennessee

Proposed Unit FK8 includes 41.0 rkm (25.5 rmi) of the Wolf River from its inundation at Dale Hollow Lake in Pickett County, TN, upstream to its confluence with Delk Creek in Fentress County, TN, and 3.4 rkm (2.0 rmi) of Town Branch from its confluence with Wolf River upstream to its headwaters in Pickett County, TN. The unit is within the Cumberland River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. A portion of this unit (6 rkm (4 rmi)) is in public ownership (Corps lands adjacent to Dale Hollow Reservoir and Sgt. Alvin C. York State Historic Park), but the majority is in private ownership.

The channel within proposed Unit FK8 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2) and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, off-road vehicle use and other recreational activities, nonpoint source pollution originating in headwater reaches, and potential canopy loss caused by infestations of the hemlock wooly adelgid.

Unit FK9: West Fork Obey River, Overton County, Tennessee

Proposed Unit FK9 includes approximately 19 rkm (12 rmi) of the West Fork Obey River from the Highway 52 Bridge crossing upstream to its confluence with Dry Hollow Creek in Overton County, TN. The unit is within the Cumberland River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private

land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within proposed Unit FK9 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish host(s) for the fluted kidneyshell, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, off-road vehicle use and other recreational activities, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution originating in headwater reaches, and potential canopy loss caused by infestations of the hemlock wooly adelgid.

Unit FK10: Indian Creek, Tazewell County, Virginia

Proposed Unit FK10 includes 6.7 rkm (4.2 rmi) of Indian Creek from its confluence with the Clinch River upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke in Tazewell County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel (69 FR 53136).

The channel within proposed Unit FK10 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with residential development, coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK11: Little River, Russell and Tazewell Counties, Virginia

Proposed Unit FK11 includes approximately 50 rkm (31 rmi) of Little River from its confluence with the Clinch River in Russell County, VA, upstream to its confluence with Liberty and Maiden Spring Creeks in Tazewell County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by fluted kidneyshell at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The Nature Conservancy also owns a small portion of adjacent property.

The channel within proposed Unit FK11 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitats may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, natural gas and oil exploration activities in headwater reaches, and nonpoint source pollution originating in headwater reaches.

Unit FK12 and SP1: North Fork Holston River, Smyth and Bland Counties, Virginia

Proposed Unit FK12 and SP1 includes approximately 67 rkm (42 rmi) of the North Fork Holston River from its confluence with Beaver Creek, upstream of Saltville, in Smyth County, VA, upstream to Ceres, Bland County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is adjacent to the George Washington and Jefferson National Forests. The Nature Conservancy and the Virginia Outdoors Foundation also own a small portion of adjacent property. A portion of this unit (58 rkm (36 rmi)) has been designated as a nonessential experimental population (NEP) for the yellowfin madtom (53 FR 29335).

The channel within proposed Unit FK12 and SP1 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), silviculture-related activities, natural gas and oil exploration activities in headwater reaches, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK13 and SP2: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia

Proposed Unit FK13 and SP2 includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake in Washington County, VA, upstream to its headwaters in Wythe County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both the fluted kidneyshell and slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within proposed Unit FK13 and SP2 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural

activities, lack of adequate riparian buffers, silviculture-related activities, and nonpoint source pollution.

Unit FK14 and SP3: Big Moccasin Creek, Scott and Russell Counties, Virginia

Proposed Unit FK14 and SP3 includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing in Scott County, VA, upstream to the Route 612 Bridge crossing near Collinwood in Russell County, VA. The unit is within the Tennessee River system and is proposed as critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in Big Moccasin Creek since the early 1900s (Ortmann 1918, p. 608). However, this unit is proposed for critical habitat for the fluted kidneyshell because it is considered essential for the conservation of the species. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within proposed Unit FK14 and SP3 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), lack of adequate riparian buffers, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK15: Copper Creek, Scott County, Virginia

Proposed Unit FK15 includes 55.5 rkm (34.5 rmi) of Copper Creek from its confluence with the Clinch River upstream to the Highway 71 Bridge crossing in Scott County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell. This unit is included in the geographical area occupied by the species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. A portion of this unit (21 rkm (13 rmi)) has been designated as critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and a portion of this unit (55.5 rkm (34.5 rmi)) has been designated as critical habitat for the yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within proposed Unit FK15 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell and its habitat may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), silviculture-related activities, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK16 and SP4: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia

Proposed Unit FK16 and SP4 includes approximately 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff, Tazewell County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. Approximately 6 rkm (4 rmi) of this unit is in public ownership, including portions of the Kyles Ford State Managed Area, George Washington National Forest, Jefferson National Forest, Cleveland Barrens State Natural Area Preserve (SNAP), and the Pinnacle SNAP. The Nature Conservancy also owns a small portion of adjacent property. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and the entire length of this unit has been designated as critical habitat for the slender chub and yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within proposed Unit FK16 and SP4 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK17 and SP5: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia

Proposed Unit FK17 and SP5 includes approximately 153 rkm (95 rmi) of the Powell River from the U.S. 25E Bridge in Claiborne County, TN, upstream to rkm 256 (rmi 159) (upstream of Rock Island in the vicinity of Pughs) in Lee County, VA. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is adjacent to the Cedars SNAP. The Nature Conservancy also owns a small portion of adjacent property. The unit completely overlaps critical habitat for the Cumberlandian combshell, rough rabbitsfoot, purple bean, and oyster mussel, and the entire length of this unit has been designated as critical habitat for the slender chub and yellowfin madtom (42 FR 45526, 42 FR 47840, 69 FR 53136).

The channel within proposed Unit FK17 and SP5 is relatively stable, with instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell, slabside pearlymussel, and

their habitats may require special management considerations or protection to address potential adverse effects associated with coal mining, silviculture-related activities, natural gas and oil exploration activities in headwater reaches, agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK18 and SP6: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee

Proposed Unit FK18 and SP6 includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam, where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing, in Greene County, TN. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell at the time of listing, but within the species' historical range. Live fluted kidneyshell have not been collected in the Nolichucky River since the mid-1960s (Tennessee Natural Heritage Inventory Program Database, accessed 2012). However, the TWRA has reintroduced the species into at least two sites in the Nolichucky River by translocating adult individuals from the Clinch River (Hubbs 2011, unpubl. data). It is not known if the reintroductions have been successful. This unit is proposed for critical habitat for the fluted kidneyshell because it is considered essential for the conservation of the species. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings, road easements, and a small portion that is within Mullins Island Wildlife Management Area. A portion of this unit (8 rkm (5 rmi)) has been designated as a critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136).

The channel within proposed Unit FK18 and SP6 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities, silviculture-related activities, rock mining, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK19: Holston River, Knox, Grainger, and Jefferson Counties, Tennessee

Proposed Unit FK19 includes approximately 85 rkm (53 rmi) of the Holston River from its confluence with the French Broad River in Knox County, TN, upstream to the base of Cherokee Dam at rkm 83.7 (rmi 52.3) along the Grainger and Jefferson County, TN, line. The unit is within the Tennessee River system. This unit is considered unoccupied by the fluted kidneyshell and slabside pearlymussel, but within the species' historical ranges. Live fluted kidneyshell have not been collected in the Holston River since the early 1900s (Ortmann 1918, p. 614). As discussed below, we consider Unit FK19 essential for the conservation of the fluted kidneyshell, but not the slabside pearlymussel, and so it is proposed as critical habitat only for the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The unit completely overlaps a designated nonessential experimental population for 15 mussels, 1 snail, and 5 fishes (72 FR 52434).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Although live fluted kidneyshell have not been collected in the Holston River since the early 1900s (Ortmann 1918, p. 614), TVA has improved conditions for aquatic species within this unit. Between 1988 and 1995, TVA implemented reservoir release improvements below Cherokee Dam on the Holston River. These improvements included the establishment of minimum flows and increasing the amount of dissolved oxygen in the tailwater below the reservoir (Scott *et al.* 1996, p. 21).

The unit does currently support populations of three federally listed species (threatened snail darter and endangered pink mucket and sheepnose). In addition, other mussel species co-occur with these species along with a diverse fish fauna, including hosts for the fluted kidneyshell. These host fishes are bottom-dwelling species that are able to move into refugia of low flows during high discharges from the hydropower dam upstream. Therefore, the fluted kidneyshell glochidia may come into contact and infest the host fishes. The slabside pearlymussel and its host fishes are known from the French Broad River drainage; however, hydropower operations make this habitat unsuitable for mid-water column fishes, such as the shiners that are hosts for the slabside pearlymussel (Layzer and Scott 2006, pp. 481, 488–9). Therefore, we are not designating Unit FK19 as critical habitat for the slabside pearlymussel at this time.

Unit FK20: French Broad River, Knox and Sevier Counties, Tennessee

Proposed Unit FK20 includes approximately 56 rkm (35 rmi) of the French Broad River from its confluence with the Holston River in Knox County, TN, upstream to the base of Douglas Dam at rkm 51.7 (rmi 32.3) in Sevier County, TN. The unit is within the Tennessee River system. This unit is considered unoccupied by the fluted kidneyshell and slabside pearlymussel, but within the species' historical ranges. Fluted kidneyshell are only known from archaeological records in the French Broad River (Parmalee 1988 in Layzer and Scott 2006, pp. 481–482). As discussed below, we consider Unit FK20 essential for the conservation of the fluted kidneyshell, but not the slabside pearlymussel, and so it is proposed as critical habitat only for the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements and a small portion that is within Forks of the River Wildlife Management Area. The unit completely overlaps a nonessential experimental population for 15 mussels, 1 snail, and 5 fishes (72 FR 52434).

We consider this unit essential for the conservation of the fluted kidneyshell due to the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events. Fluted kidneyshell are only known from archaeological records in the French Broad River (Parmalee 1988 in Layzer and Scott 2006, p. 481–482). However, between 1987 and 1995, TVA implemented reservoir release improvements below Douglas Dam on the French Broad River. These

improvements included the establishment of minimum flows and increasing the amount of dissolved oxygen in the tailwater below the reservoir (Scott *et al.* 1996, p. 11–12), improving conditions for the fluted kidneyshell and other aquatic species.

The unit does currently support populations of the federally threatened snail darter and endangered pink mucket. In addition, other mussel species co-occur with these species and a diverse fish fauna, including hosts for the fluted kidneyshell. These host fishes are bottom-dwelling species that are able to move into refugia of low flows during high discharges from the hydropower dam upstream. Therefore, the fluted kidneyshell glochidia may come into contact and infest the host fishes. The slabside pearlymussel and its host fishes are known from the French Broad River drainage; however, hydropower operations make this habitat unsuitable for mid-water column fishes, such as the shiners that are hosts for the slabside pearlymussel (Layzer and Scott 2006, pp. 481, 488–9). Therefore, we are not designating Unit FK20 as critical habitat for the slabside pearlymussel at this time.

Unit FK21 and SP7: Hiwassee River, Polk County, Tennessee

Proposed Unit FK21 and SP7 includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing upstream to the Highway 68 Bridge crossing in Polk County, TN. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell at the time of listing, but within the species' historical range. Fluted kidneyshell are only known from archaeological records in the Hiwassee River (Parmalee and Bogan 1998, p. 205). This unit is considered essential for the conservation of the fluted kidneyshell. A portion of this unit is considered a ''cut-off'' reach, because most of the water flow bypasses the reach through a tunnel from Apalachia Dam to the Apalachia powerhouse for the production of electricity. This unit is located entirely on federal lands within the Cherokee National Forest. Land and resource management decisions and activities within the CNF are guided by CNF's LRMP (USFS 2004b, pp. 28–37, entire).

The channel within proposed Unit FK21 and SP7 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2). Diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, nonpoint source pollution, water diversion through Apalachia tunnel, and potential canopy loss caused by infestations of the hemlock wooly adelgid. Another threat to the species and their habitat which may require special management of the PCEs includes the potential for significant changes in the existing flow regime and water quality due to upstream impoundment As discussed in Summary of Factors Affecting the Species, under ''Impoundments,'' mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit SP8: Sequatchie River, Marion, Sequatchie, and Bledsoe Counties, Tennessee

Proposed Unit SP8 includes approximately 151 rkm (94 rmi) of the Sequatchie River from the Highway 41, 64, 72, 2 Bridge crossing in Marion County, TN, upstream to the Ninemile Cross Road Bridge crossing in Bledsoe County, TN. The unit is within the Tennessee River system. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

Proposed Unit SP8 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects caused by agricultural activities, coal mining, silvicultural activities, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution arising from a wide variety of human activities.

Unit SP9: Paint Rock River, Madison, Marshall, and Jackson Counties, Alabama

Proposed Unit SP9 includes approximately 86 rkm (53 rmi) of the Paint Rock River from the Highway 431 Bridge crossing along the Madison and Marshall County line, AL, upstream to and including approximately 11 rkm (7 rmi) of the tributary headwaters of Larkin Fork upstream to its confluence with Bear Creek; approximately 13 rkm (8 rmi) of Estill Fork upstream to its confluence with Bull Run; and approximately 16 rkm (10 rmi) of Hurricane Creek upstream to its confluence with Turkey Creek in Jackson County, AL. The unit is within the Tennessee River system and is proposed critical habitat for the slabside pearlymussel. The unit is included in the geographical area occupied by the slabside pearlymussel at the time of listing. Approximately 6 rkm (4 rmi) of this unit is federally or State-owned and adjacent to the Fern Cave National Wildlife Refuge and Walls of Jericho State Management Area; the remainder is privately owned, including a small parcel owned by the Alabama Land Trust. A portion of this unit (80 rkm (50 rmi)) has been proposed as critical habitat for the rabbitsfoot.

The channel within proposed Unit SP9 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects associated with agricultural activities, silvicultural activities, off-road vehicle use and other recreational activities, and nonpoint source pollution originating in headwater reaches.

Unit FK22 and SP10: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee

Proposed Unit FK22 and SP10 includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake in Limestone County, AL, upstream to its confluence with Farris Creek at the dividing line between Franklin and Moore Counties, TN. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and

slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in the Elk River since the late-1960s (Isom *et al.* 1973, p. 440). The unit is considered essential for the conservation of the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements and a small portion that is within TVA-owned lands near Wheeler Reservoir.

Proposed Unit FK22 and SP10 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with hydropower generation from Tims Ford Dam, agriculture, nonpoint source pollution, and instream gravel mining. Another threat to the species and their habitat which may require special management of the PCEs includes the potential for significant changes in the existing flow regime and water quality due to upstream impoundment. As discussed in Summary of Factors Affecting the Species, under ''Impoundments,'' mollusk declines below dams are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages. These alterations can cause mussel declines for many miles below the dam.

Unit SP11: Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi

Proposed Unit SP11 includes approximately 42 rkm (26 rmi) of Bear Creek from its inundation at Pickwick Lake at rkm 37 (rmi 23) in Colbert County, AL, upstream through Tishomingo County, MS, and ending at the Mississippi/Alabama State line. The unit is within the Tennessee River system and is proposed critical habitat for the slabside pearlymussel. This unit is included in the geographical area occupied by the slabside pearlymussel at the time of listing. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements, and that within Tishomingo State Park and the Natchez Trace Parkway. The unit completely overlaps critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136; August 31, 2004) and a portion (42 rkm (26 rmi)) of this unit has been proposed as critical habitat for the rabbitsfoot (69 FR 53136).

The channel within proposed Unit SP11 has an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitat may require special management considerations or protection to address potential adverse effects associated with releases from upstream impoundments, agriculture, and nonpoint source pollution originating in headwater reaches.

Unit FK23 and SP12: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee

Proposed Unit FK23 and SP12 includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake in Humphreys County, TN, upstream to its confluence with Flat Creek near Shelbyville in Bedford County, TN. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by both species at the time of listing. The fluted kidneyshell population is a result of a successful reintroduction program implemented by TWRA and other conservation partners. Approximately 64 rkm (39 rmi) of this unit is federally or State-owned and adjacent to the Tennessee National Wildlife Refuge, Natchez Trace Parkway, Yanahli Wildlife Management Area, and Henry Horton State Park; the remainder is privately owned. A portion of this unit (74 rkm (46 rmi)) has been designated as a critical habitat for the oyster mussel and Cumberlandian combshell (69 FR 53136) and a portion of this unit (234 rkm (146 rmi)) has been proposed as critical habitat for the rabbitsfoot.

The channel within proposed Unit FK23 and SP12 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the fluted kidneyshell and slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the fluted kidneyshell, slabside pearlymussel, and their habitats may require special management considerations or protection to address potential adverse effects associated with agricultural activities (livestock), water withdrawals, lack of adequate riparian buffers, construction and maintenance of State and county roads, and nonpoint source pollution originating in headwater reaches.

Unit FK24 and SP13: Buffalo River, Humphreys and Perry Counties, Tennessee

Proposed Unit FK24 and SP13 includes approximately 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River in Humphreys County, TN, upstream to its confluence with Cane Creek in Perry County, TN. The unit is within the Tennessee River system and is proposed critical habitat for the fluted kidneyshell and slabside pearlymussel. This unit is included in the geographical area occupied by slabside pearlymussel at the time of listing. This unit is considered unoccupied by the fluted kidneyshell, but within the species' historical range. Live fluted kidneyshell have not been collected in the Buffalo River since the early 1920s (Ortmann 1924, p. 28). The unit is considered essential for the conservation of the fluted kidneyshell. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

The channel within proposed Unit FK24 and SP13 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of riffle habitats (PCE 1), with relatively silt-free sand and gravel substrates (PCE 2), and adequate instream flows (PCE 3). A diverse fish fauna, including fish hosts for the slabside pearlymussel, are known from this unit (PCE 5).

Within this proposed unit, the slabside pearlymussel and its habitats may require special management considerations or protection to address potential adverse effects associated with agriculture and nonpoint source pollution.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund,

authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeal have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the CWA or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PBFs to an extent that appreciably reduces the conservation value of critical habitat for fluted kidneyshell or slabside pearlymussel. As discussed above, the role of critical habitat is to support life-history needs and provide for the conservation of these species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the fluted kidneyshell or slabside pearlymussel. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of their stream and river habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, sand and gravel mining, clearing riparian vegetation, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and result in entrainment or burial of these mussels, and could cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime where these species occur. Such activities could include, but are not limited to; impoundment, urban development, water diversion, water withdrawal, water draw-down, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mussels and their fish hosts.

(3) Actions that would significantly alter water chemistry or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of these mussels and their fish hosts or both, and result in direct or cumulative adverse effects to the species throughout their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, gravel and sand mining, oil and gas

development, coal mining, livestock grazing, timber harvest, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mussels or their fish hosts or both, by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause reduced nighttime dissolved oxygen levels through respiration, and prevent juvenile mussels from settling into stream sediments.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

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

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the fluted kidneyshell and slabside pearlymussel are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security.

Other Relevant Impacts

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

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the fluted kidneyshell or slabside pearlymussel, and the proposed designation does not include any tribal lands or trust resources. Therefore, we anticipate no impact on tribal lands or HCPs from this proposed critical habitat designation.

Nonessential Experimental Populations

Congress made significant changes to the Act, with the addition of section 10(j) in 1982, which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' This section was designed to provide us with an innovative means to introduce a listed species into unoccupied habitat within its historical range when doing so would foster the conservation and

recovery of the species. Experimental populations provide us with a flexible, proactive means to meet recovery criteria while not alienating stakeholders, such as other agencies, municipalities, and landowners, whose cooperation is essential for eventual success of the reintroduced population.

Section 10(j) increases our flexibility in managing an experimental population by allowing us to treat a population as a threatened species, regardless of the species' status elsewhere in its range. Threatened species status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary and advisable to provide for the conservation of a threatened species under Section 4(d) of the Act. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations (NEPs) located outside the National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing as a threatened species, while on National Wildlife Refuges or National Parks the species is treated as a threatened species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

As mentioned earlier in the unit descriptions and referenced in Table 5, there are two nonessential experimental populations (NEPs) for listed aquatic species that overlap with the proposed critical habitat designation. These include the NEP for the yellowfin madtom in the North Fork of the Holston River (53 FR 29335), which overlaps with Unit FK12 and SP1, and the NEP for 21 listed aquatic species (including the yellowfin madtom) in the lower French Broad and Holston Rivers (72 FR 52434), which overlaps with Units FK19 and FK20. These NEPs were not established specifically for the conservation of the fluted kidneyshell or slabside pearlymussel, which were candidate species when the NEPs were published, but rather to promote the reintroduction of their target listed species into historical habitat. They were developed with the support of numerous partners, including the Tennessee Wildlife Resources Agency, Tennessee Valley Authority, Virginia Department of Game and Inland Fisheries, and others. We would need to amend the NEPs through the rulemaking process in order for the fluted kidneyshell and slabside pearlymussel to be included.

The North Fork of the Holston River is considered occupied by both the slabside pearlymussel and the fluted kidneyshell, and presently contains numerous PCEs (see ''Proposed Critical Habitat Designation'') and is therefore being proposed as critical habitat. The lower Holston River (below Cherokee Dam) and French Broad River (below Douglas Dam) are being proposed as unoccupied habitat for the fluted kidneyshell because we have determined these river reaches are essential to the conservation of the species.

Accordingly, at this time the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on other relevant impacts. However, we recognize that exclusion of river reaches covered by these NEPs from critical habitat may continue to encourage conservation and reintroduction efforts for numerous imperiled aquatic species in the upper Tennessee River Basin. Therefore, we are requesting information on whether the benefits of the exclusion of river reaches covered by these NEPs would outweigh the benefits of inclusion under section 4(b)(2) of the Act. Based on information received during the comment period, the Secretary may reconsider exclusion in the final rule.

Peer Review

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

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

Public Hearings

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

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment

a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. As such, certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, although not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat designation to significantly affect energy supplies, distribution, or use. Natural gas and oil exploration and development activities occur or could potentially occur in all proposed critical habitat units. However, compliance with State regulatory requirements or voluntary best management practices would be expected to minimize impacts of natural gas and oil exploration and development in the areas of proposed critical habitat for both species. The measures for natural gas and oil exploration and development are generally not considered a substantial cost compared with overall project costs and are already being implemented by oil and gas companies.

Coal mining occurs or could potentially occur in proposed critical habitat units in Kentucky, Tennessee, and Virginia, and was identified as an activity that may have adverse effects on these species and their habitat. Incidental take for listed species associated with surface coal mining activities is currently covered under a programmatic, non-jeopardy biological opinion between the Office of Surface Mining and the Service, completed in 1996 (Service 1996, entire). The biological opinion covers existing, proposed, and future endangered and threatened species that may be affected by the implementation and administration of surface coal mining programs under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). Through its analysis, the Service concluded that the proposed action (surface coal mining and reclamation activities) was not likely to jeopardize the continued existence of any threatened, endangered, or proposed species or result in adverse modification of designated or proposed critical habitat. Based on this conclusion, we do not anticipate that the designation of critical habitat would constitute a significant energy action, and have therefore not completed a Statement of Energy Effects. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Hydropower generation occurs upstream of proposed critical habitat units in the mainstem Holston, French Broad, Hiwassee, and Elk Rivers. Incidental take for listed species (which does not include the fluted kidneyshell and slabside pearlymussel), associated

with hydropower generation, is currently covered under two programmatic, non-jeopardy biological opinions between the Tennessee Valley Authority (TVA) and the Service, completed in 2004 and 2006 (Service, 2004, entire; Service 2006, entire). These biological opinions cover TVA's routine operations and maintenance of water control structures in the Tennessee River System and species that were listed at that time. The Service concluded that the proposed action (operation and maintenance activities at TVA dams—including hydropower generation) was not likely to jeopardize continued existence of any listed species. Based on our experience with the currently listed species and their critical habitat, we do not anticipate this action will qualify as a significant energy action, and therefore we have not prepared a Statement of Energy Effects at this time. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

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

The designation of critical habitat does not impose a legally binding duty on non-Federal entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 of the Act. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that the proposed designation of critical habitat for the fluted kidneyshell or slabside pearlymussel would significantly or uniquely affect small governments because these mussel species occur primarily in State-owned river channels, or in remote privately owned stream channels. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the fluted kidneyshell and slabside pearlymussel in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for these species does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. The designation may have some benefit to these governments because the areas that contain the PBFs essential to the conservation of the species are more clearly defined, and the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PBFs within the designated areas to assist the public in understanding the habitat needs of the fluted kidneyshell and slabside pearlymussel.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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

Clarity of the Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands currently occupied by the species that contain the features essential for the conservation of, and no Tribal lands that are essential for the conservation of, these two species. Therefore, we have not proposed designation of critical habitat for these species on Tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. Amend § 17.11(h) by adding entries for ''Kidneyshell, fluted'' and ''Pearlymussel, slabside'' in alphabetical order under ''CLAMS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Kidneyshell, fluted	*Ptychobranchus subtentum.*	U.S.A. (AL, KY, TN, VA).	NA	E	.....	17.95(f)	NA
*	*	*	*	*	*	*	
Pearlymussel, slabside	*Pleuronaia dolabelloides.*	U.S.A. (AL, KY, MS, TN, VA).	NA	E	.....	17.95(f)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (f) by adding entries for ''Fluted Kidneyshell (*Ptychobranchus subtentum*)'' and ''Slabside Pearlymussel (*Pleuronaia dolabelloides*)'' in that order immediately following the entry for Altamaha spinymussel (*Elliptio spinosa*), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Fluted Kidneyshell (*Ptychobranchus subtentum*)

(1) Critical habitat units are depicted on the maps below for Limestone County, Alabama; Jackson, Laurel, McCreary, Pulaski, Rockcastle, and Wayne Counties, Kentucky; Bedford, Claiborne, Cocke, Fentress, Franklin, Giles, Grainger, Greene, Hamblen, Hancock, Hickman, Humphreys, Jefferson, Knox, Lincoln, Marshall, Maury, Moore, Morgan, Overton, Perry, Pickett, Polk, Scott, and Sevier Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of fluted kidneyshell consist of five components:

(i) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(iii) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

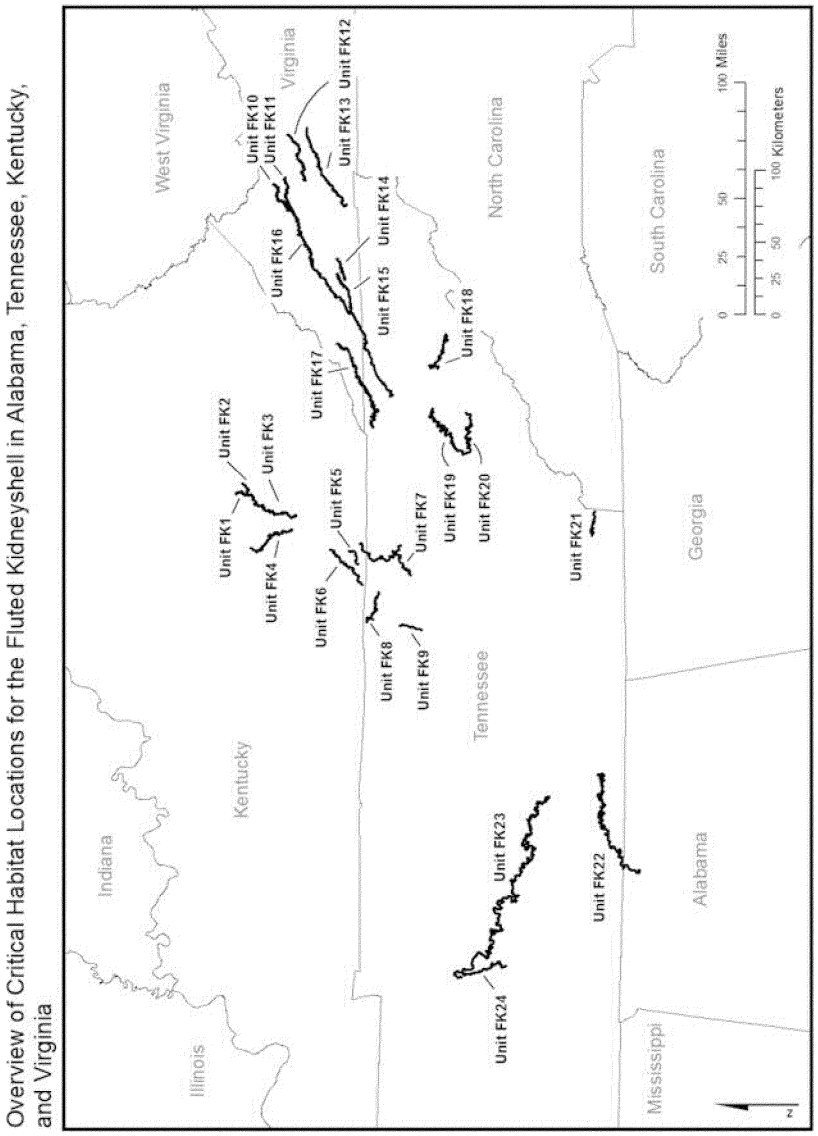
(iv) Water quality with low levels of pollutants and including a natural temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams/liter), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(v) The presence of abundant fish hosts necessary for recruitment of the fluted kidneyshell.

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

(4) *Critical habitat map units.* Data layers defining map units were created with USGS National Hydrography Dataset (NHD^+) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRIs ArcGIS 10.0 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units was USA Contiguous Albers Equal Area Conic USGS version, NAD 83, meters. The following data sources were referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD^+ flowline and waterbody data, 2011 Navteq roads data, USA Topo ESRI online basemap service, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (*http://www.fws.gov/cookeville*), *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0004, and at the Service's Tennessee Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

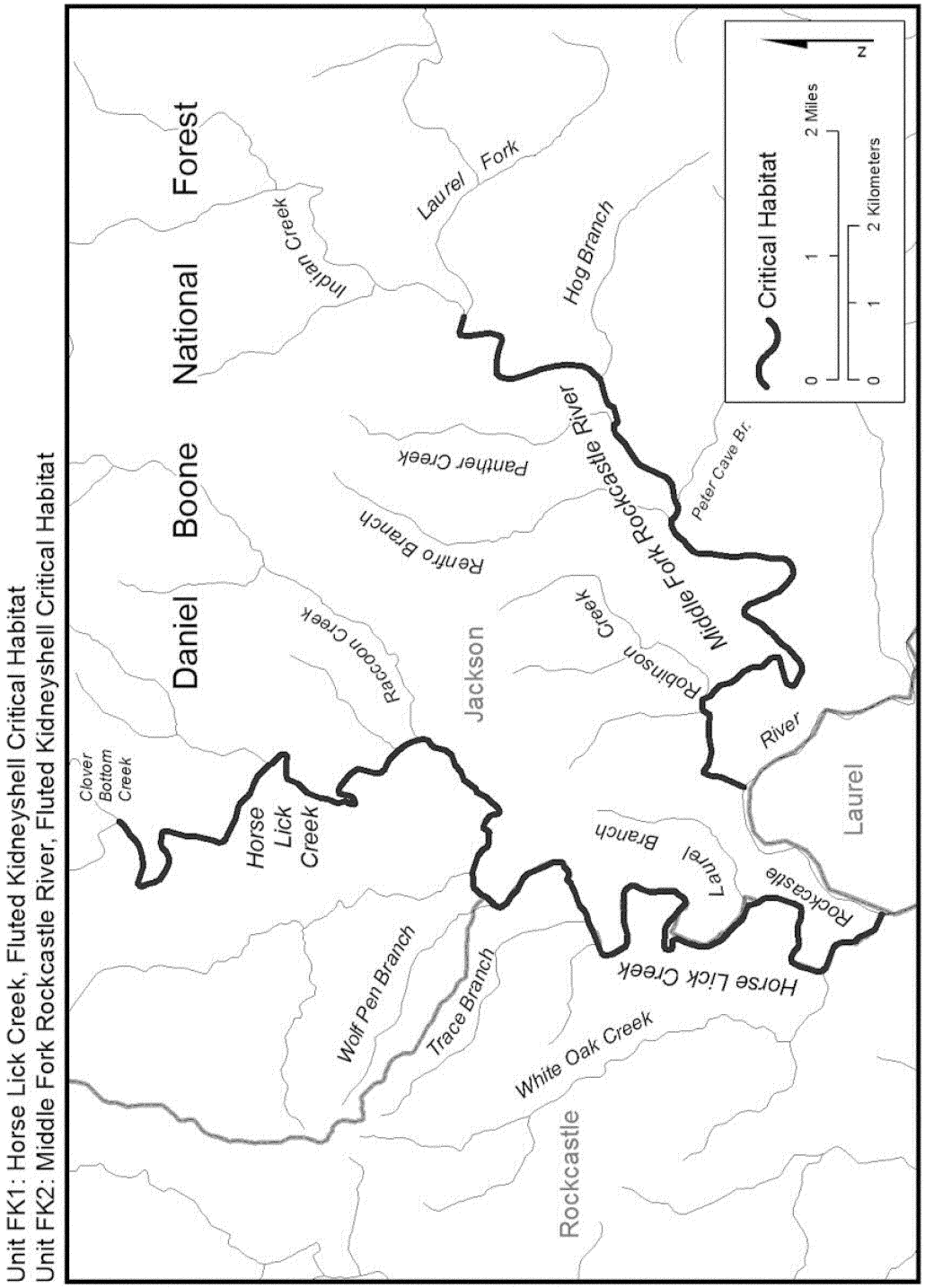
(5) An overview of critical habitat locations for the fluted kidneyshell in Alabama, Tennessee, Kentucky, and Virginia follows:



(6) Unit FK1: Horse Lick Creek, Rockcastle and Jackson Counties, Kentucky.

(i) The unit includes approximately 19 river kilometers (rkm) (12 river miles (rmi)) of Horse Lick Creek, in Rockcastle and Jackson Counties, KY. It includes the mainstem of Horse Lick Creek from its confluence with the Rockcastle River (−84.13780, 37.31991) upstream to Clover Bottom Creek (−84.12200, 37.40879).

(ii) Map of Units FK1 and FK2 follows:



(7) Unit FK2: Middle Fork Rockcastle River, Jackson County, Kentucky.

(i) The unit includes 12.5 rkm (7.7 rmi) of the Middle Fork Rockcastle River from its confluence with the Rockcastle River (−84.11895, 37.33581) upstream to its confluence with Indian Creek and Laurel Fork E (−84.04897, 37.36765) in Jackson County, KY.

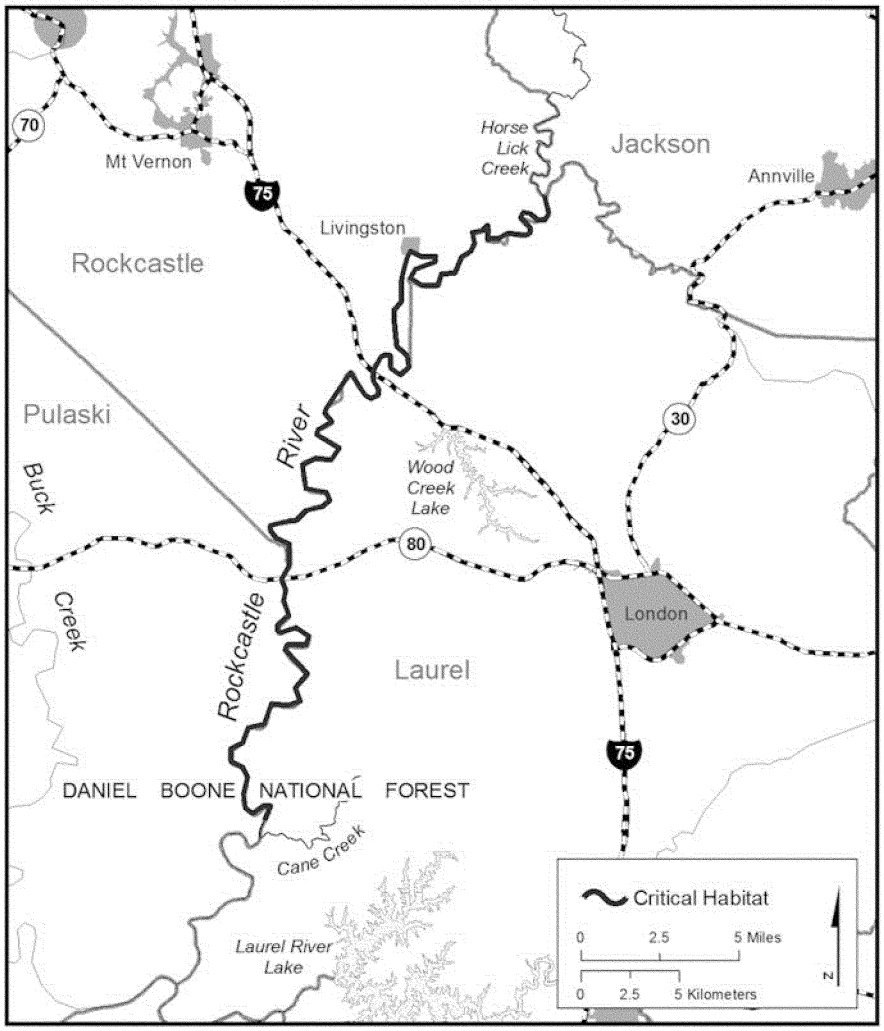
(ii) Map of Units FK1 and FK2 is provided at paragraph (6)(ii) of this entry.

(8) Unit FK3: Rockcastle River, Pulaski, Laurel, and Rockcastle Counties, Kentucky.

(i) The unit includes approximately 70 rkm (43 rmi) of the Rockcastle River from the backwaters of Lake Cumberland near its confluence with Cane Creek along the Laurel and Pulaski County line, KY (−84.30594, 37.03423), upstream to its confluence with Horse Lick Creek along the Laurel and Rockcastle County line, KY (−84.13766, 37.31944).

(ii) Map of Unit FK3 follows:

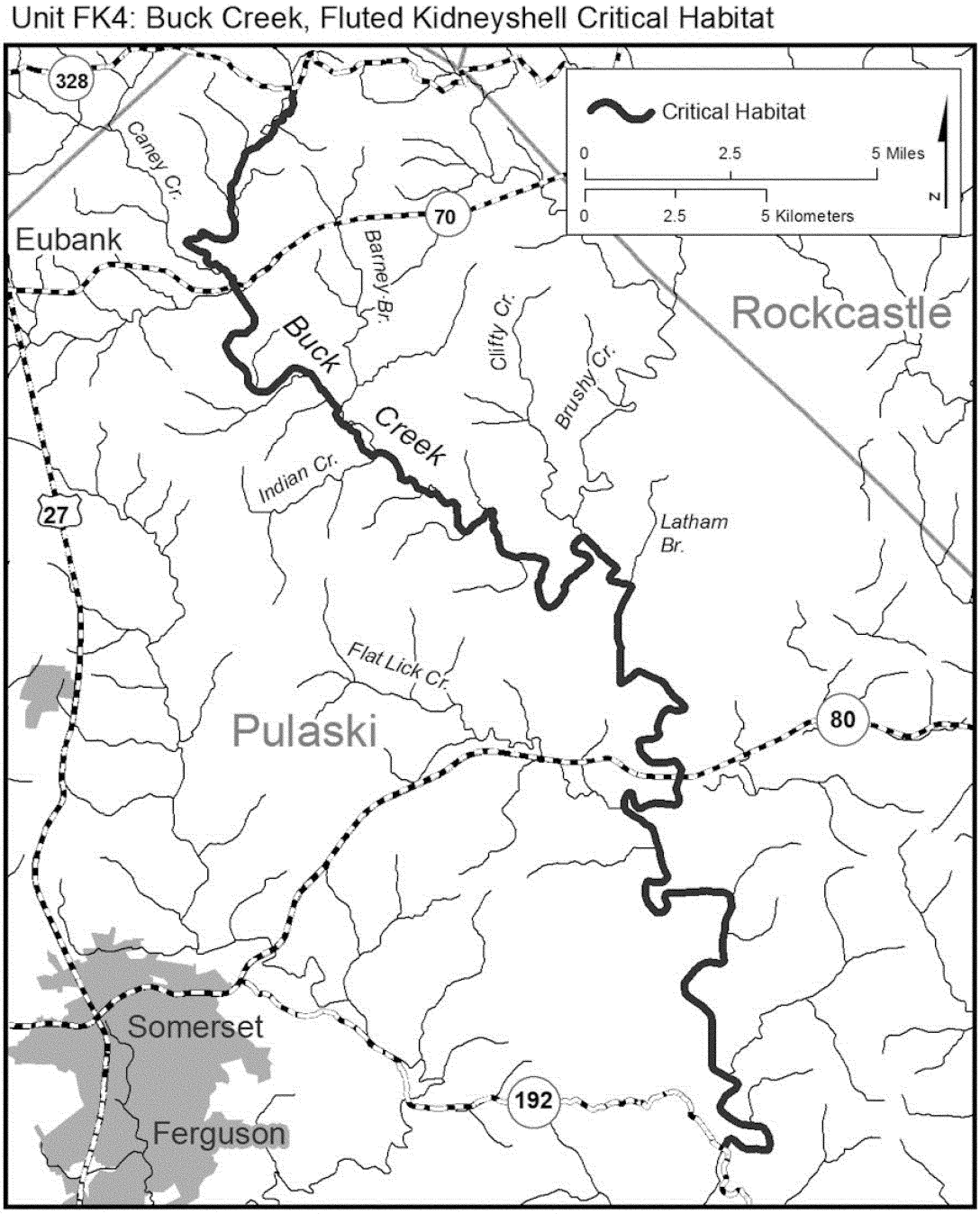
Unit FK3: Rockcastle River, Fluted Kidneyshell Critical Habitat



(9) Unit FK4: Buck Creek, Pulaski County, Kentucky.

(i) This unit includes 61 rkm (38 rmi) of Buck Creek from State Route 192 (−84.42681, 37.05977) upstream to Route 328 (−84.55492, 37.32430), Pulaski County, KY.

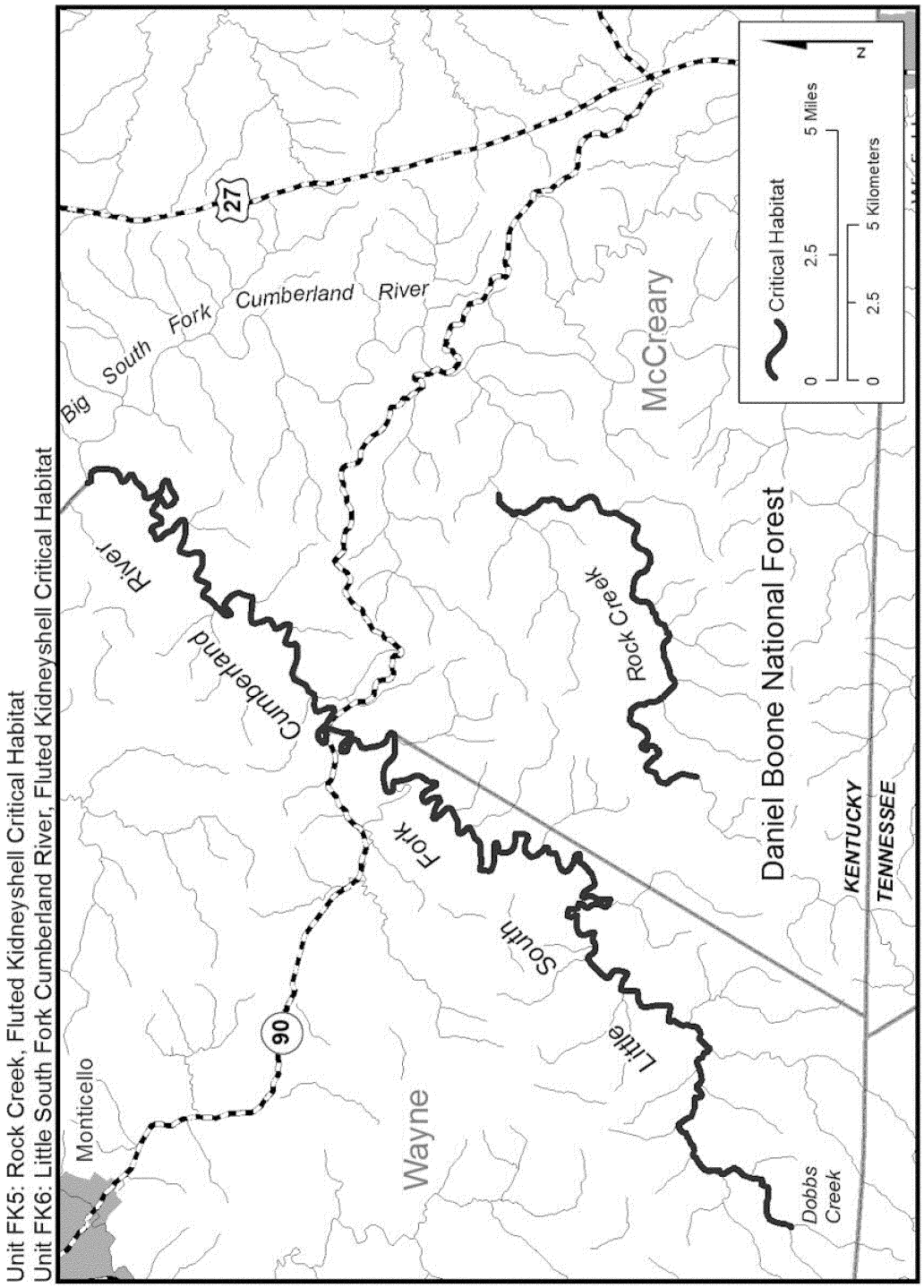
(ii) Map of Unit FK4 follows:



(10) Unit FK5: Rock Creek, McCreary County, Kentucky.

(i) The unit includes approximately 19 rkm (12 rmi) of Rock Creek from its confluence with White Oak Creek (−84.69103, 36.65145) upstream to the low water crossing at rkm 25.6 (rmi 15.9) (−84.58888, 36.70800) in McCreary County, KY.

(ii) Map of Units FK5 and FK6 follows:



(11) Unit FK6: Little South Fork Cumberland River, McCreary and Wayne Counties, Kentucky.

(i) The unit includes 65.5 rkm (40.7 rmi) of the Little South Fork Cumberland River from its confluence with the Big South Fork Cumberland River (−84.58269, 36.82690), where it is the dividing line between Wayne and McCreary Counties, upstream to its confluence with Dobbs Creek (−84.85344, 36.62588) in Wayne County, KY.

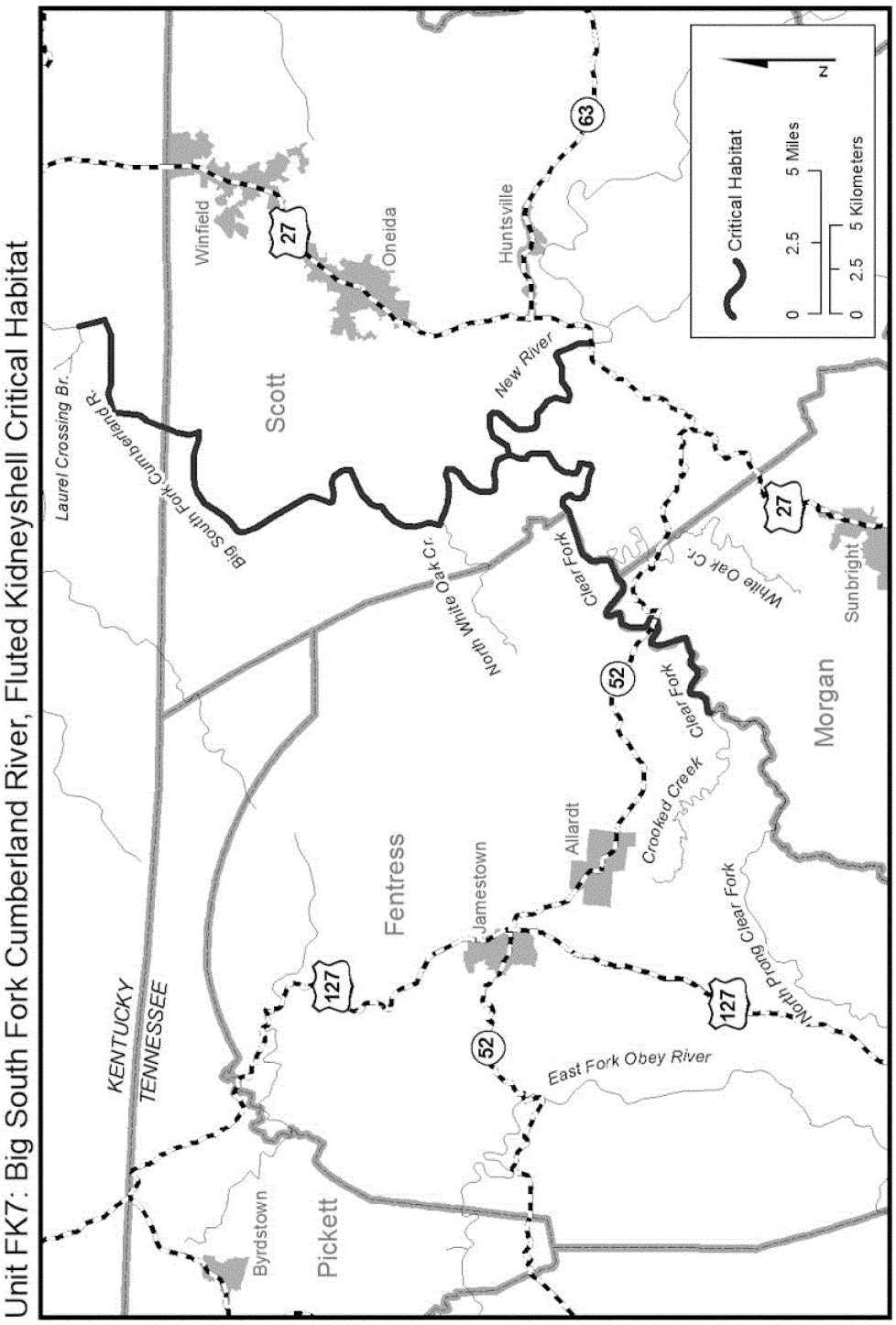
(ii) Map of Units FK5 and FK6 is provided at paragraph (10)(ii) of this entry.

(12) Unit FK7: Big South Fork Cumberland River, Fentress, Morgan, and Scott Counties, Tennessee, and McCreary County, Kentucky.

(i) The unit includes approximately 45 rkm (28 rmi) of the Big South Fork of the Cumberland River from its confluence with Laurel Crossing Branch downstream of Big Shoals (−84.53642, 36.64114), McCreary County, KY, upstream to its confluence with Clear Fork and of the New River (−84.62394, 36.42475), Scott County, TN. This unit also includes 32.3 rkm (20.0 rmi) of Clear Fork from its confluence with the Big South Fork and New River (−84.62394, 36.42475) in Scott County, TN, upstream to its confluence with Crooked Creek (−84.78637, 36.32533) along the Fentress and Morgan County

line, TN. This unit also includes 14.7 rkm (9.1 rmi) of the New River from its confluence with the Big South Fork (−84.62394, 36.42475) upstream to the Highway 27 Bridge crossing (−84.55290, 36.38279) in Scott County, TN.

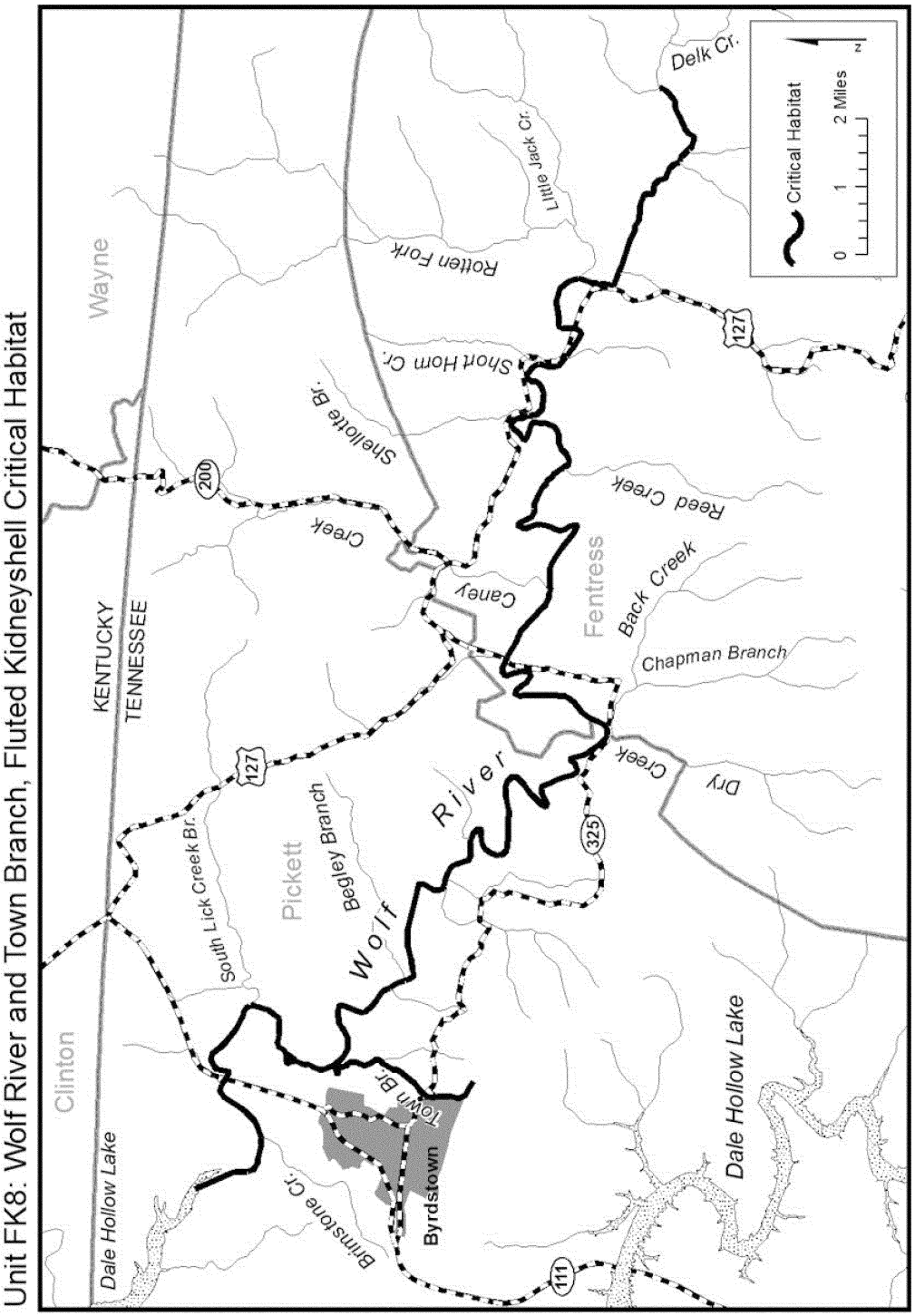
(ii) Map of Unit FK7 follows:



(13) Unit FK8: Wolf River and Town Branch, Pickett and Fentress Counties, Tennessee.

(i) The unit includes 41.0 rkm (25.5 rmi) of the Wolf River from its inundation at Dale Hollow Lake (−85.14414, 36.60670) in Pickett County, TN, upstream to its confluence with Delk Creek (−84.91064, 36.52784) in Fentress County, TN. This unit also includes 3.4 rkm (2.0 rmi) of Town Branch from its confluence with Wolf River (−85.11787, 36.58321) upstream to its headwaters (−85.12136, 36.55947) in Pickett County, TN.

(ii) Map of Unit FK8 follows:

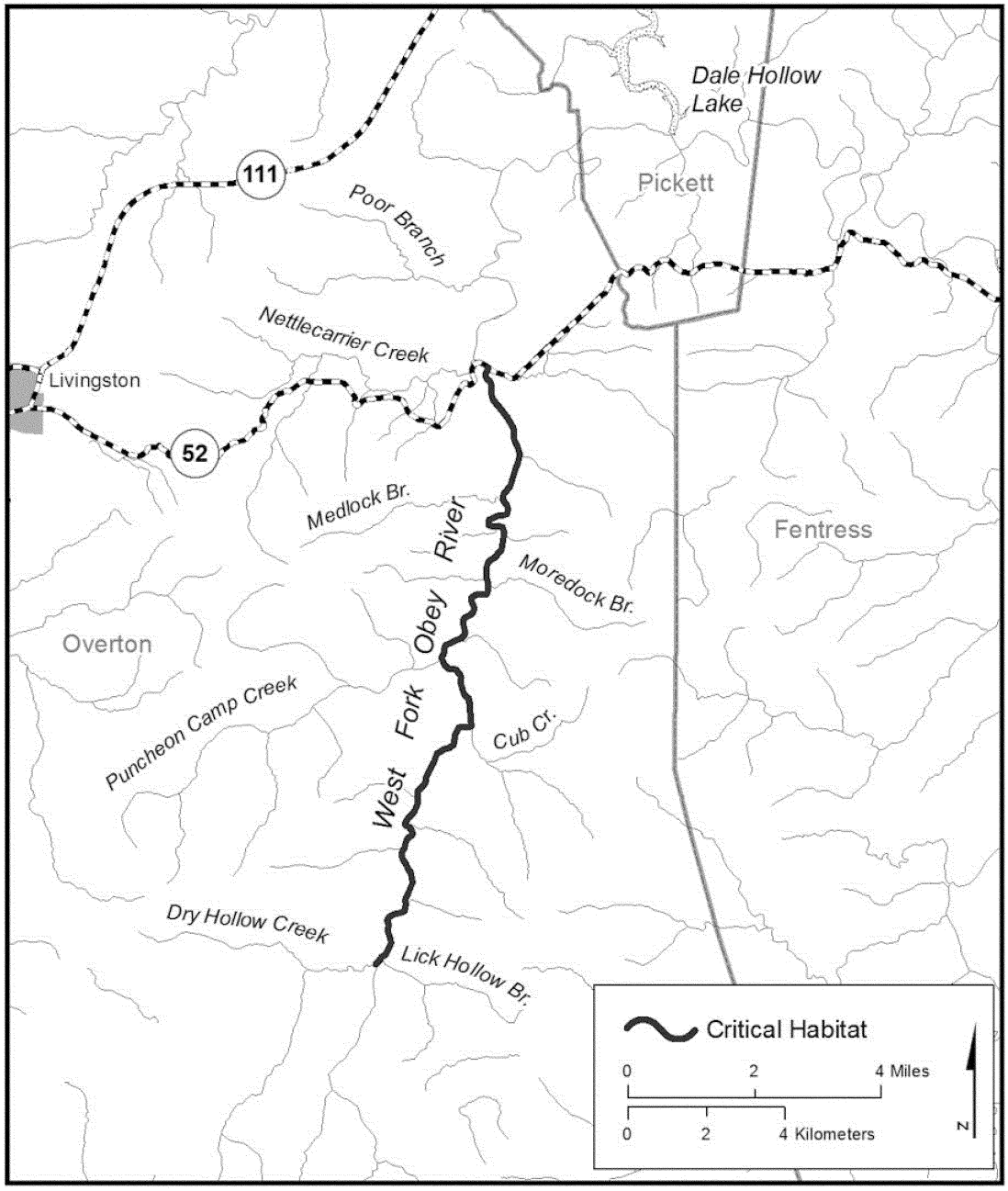


(14) Unit FK9: West Fork Obey River, Overton County, Tennessee.

(i) The unit includes approximately 19 rkm (12 rmi) of the West Fork Obey River from the Highway 52 Bridge crossing (−85.17410, 36.39731) upstream to its confluence with Dry Hollow Creek (−85.20747, 36.25989) in Overton County, TN.

(ii) Map of Unit FK9 follows:

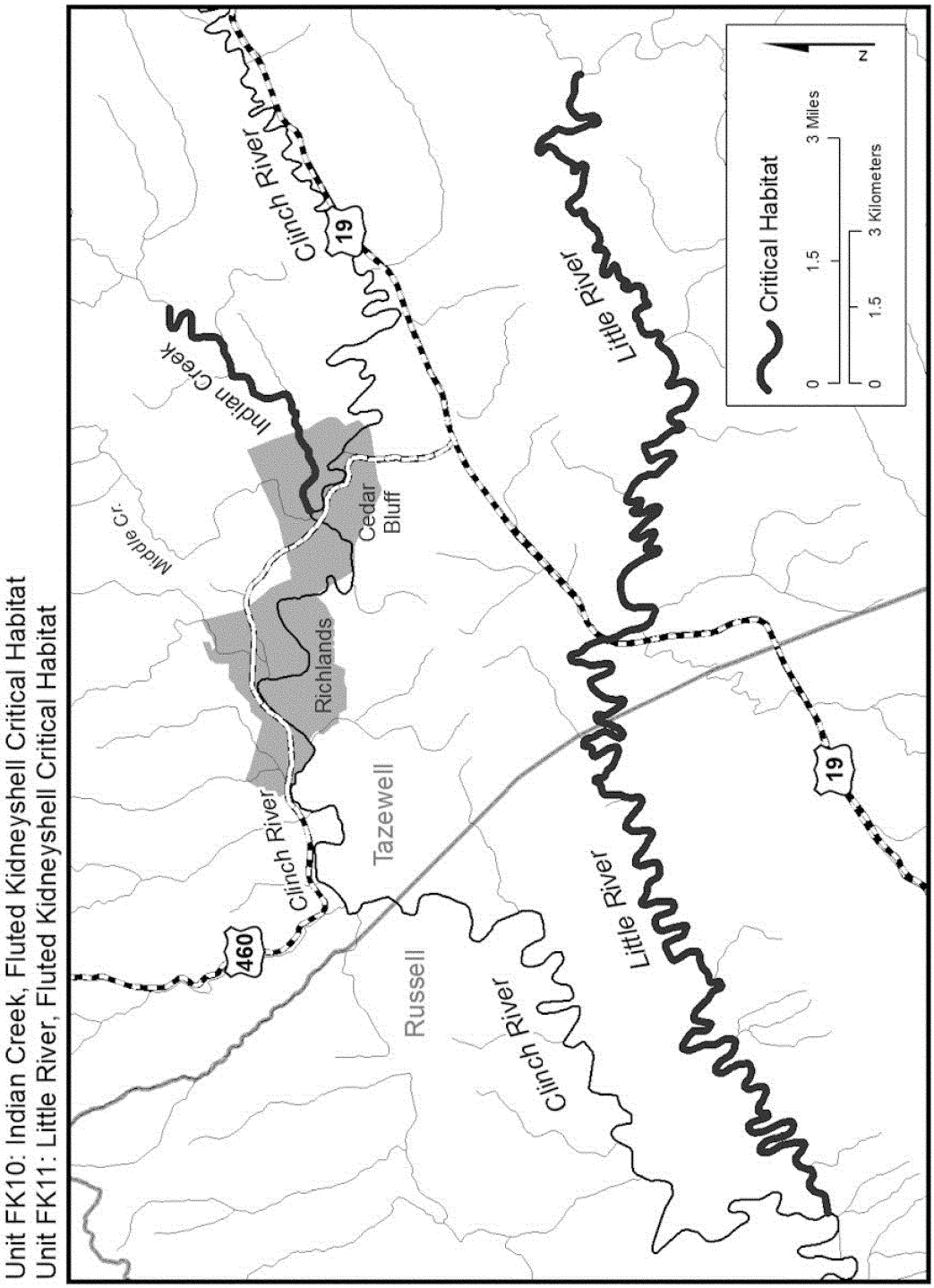
Unit FK9: West Fork Obey River, Fluted Kidneyshell Critical Habitat



(15) Unit FK10: Indian Creek, Tazewell County, Virginia.

(i) The unit includes 6.7 rkm (4.2 rmi) of Indian Creek from its confluence with the Clinch River (−81.76608, 37.08893) upstream to the fourth Norfolk Southern Railroad crossing at Van Dyke (−81.71975, 37.11206) in Tazewell County, VA.

(ii) Map of Units FK10 and FK11 follows:



(16) Unit FK11: Little River, Russell and Tazewell Counties, Virginia.

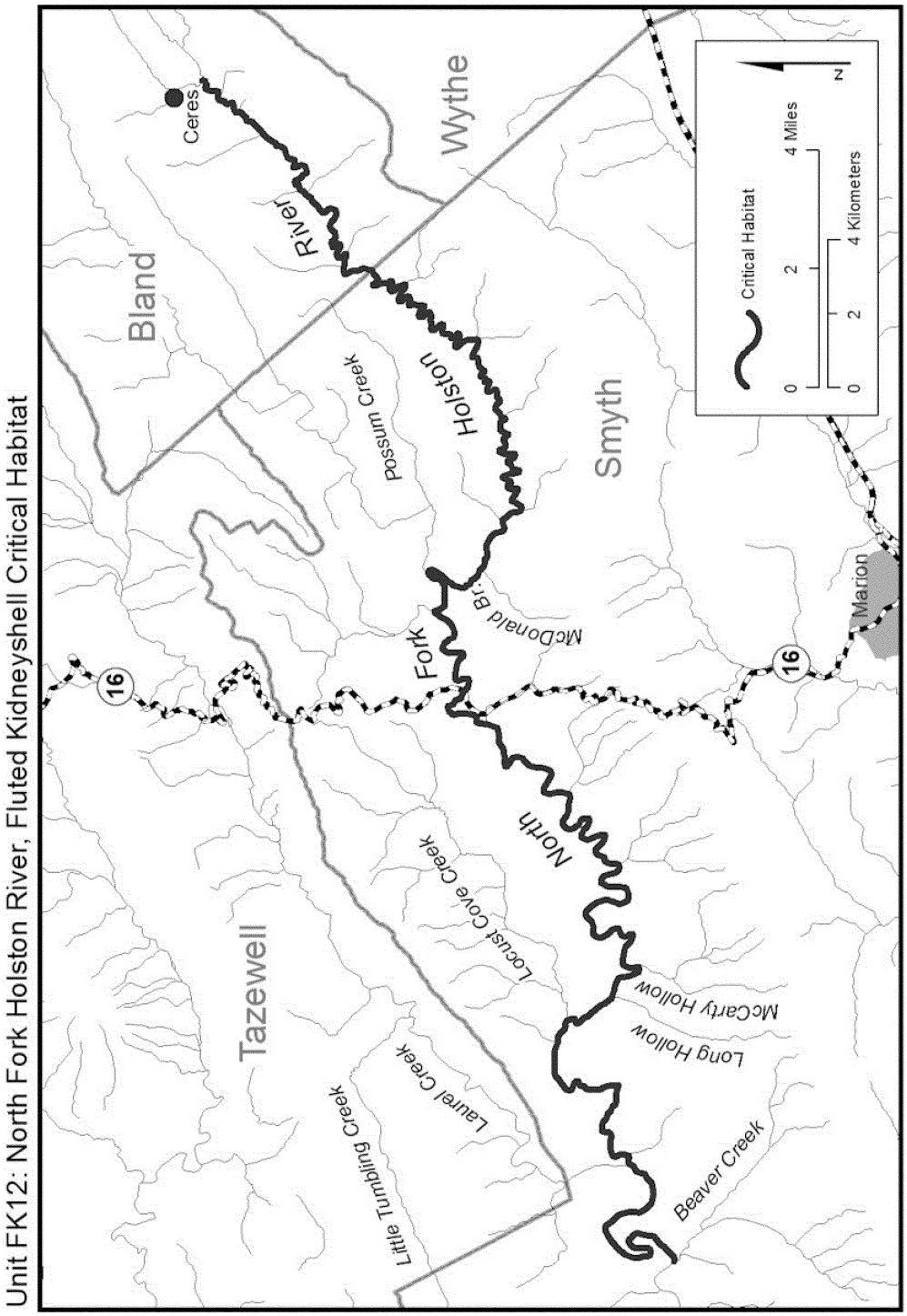
(i) The unit includes approximately 50 rkm (31 rmi) of Little River from its confluence with the Clinch River (−81.92582, 37.00223) in Russell County, VA, upstream to its confluence with Liberty and Maiden Spring Creeks (−81.67240, 37.03760) in Tazewell County, VA.

(ii) Map of Units FK10 and FK11 is provided at paragraph (15)(ii) of this entry.

(17) Unit FK12: North Fork Holston River, Smyth and Bland Counties, Virginia.

(i) The unit includes approximately 67 rkm (42 rmi) of the North Fork Holston River from its confluence with Beaver Creek (−81.70277, 36.90825), upstream of Saltville, in Smyth County, VA, upstream to Ceres (−81.33775, 37.01035), Bland County, VA.

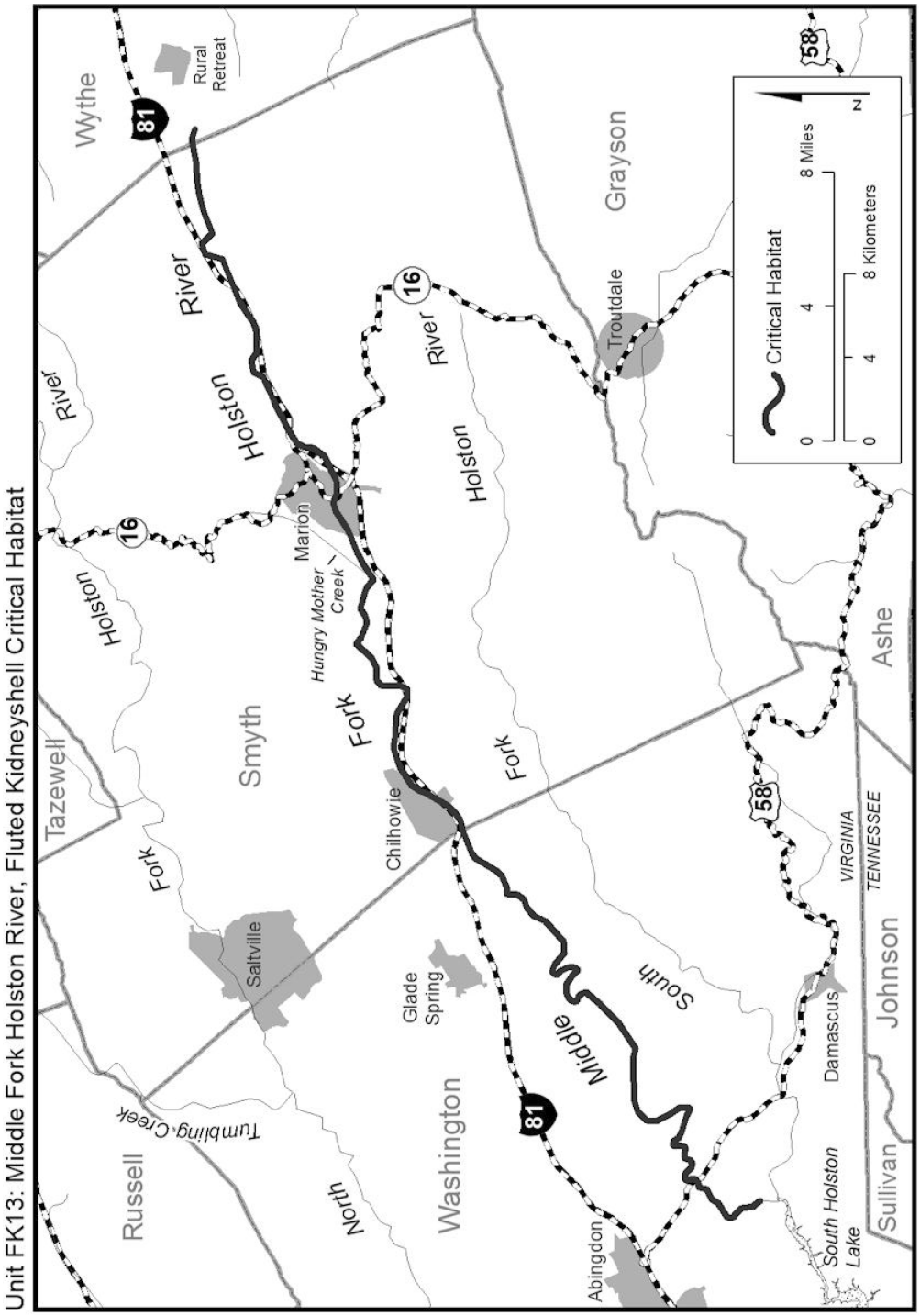
(ii) Map of Unit FK12 follows:



(18) Unit FK13: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia.

(i) The unit includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake (−81.90427, 36.66338) in Washington County, VA, upstream to its headwaters (−81.31345, 36.88666) in Wythe County, VA.

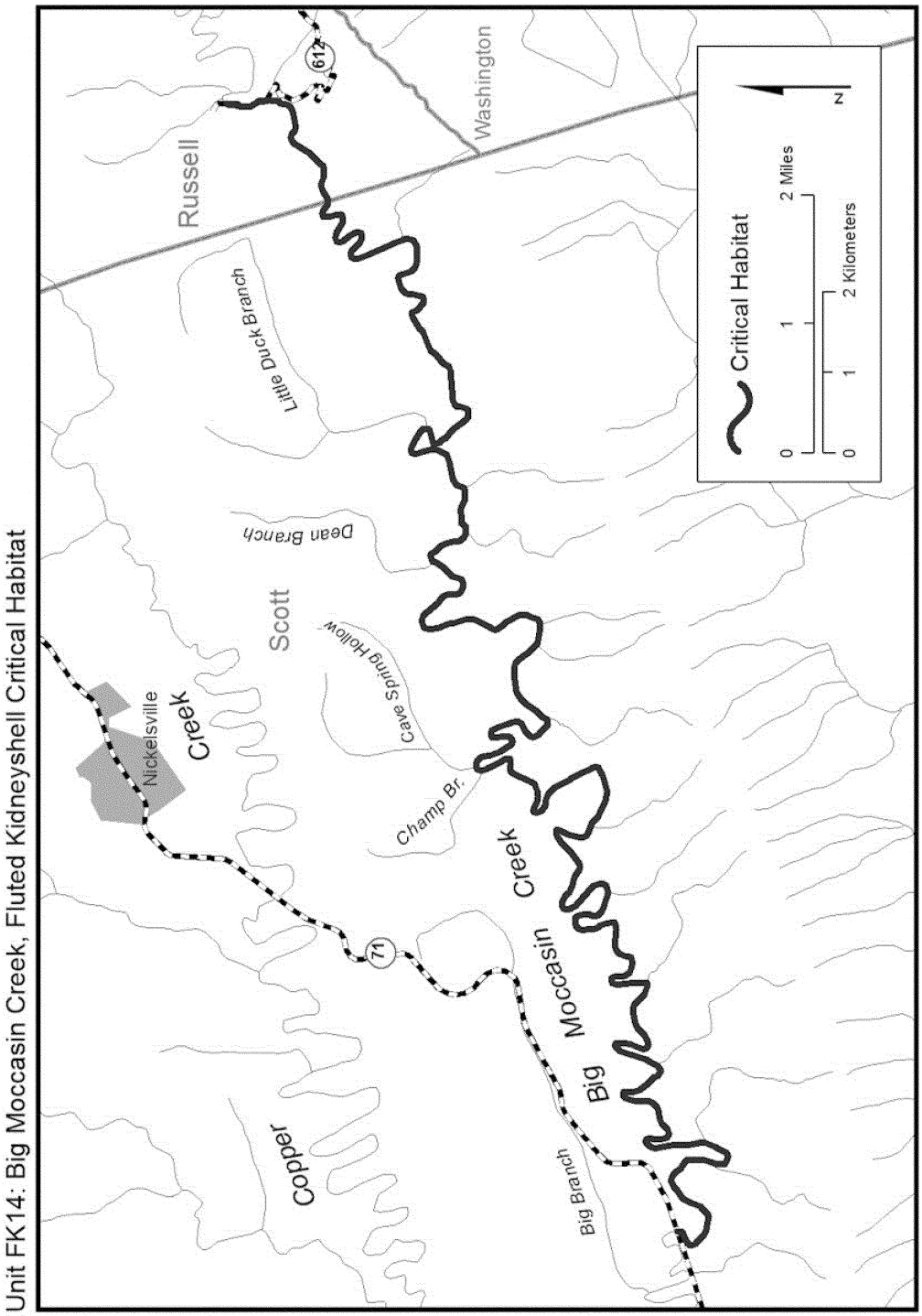
(ii) Map of Unit FK13 follows:



(19) Unit FK14: Big Moccasin Creek, Scott and Russell Counties, Virginia.

(i) The unit includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing (−82.48361, 36.69109) in Scott County, VA, upstream to the Route 612 Bridge crossing (−82.32348, 36.73740) near Collinwood in Russell County, VA.

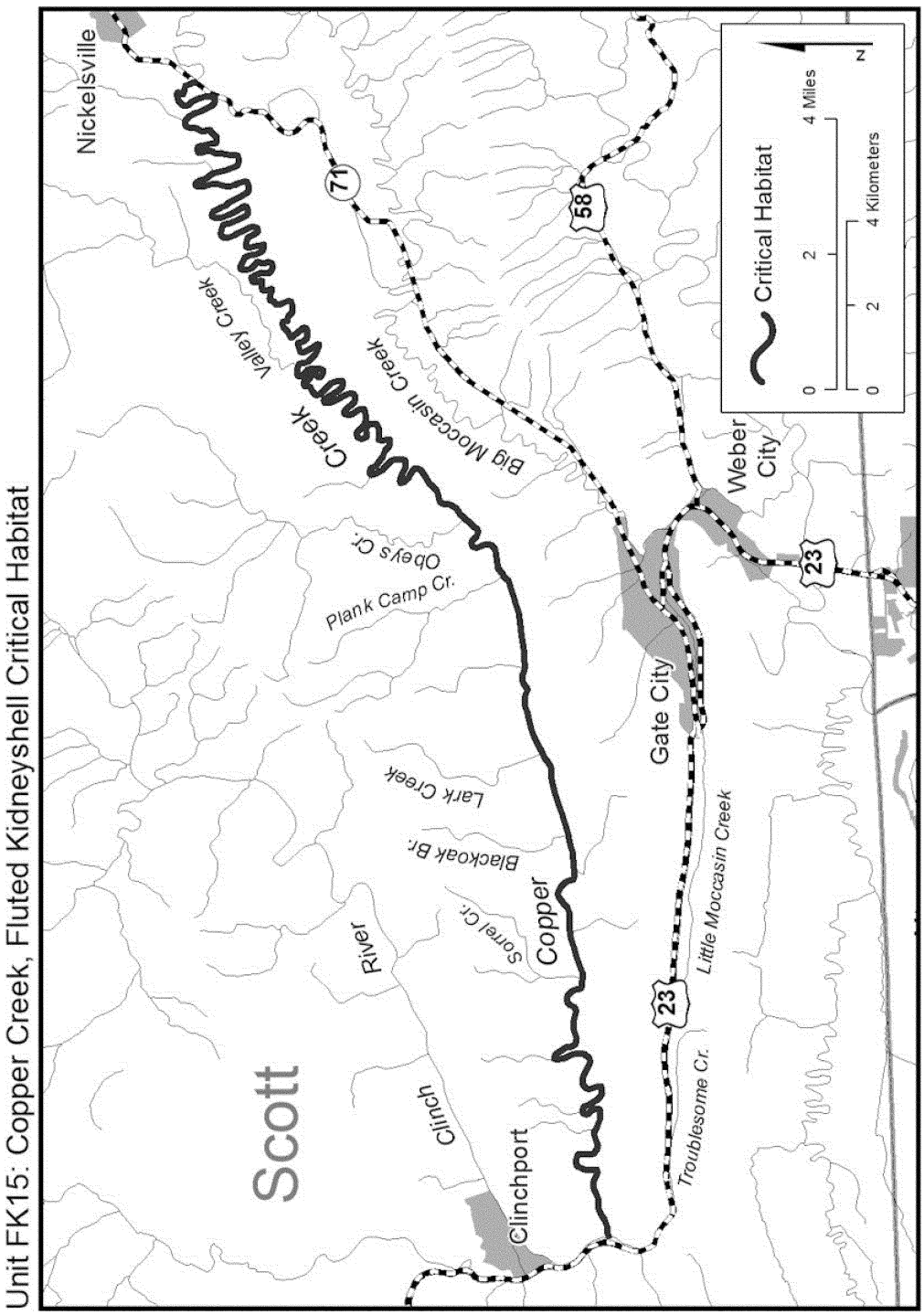
(ii) Map of Unit FK14 follows:



(20) Unit FK15: Copper Creek, Scott County, Virginia.

(i) The unit includes 55.5 rkm (34.5 rmi) of Copper Creek from its confluence with the Clinch River (−82.74538, 36.65544) upstream to the Highway 71 Bridge crossing (−82.43514, 36.73473) in Scott County, VA.

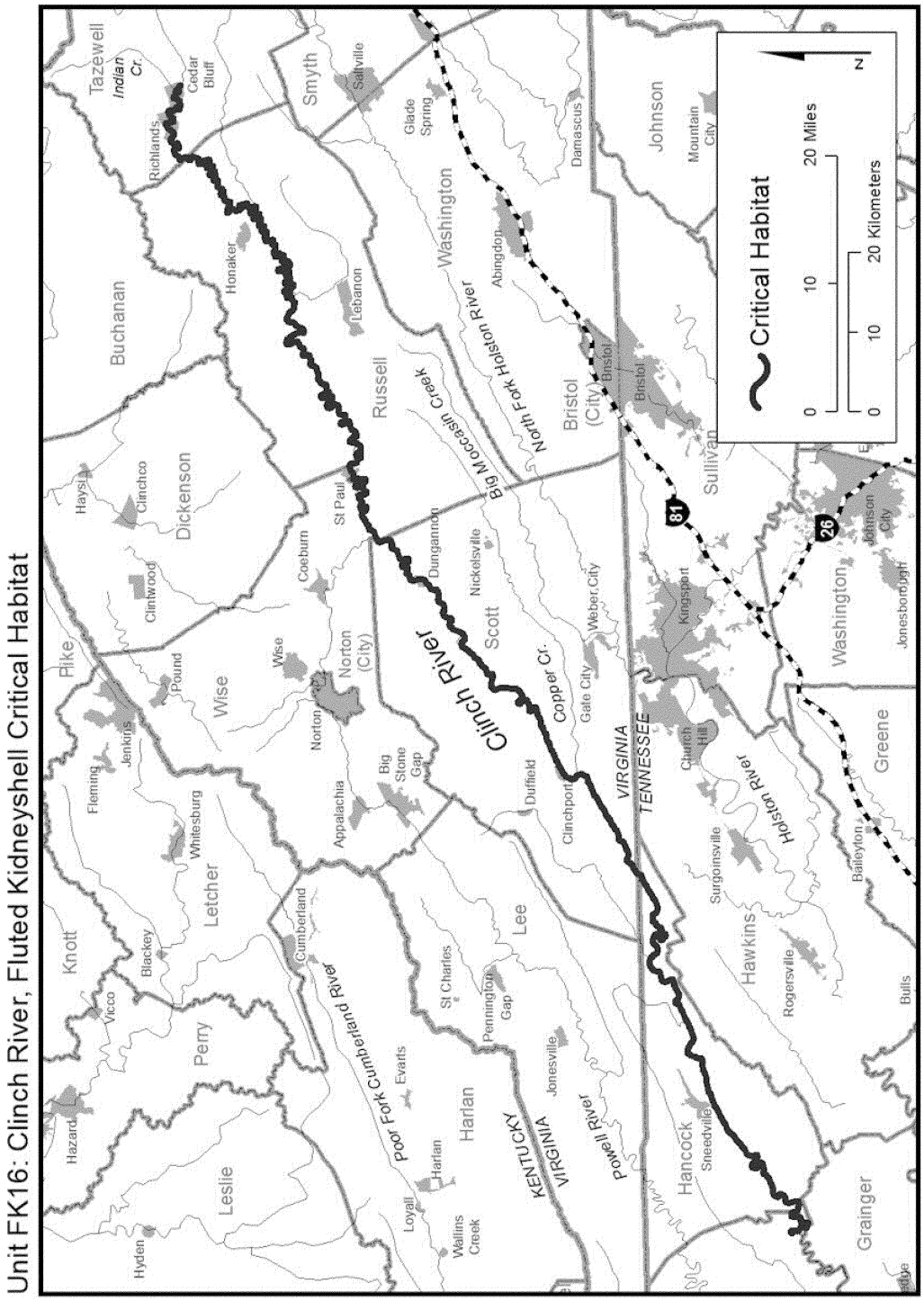
(ii) Map of Unit FK15 follows:



(21) Unit FK16: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia.

(i) The unit includes 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island (−83.40106, 36.43081) in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff (−81.74999, 37.07995), Tazewell County, VA.

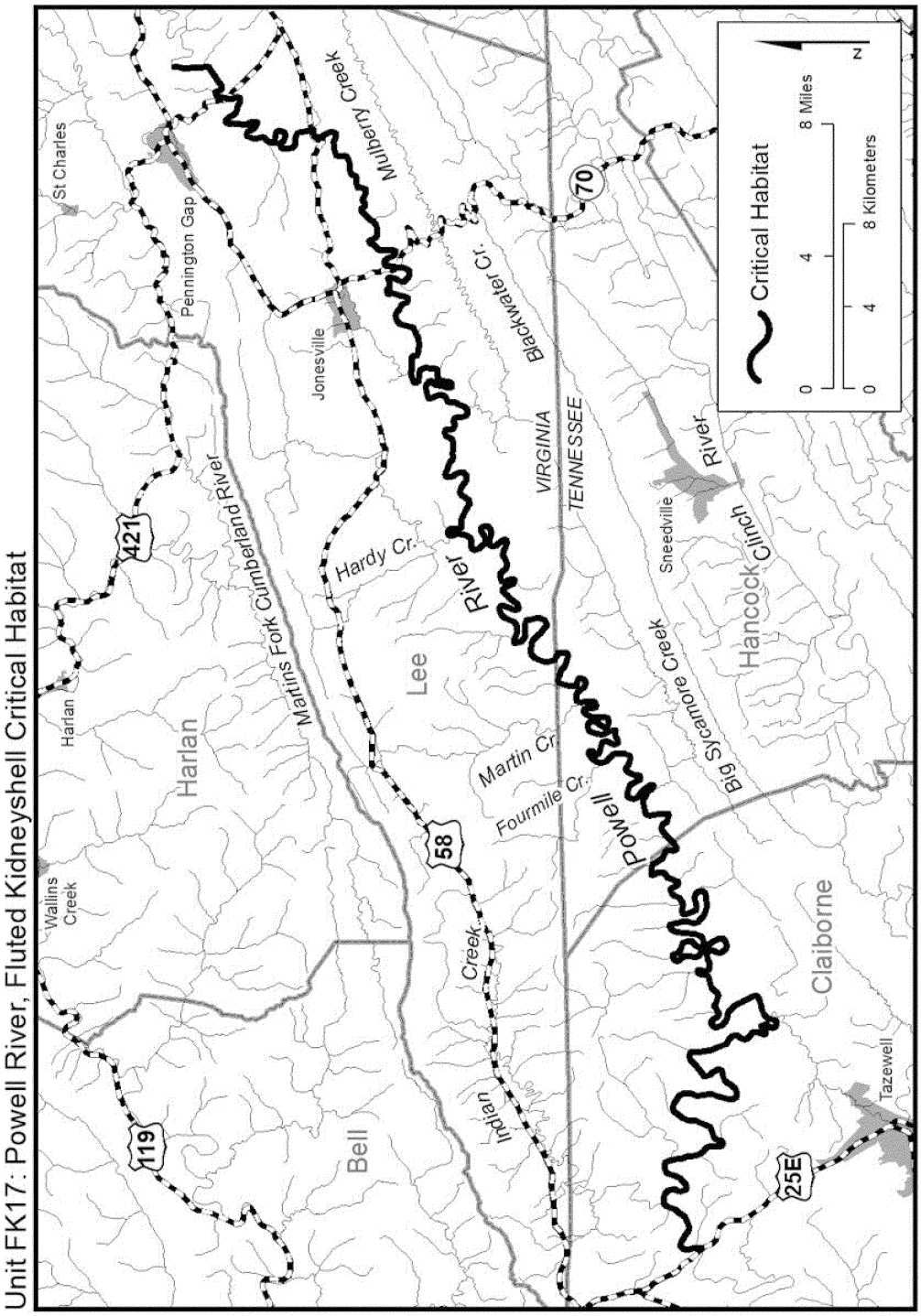
(ii) Map of Unit FK16 follows:



(22) Unit FK17: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia.

(i) The unit includes approximately 153 rkm (95 rmi) of the Powell River from the U.S. 25E Bridge (−83.63102, 36.54143) in Claiborne County, TN, upstream to rkm 256 (rmi 159) (−82.98111, 36.75730, upstream of Rock Island in the vicinity of Pughs) in Lee County, VA.

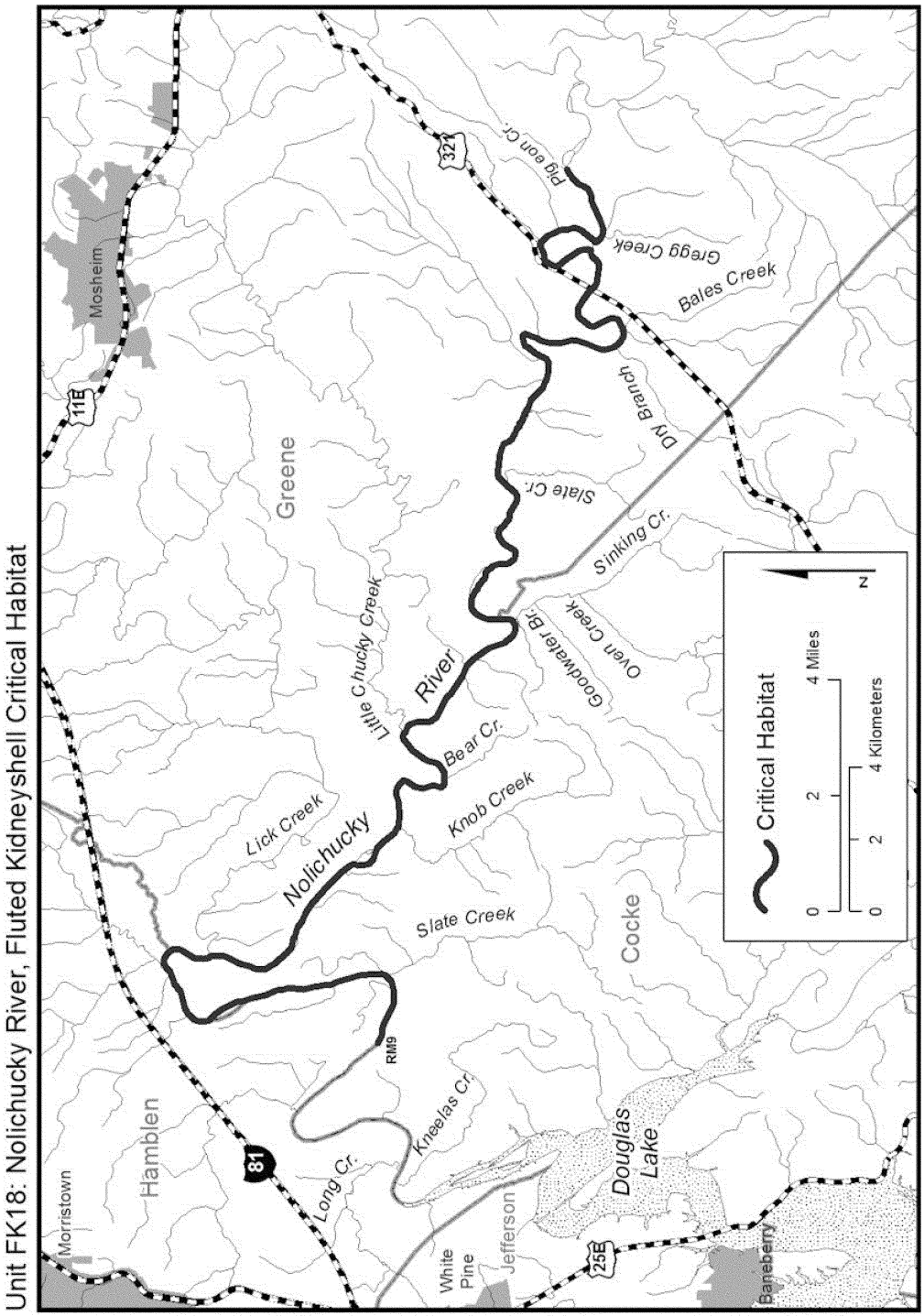
(ii) Map of Unit FK17 follows:



(23) Unit FK18: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee.

(i) The unit includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam (−83.19630, 36.12970), where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing (−82.92926, 36.07545), in Greene County, TN.

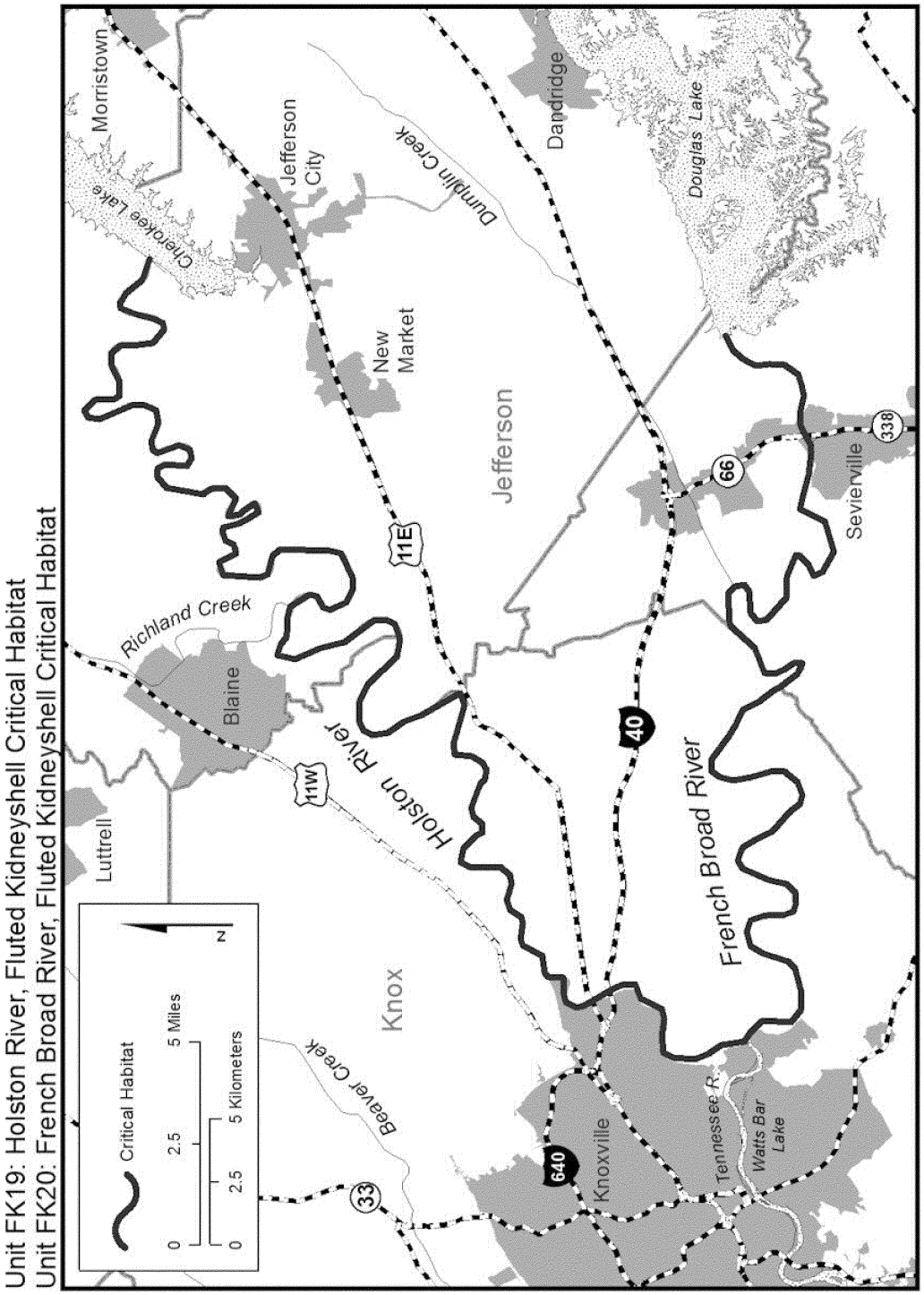
(ii) Map of Unit FK18 follows:



(24) Unit FK19: Holston River, Knox, Grainger, and Jefferson Counties, Tennessee.

(i) The unit includes approximately 85 rkm (53 rmi) of the Holston River from its confluence with the French Broad River (−83.84967, 35.95903) in Knox County, TN, upstream to the base of Cherokee Dam at rkm 83.7 (rmi 52.3) (−83.49855, 36.16666) along the Grainger and Jefferson County, TN, line.

(ii) Map of Units FK19 and FK20 follows:



(25) Unit FK20: French Broad River, Knox and Sevier Counties, Tennessee.

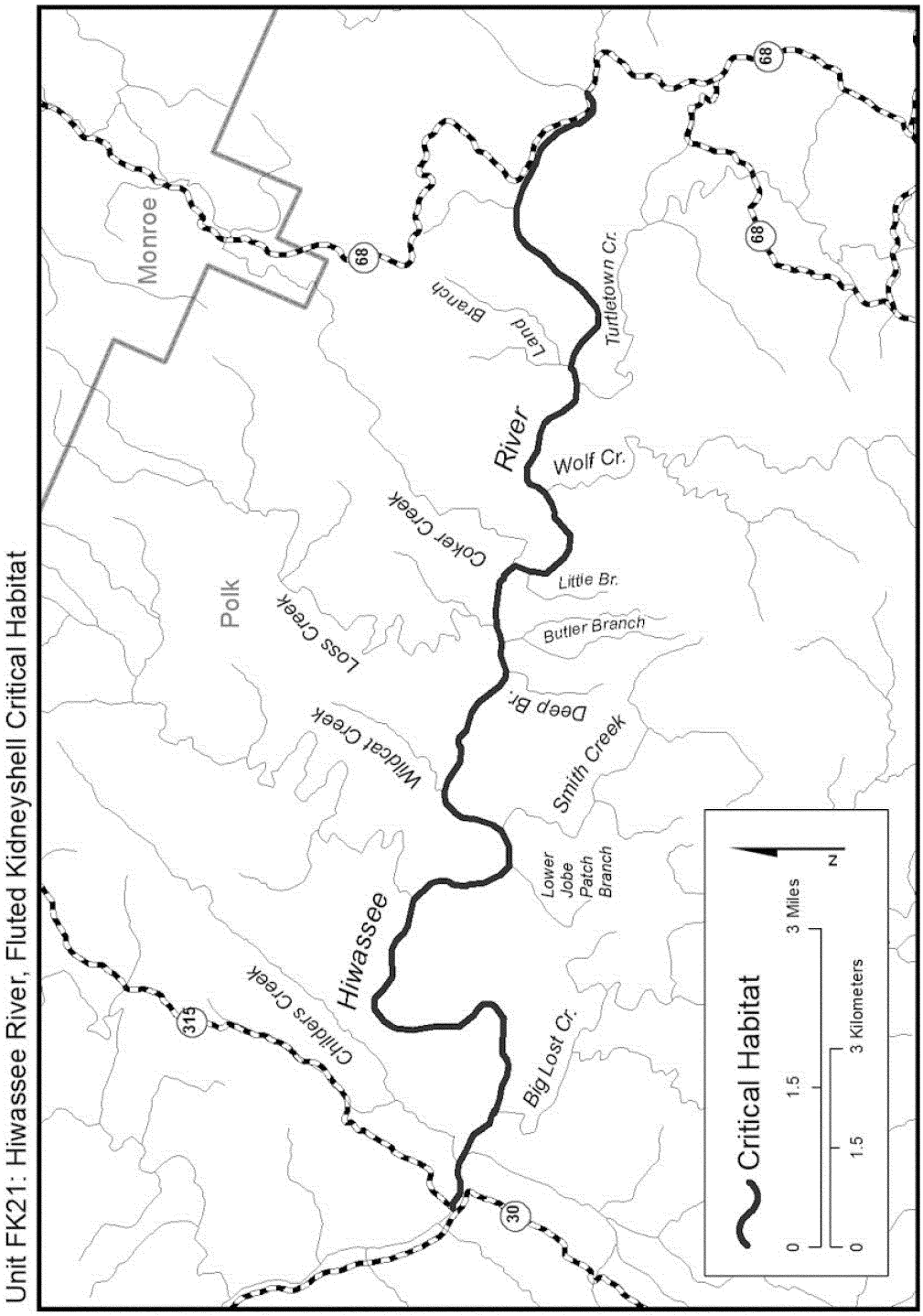
(i) The unit includes approximately 56 rkm (35 rmi) of the French Broad River from its confluence with the Holston River (−83.84967, 35.95903) in Knox County, TN, upstream to the base of Douglas Dam at rkm 51.7 (rmi 32.3) (−83.53821, 35.96073) in Sevier County, TN.

(ii) Map of Units FK19 and FK20 is provided at paragraph (24)(ii) of this entry.

(26) Unit FK21: Hiwassee River, Polk County, Tennessee.

(i) The unit includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing (−84.50234, 35.18875) upstream to the Highway 68 Bridge crossing (−84.31728, 35.16811) in Polk County, TN.

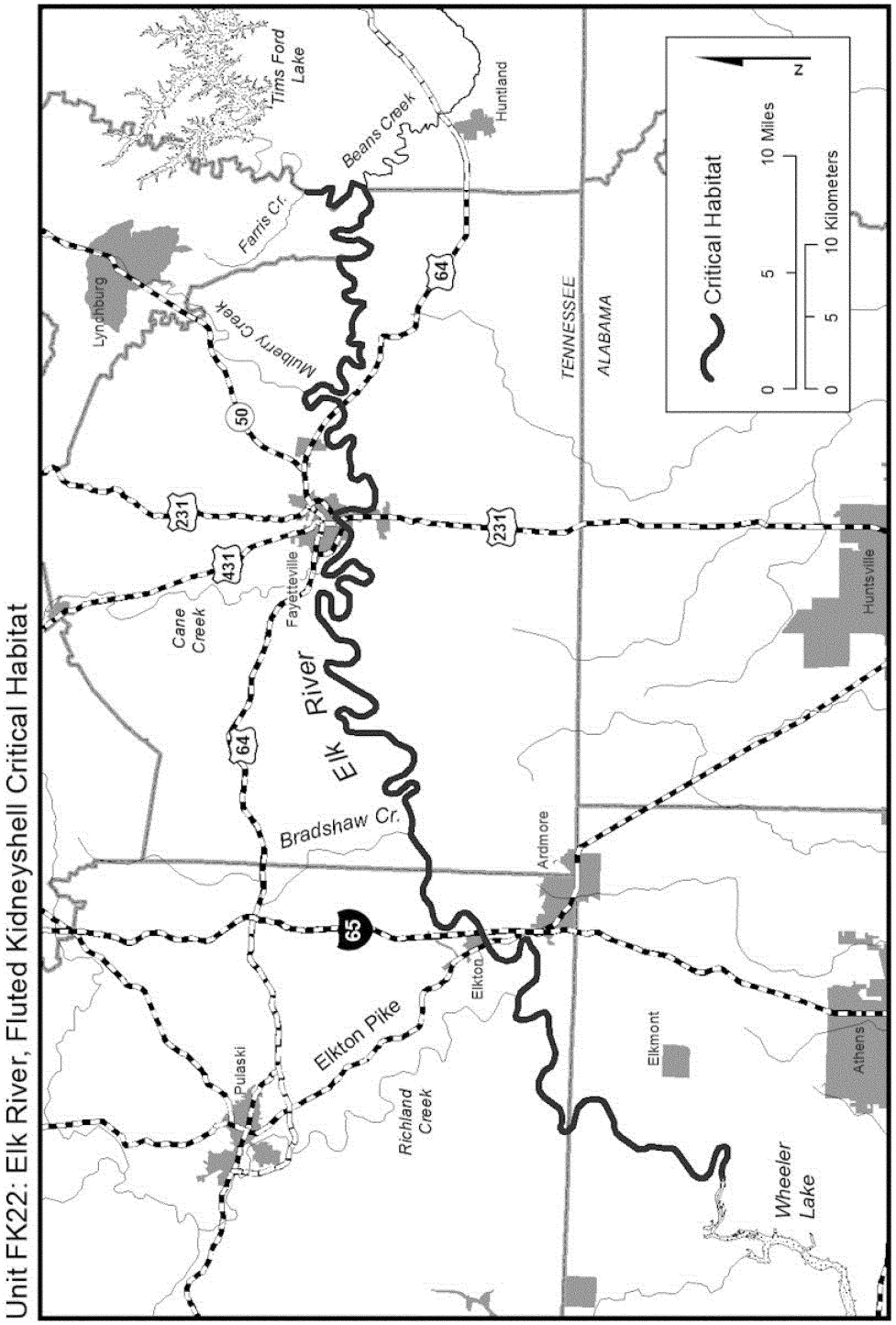
(ii) Map of Unit FK21 follows:



(27) Unit FK22: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee.

(i) The unit includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake (−87.06503, 34.89788) in Limestone County, AL, upstream to its confluence with Farris Creek (−86.31996, 35.16288) at the dividing line between Franklin and Moore Counties, TN.

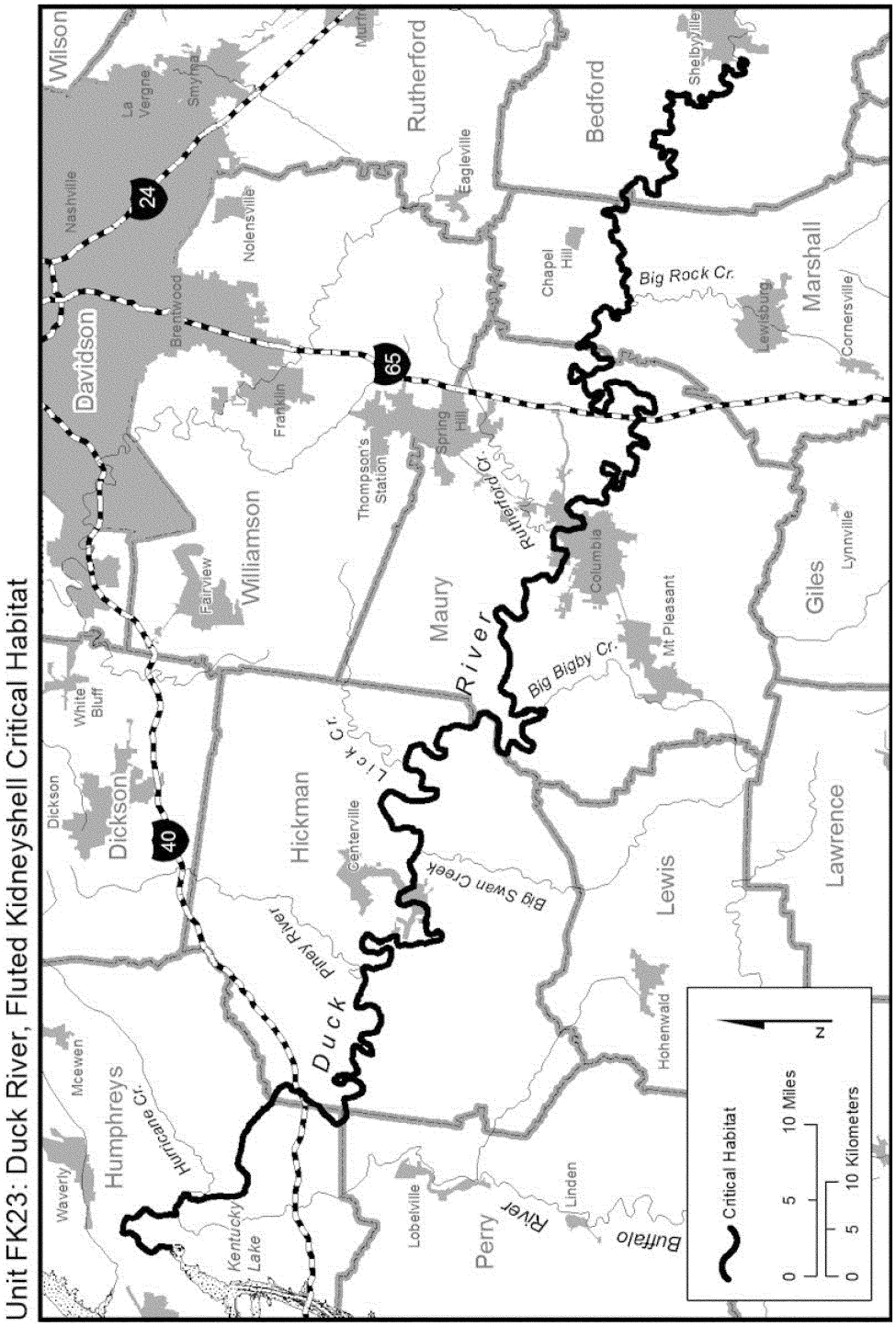
(ii) Map of Unit FK22 follows:



(28) Unit FK23: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee.

(i) The unit includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake (−87.88011, 36.00244) in Humphreys County, TN, upstream to its confluence with Flat Creek (−86.48778, 35.47209) near Shelbyville in Bedford County, TN.

(ii) Map of Unit FK23 follows:

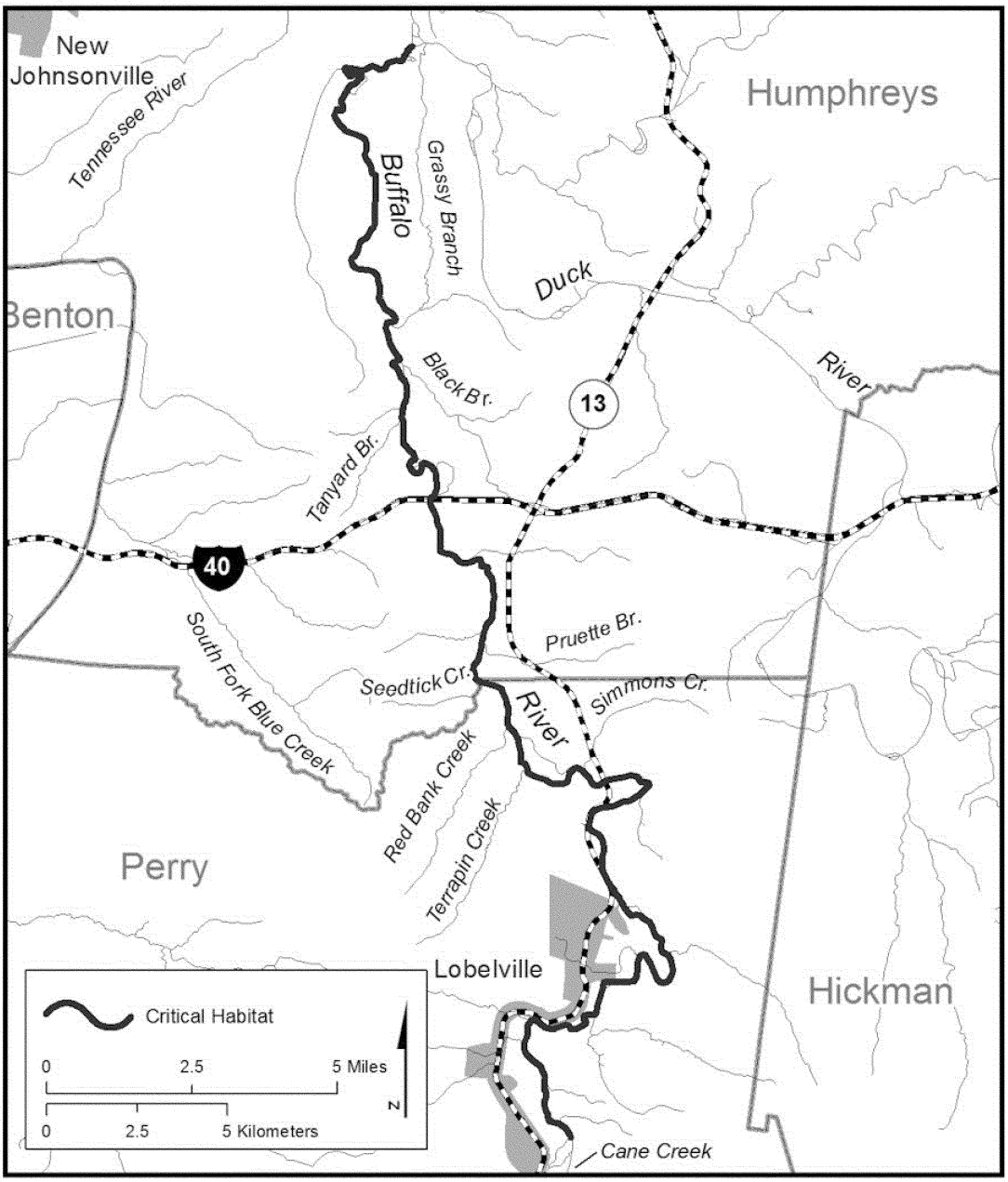


(29) Unit FK24: Buffalo River, Humphreys and Perry Counties, Tennessee.

(i) The unit includes 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River (−87.84261, 35.99477) in Humphreys County, TN, upstream to its confluence with Cane Creek (−87.78718, 35.72298) in Perry County, TN.

(ii) Map of Unit FK24 follows:

Unit FK24: Buffalo River, Fluted Kidneyshell Critical Habitat



Slabside Pearlymussel (*Pleuronaia dolabelloides*)

(1) Critical habitat units are depicted on the maps below for Colbert, Jackson, Limestone, Madison, and Marshall Counties, Alabama; Tishomingo County, Mississippi; Bedford, Bledsoe, Claiborne, Cocke, Franklin, Giles, Greene, Hamblen, Hancock, Hickman, Humphreys, Lincoln, Marion, Marshall, Maury, Moore, Perry, Polk, and Sequatchie Counties, Tennessee; and Bland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wythe Counties, Virginia.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of slabside pearlymussel consist of five components:

(i) Riffle habitats within large, geomorphically stable stream channels (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) Stable substrates of sand, gravel, and cobble with low to moderate amounts of fine sediment and containing flow refugia with low shear stress.

(iii) A natural hydrologic flow regime (magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found, and connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for habitat maintenance, food availability for all life stages, and spawning habitat for native fishes.

(iv) Water quality with low levels of pollutants and including a natural

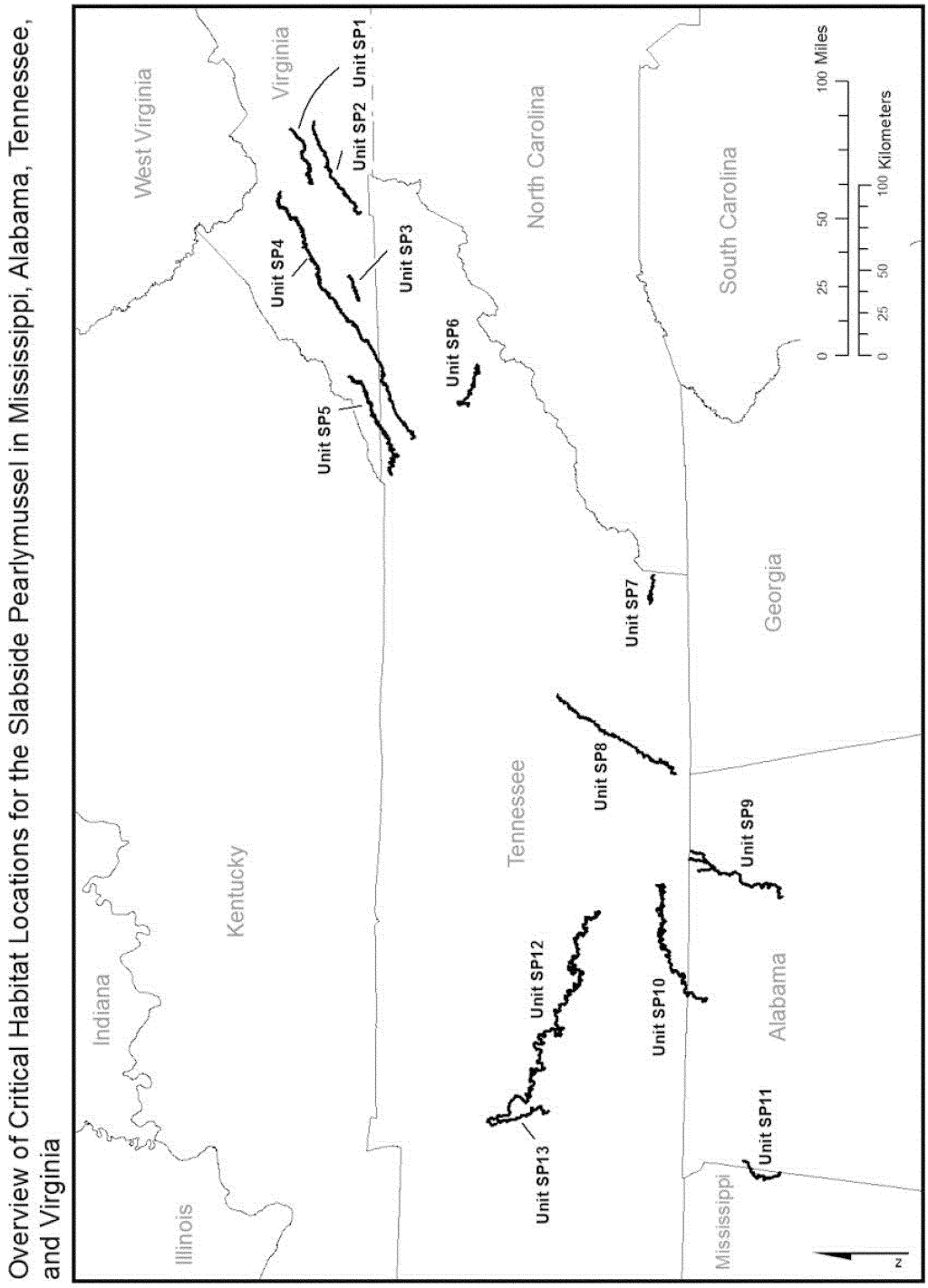
temperature regime, pH (between 6.0 to 8.5), oxygen content (not less than 5.0 milligrams/liter), hardness, and turbidity necessary for normal behavior, growth, and viability of all life stages.

(v) The presence of abundant fish hosts necessary for recruitment of the slabside pearlymussel.

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

(4) *Critical habitat map units.* Data layers defining map units were created with USGS National Hydrography Dataset (NHD+) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRIs ArcGIS 10.0 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units was USA Contiguous Albers Equal Area Conic USGS version, NAD 83, meters. The following data sources were referenced to identify features (like roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD+ flowline and waterbody data, 2011 Navteq roads data, USA Topo ESRI online basemap service, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office Internet site (*http://www.fws.gov/cookeville), http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0004, and at the Service's Tennessee Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

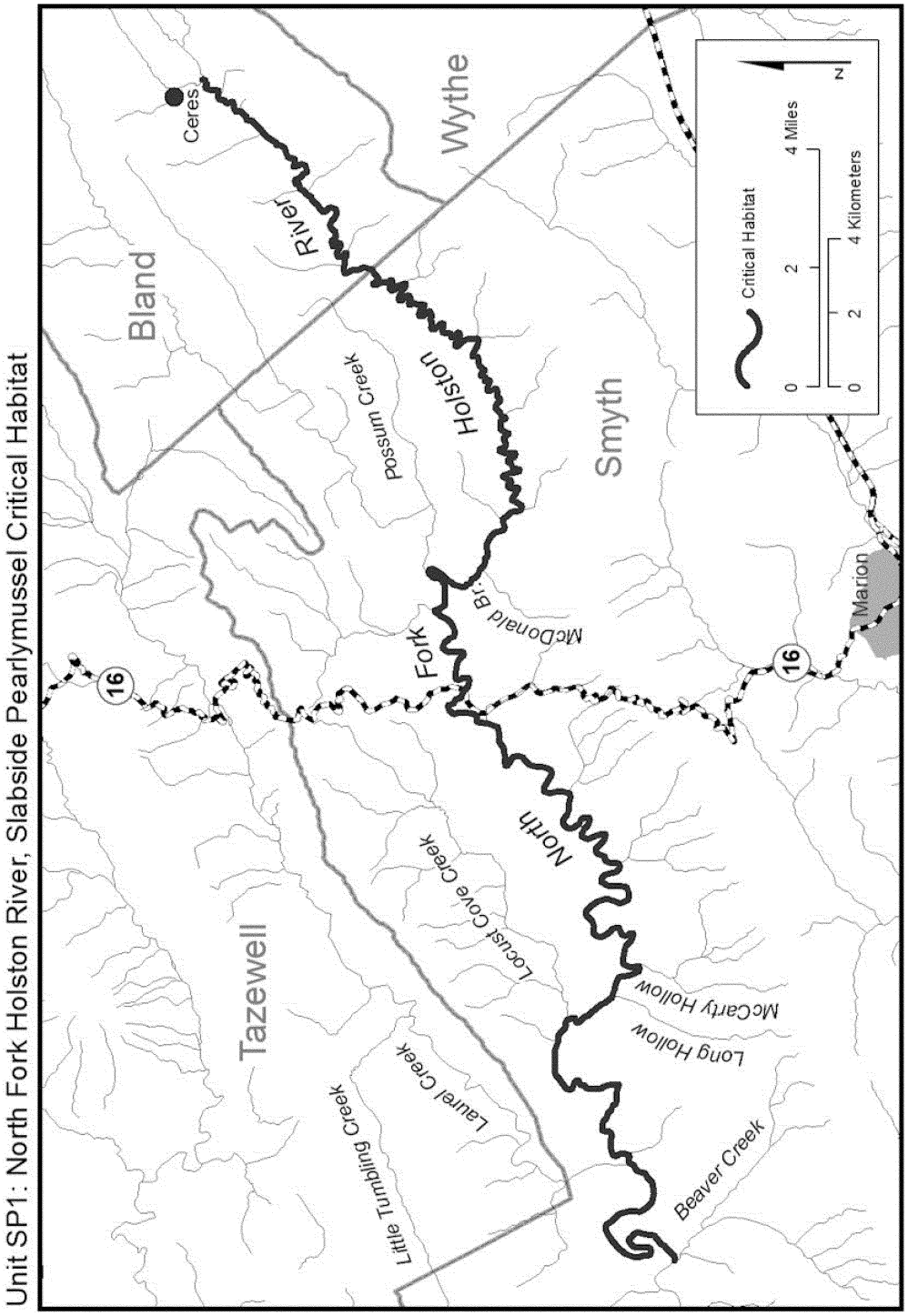
(5) An overview of critical habitat locations for the slabside pearlymussel in Mississippi, Alabama, Tennessee, and Virginia follows:



(6) Unit SP1: North Fork Holston River, Smyth and Bland Counties, Virginia.

(i) The unit includes approximately 67 river kilometers (rkm) (42 river miles (rmi)) of the North Fork Holston River from its confluence with Beaver Creek (−81.70277, 36.90825), upstream of Saltville, in Smyth County, VA, upstream to Ceres (−81.33775, 37.01035), Bland County, VA.

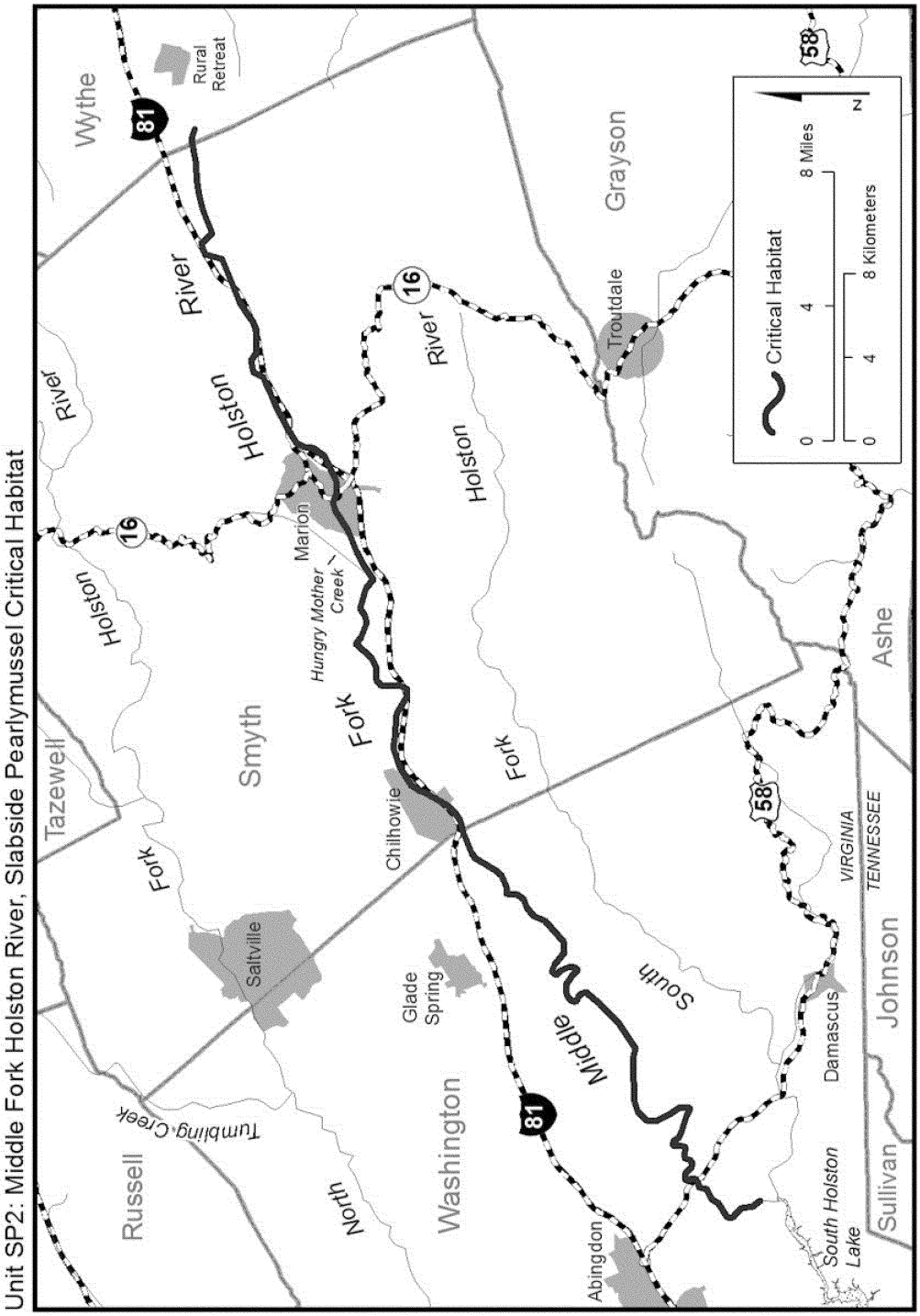
(ii) Map of Unit SP1 follows:



(7) Unit SP2: Middle Fork Holston River, Washington, Smyth, and Wythe Counties, Virginia.

(i) The unit includes approximately 89 rkm (55 rmi) of the Middle Fork Holston River from its inundation at South Holston Lake (−81.90427, 36.66338) in Washington County, VA, upstream to its headwaters (−81.31345, 36.88666) in Wythe County, VA.

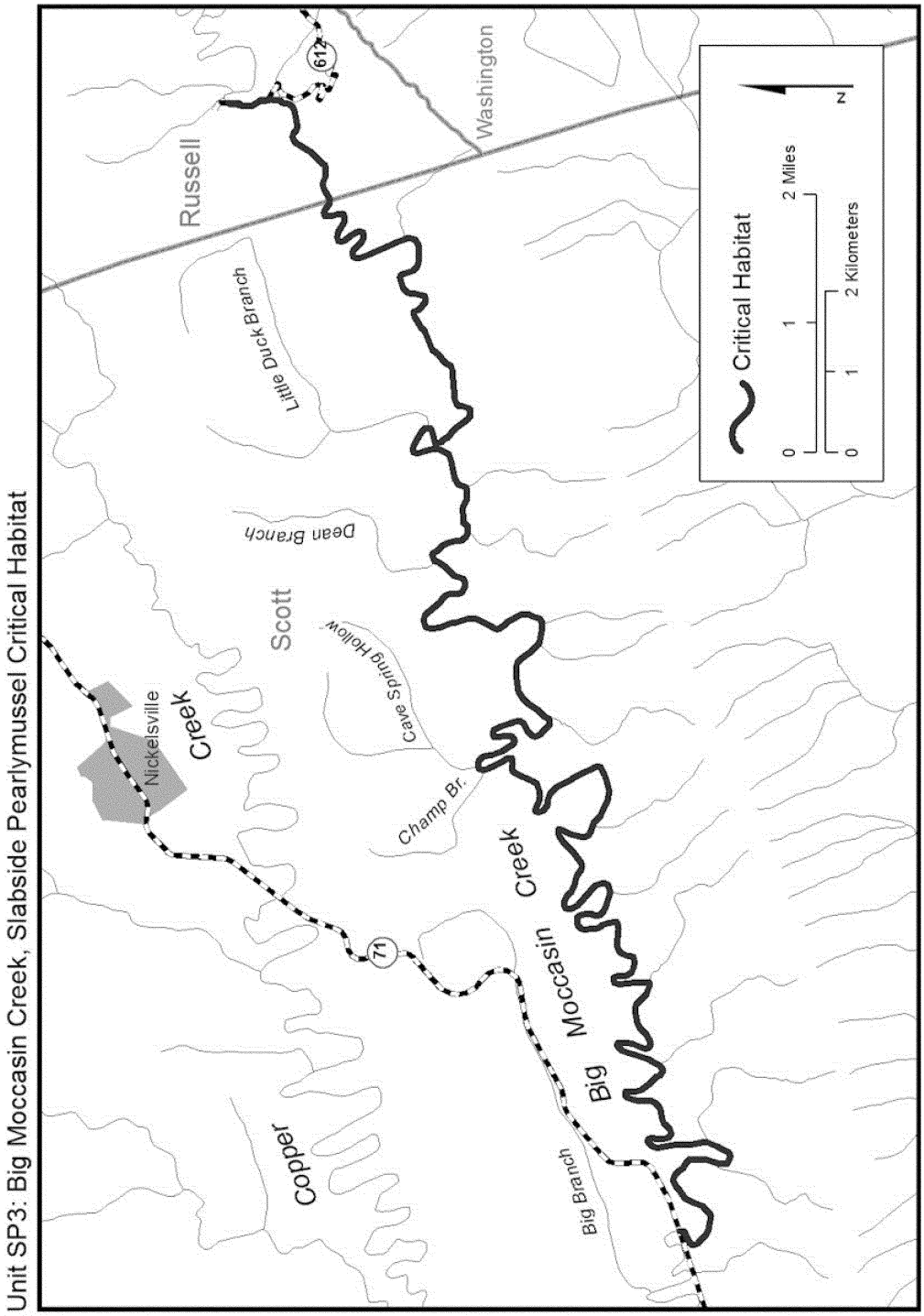
(ii) Map of Unit SP2 follows:



(8) Unit SP3: Big Moccasin Creek, Scott and Russell Counties, Virginia.

(i) The unit includes approximately 33 rkm (21 rmi) of Big Moccasin Creek from the Highway 71 Bridge crossing (−82.48361, 36.69109) in Scott County, VA, upstream to the Route 612 Bridge crossing (−82.32348, 36.73740) near Collinwood in Russell County, VA.

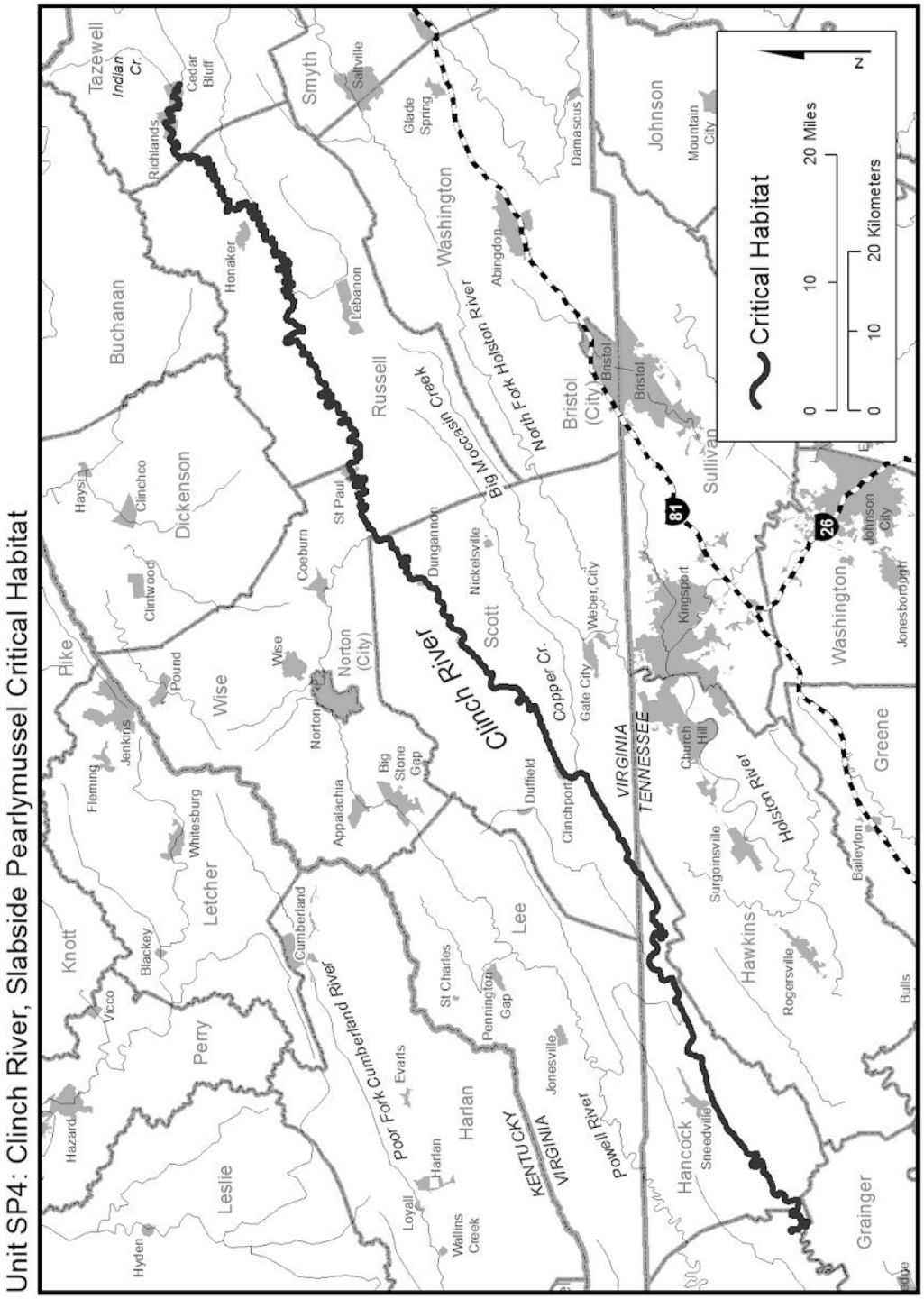
(ii) Map of Unit SP3 follows:



(9) Unit SP4: Clinch River, Hancock County, Tennessee, and Scott, Russell, and Tazewell Counties, Virginia.

(i) The unit includes 263 rkm (163 rmi) of the Clinch River from rkm 255 (rmi 159) immediately below Grissom Island (−83.40106, 36.43081) in Hancock County, TN, upstream to its confluence with Indian Creek near Cedar Bluff (−81.74999, 37.07995), Tazewell County, VA.

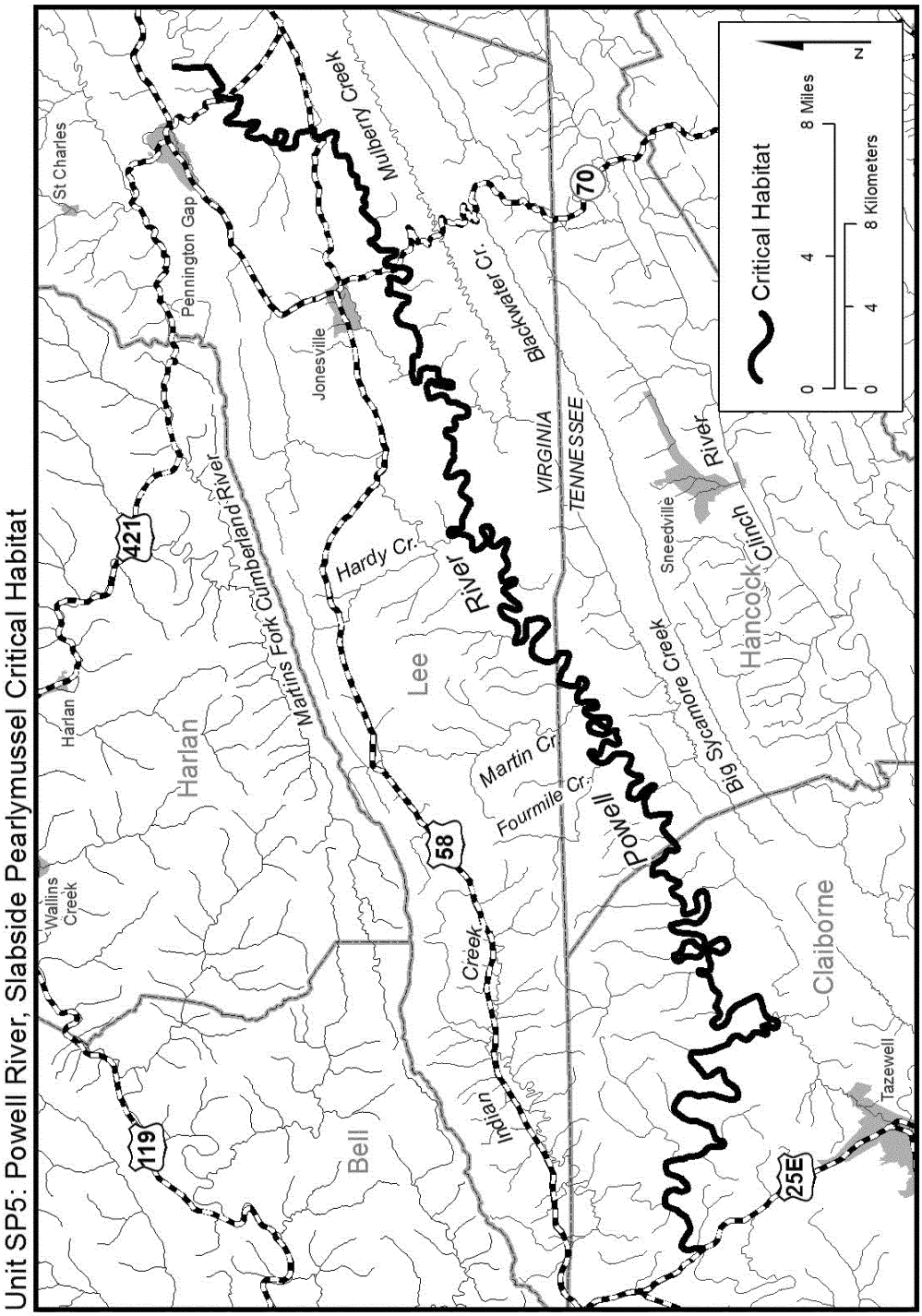
(ii) Map of Unit SP4 follows:



(10) Unit SP5: Powell River, Claiborne and Hancock Counties, Tennessee, and Lee County, Virginia.

(i) The unit includes approximately 153 rkm (95 rmi) of the Powell River from the U.S. 25E Bridge (−83.63102, 36.54143) in Claiborne County, TN, upstream to rkm 256 (rmi 159) (−82.98111, 36.75730, upstream of Rock Island in the vicinity of Pughs) in Lee County, VA.

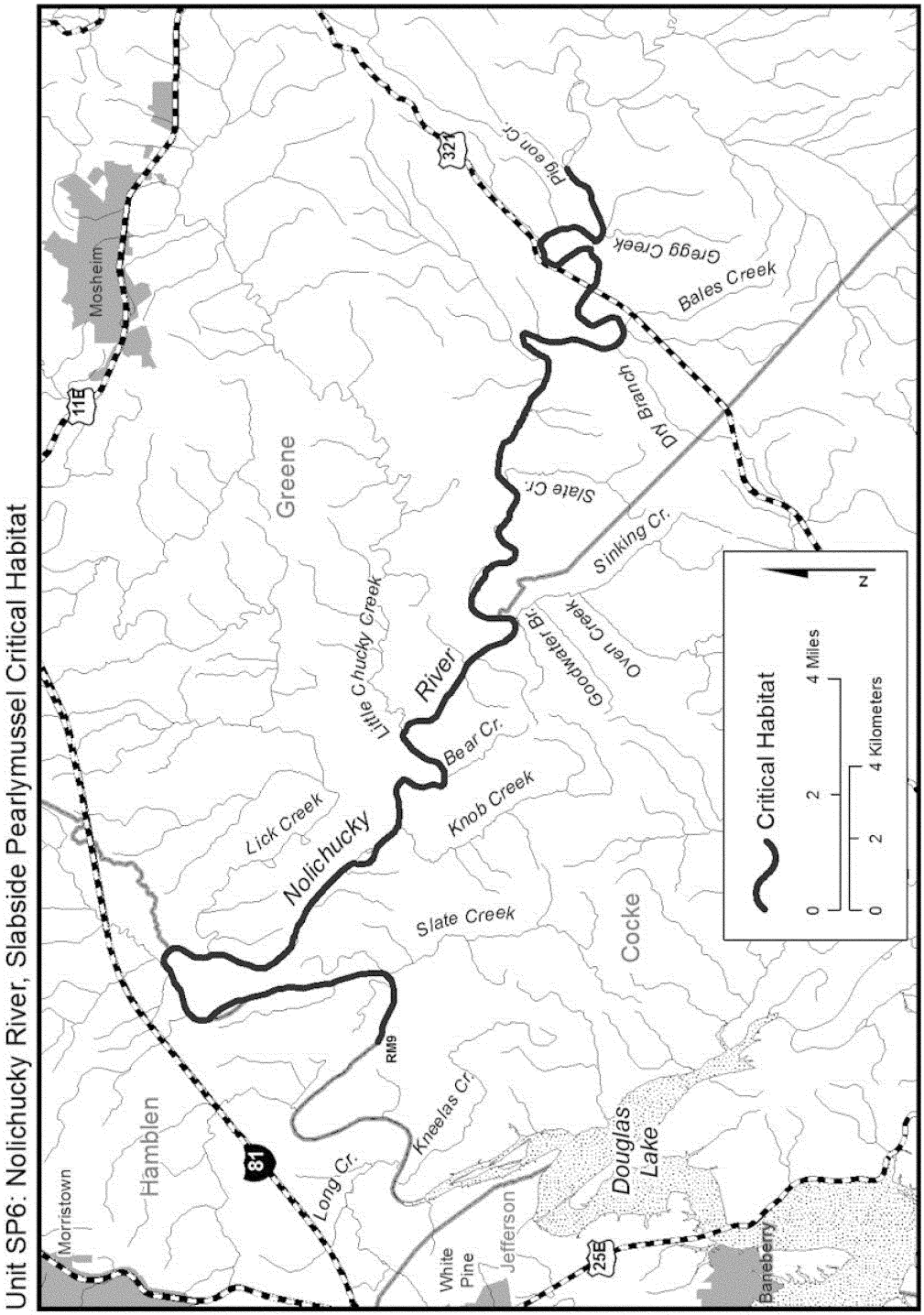
(ii) Map of Unit SP5 follows:



(11) Unit SP6: Nolichucky River, Cocke, Hamblen, and Greene Counties, Tennessee.

(i) The unit includes approximately 52 rkm (32 rmi) of the Nolichucky River from rkm 14 (rmi 9), approximately 0.6 rkm (0.4 rmi) upstream of Enka Dam (−83.19630, 36.12970), where it divides Hamblen and Cocke Counties, TN, upstream to its confluence with Pigeon Creek, just upstream of the Highway 321 Bridge crossing (−82.92926, 36.07545), in Greene County, TN.

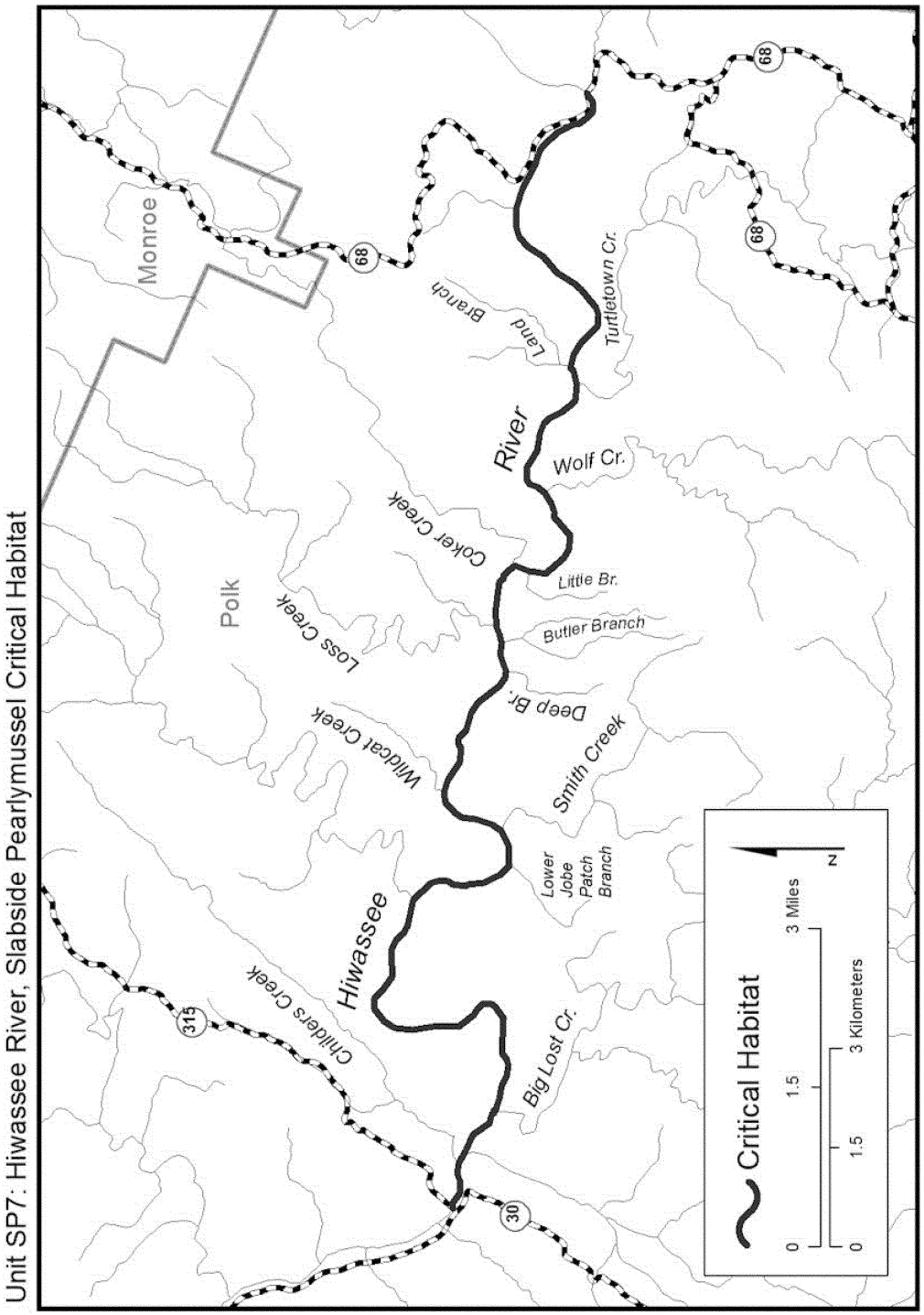
(ii) Map of Unit SP6 follows:



(12) Unit SP7: Hiwassee River, Polk County, Tennessee.

(i) The unit includes approximately 24 rkm (15 rmi) of the Hiwassee River from the Highway 315 Bridge crossing (−84.50234, 35.18875) upstream to the Highway 68 Bridge crossing (−84.31728, 35.16811) in Polk County, TN.

(ii) Map of Unit SP7 follows:

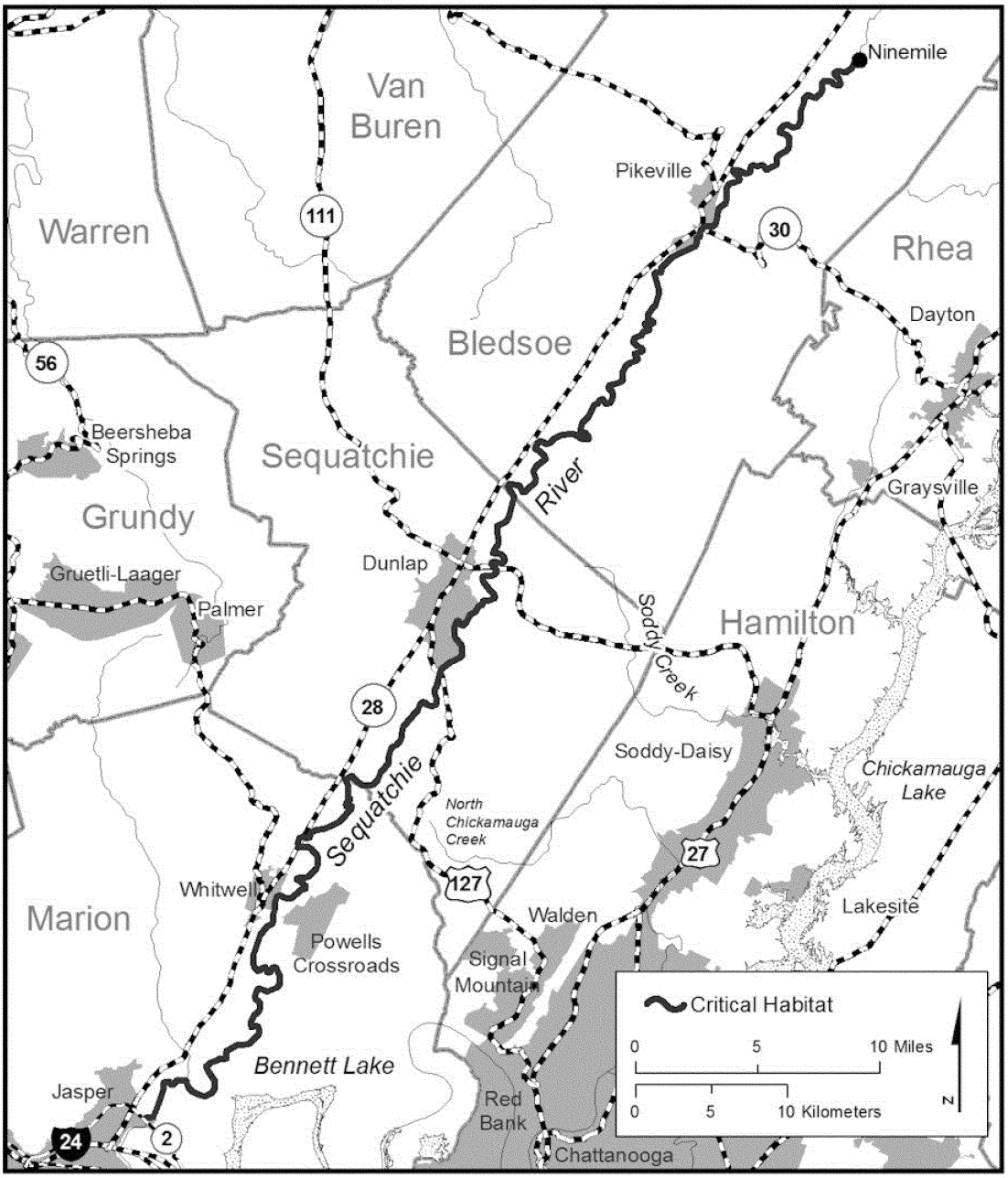


(13) Unit SP8: Sequatchie River, Marion, Sequatchie, and Bledsoe Counties, Tennessee.

(i) The unit includes approximately 151 rkm (94 rmi) of the Sequatchie River from the Highway 41, 64, 72, 2 Bridge crossing (−85.60583, 35.06576) in Marion County, TN, upstream to the Ninemile Cross Road Bridge crossing (−85.08304, 35.69162) in Bledsoe County, TN.

(ii) Map of Unit SP8 follows:

Unit SP8: Sequatchie River, Slabside Pearlymussel Critical Habitat

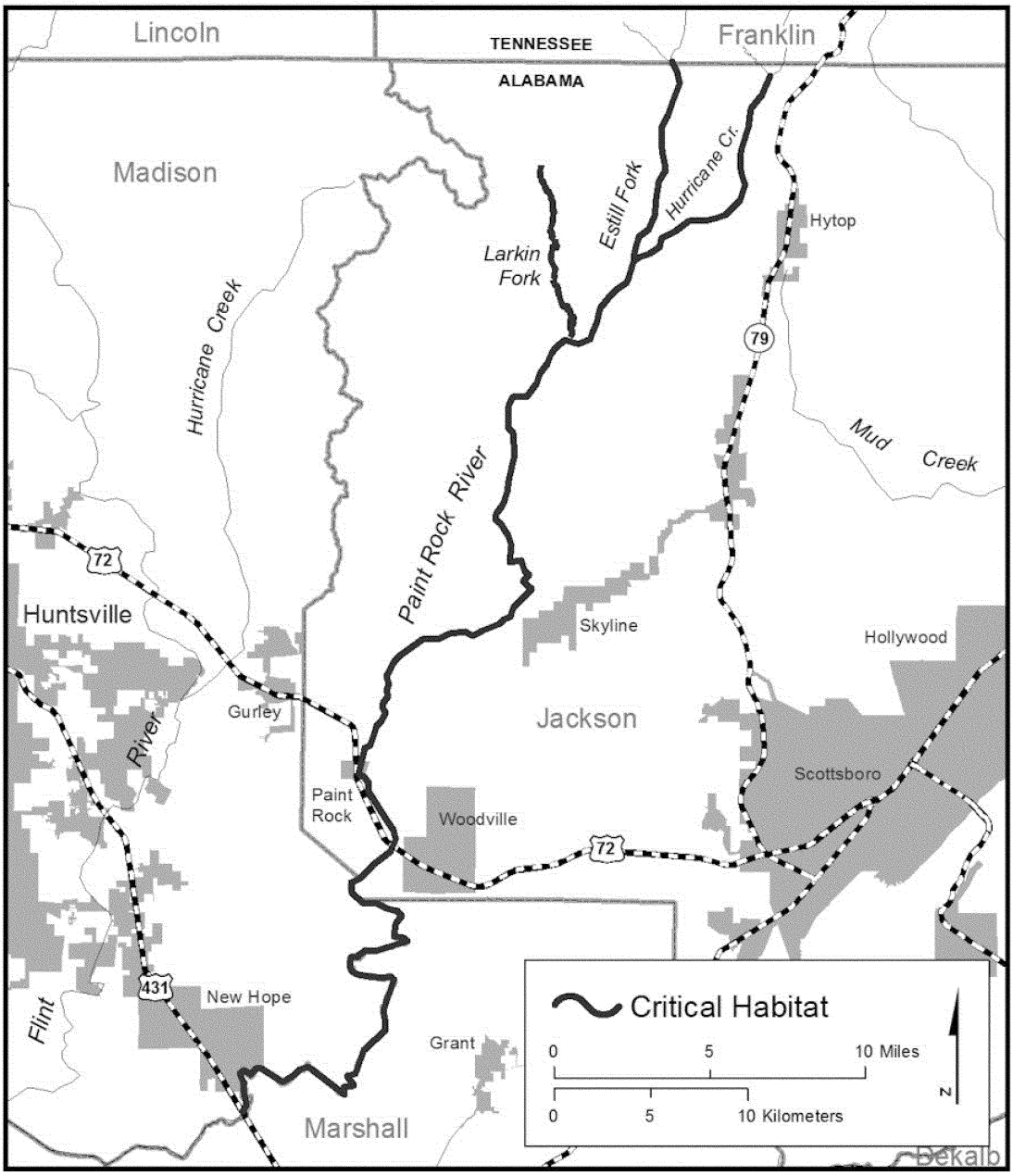


(14) Unit SP9: Paint Rock River, Madison, Marshall, and Jackson Counties, Alabama.

(i) The unit includes approximately 86 rkm (53 rmi) of the Paint Rock River from the Highway 431 Bridge crossing (−86.39109, 34.49926) along the Madison and Marshall County line, AL, upstream to Estill Fork (−86.17048, 34.89811); approximately 11 rkm (7 rmi) of Larkin Fork from its confluence with the Paint Rock River (−86.20833, 34.86218) upstream to its confluence with Bear Creek (−86.22512, 34.94205) in Jackson County, AL. This unit also includes approximately 13 rkm (8 rmi) of Estill Fork from its confluence with the Paint Rock River (−86.17048, 34.89813) upstream to its confluence with Bull Run (−86.15283, 34.99118) in Jackson County, AL. This unit also includes approximately 16 rkm (10 rmi) of Hurricane Creek from its confluence with the Paint Rock River (−86.17048, 34.89813) upstream to its confluence with Turkey Creek (−86.09441, 34.98370) in Jackson County, AL.

(ii) Map of Unit SP9 follows:

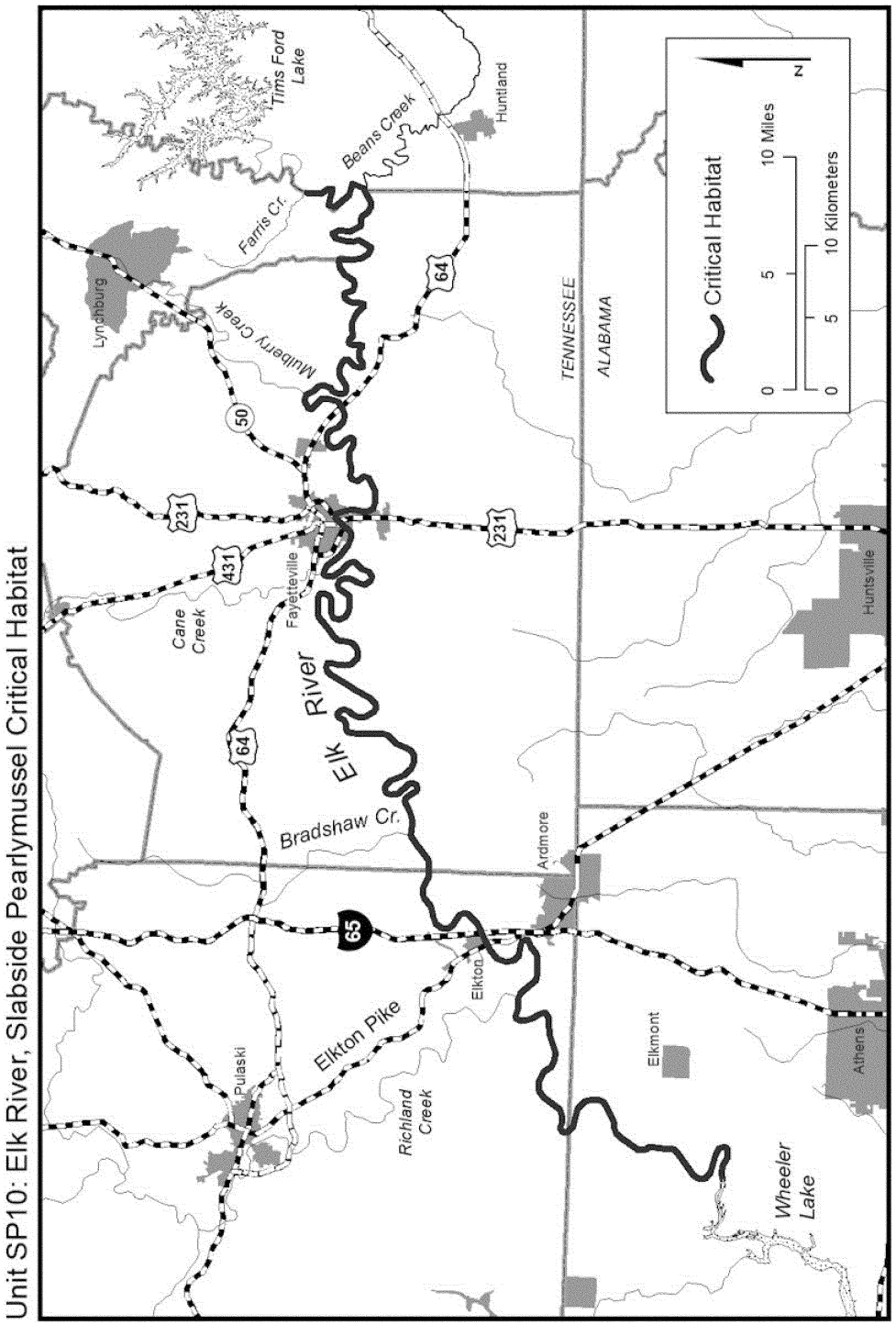
Unit SP9: Paint Rock River, Slabside Pearlymussel Critical Habitat



(15) Unit SP10: Elk River, Limestone County, Alabama, and Giles, Lincoln, Franklin, and Moore Counties, Tennessee.

(i) The unit includes approximately 164 rkm (102 rmi) of the Elk River from its inundation at Wheeler Lake (−87.06503, 34.89788) in Limestone County, AL, upstream to its confluence with Farris Creek (−86.31996, 35.16288) at the dividing line between Franklin and Moore Counties, TN.

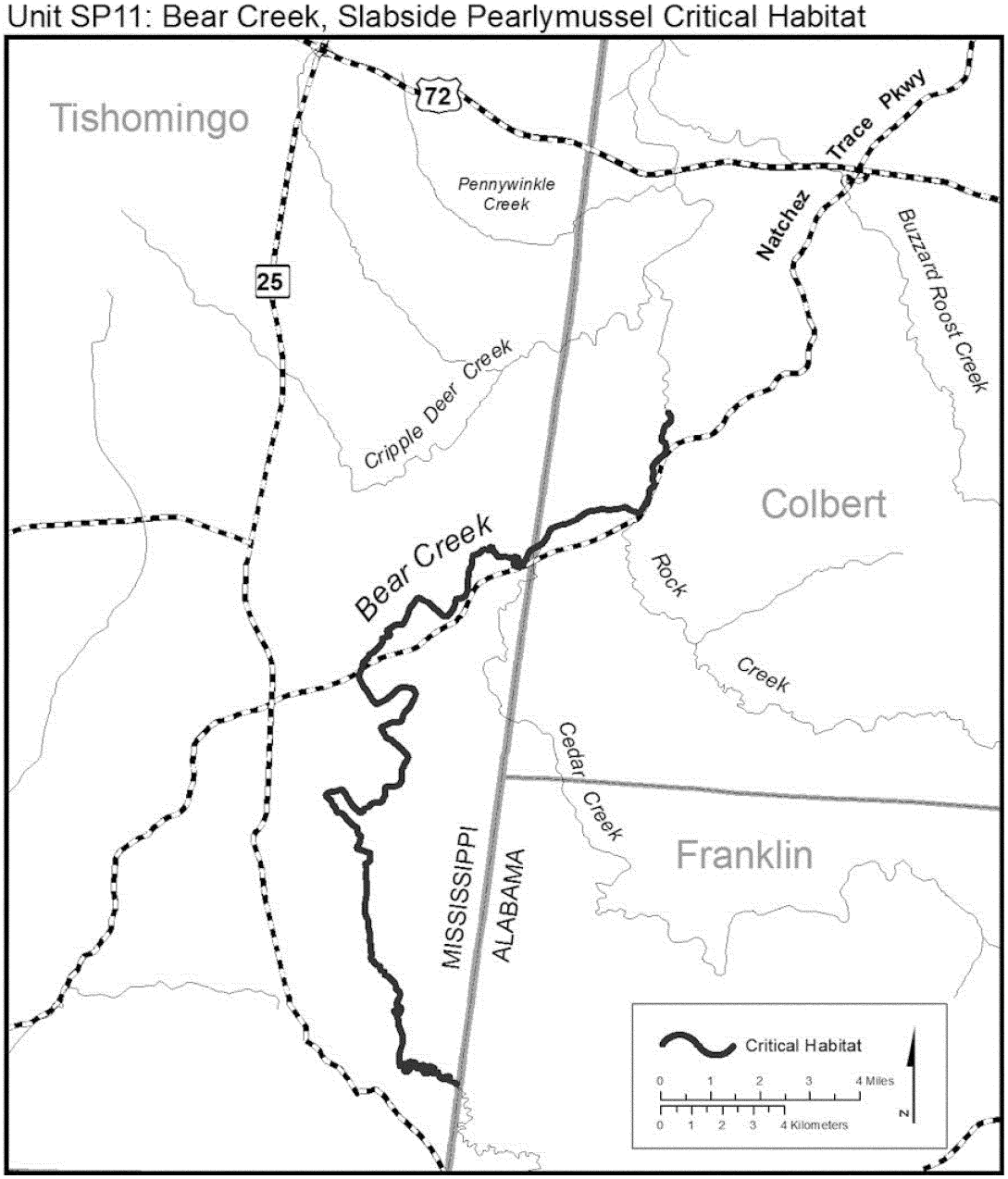
(ii) Map of Unit SP10 follows:



(16) Unit SP11: Bear Creek, Colbert County, Alabama, and Tishomingo County, Mississippi.

(i) The unit includes approximately 42 rkm (26 rmi) of Bear Creek from its inundation at Pickwick Lake at rkm 37 (rmi 23) (−88.08373, 34.68909) in Colbert County, AL, upstream through Tishomingo County, MS, and ending at the Mississippi-Alabama State line (−88.15388, 34. 49139).

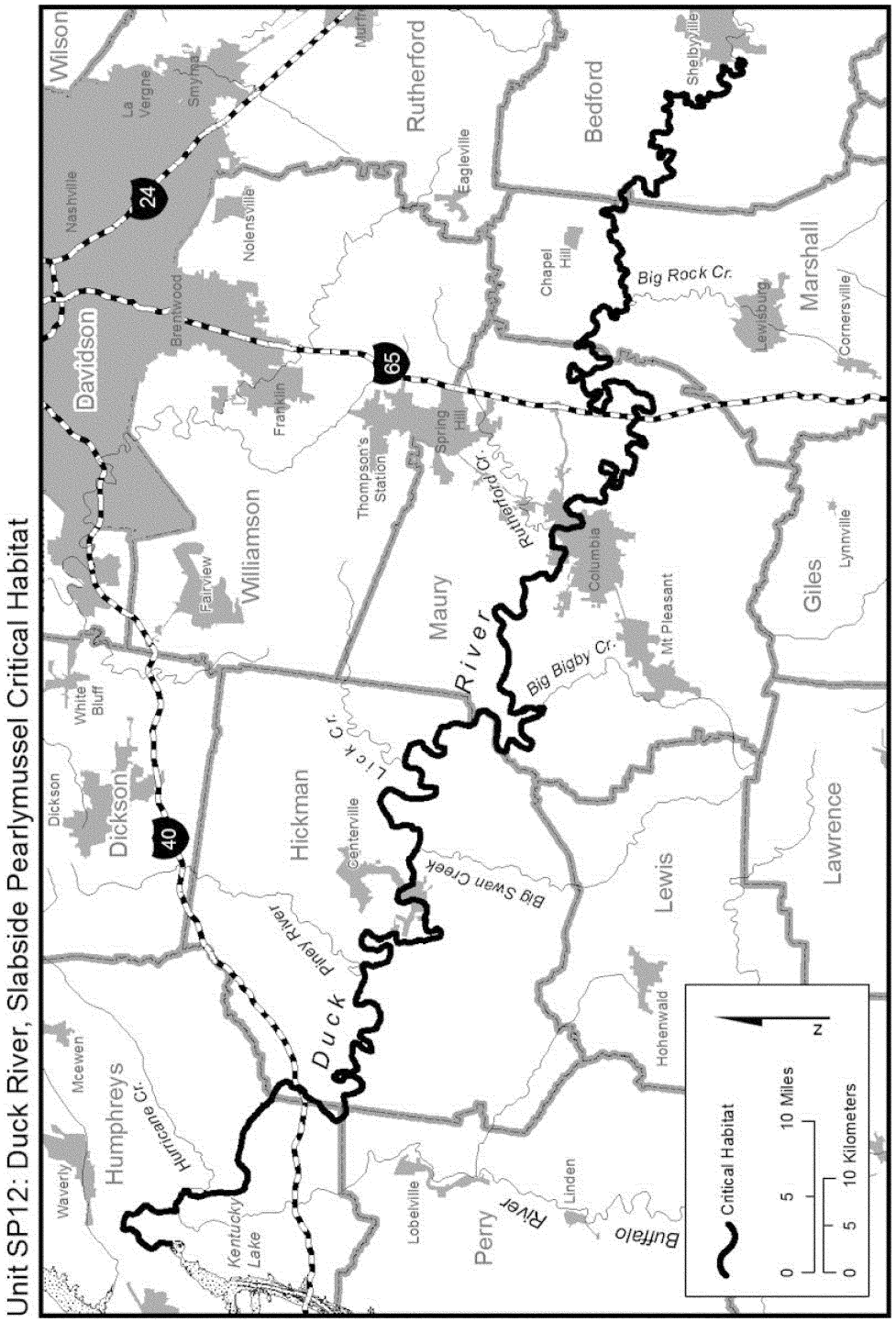
(ii) Map of Unit SP11 follows:



(17) Unit SP12: Duck River, Humphreys, Perry, Hickman, Maury, Marshall, and Bedford Counties, Tennessee.

(i) The unit includes approximately 348 rkm (216 rmi) of the Duck River from its inundation at Kentucky Lake (−87.88011, 36.00244) in Humphreys County, TN, upstream to its confluence with Flat Creek (−86.48778, 35.47209) near Shelbyville in Bedford County, TN.

(ii) Map of Unit SP12 follows:

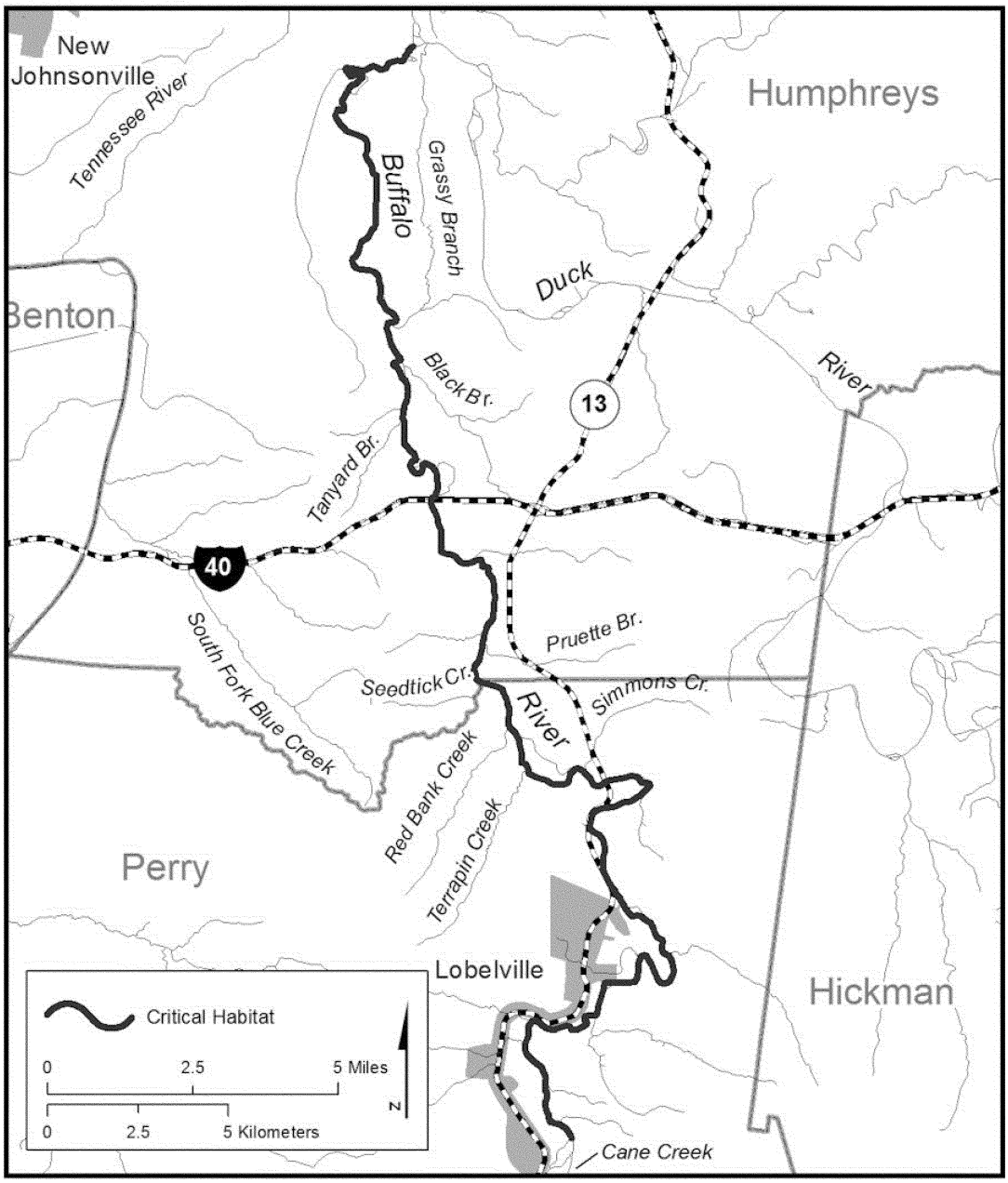


(18) Unit SP13: Buffalo River, Humphreys and Perry Counties, Tennessee.

(i) The unit includes 50 rkm (31 rmi) of the Buffalo River from its confluence with the Duck River (−87.84261, 35.99477) in Humphreys County, TN, upstream to its confluence with Cane Creek (−87.78718, 35.72298) in Perry County, TN.

(ii) Map of Unit SP13 follows:

Unit SP13: Buffalo River, Slabside Pearlymussel Critical Habitat



* * * * *

Dated: September 17, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–24019 Filed 10–3–12; 8:45 am]

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H.J. Res. 117/P.L. 112–175
Making continuing appropriations for fiscal year 2013, and for other puroses. (Sept. 28, 2012; 126 Stat. 1313)

S. 3245/P.L. 112–176
To extend by 3 years the authorization of the EB-5 Regional Center Program, the E-Verify Program, the Special Immigrant Nonminister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program. (Sept. 28, 2012; 126 Stat. 1325)

S. 3552/P.L. 112–177
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S. 3625/P.L. 112–178
To change the effective date for the internet publication of certain information to prevent harm to the national security or endangering the military officers and civilian employees to whom the publication requirement applies, and forother purposes. (Sept. 28, 2012; 126 Stat. 1408)

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