AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL REGISTER

Vol. 86 Thursday

No. 133 July 15, 2021

Pages 37213–37668

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 86 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |

**General online information** **202–512–1530; 1–888–293–6498**

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

Assistance with Federal agency subscriptions:

| | |
|---|---|
| Email | *FRSubscriptions@nara.gov* |
| Phone | **202–741–6000** |

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 86, No. 133

Thursday, July 15, 2021

**Agricultural Marketing Service**
**RULES**
Increased Assessment Rate:
Grapes Grown in a Designated Area of Southeastern California, 37213–37216

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Food and Nutrition Service
*See* Food Safety and Inspection Service
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37274

**Alcohol and Tobacco Tax and Trade Bureau**
**PROPOSED RULES**
Establishment of Viticultural Area:
Paulsell Valley, 37265–37270
Rocky Reach, 37260–37265

**Chemical Safety and Hazard Investigation Board**
**NOTICES**
Meetings; Sunshine Act, 37282

**Children and Families Administration**
**NOTICES**
Title IV–E Prevention Services Clearinghouse Handbook of Standards and Procedures, 37332–37334

**Coast Guard**
**RULES**
Cancellation of Obsolete Navigation and Inspection Circulars, 37238–37239
Safety Zone:
Around the U.S. Army Corps of Engineers Bank Grading Units and U.S. Army Corps of Engineers Mat Sinking Unit; Fixed and Moving, 37242–37244
Cumberland River; Canton, KY, 37244–37246
Special Local Regulation:
Breton Bay, McIntosh Run, Leonardtown, MD, 37239–37242
**PROPOSED RULES**
Special Local Regulation:
Chesapeake Bay, Between Sandy Point and Kent Island, MD, 37270–37273
**NOTICES**
Meetings:
Port Access Route Study: Northern New York Bight, 37339–37340
Proposed Distribution of Scheduled Navigation Safety Messages (Broadcast Notice to Mariners) by Mobile and Internet Methods, 37338–37339

**Commerce Department**
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration
*See* Patent and Trademark Office

**Community Living Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State Developmental Disabilities Council—Annual Program Performance Report, 37337
Single-Source Supplement:
Senior Medicare Patrol National Resource Center Grantee, 37336
Senior Medicare Patrol State Grantees, 37334–37336

**Defense Department**
*See* Engineers Corps

**Education Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
21st Century Community Learning Centers Annual Performance Report, 37316–37317

**Energy Department**
*See* Federal Energy Regulatory Commission

**Engineers Corps**
**RULES**
Civil Monetary Penalty Inflation Adjustment Rule, 37246–37249
Pest Control Program for Civil Works Projects, 37249

**Environmental Protection Agency**
**NOTICES**
Certain New Chemicals or Significant New Uses:
Statements of Findings for May 2021, 37325–37326
Pesticide Emergency Exemptions:
Agency Decisions and State and Federal Agency Crisis Declarations, 37324–37325
Requests for Nominations:
Science Advisory Board; Contaminant Candidate List 5 Panel, 37327–37328

**Federal Aviation Administration**
**RULES**
Airspace Designations and Reporting Points:
Alaska, 37235–37238
Amendment of V–25, V–27, V–494, V–108, V–301, and T–257 in the Vicinity of Santa Rosa, CA, 37238
Williston Basin, ND, 37234–37235
Airworthiness Directives
Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) Helicopters, 37231–37234
Airworthiness Directives:
Rolls-Royce Deutschland Ltd and Co KG (Type Certificate previously held by BMW Rolls-Royce GmbH and BMW Rolls-Royce Aero Engines) Turbofan Engines, 37226–37229
Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines, 37229–37231
The Boeing Company Airplanes, 37219–37226
**PROPOSED RULES**
Airworthiness Directives:
Dassault Aviation Airplanes, 37255–37257

Leonardo S.p.a. Helicopters, 37258–37260
NOTICES
Intent to Rule on a Land Release Request:
14.1 Acres of Land at Auburn-Lewiston Airport, Auburn, ME, 37397

**Federal Communications Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37329–37330
Comment Sought on Request for Freeze of Internet Protocol Captioned Telephone Service Compensation Level, 37328–37329
Meetings:
Consumer Advisory Committee, 37328

**Federal Energy Regulatory Commission**
NOTICES
Application:
Bard College, New York, 37318–37319
Texas Gas Transmission, LLC, 37322–37324
Combined Filings, 37317–37320
Environmental Impact Statements; Availability, etc.:
North Baja Pipeline, LLC; North Baja XPress Project, 37321–37322
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Rainbow Energy Center, LLC, 37320–37321
Records Governing Off-the-Record Communications, 37320

**Federal Housing Finance Agency**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37330–37332

**Federal Mediation and Conciliation Service**
NOTICES
Availability of Draft Strategic Plan, 37332

**Federal Motor Carrier Safety Administration**
NOTICES
Qualification of Drivers; Exemption Applications:
Epilepsy and Seizure Disorders, 37397–37400

**Federal Transit Administration**
NOTICES
Request for Information:
Capital Investment Grants Program, 37402–37405
Transit Safety Concerns, 37400–37402

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for Rufa Red Knot (Calidris canutus rufa), 37410–37668

**Food and Nutrition Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Special Supplemental Nutrition Program for Women, Infants and Children; Food Delivery Portal, 37280–37282

**Food Safety and Inspection Service**
RULES
Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species, 37216–37218
PROPOSED RULES
Establishing a Uniform Time Period Requirement and Clarifying Related Procedures for the Filing of Appeals of Agency Inspection Decisions or Actions, 37251–37255
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Overtime and Holiday Inspection Fees for Small and Very Small Establishments, 37274–37276
Overtime and Holiday Inspection Fee Reductions for Small and Very Small Establishments, 37276–37280

**General Services Administration**
NOTICES
Federal Management Regulation:
Designation of Federal Building, 37332

**Health and Human Services Department**
*See* Children and Families Administration
*See* Community Living Administration
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard

**Housing and Urban Development Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Implementation of the Housing for Older Persons Act, 37340–37342

**Interior Department**
*See* Fish and Wildlife Service
*See* National Park Service

**International Trade Administration**
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Rescission of Administrative Reviews, 37284–37285
Meetings:
Civil Nuclear Trade Advisory Committee, 37283–37284
Renewable Energy And and Energy Efficiency Advisory Committee, 37282–37283

**International Trade Commission**
NOTICES
Complaint:
Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same, 37344–37346
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Chemical Mechanical Planarization Slurries and Components Thereof, 37343–37344
Polyethylene Terephthalate Resin from Canada, China, India, and Oman, 37343

**Maritime Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Coastwise Endorsement Eligibility Determinations for Foreign-built Small Passenger Vessels, 37405–37406

**National Institute of Standards and Technology**
NOTICES
Meetings:
Manufacturing Extension Partnership Advisory Board, 37285–37286

**National Institutes of Health**
NOTICES
Meetings:
National Cancer Institute, 37337–37338

**National Oceanic and Atmospheric Administration**
RULES
Fisheries Off West Coast States:
Modification of the West Coast Commercial Salmon Fisheries; Inseason Action #18, 37249–37250
NOTICES
Endangered and Threatened Species:
Take of Anadromous Fish, 37286
Meetings:
Mid-Atlantic Fishery Management Council, 37313
Takes of Marine Mammals Incidental to Specified Activities:
Geophysical Survey of the Queen Charlotte Fault, 37286–37309
Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, 37309–37316

**National Park Service**
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 37342–37343

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Holtec Decommissioning International, LLC, Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3, Post-Shutdown Decommissioning Activities Report, 37346–37347

**Patent and Trademark Office**
NOTICES
Patent Eligibility Jurisprudence Study, 37316

**Postal Regulatory Commission**
NOTICES
New Postal Product, 37347

**Securities and Exchange Commission**
NOTICES
Application:
Fidelity Beach Street Trust, et al., 37391–37393
Self-Regulatory Organizations; Proposed Rule Changes:
Miami International Securities Exchange, LLC, 37364–37367, 37393–37397
MIAX Emerald, LLC, 37361–37364, 37373–37376
MIAX PEARL, LLC, 37347–37356, 37376–37391
New York Stock Exchange LLC, 37356–37361, 37367–37373

**Small Business Administration**
NOTICES
Major Disaster Declaration:
Mississippi, 37397

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Transit Administration
*See* Maritime Administration

**Treasury Department**
*See* Alcohol and Tobacco Tax and Trade Bureau

**Veterans Affairs Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Fee or Roster Personnel Designation, 37406–37407
Supportive Services for Veteran Families Program—Grant Application and Report, 37406

---

**Separate Parts In This Issue**

**Part II**
Interior Department, Fish and Wildlife Service, 37410–37668

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
925 ..... 37213

**9 CFR**
352 ..... 37216

**Proposed Rules:**
327 ..... 37251
351 ..... 37251
354 ..... 37251
355 ..... 37251
381 ..... 37251
500 ..... 37251
592 ..... 37251

**14 CFR**
39 (6 documents) ..... 37219, 37221, 37224, 37226, 37229, 37231
71 (3 documents) ..... 37234, 37235, 37238

**Proposed Rules:**
39 (2 documents) ..... 37255, 37258

**27 CFR**

**Proposed Rules:**
9 (2 documents) ..... 37260, 37265

**33 CFR**
Ch. I ..... 37238
100 ..... 37239
165 (2 documents) ..... 37242, 37244
207 ..... 37246
274 ..... 37249
326 ..... 37246

**Proposed Rules:**
100 ..... 37270

**46 CFR**
Ch. I ..... 37238

**50 CFR**
660 ..... 37249

**Proposed Rules:**
17 ..... 37410

# Rules and Regulations

Federal Register
Vol. 86, No. 133
Thursday, July 15, 2021

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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 925

**[Doc. No. AMS–SC–20–0093; SC21–925–1 FR]**

## Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the California Desert Grape Administrative Committee (Committee) to increase the assessment rate established for the 2021 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: *BiancaM.Bertrand@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of grapes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, grape handlers in the production area are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable grapes for the 2021 fiscal period and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate from $0.020 per 18-pound lug of assessable grapes handled, the rate that was established for the 2018 and subsequent fiscal periods, to $0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2018 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.020 per 18-pound lug of assessable grapes handled. That assessment rate continued in effect from fiscal period to fiscal period until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 4, 2020, and unanimously recommended expenditures of $85,500, and an assessment rate of $0.040 per 18-pound lug of assessable grapes handled for the 2021 and subsequent fiscal periods. In comparison, the previous fiscal period's budgeted expenditures were $121,100. The assessment rate of $0.040 is $0.020

higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, as well as add funds to the contingency reserve. Funds in the reserve are expected to be approximately $50,100 at the end of the 2021 fiscal period, which is within the Order's requirement to carryover no more than approximately one fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2021 fiscal period include $50,000 for management and compliance expenses, $19,500 for direct office expenses, and $16,000 for shared office, facilities, and maintenance expenses.

Budgeted expenses for the 2020 fiscal period were $56,000 for management and compliance expenses, $28,500 for production research, $20,700 for direct office expenses, and $15,900 for shared office, facilities, and maintenance expenses.

In 2020, the Committee determined that the contingency reserve fund had grown too large, so the Committee used $37,100 from the reserve to help fund the 2020 budget rather than raise the assessment rate.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 2.5 million 18-pound lugs of assessable grapes, and the amount of funds available in the authorized contingency reserve. Income derived from handler assessments, calculated at $100,000 (2.5 million 18-pound lugs of assessable grapes multiplied by $0.040 assessment rate), is expected to be adequate to cover budgeted expenses of $85,500, as well as add a small amount of funds ($14,500) back into the contingency reserve. Funds in the reserve are estimated to be $50,100 at the end of the 2021 fiscal period.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings will be available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2021 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 10 handlers subject to the regulation under the Order, and approximately 21 producers of grapes in the production area. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the Committee data, USDA Market News Shipping Point Data, and National Agricultural Statistics Service (NASS), the national average producer price data released in 2020 for the 2019 production year was approximately $10.62 per 18-pound lug. Assuming that the 2020 producer price remains the same as that for 2019 and using Committee data for the 2020 total grape production of 2,448,021 18-pound lugs, the total 2020 value of the grape crop was $25,997,983 (2,448,021 18-pound lugs times $10.62 per 18-pound lug equals $25,997,983). Dividing the total grape crop value by the estimated number of producers (21) yields an estimated average receipt per producer of $1,237,999, which is above the SBA threshold for small producers.

According to USDA Market News data, the reported terminal price for 2020 for grapes ranged between $18.95 to $24.95 per 18-pound lug. The average of this range is $21.95 ($18.95 plus $24.95 divided by 2). Multiplying the 2020 grape total production of 2,448,021 18-pound lugs by the estimated average price per 18-pound lug of $21.95 equals $53,734,061.

Dividing this figure by 10 regulated handlers yields estimated average annual handler receipts of $5,373,406, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, the majority of producers may be considered large entities while the majority of handlers in the production area may be classified as small entities.

Based upon information from NASS, the grower price reported for grapes in 2019 was $1,180 per ton ($10.62 per 18-pound lug) of grapes. In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate ($0.040 per 18-pound lug) times the estimated production (2,500,000 18-pound lugs), which equals the assessment revenue of $100,000.

The grower revenue is calculated by multiplying the grower price of $10.62 per 18-pound lug times the estimated production (2,500,000 18-pound lugs), which equals the grower revenue of $26,550,000.

In the final step, dividing the assessment revenue by the grower revenue indicates that, for the 2021 fiscal period, the estimated assessment revenue as a percentage of total grower revenue would be about 0.38 percent.

This rule increases the assessment rate collected from handlers for the 2021 and subsequent fiscal periods from $0.020 to $0.040 per 18-pound lug of assessable grapes handled. The Committee unanimously recommended 2021 expenditures of $85,500 and an assessment rate of $0.040 per 18-pound lug of assessable grapes handled. The assessment rate of $0.040 per 18-pound lug of assessable grapes handled is $0.020 higher than the rate currently in effect. The volume of assessable grapes for the 2021 fiscal period is estimated to be 2,500,000 18-pound lugs. Thus, the $0.040 per 18-pound lug of assessable grapes handled should provide $100,000 in assessment income (2,500,000 multiplied by $0.040). Therefore, income derived from handler assessments is expected to be adequate to cover budgeted expenses for the 2021 fiscal period.

The major expenditures recommended by the Committee for the 2021 fiscal period include $50,000 for management and compliance expenses, $19,500 for direct office expenses, and $16,000 for shared office, facilities, and maintenance expenses. Budgeted

expenses for the 2020 fiscal period were $56,000 for management and compliance, $28,500 for production research, $20,700 for direct office, and $15,900 for shared office, facilities, and maintenance.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal period, while adding funds to its financial reserve. This action is expected to maintain the Committee's reserve balance at a level that the Committee believes is appropriate and meets the requirements of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.020 per 18-pound lug of assessable grapes handled, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate should fully fund budgeted expenses and add funds to the contingency reserve.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 4, 2020, meeting was a public meeting, and all entities, both large and small, had an opportunity to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large southeastern California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 26, 2021 (86 FR 16085). Copies of the proposal were provided by the Committee to producers and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 45-day comment period ending May 10, 2021, was provided to allow interested persons to respond to the proposal. Seven comments were received.

Five of the comments received were in favor of the assessment rate increase and two were neither in favor nor opposed to the proposal.

Four of the five comments in favor were generally supportive of the assessment rate. The other comment in favor appeared to misunderstand the rule's merits, the parties affected, and its potential impact on the industry, but was nonetheless supportive of the action.

Two of the comments referenced the consideration of small businesses and the impact of this rule. One of the comments incorrectly assumed that small businesses would pay a lower assessment rate than their larger counterparts. The comment also believed that assessments were paid by ''producers/growers'' and suggested that such assessments be proportionate to their production.

As previously discussed in the rule, assessments are paid only by handlers and such assessments are applied uniformly regardless of the size of the handler based on the volume of product that they handle. As stated above, and in the proposed rule, some of the increased cost of assessment may be passed on to producers, but such costs are believed to be offset by the benefits derived by the operation of the Order. In addition, a RFA analysis was conducted by USDA in consideration of this action to ensure that the regulatory action fits the scale of businesses subject to the action and that small businesses will not be unduly or disproportionately burdened by it.

One comment raised questions regarding what grapes are assessable under this rule. Further, the comment requested clarity in the role of the Committee in recommending the assessment increase and the Committee's public outreach to ensure that all interested parties were able to provide input.

Under the Order, only grapes produced within the production area as defined in the Order are subject to assessment. Also prescribed by the Order, the Committee is the administrative body duly appointed by USDA to oversee the Order's operation. The Committee is made up of producers and handlers operating within the production area, and a public member. As such, Committee members are familiar with the program's needs and with the costs of goods and services in their local area. They are, therefore, in a position to formulate an appropriate budget and to recommend the assessment rate. Committee actions are recommended at public meetings where the meetings have been duly posted and promoted throughout the industry and all industry participants are encouraged to attend and provide input.

Two comments mistakenly associated the assessment rate increase with COVID–19 and California wildfire relief efforts that would provide economic stimulus for the desert grape industry.

This action is not correlated with any external event or events, nor any economic challenges that may have been precipitated by such events. The assessment rate increase is related only to the cost of the Committee's budgeted expenditures for the upcoming year and the projected size of the desert grape crop for that year.

One comment questioned why excess assessments collected are held over in a financial reserve fund and requested more information with regards to what happens with these funds.

Section 925.42 provides the authority for the Committee to hold excess funds as a reserve against future expenditures. The Committee may hold no more than approximately one fiscal period's expenses in reserve. Funds held in reserve are primarily to be used to: (1) Defray expenses, during any fiscal period, prior to the time the assessment income is sufficient to cover such expenses; and (2) cover deficits incurred during any fiscal period when assessment income is less than expenses.

Lastly, one comment suggested that the assessment rate should only be established for one year and that the rate should be reassessed at the end of that period. The commentor felt that one year would allow the Committee to collect data to assess the impact of the

increase and determine whether it should be continued in the future.

As stated above and in the proposed rule, while the assessment rate is effective for an indefinite period of time, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Notice and comment rulemaking to adjust the assessment rate would be undertaken as necessary.

Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 925**

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

**§ 925.215 Assessment rate.**

On and after January 1, 2021, an assessment rate of $0.040 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–14731 Filed 7–14–21; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 352

**[Docket No. FSIS–2019–0028]**

**RIN 0583–AD73**

## Inspection of Yak and Other Bovidae, Cervidae, and Camelidae Species

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its regulations to define yak and include it among ''exotic animals'' eligible for voluntary inspection under 9 CFR part 352. This change is in response to a petition for rulemaking from a yak industry association, which FSIS granted in 2015. Additionally, FSIS is revising the definitions of antelope, bison, buffalo, catalo, deer, elk, reindeer, and water buffalo to make them more scientifically accurate. Moreover, FSIS is responding to comments on whether all farmed-raised species in the biological families Bovidae, Cervidae, and Camelidae, if not already subject to mandatory inspection, should be eligible for voluntary inspection, and whether any species in these families should be added to the list of amenable species requiring mandatory inspection.

**DATES:** Effective September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 1, 2020, FSIS proposed to amend its regulations (9 CFR 352.1) to add yak to its list of ''exotic animals'' eligible for voluntary inspection (85 FR 33034, June 1, 2020). FSIS proposed to define yak as a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau. The proposed rule explained that while yak was not listed in the regulations as an ''exotic animal,'' the Agency has inspected yak under its voluntary program for several years.

As FSIS explained in the proposed rule, on September 3, 2014, the International Yak Association (IYAK) submitted a petition for rulemaking,[1] under 9 CFR part 392, requesting that FSIS amend 9 CFR 352.1(k) to include yak under the definition of an ''exotic animal.'' The petitioner stated that because FSIS had voluntarily inspected yak for many years, it had created an expectation among breeders and buyers that FSIS would continue to inspect yak. On November 21, 2014, IYAK submitted additional supporting data.[2] IYAK had surveyed United States yak producers and found that continued FSIS inspection of yak meat was critical to the industry as a whole.

After reviewing the petition and supporting data, FSIS decided to grant the petition, and stated that it would continue to voluntarily inspect yak while FSIS went through rulemaking to add yak to the list of exotic animals eligible for voluntary inspection.[3] [4]

In the proposed rule, FSIS also requested comments on whether the regulations should be amended to list as eligible for voluntary inspection all farm-raised species in the biological families Cervidae (*e.g.,* moose, all deer and elk), all Bovidae not currently subject to mandatory inspection (*e.g.,* water buffalo and impalas), and Camelidae (*e.g.,* camel, llama, and alpaca). And, based on interest from stakeholders, FSIS requested comment as to whether any species in these families, if not currently subject to mandatory inspection, should be. FSIS already requires the inspection of some species of the biological family Bovidae under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(w)). These species include cattle, sheep, and goats.

After considering the comments received on the proposed rule, discussed below, FSIS is finalizing the proposed rule with some changes. In response to public comment, the final rule will also amend 9 CFR 352.1 to revise the definitions of antelope (9 CFR 352.1(c)), bison (9 CFR 352.1 (e)), buffalo (9 CFR 352.1(f)), catalo (9 CFR 352.1(g)), deer (9 CFR 352.1(j)), elk (9 CFR 352.1(l)), reindeer (9 CFR 352.1(x)), and water buffalo (9 CFR 352.1(aa)) to make them more taxonomically accurate.

### Responses to Comments

FSIS received seven comments from individuals, a yak producer, and a llama

[1] See: *https://www.fsis.usda.gov/wps/wcm/connect/db2ac10c-7b92-4bb4-a0d3-885641738711/Petition-YAK-112014.pdf?MOD=AJPERES.*

[2] IYAK asked that the supporting data remain confidential because it contains proprietary information.

[3] See: *https://www.fsis.usda.gov/wps/wcm/connect/aa5f69d7-ddc6-44bc-9ff3-bc9489fcd338/IYAK-FSIS-response-120314.pdf?MOD=AJPERES.*

[4] See: *https://www.fsis.usda.gov/wps/wcm/connect/c109452f-4497-4144-815e-6a382b94a113/FSIS-Final-Response-IAK-080315.pdf?MOD=AJPERES.*

and alpaca producer. A summary of the comments and FSIS's responses follows.

A yak producer and an individual supported defining yak and including it among ''exotic animals'' eligible for voluntary inspection under 9 CFR part 352. The individual stated that formally allowing for voluntary inspection of yak will help the continued growth of the yak industry by creating consumer trust in the product. Both commenters stated that allowing for voluntary inspection of yak gives consumers a healthy and sustainable red meat alternative.

*Comment:* Comments from three individuals stated that species from the families Bovidae, Cervidae, and Camelidae could be slaughtered and processed under either mandatory or voluntary inspection, depending on whether certain criteria are met, including whether there is a sufficient market for consumers to justify mandatory inspection. Furthermore, the same three individuals suggested that yak should be slaughtered and prepared under mandatory FSIS inspection. According to these commenters, yak should be amenable under the FMIA, because it meets the dictionary definition of ''cattle,'' and yak are transported and held in pens for slaughter like other amenable cattle.

A producer of deer, elk, bison, llama, and alpaca recommended that FSIS revise 9 CFR part 352 to allow for any ''large farm-raised mammals'' to be eligible for voluntary inspection. Specifically, the commenter requested that FSIS provide voluntary inspection for llamas and alpacas. The commenter argued that producers of llamas and alpacas would benefit from FSIS voluntary inspection, because it would alleviate confusion and create consistency for the llama and alpaca industry.

*Response:* FSIS would need to gather more economic and scientific information before deciding whether to expand the list of species eligible for voluntary inspection or subject to mandatory inspection. Therefore, FSIS is not making any additional changes to the regulations at this time.

*Comment:* A few individuals noted that 9 CFR 352.1(f) defines ''buffalo'' as ''any animal belonging to the buffalo family.'' The commenters argued that definition should be revised because ''buffalo family'' is not an accurate scientific classification.

*Response:* FSIS acknowledges that the definition of ''buffalo'' in 9 CFR 352.1(f) is not taxonomically accurate. In addition to ''buffalo,'' FSIS is correcting the definitions of all the exotic species covered under 9 CFR 352.1. Specifically, FSIS has corrected the definitions of antelope (9 CFR 352.1(c)), bison (9 CFR 352.1 (e)), buffalo (9 CFR 352.1(f)), catalo (9 CFR 352.1(g)), deer (9 CFR 352.1(j)), elk (9 CFR 352.1(l)), reindeer (9 CFR 352.1(x)), and water buffalo (9 CFR 352.1(aa)) to make them taxonomically accurate.

*Comment:* A few individuals questioned why the proposed rule did not address rabbits and other lagomorphs that are produced under voluntary inspection.

*Response:* These comments are outside of the scope of this rulemaking, since voluntary inspection of rabbits is addressed in a different part of its regulations, in 9 CFR part 354.

**Executive Orders (E.O.s) 12866 and 13563**

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

FSIS has updated the number of yak establishments under the voluntary inspection program in this final rule from those published in the proposed rule based on more recent labeling data. In response to comments on the proposed rule, FSIS is also clarifying the definitions of antelope, bison, buffalo, catalo, deer, elk, reindeer, and water buffalo in the regulations to make them more taxonomically accurate. FSIS does not expect any quantifiable costs or benefits will be associated with these revisions.

*Expected Costs of the Final Rule*

FSIS does not expect any additional industry or Agency costs as a result of this final rule because, although yak is not currently listed as an ''exotic animal'' eligible for voluntary inspection, FSIS has been inspecting yak under the voluntary inspection program for many years.

*Expected Benefits of the Final Rule*

In 2014, IYAK conducted a National Yak Industry Survey to support its petition requesting that FSIS amend 9 CFR 352.1(k) to include Yak under the definition of an ''exotic animal.'' According to IYAK's survey, FSIS voluntarily inspected 109 yaks from 22 establishments in 2014. The IYAK survey also stated that there were 33 total establishments slaughtering yak in 2014. From 2014 to December 3, 2020, 23 unique establishments submitted a total of 76 yak product labels to the FSIS Labeling and Program Delivery Staff (LPDS) for approval.[5] These establishments will benefit from being able to continue to use their labels with FSIS's voluntary mark of inspection. According to the 2014 IYAK survey, 90 percent of the establishments surveyed noted that USDA inspection is critical to the yak industry. Amending 9 CFR 352.1 to list yak as an ''exotic animal'' eligible for FSIS's voluntary inspection service will avoid disruption to the yak industry and possible economic harm to producers if FSIS stopped voluntarily inspecting yak.

**Regulatory Flexibility Act Assessment**

The FSIS Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will allow FSIS to continue to voluntarily inspect yak and there will be no increased costs to industry. Small and very small yak establishments that choose to continue to receive voluntary inspection will benefit from being able to continue to use their labels with FSIS's voluntary mark of inspection. About 17 percent of the establishments that submitted yak labels from 2014 to December 3, 2020, were classified as small under Hazard Analysis and Critical Control Point (HACCP) sizes and 83 percent were classified as very small.[6] The final rule will benefit small and very small establishments because it will continue to give these establishments access to the FSIS voluntary mark of inspection and access to buyers who look for that mark of inspection when making purchasing decisions.

**Paperwork Reduction Act**

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

[5] FSIS used data from the Labeling and Program Delivery Staff's Label Submission and Approval System (LSAS). This data was received on December 4, 2020.

[6] FSIS used data from the Public Health Information System (PHIS) to identify these establishments by HACCP category.

**Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

**E-Government Act**

FSIS and USDA are committed to achieving the purpose of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizens access to Government information and services, and for other purposes.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS website located at: *https://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS website. Through the website, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

**List of Subjects in 9 CFR Part 352**

Exotic Animals.

For the reasons set out in the preamble, FSIS amends 9 CFR part 352 as follows:

## PART 352—EXOTIC ANIMALS AND HORSES: VOLUNTARY INSPECTION

■ 1. The authority citation for part 352 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624; 7 CFR 2.17(g)and (i), 2.53.

■ 2. Amend § 352.1 by revising paragraphs (c), (e), (f), (g), (j), (k), (l), (x), and (aa) and adding paragraph (bb) to read as follows:

**§ 352.1 Definitions.**

* * * * *

(c) *Antelope* means any of various ruminant deerlike mammals (family Bovidae) chiefly of Africa and southwest Asia that have a slender lean build and usually horns directed upward and backward.

* * * * *

(e) *Bison (Bison bison),* commonly known as the American bison or buffalo, is a species of the genus Bison native to North America. Bison includes catalo or cattalo.

(f) *Buffalo* refers to a subtribe Bubalina of the tribe Bovini within the subfamily Bovinae that includes the water buffalo (*Bubalus bubalis)* and Cape buffalo *(Syncerus caffer*).

(g) *Catalo* or *Cattalo* means any hybrid animal with bison (*Bison bison*) appearance resulting from direct crossbreeding of bison (*Bison bison*) and cattle (*Bos taurus*).

* * * * *

(j) *Deer* refers to the any farm-raised species of the family Cervidae.

(k) *Exotic animal* means any reindeer, elk, deer, antelope, water buffalo, bison, buffalo, or yak.

(l) *Elk* (*Cervus canadensis*) refers to one of the largest species within the family Cervidae. It is native to North America and in high mountains of Central Asia.

* * * * *

(x) *Reindeer* (*Rangifer tarandus*), commonly referred to as caribou, is a species within the family Cervidae with circumpolar distribution, native to Arctic, sub-Arctic, tundra, boreal, and mountainous regions of northern Europe, Siberia, and North America.

* * * * *

(aa) *Water buffalo (Bubalus bubalis)*, commonly known as the domestic water buffalo or Asian water buffalo, is a large bovid originating in the Indian subcontinent, Southeast Asia, and China.

(bb) *Yak (Bos grunniens)* means a long-haired bovid animal originally found throughout the Himalaya region of southern Central Asia and the Tibetan Plateau.

Done at Washington, DC.

**Paul Kiecker,**

*Administrator.*

[FR Doc. 2021–15062 Filed 7–14–21; 8:45 am]

BILLING CODE 3410–DM–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2020–1030; Project Identifier AD–2020–01079–T; Amendment 39–21607; AD 2021–13–02]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–300ER series airplanes. This AD was prompted by a report that a production design change to certain insulation blankets inadvertently opened up leakage paths for halon and smoke to escape from the aft cargo compartment in the event of a fire. This AD requires installation of an insulation blanket assembly on top of existing insulation blankets in certain areas of the forward endwall in the aft cargo compartment. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1030.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1030; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Courtney Kronenberger, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.a.kronenberger@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–300ER series airplanes. The NPRM published in the **Federal Register** on December 29, 2020 (85 FR 85557). The NPRM was prompted by report indicating that a production design change to certain insulation blankets inadvertently opened up leakage paths for halon and smoke to escape from the aft cargo compartment in the event of a fire. In the NPRM, the FAA proposed to require installation of an insulation blanket assembly on top of existing insulation blankets in certain areas of the forward endwall in the aft cargo compartment. The FAA is issuing this AD to address increased leakage paths, which, in the event of a fire, could result in loss of fire suppressant in the cargo compartment, and could lead to an uncontained fire and subsequent loss of the airplane.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from one commenter, Boeing, who supported the NPRM without change.

The FAA received additional comments from one commenter, United Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request for Update to Illustrated Parts Catalog (IPC)

United Airlines stated that it agrees with the intent of the proposed AD. United Airlines also recommended that Boeing update the applicable IPC to show configuration control of the new part numbers that are installed during the accomplishment of the actions specified in the referenced service information. United Airlines noted that the update would provide proper configuration control and documentation support to maintain the new insulation blanket installation changes made prior to the release of the AD. United Airlines also asserted that the change could mitigate incorrect blanket installation.

The FAA acknowledges the commenter's recommendation and reasoning. However, the FAA does not control or require changes to the IPC. The FAA has not changed this AD in this regard.

### Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020. This service information specifies procedures for installing an insulation blanket assembly on top of existing insulation blankets on the left and right side corner of the forward endwall in the aft cargo compartment. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

### Costs of Compliance

The FAA estimates that this AD affects 22 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Insulation blanket installation | 1 work-hour × $85 per hour = $85 | $240 | $325 | $7,150 |

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

## 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.

The FAA is 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

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES PROJECT NO. 15021–000

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

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

### § 39.13 [Amended] Project No. 15021–000

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2021–13–02 The Boeing Company:** Amendment 39–21607; Docket No. FAA–2020–1030; Project Identifier AD–2020–01079–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 777–300ER series airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report that a production design change to certain insulation blankets inadvertently opened up leakage paths for halon and smoke to escape from the aft cargo compartment in the event of a fire. The FAA is issuing this AD to address increased leakage paths, which, in the event of a fire, could result in loss of fire suppressant in the cargo compartment, and could lead to an uncontained fire and subsequent loss of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 777–25–0753, dated July 31, 2020, which is referred to in Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020.

**(h) Exceptions to Service Information Specifications**

Where Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020, uses the phrase ''the original issue date of the Requirements Bulletin 777–25–0753 RB,'' this AD requires using ''the effective date of this AD.''

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

**(j) Related Information**

(1) For more information about this AD, contact Courtney Kronenberger, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.a.kronenberger@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Requirements Bulletin 777–25–0753 RB, dated July 31, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the

National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 9, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15028 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0981; Project Identifier AD–2020–00919–T; Amendment 39–21615; AD 2021–13–10]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports indicating that during investigation of a fuel leak, fatigue cracking was found on the forward inboard side of the fuel tank access door cutouts on the left and right lower wing skin. The cause of the cracking is attributed to corrosion damage. This AD requires repetitive inspections for any existing repair of the wing lower skin fuel tank and dry bay access door cutouts on the left and right lower wing skin, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0981.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0981; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Luis A. Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on November 18, 2020 (85 FR 73430). The NPRM was prompted by reports indicating that during investigation of a fuel leak, fatigue cracking was found on the forward inboard side of the fuel tank access door cutouts on the left and right lower wing skin. The cause of the cracking is attributed to corrosion damage. In the NPRM, the FAA proposed to require repetitive inspections for any existing repair of the wing lower skin fuel tank and dry bay access door cutouts on the left and right lower wing skin, and applicable on-condition actions. The FAA is issuing this AD to address fatigue cracking, which could result in the inability of a principal structural element to sustain limit load, and consequent reduced structural integrity of the airplane.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from Boeing and United Airlines. Those commenters supported the NPRM without change.

The FAA received additional comments from six commenters, including AeroLogic, Air France, American Airlines, Emirates, FedEx Express (FedEx), and one individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request To Revise Compliance Time

AeroLogic, Air France, American Airlines, and Emirates asked that the FAA re-evaluate and extend the initial and repetitive calendar-based compliance times in the proposed AD to match heavy maintenance intervals. The commenters stated that the 1,125-day compliance time does not align with existing MPD intervals of 3,000 days and 4,500 days or the existing heavy maintenance intervals. One commenter stated that, as a long-range freight specialist it has an average flight hour/flight cycle ratio of 6.0 to 6.3, thus reaching the flight hour LOV of the Model 777F before reaching the flight cycle utilization that the aircraft with crack findings had at the time of crack detection. The commenters also stated that more frequent opening and closing of the access doors could increase the chance of corrosion. although the airplane with the initial crack finding was 19 years old at the time cracking was found, and Boeing reported that only minimal corrosion was found during lab testing of the cracking.

The FAA does not agree with the requests to extend the compliance time. The compliance times were coordinated with the design approval holder based on its analysis and fleet findings. Additionally, the commenters did not provide substantiation data that shows that the proposed extended inspection intervals provide adequate crack detection. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety. This AD has not been changed in this regard.

### Request To Change Exception

Air France stated that paragraph (h)(1) of the proposed AD would require using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020, uses the phrase ''the original issue date of Requirements Bulletin 777–57A0118 RB'' in a note or flag note. Air France noted that making the exception depend on a note or flag note is confusing. Air France asked that the FAA change the exception to apply throughout the proposed AD requirements instead of depending on

where the phrase ''the original issue date of Requirements Bulletin 777–57A0118 RB'' is used.

The FAA agrees to change the exception in paragraph (h)(1) of this AD. The exception specified in paragraph (h)(1) of the proposed AD was intended to apply only to certain dates referenced in Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020. The exception applies to the associated date in the Effectivity paragraph and the Condition and Compliance columns of tables 1 through 10 of paragraph 1.E., ''Compliance,'' and not to flag note (c) in the tables. Repairs accomplished relative to the original issue date of Requirements Bulletin 777–57A0118 RB, as specified in flag note (c) in those tables, do not need an exception for compliance with this AD. The FAA has changed paragraph (h)(1) of this AD accordingly.

**Request To Change Estimated Work Hours for Inspection**

FedEx stated that the hours estimated for ''the inspection'' in the Costs of Compliance section of the NPRM is lower than its forecast of 80 work-hours and 60 elapsed hours. FedEx noted that the NPRM specified only 34 work-hours.

The FAA infers that the commenter is asking to increase the work hours for the general visual inspections specified in the Costs of Compliance section of this AD to 80 work-hours. We do not agree. The estimate of 34 work-hours includes access and close for accomplishing the general visual inspections. The FAA recognizes that additional on-condition inspections could be required, depending on the results of the general visual inspection. However, since the FAA has no way of determining the number of aircraft that might need these on-condition inspections, the hours and cost estimates for the additional inspections are provided in the on-condition actions table on a per-airplane basis. This AD has not been changed in this regard.

**Request To Allow Detailed Inspections for Certain Airplanes**

One individual asked that the FAA allow detailed and high frequency eddy current (HFEC) inspections for airplanes in Group 3, Condition 17 (for the right wing), similar to the detailed and HFEC inspections allowed for airplanes in Group 3, Condition 14 (for the left wing). The commenter observed that Condition 14 specifies detailed and HFEC inspections, whereas Condition 17 specifies contacting Boeing. The commenter stated that these conditions are the same and symmetrical for the left- and right-hand wings.

The FAA does not agree with the commenter's request. Configurations on Group 3 airplanes may be different on the left and right sides due to previously approved repairs or production changes. The inspection procedures were coordinated with the design approval holder regarding the airplane configurations. Therefore, this AD has not been changed in this regard.

**Request To Clarify Cost Estimate**

AeroLogic stated that the proposed compliance time would result in an economic impact that was not considered in the operator burden provided in the cost estimate.

The FAA provides the following clarification: The cost information describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time necessary for planning or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate.

Aerologic also stated that the aircraft maintenance manual (AMM) recommends using new gaskets to prevent fuel leaks after each tank access. Therefore, the parts cost should be estimated with up to 240 USD per gasket. At 18 Access Doors opened for every repeat inspection, this sums up to 4,320 USD per aircraft for each inspection cycle.

The FAA does not agree to change the estimated parts costs, as the actions in the AMM are not required by this AD.

**Conclusion**

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020. The service information describes procedures for repetitive general visual inspections for any existing repair of the fuel tank access door cutouts on the left and right lower wing skin, and applicable on-condition actions. On-condition actions include detailed and HFEC inspections for any corrosion, fretting, and cracking; a blend out of corrosion or fretting that meets certain criteria; and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Costs of Compliance**

The FAA estimates that this AD affects 221 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| General visual inspection ..... | Up to 34 work-hours × $85 per hour = Up to $2,890 per inspection cycle. | $0 | Up to $2,890 per inspection cycle. | Up to $638,690 per inspection cycle. |

The FAA estimates the following costs to do any necessary on-condition actions that would be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Blend out of corrosion or fretting. | 2 work-hours × $85 per hour = $170 per blend out. | $0 | $170 per blend out | $170 per blend out. |
| Repair of crack 0.2 inch or less with no blend repair or keyway trim modification. | 2 work-hours × $85 per hour = $170 per crack. | 0 | $170 per crack | $170 per crack. |
| Detailed and HFEC inspections. | 2 work-hours × $85 per hour = $170 per access door cutout. | 0 | $170 per access door cutout | $170 per access door cutout. |

* The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD that require obtaining an alternative method of compliance (AMOC).

## 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.

The FAA is 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

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 airworthiness directive:

**2021–13–10 The Boeing Company:** Amendment 39–21615; Docket No. FAA–2020–0981; Project Identifier AD–2020–00919–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by reports indicating that during investigation of a fuel leak, fatigue cracking was found on the forward inboard side of the fuel tank access door cutouts on the left and right lower wing skin. The cause of the cracking is attributed to corrosion damage. The FAA is issuing this AD to address such cracking, which could result in the inability of a principal structural element to sustain limit load, and consequent reduced structural integrity of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–57A0118, dated June 23, 2020, which is referred to in Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020.

**(h) Exceptions to Service Information Specifications**

(1) Where the ''Effectivity'' paragraph, and the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph, of Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020, use the phrase ''the original issue date of Requirements Bulletin 777–57A0118 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair,

modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(j) Related Information**

For more information about this AD, contact Luis A. Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3958; email: *luis.a.cortez-muniz@faa.gov.*

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 777–57A0118 RB, dated June 23, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 10, 2021.

**Ross Landes,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15029 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0258; Project Identifier AD–2020–01565–T; Amendment 39–21637; AD 2021–14–10]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. This AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam found in certain locations on the airplane; investigation revealed that the fire-retardant properties degrade with age. This AD requires inspecting the insulation blankets in certain areas of the forward cargo compartment for exposed BMS 8–39 urethane foam, not encapsulated by a protective fire resistant barrier, and for seal integrity, and replacing the BMS 8–39 urethane foam and seal if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0258.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0258; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3584; email: *Julie.Linn@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. The NPRM published in the **Federal Register** on April 13, 2021 (86 FR 19160). The NPRM was prompted by reports of burned BMS 8–39 urethane foam found in certain locations on the airplane; investigation revealed that the fire-retardant properties degrade with age. In the NPRM, the FAA proposed to require inspecting the insulation blankets in certain areas of the forward cargo compartment for exposed BMS 8–39 urethane foam, not encapsulated by a protective fire resistant barrier, and for seal integrity, and replacing the BMS 8–39 urethane foam and seal if necessary. The FAA is issuing this AD to address degraded BMS 8–39 urethane foam used in seals, which may fail to maintain sufficient halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and may fail to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression, which could result in loss of control of the airplane.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

### Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

None of the changes will increase the economic burden on any operator.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020. This service information specifies procedures for doing a general visual inspection of the insulation blankets in the area between station (STA) 960 and STA 1000 on the left and right sides of the forward cargo compartment for exposed BMS 8–39 urethane foam, not encapsulated by a protective fire resistant barrier, and seal integrity, and replacing any BMS 8–39 urethane foam that is found exposed and any seal that does not have acceptable integrity for a smoke barrier. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD affects 109 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | 3 work-hours × $85 per hour = $255 | $0 | $255 | $27,795 |

The FAA estimates the following costs to do any necessary on-condition actions that are required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 1 work-hour × $85 per hour = $85 per finding | Minimal | $85 per finding. |

**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.

The FAA is 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**

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

For the reasons discussed above, I certify that this AD:

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 airworthiness directive:

**2021–14–10 The Boeing Company:** Amendment 39–21637; Docket No. FAA–2021–0258; Project Identifier AD–2020–01565–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by reports of burned Boeing Material Specification (BMS) 8–39 urethane foam found in certain locations on the airplane; investigation revealed that the fire-retardant properties degrade with age. The FAA is issuing this AD to address degraded BMS 8–39 urethane foam used in seals, which may fail to maintain sufficient halon concentrations in the cargo compartments to extinguish or contain fire or smoke, and may fail to prevent penetration of fire or smoke in areas of the airplane that are difficult to access for fire and smoke detection or suppression, which could result in loss of control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 747–25–3725, dated October 27, 2020, which is referred to in Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020.

**(h) Exception to Service Information Specifications**

Where Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020, uses the phrase ''after the Original Issue date of Requirements Bulletin 747–25–3725 RB,'' this AD requires using ''the effective date of this AD.''

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

**(j) Related Information**

(1) For more information about this AD, contact Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3584; email: *Julie.Linn@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Requirements Bulletin 747–25–3725 RB, dated October 27, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 25, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15027 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–1025; Project Identifier MCAI–2020–00757–E; Amendment 39–21630; AD 2021–14–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by BMW Rolls-Royce GmbH and BMW Rolls-Royce Aero Engines) Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd. & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 model turbofan engines. This AD was prompted by reports of HPT stage 1 blades failing in service due to sulphidation and subsequent crack initiation. This AD requires removal and replacement of the HPT stage 1 blade and HPT stage 1 blade damper. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *rrd.techhelp@rolls-royce*; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1025.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1025; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; fax: (781) 238–7199; email: *barbara.caufield@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain RRD BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 model turbofan engines. The NPRM published in the **Federal Register** on November 13, 2020 (85 FR 72608). The NPRM was prompted by reports of HPT stage 1 blades failing in service due to sulphidation and subsequent crack initiation, due to contamination of the blade shank passing by the blade damper. In the NPRM, the FAA proposed to require removal and replacement of the HPT stage 1 blade and HPT stage 1 blade damper. The

FAA is issuing this AD to address the unsafe condition on these products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0194, dated September 4, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences have been reported on RRD BR700–715 engines where certain HP turbine stage 1 blades failed in service. Investigation of these events showed that these were caused by sulphidation and subsequent crack initiation, due to contamination of the blade shank passing by the blade damper.
>
> This condition, if not corrected, could lead to further HP turbine stage 1 blade failures, possibly resulting in engine in-flight shut-down and consequent reduced control of the aeroplane. To address this potential unsafe condition, RRD published the NMSB to provide instructions to replace the affected assembly.
>
> For the reasons described above, this [EASA] AD requires determination of the engine configuration and, depending on findings, removal of the engine from service to replace the affected assembly.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1025.

## Discussion of Final Airworthiness Directive

### Comments

The FAA received comments from one commenter. The commenter was Delta Airlines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request To Revise Definition of ''Parts Eligible for Installation''

Delta requested that the FAA revise the definition of ''parts eligible for installation'' to avoid the necessity of an alternate method of compliance (AMOC) request each time Rolls-Royce introduces a new part number for the HPT stage 1 blade or HPT stage 1 damper.

The FAA agrees and revised the definition of ''parts eligible for installation'' to allow installation of HPT stage 1 blades and HPT stage 1 dampers approved as eligible for installation in accordance with certain RRD service information.

### Request To Clarify Compliance Time Language

Delta requested that the FAA revise paragraph (g)(1)(i) in the Required Actions section of this AD to refer to ''flight cycles since new'' instead of ''flight cycles since first installation,'' as proposed in the NPRM. Delta noted that the proposed language could be misinterpreted as referring to any affected HPT stage 1 blade, regardless of whether the affected HPT stage 1 blade is currently installed on an engine.

The FAA partially agrees. The FAA agrees to update this reference to avoid possible misinterpretation, but disagrees with the specific language proposed by the commenter. The FAA has updated paragraph (g)(1)(i) of this AD to read: ''Before an affected HPT stage 1 blade exceeds 10,000 flight cycles (FCs) since first installation . . .''

### Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed RRD BR700 Series Alert Non-Modification Service Bulletin (NMSB) SB–BR700–72–A900640, Revision 1, dated August 31, 2018. The Alert NMSB describes procedures for removing and replacing the HPT stage 1 blade and HPT stage 1 blade damper. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

### Other Related Service Information

The FAA reviewed RRD Service Bulletin (SB) SB–BR700–72–102005, dated March 20, 2018; RRD NMSB SB–BR700–72–900118, dated June 6, 2017; and RRD SB SB–BR700–72–101671, dated January 29, 2010. RRD SB SB–BR700–72–102005, dated March 20, 2018, introduces a new HPT stage 1 blade damper with a front restrictor that reduces the average airflow into the blade shank cavity, thereby reducing deposition of particles in the cavity. RRD NMSB SB–BR700–72–900118, dated June 6, 2017, describes procedures for recording the serial numbers of the cleaned, crack tested, and examined HPT stage 1 blades. RRD SB SB–BR700–72–101671, dated January 29, 2010, introduces a redesigned HPT stage 1 blade that improves robustness and stress characteristics.

### Costs of Compliance

The FAA estimates that this AD affects 222 engines installed on airplanes of U.S. registry. The agency estimates that the service life of both the HPT stage 1 blade and HPT stage 1 blade damper are 5.5 years. Based on this life estimate, the agency is providing an estimated annual cost to replace these parts.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Annualized cost on U.S. operators |
|---|---|---|---|---|
| Replace HPT stage 1 blade and HPT stage 1 blade damper. | 20 work-hours × $85 per hour = $1,700 ..... | $692,000 | $693,700 | $28,000,524 |

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals.

## 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.

The FAA is 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

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 airworthiness directive:

**2021–14–03 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by BMW Rolls-Royce GmbH and BMW Rolls-Royce Aero Engines):** Amendment 39–21630; Docket No. FAA–2020–1025; Project Identifier MCAI–2020–00757–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Rolls-Royce Deutschland Ltd. & Co KG (Type Certificate previously held by BMW Rolls-Royce GmbH and BMW Rolls-Royce Aero Engines) (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 model turbofan engines with high-pressure turbine (HPT) stage 1 blade, part number (P/N) BRH17133, BRH19984, BRH20011, BRH20237, BRH20351, FW35594, FW45914, FW64379, or FW75735, and with HPT stage 1 blade damper, P/N BRH10943, BRH20353, or FW45770, installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by reports of HPT stage 1 blades failing in service due to sulphidation and subsequent crack initiation. The FAA is issuing this AD to prevent failure of the HPT stage 1 blade. The unsafe condition, if not addressed, could result in the release of the HPT stage 1 blade, failure of the engine, in-flight shutdown, and loss of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

(1) For affected engines that have not operated exclusively under the Hawaiian Flight Mission:

(i) Before an affected HPT stage 1 blade exceeds 10,000 flight cycles (FCs) since first installation of that affected HPT stage 1 blade, or within 50 FCs after the effective date of this AD, whichever occurs later, remove the affected HPT stage 1 blade and the affected HPT stage 1 blade damper from service and replace with parts eligible for installation using the Accomplishment Instructions, paragraph 3.R. through T., of RRD Alert Non-Modification Service Bulletin (NMSB) SB–BR700–72–A900640, Revision 1, dated August 31, 2018 (NMSB SB–BR700–72–A900640).

(ii) If an HPT stage 1 blade has been cleaned and examined before the effective date of this AD using RRD NMSB SB–BR700–72–900118, dated June 6, 2017, within 1,500 FCs from the last cleaning and examination, or within 10 FCs after the effective date of this AD, whichever occurs later, remove the affected HPT stage 1 blade and affected HPT stage 1 blade damper from service and replace with parts eligible for installation using Accomplishment Instructions, paragraph 3.R. through T., of RRD NMSB SB–BR700–72–A900640.

(2) For affected engines operated exclusively under the Hawaiian Flight Mission:

(i) At the next change of the flight mission after the effective date of this AD, replace the affected HPT stage 1 blade and affected HPT stage 1 blade damper in accordance with paragraphs (g)(1)(i) and (ii) of this AD.

(ii) [Reserved]

**(h) Installation Prohibition**

After the effective date of this AD, do not install any HPT stage 1 blade, P/N BRH17133, BRH19984, BRH20011, BRH20237, BRH20351, FW35594, FW45914, FW64379, or FW75735, with any HPT stage 1 blade damper, P/N BRH10943, BRH20353, or FW45770, in any engine.

**(i) Definitions**

(1) For the purpose of this AD, ''parts eligible for installation'' are an HPT stage 1 blade, P/N FW75735, or a P/N approved for installation in accordance with paragraph 2.C of RRD NMSB SB–BR700–72–A900640, installed with HPT stage 1 blade damper, P/N KH82098, or a P/N approved for installation in accordance with paragraph 2.C of RRD NMSB SB–BR700–72–A900640.

(2) For the purpose of this AD, the ''Hawaiian Flight Mission'' are flights operated by Hawaiian Airlines.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO 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 manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

**(k) Related Information**

(1) Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; fax: (781) 238–7199; email: *barbara.caufield@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0194, dated September 4, 2018, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–1025.

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce Deutschland Ltd. & Co KG (RRD) BR700 Series Alert Non-Modification Service Bulletin SB–BR700–72–A900640, Revision 1, dated August 31, 2018.

(ii) [Reserved]

(3) For RRD service information identified in this AD, contact Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *rrd.techhelp@rolls-*

*royce*; website: *https://www.rolls-royce.com/contact-us.aspx.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on June 21, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15055 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0100; Project Identifier MCAI–2020–00309–E; Amendment 39–21613; AD 2021–13–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. Arriel 2C and Arriel 2S1 model turboshaft engines. This AD was prompted by reports of error messages on the full authority digital engine control (FADEC) B digital engine control unit (DECU), caused by blistering of the varnish on the DECU circuit board. This AD requires the replacement of certain FADEC B DECUs. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Safran Helicopter Engines, S.A., Avenue du 1er Mai, 40220 Tarnos, France; phone: +33 (0) 5 59 74 40 00. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0100.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0100; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Safran Helicopter Engines, S.A. Arriel 2C and Arriel 2S1 model turboshaft engines. The NPRM published in the **Federal Register** on February 26, 2021 (86 FR 11662). The NPRM was prompted by reports of error messages on the FADEC B DECU, caused by blistering of the varnish on the DECU circuit board. In the NPRM, the FAA proposed to require the replacement of certain FADEC B DECUs. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0046, dated March 4, 2020 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences have been reported of FADEC B DECU error messages, which were found to be caused by blistering of the varnish on the DECU circuit board. Subsequent investigation determined that the use of a non-compliant primer is related to the blistering effect which, in wet conditions, can cause malfunction of the stepper motor.
>
> This condition, if not corrected, could lead to loss of automatic control on both engines concurrently, possibly resulting in reduced control of the helicopter.
>
> To address this potentially unsafe condition, SAFRAN issued the MSB, as defined in this [EASA] AD, to provide instructions for identification and replacement of affected parts. For the reason described above, this [EASA] AD requires replacement of affected parts with serviceable parts. This [EASA] AD also prohibits (re-installation of affected parts.

You may obtain further information by examining the MCAI in the AD docket on at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0100.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received no comments on the NPRM or on the determination of the costs.

### Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Safran Helicopter Engines Note Technique AA187866, Version A, dated 18 Octobre 2019 [October 18, 2019]. This service information identifies the serial numbers (S/Ns) of certain FADEC B DECUs installed on Arriel 2C and Arriel 2S1 model turboshaft engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

### Other Related Service Information

The FAA reviewed Safran Helicopter Engines Mandatory Service Bulletin (MSB) No. 292 73 2872, Version A, dated October 17, 2019. This MSB describes procedures for identifying the S/Ns of certain FADEC B DECUs and replacing certain FADEC B DECUs on Arriel 2C and Arriel 2S1 model turboshaft engines.

### Costs of Compliance

The FAA estimates that this AD affects 148 engines installed on helicopters of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace the FADEC B DECU | 1 work-hour × $85 per hour = $85 | $0 | $85 | $12,580 |

## 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.

The FAA is 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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 airworthiness directive:

**2021–13–08 Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.):** Amendment 39–21613; Docket No. FAA–2021–0100; Project Identifier MCAI–2020–00309–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.) Arriel 2C and Arriel 2S1 model turboshaft engines.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7321, Fuel Control/Turbine Engines.

**(e) Unsafe Condition**

This AD was prompted by reports of error messages of the full authority digital engine control (FADEC) B digital engine control unit (DECU), caused by blistering of the varnish on the DECU circuit board. The FAA is issuing this AD to prevent failure of the FADEC B DECU. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the helicopter.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

For affected engines having an installed FADEC B DECU with a serial number (S/N) identified in Safran Helicopter Engines Note Technique AA187866, Version A, dated 18 Octobre 2019 [Octobre 18, 2019] (the Note Technique), within 1,400 engine operating hours after the effective date of this AD, replace the FADEC B DECU with a part eligible for installation.

**(h) Installation Prohibition**

After the effective date of this AD, do not install onto any engine a FADEC B DECU having an S/N listed in the Note Technique.

**(i) Definition**

For the purpose of this AD, a part eligible for installation is a FADEC B DECU that does not have an S/N listed in the Note Technique.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO 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 manager of the ECO Branch, send it to the attention of the person identified in Related Information. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

**(k) Related Information**

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0046, dated March 4, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0100.

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Safran Helicopter Engines Note Technique AA187866, Version A, dated 18 Octobre 2019 [October 18, 2019].

(ii) [Reserved]

(3) For Safran Helicopter Engines, S.A. service information identified in this AD, contact Safran Helicopter Engines, S.A., Avenue du 1er Mai, 40220 Tarnos, France; phone: +33 (0) 5 59 74 40 00.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 9, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15041 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0340; Project Identifier MCAI–2020–01638–R; Amendment 39–21634; AD 2021–14–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2003–25–01 which applied to certain Eurocopter France (now Airbus Helicopters) Models AS332C, AS332C1, AS332L, AS332L1, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. AD 2003–25–01 required modifying and re-identifying the hoist operator control unit and replacing certain fuses. This AD was prompted by the identification of multiple errors in the applicable service information for the AS350-series and AS355-series helicopters and of other needed changes. This AD retains certain requirements of AD 2003–25–01, revises the applicability, and requires using corrected service information. This AD also requires reporting certain information and prohibits the installation of an affected hoist until the required actions are accomplished. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 19, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 20, 2004 (68 FR 69596, December 15, 2003).

**ADDRESSES:** For service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is incorporated by reference is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0340.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0340; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Direction Generale De L'Aviation Civile (DGAC) AD, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003) (AD 2003–25–01), for Eurocopter France (now Airbus Helicopters) Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3, and D, and AS355E, F, F1, F2, and N helicopters with a Breeze 300 pound electric hoist (hoist) and hoist operator control unit 26M part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M P/N 332A67–2875–00, installed. The NPRM published in the **Federal Register** on April 28, 2021 (86 FR 22363). In the NPRM, the FAA proposed to require modifying and re-identifying the hoist operator control unit, replacing the fuses, and performing a functional test of the hoist operation and the emergency jettison controls. The NPRM also proposed to require reporting certain information and prohibit the installation of an affected hoist until the required actions are accomplished.

The NPRM was prompted by EASA AD 2019–0228, dated September 12, 2019 (EASA AD 2019–0228) to supersede DGAC AD 2002–585(A), dated November 27, 2002 (DGAC AD 2002–585(A)), issued by DGAC, which is the aviation authority for France. EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD 2019–0228 to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, and AS 355 N helicopters. EASA advises that Airbus Helicopters identified translation errors in the service information required for compliance by DGAC AD 2002–585(A). Airbus Helicopters was also informed that there could be helicopters modified by that service information with incorrect installations. Prompted by these findings, Airbus Helicopters revised the related service information. Therefore, EASA issued EASA AD 2019–0228 to require modifying and re-identifying the hoist operator control unit, replacing the fuses, and performing a functional test of the hoist operation and the emergency jettison controls as intended by DGAC AD 2002–585(A) with the revised service information. EASA AD 2019–0228 also requires reporting certain information to Airbus Helicopters and prohibits the installation of an affected part on any helicopter unless it has been modified.

The NPRM also retains the requirements from AD 2003–25–01 for Model AS332C, C1, L, and L1 helicopters with a certain hoist and hoist box installed, based on DGAC AD 2002–584(A), dated November 27, 2002.

Additionally, since the FAA issued AD 2003–25–01, the FAA discovered that the applicability needed to be revised. This AD revises the applicability by distinguishing the hoist box installations by P/N, clarifying that Airbus Helicopters service information refers to a hoist box as a hoist operator's control unit, adding TRW, Lucas, and Air Equipement hoists for affected Model AS350-series and AS355-series helicopters, and adding an exception for affected helicopters to exclude those with a certain modification (MOD) installed.

Lastly, since the FAA issued AD 2003–25–01, Eurocopter France changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

## Discussion of Final Airworthiness Directive

### Comments

The FAA received no comments on the NPRM or on the determination of the costs.

### Conclusion

These helicopters have been approved by both the authority of France and EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with France and the European Union, DGAC and EASA have notified the FAA about the unsafe condition described in the ADs issued by each authority. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. With the exception of the minor editorial change of adding, ''With a'' in paragraph (c)(1)(ii) of this AD, this AD is adopted as proposed in the NPRM.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. 25.00.71, Revision 2, dated May 14, 2019 (ASB 25.00.71 Rev 2), Airbus Helicopters ASB No. 25.00.79, Revision 3, dated September 24, 2019 (ASB 25.00.79 Rev 3), and Eurocopter ASB No. 25.01.18, dated November 12, 2002 (ASB 25.01.18). ASB 25.00.71 Rev 2 applies to Model AS355-series helicopters, ASB 25.00.79 Rev 3 applies to Model AS350-series helicopters, and ASB 25.01.18 applies to Model AS332-series helicopters. ASB 25.00.71 Rev 2 and ASB 25.00.79 Rev 3 specify procedures to install MOD 07 3190, which consists of eliminating resistor 27M in the hoist operator's control unit 26M and replacing the 2.5A quick-response fuses on the Honeywell unit at 30 alpha or 21 delta for Model AS350-series helicopters or on the distribution panel 10 alpha for Model 355-series helicopters. ASB 25.00.71 Rev 2 and ASB 25.00.79 Rev 3 also specify reporting certain information to Airbus Helicopters. ASB 25.01.18 specifies procedures to install MOD 332PCS 78 288, which consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67–2894–01, –02, –03, or –04, depending on which electrical wiring assembly is installed in the helicopter.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### Other Related Service Information

The FAA also reviewed Airbus Helicopters ASB No. 25.00.71, Revision 1, dated May 21, 2014 (ASB 25.00.71 Rev 1), and ASB No. 25.00.79, Revision 1, dated May 21, 2014 (ASB 25.00.79 Rev 1) and Revision 2 (ASB 25.00.79 Rev 2), dated May 14, 2019.

ASB 25.00.71 Rev 1 specifies the same actions as ASB 25.00.71 Rev 2, except ASB 25.00.71 Rev 2 provides a reminder that MOD 07 3190 is mandatory and adds a reporting response form. ASB 25.00.79 Rev 1 and ASB 25.00.79 Rev 2 specify the same actions as ASB 25.00.79 Rev 3, except ASB 25.00.79 Rev 2 provides a reminder that MOD 07 3190 is mandatory and adds a reporting response form and ASB 25.00.79 Rev 3 adds Model AS350L1 to the effectivity.

### Differences Between This AD and the EASA AD

EASA AD 2019–0228 applies to Model AS350BB helicopters, whereas this AD does not because that model is not FAA type-certificated. EASA AD 2019–0228 requires modifying affected parts within 100 flight hours or 2 months, whichever occurs first, whereas this AD requires these actions before next flight involving a hoist operation for Model AS350-series and AS355-series helicopters instead.

### Costs of Compliance

The FAA estimates that this AD affects up to 977 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Modifying and re-identifying the hoist operator control unit, replacing the fuses, and functionally testing the hoist operation and the emergency jettison controls takes about 4 work hours and parts cost about $20 for an estimated cost of $360 per helicopter and up to $351,720 for the U.S. fleet.

For Model AS350-series and AS355-series helicopters, reporting information takes about 1 work-hour for an estimated cost of $85 per helicopter and up to $82,195 for the U.S. fleet.

### Paperwork Reduction Act

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 currently 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 take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

### 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.

The FAA is 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

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

For the reasons discussed above, I certify that this AD:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:
■ a. Removing Airworthiness Directive 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003); and
■ b. Adding the following new airworthiness directive:

**2021–14–07 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France):** Amendment 39–21634; Docket No. FAA–2021–0340; Project Identifier MCAI–2020–01638–R.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 19, 2021.

**(b) Affected ADs**

This AD replaces AD 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003) (AD 2003–25–01).

**(c) Applicability**

This AD applies to:

(1) Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category, as follows:

(i) With a Breeze 300 pound electric hoist (hoist) installed,

(ii) With a hoist box 91M part number (P/N) 332A67–2875–00 installed, and

(iii) Without Eurocopter modification (MOD) 332PCS 78 288, specified in Eurocopter Alert Service Bulletin (ASB) No. 25.01.18 dated November 12, 2002 (ASB No. 25.01.18) installed.

(2) Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category, as follows:

(i) With a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist installed,

(ii) With a hoist box 26M P/N 350A63–1136–00 (AS350-series) or 350A63–1136–01 (AS355-series) installed, and

(iii) Without Airbus Helicopters (Eurocopter) MOD 07 3190 installed.

**Note 1 to paragraph (c)(2):** Airbus Helicopters service information refers to a hoist box as a hoist operator's control unit.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

**(e) Unsafe Condition**

This AD was prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The FAA is issuing this AD to prevent failure of the hoist pyrotechnic squib electrical control unit. Lack of adequate current to activate the hoist pyrotechnic squib prohibits the ability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency. The unsafe condition, if not addressed, could result in subsequent loss of control of the helicopter.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

(1) For Model AS332C, AS332C1, AS332L, and AS332L1 helicopters identified in paragraph (c) of this AD, within 100 hours time-in-service or within 2 months, whichever occurs first from January 20, 2004 (the effective date of AD 2003–25–01), modify and re-identify the hoist operator control unit, replace the fuses, and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2.B., Operational Procedure, of Eurocopter ASB No. 25.01.18.

(2) For Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters identified in paragraph (c) of this AD:

(i) Before next flight involving a hoist operation after the effective date of this AD, modify and re-identify the hoist operator control unit, replace the fuses, and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2.B., Operational Procedure, of Airbus Helicopters ASB No. 25.00.71, Revision 2, dated May 14, 2019 (ASB 25.00.71 Rev 2), or Airbus Helicopters ASB No. 25.00.79, Revision 3, dated September 24, 2019 (ASB 25.00.79 Rev 3), as applicable to your model helicopter.

(ii) Within 30 days after accomplishing the actions required by paragraph (g)(2)(i) of this AD, report the information in Appendix 4.A. of ASB 25.00.71 Rev 2 or ASB 25.00.79 Rev 3, as applicable to your model helicopter, by email to *support.technical-avionics.ah@airbus.com.*

(3) As of the effective date of this AD, do not install a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist identified in paragraphs (c)(1) or (2) of this AD unless the actions required by paragraphs (g)(1) or (2) have been accomplished, as applicable to your model helicopter.

**(h) Credit for Previous Actions**

Actions accomplished before the effective date of this AD by following the procedures in Airbus Helicopters ASB No. 25.00.71, Revision 1, dated May 21, 2014, or ASB No. 25.00.79, Revision 1, dated May 21, 2014 or Revision 2, dated May 14, 2019, as applicable to your model helicopter, are considered acceptable for compliance with the corresponding actions required in paragraph (g)(2)(i) of this AD. If you take credit, you must also accomplish the actions required by paragraph (g)(2)(ii) of this AD within 30 days after the effective date of this AD.

**(i) Special Flight Permits**

Special flight permits are prohibited for use of a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist identified in paragraphs (c)(1) or (2) of this AD.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation 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 manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

**(k) Related Information**

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov*.

(2) Airbus Helicopters ASB No. 25.00.71, Revision 1, dated May 21, 2014, and Airbus Helicopters ASB No. 25.00.79, Revision 1, dated May 21, 2014 and Revision 2, dated May 14, 2019, which are not incorporated by reference, contain additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (l)(5) and (6) of this AD.

(3) The subject of this AD is addressed in Direction Generale De L'Aviation Civile (DGAC) AD 2002–584(A), dated November 27, 2002, and European Union Aviation Safety Agency (EASA) AD 2019–0228, dated September 12, 2019. You may view the DGAC and EASA ADs at *https://www.regulations.gov* in Docket No. FAA–2021–0340.

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on August 19, 2021.

(i) Airbus Helicopters Alert Service Bulletin No. 25.00.71, Revision 2, dated May 14, 2019.

(ii) Airbus Helicopters Alert Service Bulletin No. 25.00.79, Revision 3, dated September 24, 2019.

(4) The following service information was approved for IBR on January 20,

2004 (68 FR 69596, December 15, 2003).

(i) Eurocopter Alert Service Bulletin No. 25.01.18, dated November 12, 2002.

(ii) [Reserved]

(5) For Airbus Helicopters and Eurocopter service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(6) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 9, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15020 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2021–0292; Airspace Docket No. 21–AGL–22]**

**RIN 2120–AA66**

## Establishment and Modification of Class E Airspace; Williston Basin, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes a Class E airspace area, designated as an extension to a Class D or Class E surface area, at Williston Basin International Airport, Williston, ND. This action also modifies the Class E airspace extending upward from 700 feet above the surface. The airspace modifications support the establishment of new instrument procedures for runways 04 and 22. This action also updates the geographic coordinates in the Class E2 and Class E5 text headers. The airspace supports instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 21672; April 23, 2021) for Docket No. FAA–2021–0292 to modify the Class E airspace at Williston Basin International Airport, Williston, ND. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

After the publication of the NPRM, the FAA determined that Class E4 airspace should be established versus modifying the Class E2 airspace. This action corrects the NPRM by establishing Class E4 airspace. This airspace area is designed to contain IFR aircraft descending below 1,000 feet above the surface on the VOR RWY 22 approach. The new Class E4 area is identical to the Class E2 modification that was proposed in the NPRM. The airspace is described as ''That airspace extending upward from the surface within 2.4 miles each side of the 045° bearing from the airport, extending from the Class E2's 4.2-mile radius to 6.8 miles northeast of the airport.''

Class E2, E4, and E5 airspace designations are published in paragraphs 6002, 6004, and 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area, designated as an extension to a Class D or Class E surface area, at Williston Basin International Airport, Williston, ND. This airspace area is established northeast of the airport and is designed to contain arriving IFR aircraft descending below 1,000 feet above the surface on the VOR RWY 22 approach.

Additionally, this action modifies the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain arriving IFR aircraft descending below 1,500 feet above the surface and departing IFR aircraft until reaching 1,200 feet above the surface. An area northeast and

another southwest of the airport are added to contain IFR aircraft arriving and departing the airport.

Lastly, the action updates the geographic coordinates in the Class E2 and Class E5 text headers. The coordinates are updated to ''lat. 48°15′35″ N, long. 103°45′02″ W,'' to match the FAA database.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as a Surface Area.*

* * * * *

**AGL ND E2 Williston, ND [Amended]**

Williston Basin International Airport, ND
(Lat. 48°15′35″ N, long. 103°45′02″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 1.3 miles each side of the 135° bearing from the airport extending from the 4.2-mile radius to 4.7 miles southeast of the airport, and within 1.3 miles each side of the 339° bearing from the airport extending from the 4.2-mile radius to 4.7 miles north of the airport.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

* * * * *

**AGL ND E4 Williston, ND [New]**

Williston Basin International Airport, ND
(Lat. 48°15′35″ N, long. 103°45′02″ W)

That airspace extending upward from the surface within 2.4 miles each side of the 045° bearing from the airport extending from the Class E2's 4.2-mile radius to 6.8 miles northeast of the airport.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AGL ND E5 Williston, ND [Amended]**

Williston Basin International Airport, ND
(Lat. 48°15′35″ N, long. 103°45′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 4.4 miles each side of the 044° bearing from the airport extending from the 6.7-mile radius to 9.8 miles northeast of the airport, and within 2 miles each side of the 053° bearing from the airport extending from the 6.7-mile radius to 12.4 miles northeast of the airport and within 3.3 miles each side of the 133° bearing from the airport extending from the 6.7-mile radius to 11.3 miles southeast of the airport, and within 2.1 miles each side of the 232° bearing from the airport extending from the 6.7-mile radius to 11.8 miles southwest of the airport, and within 3.8 miles each side of the 340° bearing from the airport extending from the 6.7-mile radius to 11 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 41-mile radius of the airport.

Issued in Des Moines, Washington, on July 9, 2021.

**B.G. Chew,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2021–15017 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2020–0567; Airspace Docket No. 20–AAL–15]**

**RIN 2120–AA66**

## Amendment to Federal Airways Amber 15 (A–15), V–444, J–502, J–511, and Extension of Canadian Area Navigation Routes Q–902 and Q–811; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Federal airways, A–15, V–444, J–502, and J–511 in Alaska. It also establishes an extension of two Canadian Area Navigation Q routes, Q–902, and Q–811. The modifications are necessary due to the decommissioning of the Burwash Non-Directional Beacon (NDB) in Yukon Territory, Canada, which provides navigation guidance for portions of the affected routes. The Burwash NDB was decommissioned effective March 26, 2020 due to ongoing maintenance problems and logistic issues.

**DATES:** Effective date 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Christopher McMullin, Rules and

Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

## History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0567 in the **Federal Register** (85 FR 38799; June 29, 2020) amending Federal airways A–15, V–444, J–502, and J–511 in Alaska. A supplemental notice of proposed rulemaking was also published for Docket No. FAA–2020–0567 in the **Federal Register** (85 FR 60108 September 24, 2020) amending Federal airways J–502, and J–511 in Alaska, and establishing two Q routes, Q–902, and Q–811. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Colored and Alaskan VOR Federal airways are published in paragraph 6009 and 6010(b), Jet routes are published in paragraph 2004, and Canadian Area Navigation Routes are published in paragraph 2007 of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Federal airways, jet routes, and Canadian Area Navigation routes listed in this document will be subsequently published in the Order.

## Differences From the NPRM

In the supplemental NPRM published in the **Federal Register** (85 FR 60108; September 24, 2020) proposal section addressing the establishment of Q–811 and Q–902, they were referred to as Alaskan Air Navigational routes, which was stated in error. This same error was made in the proposed amendment section. Q–811 and Q–902 are extensions of Canadian Area Navigation routes that extend into Alaskan airspace and should be referenced under paragraph 2007. This rule corrects that editorial error in the amendment section.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Rule

This action amends 14 CFR part 71 by modifying Federal airways A–15, and V–444, jet routes J–502, and J–511, and Canadian Area Navigation Routes Q–811, and Q–902. The airway actions are described below.

*A–15:* A–15 currently extends between the Ethelda, BC, Canada, NDB and the Delta Junction, AK, NDB. This action removes the segment between the Intersection of Sisters Island 331°, and Whitehorse 207° radials and Beaver Creek, YT, NDB. The unaffected portions of the existing route remain as charted.

*V–444:* V–444 currently extends between the Barrow, AK, NDB and the Burwash, YT, NDB. This action removes the segment between the intersection of the Northway 138°, and Gulkana 079° and Burwash, YT, NDB. The unaffected portions of the existing route remain as charted. The portion within Canada is excluded.

*J–502:* J–502 currently extends between Seattle, WA and Kotzebue, AK. This action removes the segment between the Sister Island, AK, VORTAC and the Northway, AK, VORTAC. The unaffected portions of the existing route would remain as charted.

*J–511:* J–511 currently extends between Dillingham, AK and Burwash Landing, YT, Canada, NDB. This action removes the segment between the Gulkana VORTAC and the Burwash Landing, YT, Canada. The unaffected portions of the existing route would remain as charted.

*Q–811:* This action extends Canadian Area Navigation Route Q–811 to overly the existing J–511 to mitigate the route segments that cannot be supported by ground navigational facilities. Q–811 starts at Dillingham, AK and terminates at the newly established waypoint of IGSOM, which was established to replace the Burwash NDB, excluding that airspace in Canada.

*Q–902:* This action extends Canadian Area Navigation Route Q–902 to overlay the existing J–502 in its entirety, to mitigate route segments that cannot be supported by ground navigation facilities. Q–902 starts at Seattle, WA and terminates at Kotzebue, AK, excluding that airspace in Canada.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

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

## Environmental Review

The FAA has determined that this airspace action of amending of Federal airways A–15, and V–444, jet routes J–502, and J–511, and Canadian Area Navigation Routes Q–811, and Q–902 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and

circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6009 Colored Federal Airways.*

* * * * *

**A–15 [Amended]**

From Ethelda, BC, Canada, NDB; Nichols, AK, NDB; Sumner Strait, AK, NDB; Coghlan Island, AK, NDB; Haines, AK, NDB; Intersection of Sisters Island 311° (M), 331° (T), and Whitehorse 189° (M), 207° (T) radials; and then; Beaver Creek, YT, Canada, NDB; Nabesna, AK, NDB; to Delta Junction, AK, NDB. The airspace within Canada is excluded.

* * * * *

*Paragraph 6010(b) Alaskan VOR Federal Airways.*

* * * * *

**V–444 [Amended]**

From Barrow, AK, Evansville, AK, NDB; Bettles, AK; Fairbanks, AK; Big Delta, AK; Northway, AK; intersection of the Northway 120° (M), 138° (T), and Gulkana 062° (M), 079° (T) radials.

* * * * *

*Paragraph 2004 Jet Routes.*

* * * * *

**J–502 [Amended]**

From Seattle, WA; via Victoria, BC, Canada; Port Hardy, BC, Canada; Annette Island, AK; Level Island, AK; Sisters Island; and then; Northway, AK; Fairbanks, AK; to Kotzebue, AK, excluding the airspace within Canada.

* * * * *

**J–511 [Amended]**

From Dillingham, AK; via INT Dillingham 059° and Anchorage, AK 247° radials, to Anchorage, AK; Gulkana, AK.

* * * * *

*Paragraph 2007 Canadian Area Navigation Routes.*

* * * * *

**Q–811 DILLINGHAM, AK TO IGSOM [NEW]**

| | | |
|---|---|---|
| DILLINGHAM, AK (DLG) | VOR/DME | (Lat. 58°59′39.24″ N, long. 158°33′07.99″ W) |
| KOWOK, AK | FIX | (Lat. 59°12′31.22″ N, long. 157°50′52.40″ W) |
| SAHOK, AK | FIX | (Lat. 59°34′38.92″ N, long. 156°35′01.99″ W) |
| FAGIN, AK | WP | (Lat. 59°51′56.15″ N, long. 155°32′43.30″ W) |
| NONDA, AK | WP | (Lat. 60°19′15.50″ N, long. 153°47′57.60″ W) |
| AMOTT, AK | WP | (Lat. 60°52′26.59″ N, long. 151°22′23.60″ W) |
| GASTO, AK | WP | (Lat. 60°56′38.36″ N, long. 151°02′43.16″ W) |
| ANCHORAGE, AK (TED) | VOR/DME | (Lat. 61°10′04.32″ N, long. 149°57′36.51″ W) |
| GULKA N, AK (GKN) | VOR/DME | (Lat. 62°09′13.51″ N, long. 145°26′50.51″ W) |
| TOVAD, CAN | FIX | (Lat. 61°37′45.02″ N, long. 140°58′54.31″ W) |
| IGSOM, CAN | WP | (Lat. 61°22′14.38″ N, long. 139°02′23.81″ W) |

* * * * *

**Q–902 SEATTLE, WA TO KOTZEBUE, AK [NEW]**

| | | |
|---|---|---|
| SEATTLE, WA (SEA) | VORTAC | (Lat. 47°26′07.34″ N, long. 122°18′34.62″ W) |
| ORCUS, WA | WP | (Lat. 48°20′39.54″ N, long. 123°07′44.01″ W) |
| VICTORIA, CAN (YYJ) | VOR/DME | (Lat. 48°43′37.34″ N, long. 123°29′03.69″ W) |
| ARRUE, CAN | INT | (Lat. 49°04′23.00″ N, long. 124°07′47.00″ W) |
| ROYST, CAN | INT | (Lat. 49°35′29.00″ N, long. 125°07′35.00″ W) |
| PORT HARDY, CAN (YZT) | VOR/DME | (Lat. 50°41′02.90″ N, long. 127°21′55.10″ W) |
| PRYCE, CAN | INT | (Lat. 52°14′17.00″ N, long. 128°45′00.00″ W) |
| DUGGS, CAN | INT | (Lat. 53°02′05.00″ N, long. 129°30′12.00″ W) |
| HANRY, CAN | INT | (Lat. 54°36′23.00″ N, long. 131°05′36.00″ W) |
| ANNETTE ISLA N, AK (ANN) | VOR/DME | (Lat. 55°03′37.47″ N, long. 131°34′42.24″ W) |
| GESTI, AK | INT | (Lat. 55°25′57.47″ N, long. 131°57′50.40″ W) |
| DOOZI, AK | WP | (Lat. 55°37′57.14″ N, long. 132°10′28.73″ W) |
| LEVEL ISLA N, AK (LVD) | VOR/DME | (Lat. 56°28′03.75″ N, long. 133°04′59.21″ W) |
| HOODS, AK | WP | (Lat. 57°44′34.56″ N, long. 134°40′53.66″ W) |
| SISTERS ISLA N, AK (SSR) | VORTAC | (Lat. 58°10′39.58″ N, long. 135°15′31.91″ W) |
| IGSOM, CAN | WP | (Lat. 61°22′14.38″ N, long. 139°02′23.81″ W) |
| AYZOL, AK | WP | (Lat. 62°28′16.15″ N, long. 141°00′00.00″ W) |
| NORTHWAY, AK (ORT) | VORTAC | (Lat. 62°56′49.92″ N, long. 141°54′45.39″ W) |
| RDFLG, AK | WP | (Lat. 63°35′27.26″ N, long. 143°51′00.14″ W) |
| HRD N, AK | WP | (Lat. 64°18′04.42″ N, long. 146°12′01.50″ W) |
| FAIRBANKS, AK (FAI) | VORTAC | (Lat. 64°48′00.25″ N, long. 148°00′43.11″ W) |
| KOTZEBUE, AK (OTZ) | VOR/DME | (Lat. 66°53′08.46″ N, long. 162°32′23.77″ W) |

* * * * *

Issued in Washington, DC, on July 9, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–14978 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2020–0642; Airspace Docket No. 19–AWP–98]**

**RIN 2120–AA66**

### Amendment of V–25, V–27, V–494, V–108, V–301, and T–257 in the Vicinity of Santa Rosa, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published by the FAA in the **Federal Register** on June 4, 2021 that amends VHF Omnidirectional Range (VOR) Federal airways V–25, V–27, V–494, V–108, V–301, and United States Area Navigation route (RNAV) T–257 in the vicinity of Santa Rosa, CA. This action makes an editorial correction to include the Mendocino VOR, which was inadvertently deleted from the legal description for V–494. Amendments are due to the planned decommissioning of the Santa Rosa, CA VOR/Distance Measuring Equipment (DME) navigation aid (NAVAID) which provides navigation guidance for portions of the affected airways. The Santa Rosa VOR/DME is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, August 12, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

#### History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0642 in the **Federal Register** (85 FR 47928; August 7, 2020) and a final rule (86 FR 29946; June 4, 2021), amending VOR Federal airways V–25, V–27, V–494, V–108, V–301, and RNAV route T–257 in the vicinity of Santa Rosa, CA, due to the planned decommissioning of the Santa Rosa, CA, VOR/DME NAVAID. Subsequent to the publication, it was determined that Mendocino, CA, VOR was missing from the legal description of V–494. This rule corrects that error by including Mendocino, CA, VOR in its appropriate place in the V–494 legal description. This is an editorial change only and does not alter the alignment of the route as shown on aeronautical charts, and does not affect the use of the route by aircraft.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently published in the Order.

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### Correction to Final Rule

■ The description of VOR Federal Airway V–494, as published on page 29948, in column 1 beginning on line 10, in the **Federal Register** of June 4, 2021 (86 FR 29946), FR Doc. 2021–11651, is corrected as follows:

**V–494 [Corrected]**

From Crescent City, CA, via INT Crescent City 195° and Fortuna, CA, 345° radials; Fortuna; INT Fortuna 170° and Mendocino, CA 321° radials; Mendocino; INT Point Reyes, CA 006° and Scaggs Island, CA 314° radials; Sacramento, CA; INT Sacramento 038° and Squaw Valley, CA, 249° radials; Squaw Valley; INT Squaw Valley 078° and Hazen, NV, 244° radials; Hazen.

* * * * *

Issued in Washington, DC, on July 9, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–15004 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Chapter I

### 46 CFR Chapter I

**[Docket No. USCG–2021–0404]**

### Cancellation of Obsolete Navigation and Inspection Circulars

**AGENCY:** Coast Guard, DHS.

**ACTION:** Announcement of decision.

**SUMMARY:** The Coast Guard announces the cancellation of several obsolete Navigation and Vessel Inspection Circulars (NVIC). NVICs are guidance documents issued by the Coast Guard that do not have the force of law. However, NVICs ensure Coast Guard inspections and other regulatory actions conducted by field personnel are complete and consistent. Similarly, the marine industry and the general public rely on NVICs as a way to assess how the Coast Guard will enforce certain regulations or conduct various marine safety programs. Thus, it is important that the public is made aware when NVICs are cancelled so as to avoid confusion.

**DATES:** July 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email LCDR Peter Bizzaro, Coast Guard; telephone 202–372–1135, email *cg-cvc@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

#### Background and Purpose

A Navigation and Vessel Inspection Circular (NVIC) provides detailed guidance about the enforcement or compliance with a certain Federal marine safety regulations and Coast Guard marine safety programs. While NVIC's are non-directive, meaning that they do not have the force of law, they are important ''tools'' for complying

with the law. To best serve the public and maritime industry, the Coast Guard is reviewing and actively managing its inspections policy to ensure that all published NVICs are consistent with current practices.

The Coast Guard is issuing this document under 5 U.S.C. 552(a)(1)(e). This document serves to inform the public about the cancellation and removal of certain obsolete and outdated Coast Guard NVICs. The Coast Guard wishes to reduce confusion to the public by removing NVICs that do not reflect current practices and that potentially conflict with more modern guidance.

**NVICs Being Repealed**

1. NVIC 09–83 provided guidance on the carriage of charts and publications. The regulations it references were amended in June 2001. Agencies mentioned in the NVIC no longer provide the services mentioned as charts have moved to digital formatting. Current policy can be found in the superseding NVIC 01–16.

2. NVICs 02–97 and 02–97CH–1 provided guidance on the implementation of operational measures for existing tank vessels without double hulls until 2015. The phase out ended on January 1, 2015. Since the phase out date of January 1, 2015 has passed the guidance no longer applies. Due to the obsolescence of the vessel classification this NVIC regulates, there is no longer a need for its publication.

3. NVICs 10–94, 10–94CH–1, and 10–94CH–2 provided guidance for the OPA 90 Phase-Out Schedule of single hull vessels carrying oil. The phase out ended on January 1, 2015. After January 1, 2015 any vessel carrying oil must be double hulled, except for those exceptions under 46 U.S.C. 3703a (b)(1)–(5). The phase out was final in 2015. Therefore, there are no more vessels operating lawfully which would need a determination for phase out. This eliminates the need for guidance in classifying them.

4. NVIC 10–83 provides guidance on the procedures for the issuance of stability letters to small passenger vessels (SPV) of less than 65′. The Coast Guard organizations referenced no longer exist and the SPV stability regulations have been updated twice since the date of issuance. This NVIC is outdated and confusing to the public. The current regulatory requirements for a stability letter can be found in 46 CFR part 170.

5. NVIC 00–13 provides guidance on the list of currently applicable NVICs as of January 1, 2013. This list is incomplete and outdated. The list of currently applicable NVICs has not been updated since January 1, 2013. The Coast Guard provides all NVICs on its outward facing website where each NVIC entry's description indicates whether its currently applicable.

6. NVIC 05–71 provides an index of 46 CFR part 151 under subchapter O that concerns barges carrying bulk liquid hazardous material cargoes. The subchapter has been altered since the time of the NVIC's release. The information in this NVIC is no longer accurate or current. The current outline of subchapter O on certain bulk dangerous cargoes can be found as part of the eCFR, provided at no cost online.

7. NVIC 07–99 provides guidance regarding the Coast Guard's policy on ensuring maritime safety during the year 2000 (Y2K) date change. The year 2000 has passed and this policy is no longer applicable.

8. NVIC 13–92 provides guidance concerning the delineation of Captain of the Port (COTP) zone boundaries throughout the Exclusive Economic Zone (EEZ). NVIC 13–92 has out of date geographical limits to represent COTP zone boundaries and is obsolete. The current COTP boundaries are properly reflected in 33 CFR part 3.

Dated: June 14, 2021.

**W.R. Arguin,**

*Captain, U.S. Coast Guard, Director of Inspection and Compliance (CG–5PC).*

[FR Doc. 2021–14966 Filed 7–14–21; 8:45 am]

BILLING CODE 9110–04–P

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2021–0214]**

**RIN 1625–AA08**

## Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations for certain waters of Breton Bay and McIntosh Run. This action is necessary to provide for the safety of life on these navigable waters located at Leonardtown, MD, during a high-speed power boat demonstration event on July 31, 2021, and August 1, 2021. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port Maryland-National Capital Region or the Event Patrol Commander.

**DATES:** This rule is effective from 7 a.m. on July 31, 2021, through 6 p.m. on August 1, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0214 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Shaun Landante, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2570, email *Shaun.C.Landante@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Southern Maryland Boat Club of Leonardtown, MD, has notified the Coast Guard that it will be conducting the Southern Maryland Boat Club Wharf Summer Regatta from 9:30 a.m. to 4 p.m. on July 31, 2021, and from 10:15 a.m. to 4 p.m. on August 1, 2021. The high-speed boat event consists of approximately 50 participating vintage and historic race boats—including runabouts, v-bottoms, tunnel hulls, and hydroplanes—12 to 21 feet in length. The boats will be participating in an exhibition, operating in heats along a marked racetrack-type course 1 mile in length and 150 feet in width, located in Breton Bay and McIntosh Run at Leonardtown, MD. The Regatta is not a competition, but rather a demonstration of the vintage race craft. Hazards from the high-speed power boat demonstration event include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to local public boat landings. In response, on June 10, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD'' (86 FR 30851). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power

boat event. During the comment period that ended June 25, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with this high-speed power boat event.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port (COTP) Maryland—National Capital Region has determined that potential hazards associated with the high-speed power boat event would be a safety concern for anyone intending to operate within certain waters of Breton Bay and McIntosh Run at Leonardtown, MD, operating in or near the event area. The pupose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 10, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 7 a.m. on July 31, 2021, through 6 p.m. on August 1, 2021. The special local regulation will be enforced from 7 a.m. through 6 p.m. on July 31st and 7 a.m. through 6 p.m. on August 1st. The regulated area covers all navigable waters of Breton Bay and McIntosh Run immediately adjacent to Leonardtown, MD, within an area bounded by lines drawn shoreline to shoreline, to the south along latitude 38°16′43″ N, and to the west along longitude 076°38′30″ W.

This rule provides additional information about areas within the regulated area, and the restrictions that would apply to mariners. These areas include a ''Race area,'' ''Buffer area,'' ''Milling area'' and ''Spectator area.'' They lie within an area bounded to the south by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′30″ W, located in Breton Bay and McIntosh Run at Leonardtown, MD.

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event scheduled from 9:30 a.m. until 4 p.m. on July 31, 2021, and from 10:15 a.m. until 4 p.m. on August 1, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Southern Maryland Boat Club Regatta participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels are required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct everyone other than participants while within the regulated area. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Only participants and official patrols are allowed within the race area and milling area.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, duration, and time of year of the regulated area, which will impact a small designated area of Breton Bay and McIntosh Run for 22 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule allows vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely will be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue Local Notice to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for eleven hours each day. It is categorically excluded from further review under paragraph L61(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 100**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0214 to read as follows:

**§ 100.T05–0214 Southern Maryland Boat Club Leonardtown Regatta, Breton Bay, McIntosh Run, Leonardtown, MD.**

(a) *Locations.* All coordinates reference Datum NAD 1983. (1) *Regulated area.* All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′43″ N and bounded to the west by a line drawn along longitude 076°38′30″ W, located at Leonardtown, MD. The following locations are within the regulated area:

(2) *Race area.* The area is bounded by a line commencing at position latitude 38°17′09.78″ N, longitude 076°38′22.71″ W; thence southeasterly to latitude 38°16′58.62″ N, longitude 076°37′50.91″ W; thence southwesterly to latitude 38°16′51.89″ N, longitude 076°37′55.82″ W; thence northwesterly to latitude 38°17′05.44″ N, longitude 076°38′27.20″ W; thence northeasterly terminating at point of origin.

(3) *Buffer area.* The area surrounds the entire Race Area described in the preceding paragraph of this section. The area is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude 38°17′13.80″ N, longitude 076°38′24.72″ W; thence easterly to latitude 38°16′58.61″ N, longitude 076°37′44.29″ W; thence southerly to latitude 38°16′46.35″ N, longitude 076°37′52.54″ W; thence westerly to latitude 38°16′58.78″ N, longitude 076°38′26.63″ W; thence northerly to latitude 38°17′07.50″ N, longitude 076°38′30.00″ W; thence northeasterly terminating at point of origin.

(4) *Milling area.* The area is bounded by a line commencing at the shoreline east of Leonardtown Wharf Parkat position latitude 38°17′10.07″ N, longitude 076°38′14.87″ W; thence easterly and southerly along the shoreline to latitude 38°17′01.54″ N, longitude 076°37′52.24″ W; thence westerly terminating at point of origin.

(5) *Spectator area: Northeast spectator fleet area.* The area is bounded by a line commencing at position latitude 38°16′59.10″ N, longitude 076°37′45.60″ W, thence northeasterly to latitude 38°17′01.76″ N, longitude 076°37′43.71″ W, thence southeasterly to latitude 38°16′59.23″ N, longitude 076°37′37.25″ W, thence southwesterly to latitude 38°16′53.32″ N, longitude 076°37′40.85″ W, thence northwesterly to latitude 38°16′55.48″ N, longitude 076°37′46.39″ W, thence northeasterly to latitude 38°16′58.61″ N, longitude 076°37′44.29″ W, thence northwesterly to point of origin.

(6) *Southeast spectator fleet area.* The area is bounded by a line commencing at position latitude 38°16′47.20″ N, longitude 076°37′54.80″ W, thence southerly to latitude 38°16′43.30″ N, longitude 076°37′55.20″ W, thence easterly to latitude 38°16′43.20″ N, longitude 076°37′47.80″ W, thence northerly to latitude 38°16′44.80″ N, longitude 076°37′48.20″ W, thence northwesterly to point of origin.

(7) *South spectator fleet area.* The area is bounded by a line commencing at position latitude 38°16′55.36″ N, longitude 076°38′17.26″ W, thence southeasterly to latitude 38°16′50.39″ N, longitude 076°38′03.69″ W, thence southerly to latitude 38°16′48.87″ N, longitude 076°38′03.68″ W, thence northwesterly to latitude 38°16′53.82″ N, longitude 076°38′17.28″ W, thence northerly to point of origin.

(b) Definitions. As used in this section:

*Buffer area* is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a race area and specified spectator areas or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Milling area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a demonstration start to warm up the boats engines.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means a person or vessel registered with the event sponsor as participating in the Southern Maryland Boat Club Leonardtown Regatta or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a high-speed power boat demonstration area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols and is present with the purpose of observing the event.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations:* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area and milling area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area, in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 6 p.m. on July 31, 2021, and, from 7 a.m. to 6 p.m. on August 1, 2021.

Dated: July 6, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021–14826 Filed 7–14–21; 8:45 am]

**BILLING CODE 9110–04–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2021–0392]**

**RIN 1625–AA00**

## Fixed and Moving Safety Zone; Around the USACE Bank Grading Units and USACE Mat Sinking Unit

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary fixed and moving safety zone for all waters within 300 yards of the U.S. Army Corps of Engineers (USACE) Bank Grading Units and USACE Mat Sinking Unit while operating on the Lower Mississippi River between MM332 through MM862. The safety zone is needed to protect persons, property, infrastructure, and the marine environment from the potential safety hazards associated with the bank grading and mat sinking operations performed by the USACE. During the effective period, USACE operations may require at times one way traffic, or complete closures during daylight hours when no traffic will be allowed to transit within 300 yards of

the operation. Broadcast Notice to Mariners will be used to inform marine traffic of these times based on notice provided by the USACE. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port, Lower Mississippi River, or a designated representative.

**DATES:** This rule is effective from July 15, 2021 until December 31, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0392 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking,
§ Section
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the USACE is taking necessary and immediate action to protect persons, property, infrastructure, and the marine environment.. Completing the full NPRM process is impracticable because the USCG must establish this safety zone as soon as possible to protect persons, property, infrastructure, and the marine environment from the potential safety hazards associated with the time critical USACE operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because we must respond to the potential safety hazards associated with the bank grading and mat sinking operations in the LMR by July 15, 2021.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP, LMR has determined that potential hazards associated with the bank grading and mat sinking operations will be a safety concern for anyone within a 300 yard radius of USACE equipment This rule is needed to protect persons, property, infrastructure, and the marine environment within the safety zone while USACE operations are being conducted.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from July 15, 2021, through December 31, 2021. The safety zone will cover all navigable waters of the LMR from Mile Marker (MM) 332 through MM 862 extending the entire width of the river. The safety zone will only be activated when USACE operations preclude safe navigation of the established channel. The duration of the zone is intended to protect persons, property, infrastructure, and the marine environment in these navigable waters while operations are being conducted. Broadcast Notice to Mariners will be used to inform marine traffic of these times based on notice provided by the USACE.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 314–269–2332. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone will temporarily restrict navigation on the LMR from MM 332 through MM 863, from July 15, 2021 through December 31, 2021. Moreover, The Coast Guard will issue BNMs, LNMs, and/or Marine Safety Information Bulletins as appropriate. The rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the LMR from MM 332 through MM 863, that will prohibit entry into this temporary zone. The safety zone will only be enforced while operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0392 to read as follows:

**§ 165.T08–0392 Fixed and Moving Safety Zone; around USACE Bank Grading Unit and USACE Mat Sinking Unit.**

(a) *Location.* The following area is a safety zone: All waters of the Lower Mississippi River from MM 332 through MM 863.

(b) *Regulations.* (1) The safety zone described in paragraph (a) of this section will be activated when USACE operations preclude safe navigation of the established channel. The Coast Guard will inform marine traffic of the of the times the safety zone is activated using Broadcast Notice to Mariners.

(2) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section when the safety zone is activated unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(3) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced periodically, as announced on Broadcast Notice to Mariners, from July 15, 2021 until December 31, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: July 12, 2021.

**S. Rhodes,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.*

[FR Doc. 2021–15129 Filed 7–14–21; 8:45 am]

BILLING CODE 9110–04–P

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2021–0542]**

**RIN 1625–AA00**

## Safety Zone; Cumberland River; Canton, KY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Cumberland River extending from mile marker (MM) 61 to MM 64 near Canton, KY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards due to the salvage of a cruise ship and the disembarkation of the passengers on board. Entry of vessels or persons into

this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from July 15, 2021 through July 16, 2021. For the purposes of enforcement, actual notice will be used from July 9, 2021 until July 15, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0542 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email MST2, Dylan Caikowski, MSU Paducah, U.S. Coast Guard; telephone 270–442–1621 ext. 2120, email *STL-SMB-MSUPaducah-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. On July 7, 2021 a cruise ship grounded near MM 62 of the Cumberland River causing a hazardous condition for the disembarkation of the passengers on board. Due to the nature of the Cumberland River and the amount of recreational vessels there is potential risk during salvage of the cruise ship to recreational vessels in the area. The safety zone must be established immediately to protect people, vessels, and the marine environment from hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board. It is impracticable to publish an NPRM because we must establish this safety zone by July 9, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the salvage and disembarkation of passengers from a grounded cruise ship will be a safety concern for anyone between MM 61 and MM 64 on the Cumberland River. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards due to the salvage of a cruise ship and the disembarkation of the passengers on board at MM 62 on the Cumberland River.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from July 9, 2021 through July 16, 2021, or until the hazard have been mitigated. The temporary safety zone will cover all navigable waters of the Cumberland River from MM 61 to MM 64. The COTP will terminate the enforcement of this temporary safety zone before July 16, 2021 if the hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board have been resolved. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 502–779–5422 or the on scene designated representative can be reached via VHF–FM channel 16. Persons and vessels permitted to enter this temporary safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration. This temporary safety zone will restrict vessel traffic from entering or transiting within a 3 mile area of navigable waters on the Cumberland River between MM 61 and MM 64. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM channel 16 about the temporary safety zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting seven days or until the salvage of a cruise ship, and disembarkation of the passengers on board is complete. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0542 to read as follows:

**§ 165.T08–0542 Safety Zone; Cumberland River, Canton, KY.**

(a) *Location.* The safety zone will cover all navigable waters of the Cumberland River from mile marker (MM) 61 to MM 64.

(b) *Enforcement period.* This section will be enforced from July 9, 2021 and will continue through July 16, 2021 or until the hazards associated with the salvage of a cruise ship and the disembarkation of the passengers on board have been mitigated, whichever occurs first.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into the zone during demolition operations is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

Dated: July 9, 2021.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2021–14996 Filed 7–14–21; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### 33 CFR Parts 207 and 326

**RIN 0710–AB19**

### Civil Monetary Penalty Inflation Adjustment Rule

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is issuing this final rule to adjust its civil monetary penalties (CMP) under the Rivers and Harbors Act of 1922 (RHA), the Clean Water Act (CWA), and the National Fishing Enhancement Act (NFEA) to account for inflation.

**DATES:** This final rule is effective on July 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** For the RHA portion, please contact Mr. Paul Clouse at 202–761–4709 or by email at *Paul.D.Clouse@usace.army.mil,* or for the CWA and NFEA portion, please contact Ms. Karen Mulligan at 202–761–4664 or by email at *karen.mulligan@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.*

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act), Public Law 114–74,

November 2, 2015, required agencies to annually adjust the level of CMP for inflation to improve their effectiveness and maintain their deterrent effect.

With this rule, the new statutory maximum penalty levels listed in Table 1 will apply to all statutory civil penalties assessed on or after the effective date of this rule. Table 1 shows the calculation of the 2021 annual inflation adjustment based on the guidance provided by the Office of Management and Budget (OMB) (see December 23, 2020, Memorandum for the Heads of Executive Departments and Agencies, Subject: Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act 2015). The OMB provided to agencies the cost-of-living adjustment multiplier for 2021, based on the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October 2020, not seasonally adjusted, which is 1.01182. Agencies are to adjust ''the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.'' For 2021, agencies multiply each applicable penalty by the multiplier, 1.01182, and round to the nearest dollar. The multiplier should be applied to the most recent penalty amount, *i.e.,* the one that includes the 2020 annual inflation adjustment.

TABLE 1

| Citation | Civil monetary penalty (CMP) amount established by law | 2020 CMP amount in effect prior to this rulemaking | 2021 Inflation adjustment multiplier | CMP amount as of 7/15/2021 |
|---|---|---|---|---|
| Rivers and Harbors Act of 1922 (33 U.S.C. 555). | $2,500 per violation | $5,834 per violation | 1.01182 | $5,903 per violation. |
| CWA, 33 U.S.C. 1319(g)(2)(A). | $10,000 per violation, with a maximum of $25,000. | $22,321 per violation, with a maximum of $55,801. | 1.01182 | $22,585 per violation, with a maximum of $56,461. |
| CWA, 33 U.S.C. 1344(s)(4) | Maximum of $25,000 per day for each violation. | Maximum of $55,801 per day for each violation. | 1.01182 | Maximum of $56,461 per day for each violation. |
| National Fishing Enhancement Act, 33 U.S.C. 2104(e). | Maximum of $10,000 per violation. | Maximum of $24,441 per violation. | 1.01182 | Maximum of $24,730 per violation. |

Section 4 of the Inflation Adjustment Act directs federal agencies to publish annual penalty inflation adjustments. In accordance with Section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. Section 4(b)(2) of the Inflation Adjustment Act further provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to the December 2020 OMB guidance issued to Federal agencies on the implementation of the 2021 annual adjustment, the phrase ''notwithstanding section 553'' means that ''the public procedure the APA generally requires (*i.e.,* notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.'' Consistent with the language of the Inflation Adjustment Act and OMB's implementation guidance, this rule is not subject to notice and opportunity for public comment. This rule adjusts the value of current statutory civil penalties to reflect and keep pace with the levels originally set by Congress when the statutes were enacted, as required by the Inflation Adjustment Act. This rule will apply prospectively to penalty assessments beginning on the effective date of this final rule.

**Regulatory Procedures**

*Plain Language*

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps and the use of ''you'' refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

*Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

This rule is not designated a ''significant regulatory action'' under Executive Order 12866 and OMB determined this rule to not be significant. Moreover, this final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the Inflation Adjustment Act and OMB guidance. The Corps, therefore, did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

The Department of Defense determined that provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements. This action merely increases the level of statutory civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of Corps-administered statutes and their implementing regulations.

*Executive Order 13132, ''Federalism''*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)*

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

*Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 104–113, ''National Technology Transfer and Advancement Act'' (15 U.S.C. Chapter 7)*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our 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 NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

*Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks''*

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives. This rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

*Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''*

Executive Order 13175 requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule does not have tribal implications. The rule imposes no new substantive obligations on tribal governments. Therefore, Executive Order 13175 does not apply to this rule.

*Public Law 104–121, ''Congressional Review Act'', (5 U.S.C Chapter 8)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended 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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*Executive Order 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations''*

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin. This rule merely adjusts civil penalties to account for inflation, and therefore, is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

*Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''*

This rule is not a ''significant energy action'' as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*33 CFR Part 207*

Navigation (water), Penalties, Reporting and recordkeeping requirements, and Waterways.

*33 CFR Part 326*

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (Water), Water pollution control, Waterways.

Dated: July 6, 2021.

Approved by:

**Jaime A. Pinkham,**

*Acting Assistant Secretary of the Army (Civil Works).*

**Title 33—Navigation and Navigable Waters**

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is amended as follows:

## PART 207—NAVIGATION REGULATIONS

■ 1. The authority citation for part 207 is revised to read as follows:

**Authority:** 33 U.S.C. 1; 33 U.S.C. 555; 28 U.S.C. 2461 note.

■ 2. Amend § 207.800 by revising paragraph (c)(2) to read as follows:

**§ 207.800 Collection of navigation statistics.**

* * * * *

(c) * * *

(2) In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by the regulation in this section may also be assessed a civil penalty of up to $5,903 per violation under 33 U.S.C. 555, as amended.

* * * * *

## PART 326—ENFORCEMENT

■ 3. The authority citation for part 326 continues to read as follows:

**Authority:** 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

■ 4. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

**§ 326.6 Class I administrative penalties.**

(a) * * *

(1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under Section 309(g) of the Clean Water Act, judicially-imposed civil penalties under Section 404(s) of the Clean Water Act, and Section 205 of the National Fishing Enhancement Act. Under Section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $22,585 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $56,461. Under Section 404(s)(4) of the Clean Water Act, judicially-imposed civil penalties may not exceed $56,461 per day for each violation. Under Section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $24,730 for each violation.

TABLE 1 TO PARAGRAPH (a)(1)

| Environmental statute and U.S. code citation | Statutory civil monetary penalty amount for violations that occurred after November 2, 2015, and are assessed on or after 7/15/2021 |
|---|---|
| Clean Water Act (CWA), Section 309(g)(2)(A), 33 U.S.C. 1319(g)(2)(A) | $22,585 per violation, with a maximum of $56,461. |
| CWA, Section 404(s)(4), 33 U.S.C. 1344(s)(4) | Maximum of $56,461 per day for each violation. |
| National Fishing Enhancement Act, Section 205(e), 33 U.S.C. 2104(e) | Maximum of $24,730 per violation. |

* * * * *

[FR Doc. 2021–14716 Filed 7–14–21; 8:45 am]

BILLING CODE 3720–58–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### 33 CFR Part 274

**RIN 0710–AB37**

### Pest Control Program for Civil Works Projects

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the U.S. Army Corps of Engineers (USACE) part titled, ''Pest Control Program for Civil Works Projects.'' This part is redundant and otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

**DATES:** This rule is effective on July 15, 2021.

**ADDRESSES:** Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW–P (Mr. Jeremy Crossland), 441 G Street NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Crossland at (202) 761–4259 or by email at *Jeremy.M.Crossland@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** This final rule removes from the Code of Federal Regulations 33 CFR part 274 titled, ''Pest Control Program for Civil Works Projects,'' which assigns responsibilities and prescribes procedures concerning the use of chemicals in the USACE pest control program at Civil Works projects under the authority of Public Law 92–516, as amended, Federal Insecticide, Fungicide and Rodenticide ACT (FIFRA), 7 U.S.C. 136 *et seq.,*which among other things, transferred responsibility of pesticide regulation from the Department of Agriculture to the Environmental Protection Agency. This rule was initially published on August 15, 1977 (42 FR 41118). While the rule applies only to the Corps' Pest Control Program, it was published, at that time, in the **Federal Register** to aid public accessibility.

The solicitation of public comment for this removal is unnecessary because the rule is out-of-date, duplicative of existing internal agency guidance, and otherwise covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, updated internal agency policy on this topic may be found in Engineer Regulation 1130–2–540, ''Environmental Stewardship Operations and Maintenance Guidance and Procedures'' (available at *https://www.publications.usace.army.mil/Portals/76/Publications/Engineer Regulations/ER_1130-2-540.pdf*) The agency policy is only applicable to field operating activities having responsibility for the Pest Control Program and provides guidance specific to the Corps' use of chemicals at Civil Works projects.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' Pest Control Program. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs. This rule is not significant under Executive Order 12866, ''Regulatory Planning and Review.''

**List of Subjects in 33 CFR Part 274**

Pesticides and pests, Water resources.

## PART 274 [REMOVED]

■ Accordingly, under the authority of 5 U.S.C. 301, the Army Corps of Engineers removes 33 CFR part 274.

Dated: July 1, 2021.

**Jaime A. Pinkham,**

*Acting Assistant Secretary of the Army (Civil Works).*

[FR Doc. 2021–14721 Filed 7–14–21; 8:45 am]

BILLING CODE 3720–58–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 210505–0101] RTID 0648–XB196**

### Fisheries Off West Coast States; Modification of the West Coast Commercial Salmon Fisheries; Inseason Action #18

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

**ACTION:** Inseason modification of 2021 management measures.

**SUMMARY:** NMFS announces an inseason action in the 2021 ocean salmon fisheries. This inseason action modifies

the commercial salmon fisheries in the area south of Cape Falcon in the Oregon Klamath Management Zone (KMZ) from Humbug Mountain to the Oregon/California border.

**DATES:** This inseason action became applicable on June 16, 2021, and remains in effect until superseded or modified.

**FOR FURTHER INFORMATION CONTACT:** Shannon Penna at 562–676–2148, Email: *Shannon.penna@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

In the 2021 annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), NMFS announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2021, until the effective date of the 2022 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR) and South of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The action described in this document affected the SOF commercial salmon fishery as set out under the heading Inseason Action.

### *Reason and Authorization for Inseason Action #18*

The fishery affected by the inseason action described below was authorized in the final rule for 2021 annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021).

The management subarea from Humbug Mountain to the Oregon/California border has two quota managed seasons for the commercial salmon fishery, June (300 Chinook salmon) and July (200 Chinook salmon). The first quota season opened on June 1, 2021, with a weekly landing limit of 20 Chinook salmon per vessel per week (Thursday–Wednesday). During the first 15 days of the season, the reported landings reached 271 Chinook salmon (90 percent of the quota), leaving 29 Chinook salmon remaining on the quota with one day remaining in the landing week. Taking into account the number of vessels participating, the fishery had the potential to exceed the quota by the end of the day (Wednesday, June 16, 2021). Oregon Department of Fisheries and Wildlife (ODFW) recommended immediate closure of the fishery to prevent exceeding the quota.

The NMFS West Coast Regional Administrator (RA) considered the landings of Chinook salmon in the SOF commercial salmon fishery, fishery effort occurring to date as well as anticipated under the proposal, and the Chinook salmon quota remaining and determined that this inseason action was necessary to meet management and conservation objectives. Inseason modification of fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation on this inseason action occurred on June 16, 2021. Representatives from NMFS, ODFW, California Department of Fish and Wildlife, and Council staff participated in the consultation.

## Inseason Action

### *Inseason Action #18*

*Description of the action:* In the commercial salmon fishery south of Cape Falcon in the Oregon KMZ from Humbug Mountain to the Oregon/California border, the season open from June 1 to June 30, or the earlier of 300 chinook salmon quota, is closed.

*Effective dates:* Inseason action #18 took effect at 11:59 p.m., Wednesday, June 16, 2021, and remains in effect until superseded. This inseason action was announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on June 16, 2021 (50 CFR 660.411(a)(2)).

All other restrictions and regulations remain in effect as announced for the 2021 ocean salmon fisheries (86 FR 26425, May 14, 2021), as modified by previous inseason action (86 FR 34161, June 29, 2021).

The RA determined that this inseason action was warranted based on the best available information on Pacific salmon abundance forecasts and anticipated fishery effort. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory action was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

## Classification

NMFS issues these actions pursuant to section 305(d) of the MSA. These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on these actions, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on these actions was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon abundance, catch, and effort information was developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (86 FR 26425, May 14, 2021), the fishery management plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: July 8, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–15009 Filed 7–14–21; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 86, No. 133
Thursday, July 15, 2021

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

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 327, 351, 354, 355, 381, 500, and 592

**[Docket No. FSIS 2019–0001]**

**RIN 0583–AD78**

## Establishing a Uniform Time Period Requirement and Clarifying Related Procedures for the Filing of Appeals of Agency Inspection Decisions or Actions

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to establish a uniform time period requirement for the filing of appeals of certain Agency inspection decisions or actions.

**DATES:** Comments must be received on or before September 13, 2021.

**ADDRESSES:** FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 205–0495.

**SUPPLEMENTARY INFORMATION:**

### Background

Current regulatory requirements for appeals of FSIS decisions or actions related to inspection activities appear across multiple subsections of the FSIS regulations. For example, several subsections specify time period requirements for the filing of appeals between 48 hours and ten days. The majority of the subsections specify no time period requirement. The action being proposed would establish a unified appeals time period requirement of 30 calendar days from receipt of notification of the contested inspection decision or action. As such, for some specific types of decisions or actions, currently prescribed appeals filing deadlines would be lengthened. However, in general, new deadlines for appeals would be established, as there are currently no deadlines for the appeal of most Agency decisions or actions.

Current FSIS regulations also provide varied information about appeals requirements and procedures, such as who may file an appeal, where to file an appeal, what information may be submitted with the appeal, and whether the appellant must bear the cost of the appeal if it is determined to be frivolous. Therefore, FSIS is using this opportunity to clarify and simplify inspection appeals procedures generally.

### Proposed Rule

FSIS is proposing to add a new subsection to the Agency's Rules of Practice, at 9 CFR part 500, which will set forth the procedures. Specifically, the new subsection will include the following elements:

1. Requiring eligible persons to appeal decisions or actions related to inspection activities within 30 calendar days after receiving notification, either verbally or in writing (via electronic or hard copy communication), of the initial decision or action.

2. Clarifying and simplifying the following Agency requirements and procedures concerning such appeals:

a. Any establishment subject to mandatory Federal inspection or facility receiving voluntary inspection services under the regulations that believes it has been adversely affected by an applicable decision or action may file an appeal;

b. Such appeal must be submitted to the immediate supervisor of the inspector or other Agency employee who made the contested decision or action;

c. The appellant may support the appeal by any argument or evidence as to why the appeal should be granted; and

d. Eliminating the requirement, currently prescribed in several subsections of the regulations, that the appellant must bear the cost of an appeal of an Agency decision or action if the appeal is determined to be frivolous.

FSIS is also proposing to revise several sections of the Federal regulations (9 CFR 327.10(d)(2), 327.24, 351.21, 354.134, 355.39, 381.35, 381.202(d), 381.204(f)(2), and 592.400) to state that appeals of relevant Agency decisions or actions must be made in accordance with the new Rules of Practice subsection, 9 CFR 500.9. In the 2020 final rule to amend the Agency's egg products inspection regulations, FSIS incorporated egg products plants into coverage of the Rules of Practice (85 FR 68642, October 29, 2020). As such, under this proposed rule, appeals of relevant Agency egg products inspection decisions or actions would also be made in accordance with the new subsection 500.9.

The scope of the proposed rule includes certain procedures for filing initial appeals of Agency decisions or actions related to inspection activities mandated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). It also includes appeals of Agency inspection decisions

or actions related to voluntary reimbursable inspection services allowed under the Agricultural Marketing Act (AMA) (7 U.S.C. 1622 and 1624; 9 CFR 354.134 and 355.39). For example, it includes appeals of Noncompliance Records, the cancellation of pre-stamping privileges for imported meat and poultry products, and sampling test results.

The scope of the proposed rule does not include appeals of FSIS decisions or actions unrelated to inspection. Further, it does not include actions related to refusing approval of labels. The Agency determined that the proposed new Rules of Practice subsection, 9 CFR 500.9, would not sufficiently address the varied, product-specific policy issues central to labeling determinations and reevaluation consultations between FSIS Labeling and Program Delivery Staff and labeling applicants.[1] Finally, the scope of the proposed rule does not include appeals of Agency responses to requests made under the Freedom of Information Act (FOIA) (5 U.S.C. 552, *et seq.;* 9 CFR 390.7), as this Federal statute prescribes procedural requirements for such appeals.

*Unified Time Period Requirement for Appeals*

FSIS is proposing to require that initial appeals of Agency decisions or actions related to inspection activities be filed within 30 calendar days of the appellant's receipt of notification of the decision or action. This change will streamline and harmonize the appeals process by establishing a unified time period requirement for relevant Agency decisions or actions. The uniform time period requirement will further benefit certain appellants, as it will lengthen the amount of time the FSIS regulations currently prescribes for filing an appeal of specified types of decisions or actions. Specifically, the prescribed time period will lengthen for decisions or actions related to the cancellation of pre-stamping privileges for imported meat and poultry products (9 CFR 327.10(d)(2), 381.204(f)(2)), refused entry for imported poultry products (9 CFR 381.202(d)),[2] appeals of voluntary inspection of rabbits and products thereof (9 CFR 354.134), and poultry products inspection decisions or actions (9 CFR 381.35). Finally, establishing a time period requirement for appeals of inspection decisions or actions will increase the likelihood that relevant physical evidence, as well as directly involved personnel, will remain available during consideration of the initial appeal of the contested decision or action.

The time period for any subsequent appeal will be provided in the response to the initial appeal. The Agency's response to subsequent appeals will indicate when the Agency's decision will constitute final agency action.

FSIS is proposing that this 30-day time period requirement for initial appeals would be set forth in a new subsection of the FSIS Rules of Practice.

**Executive Orders 12866 and 13563**

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

**Economic Impact Analysis**

The proposed rule is expected to economically benefit industry by providing a harmonized, streamlined appeals process. Consolidating the inspection appeals procedures from multiple subsections of the CFR, simplifying the process, eliminating charges for frivolous appeals, and setting a uniform time period requirement would reduce the regulatory burden placed on industry.

Similarly, clarifying and simplifying Agency inspection appeals procedures is expected to benefit the Agency by reducing inefficiencies and facilitating better use of Agency personnel and resources. The proposed actions would also increase the likelihood that relevant physical evidence, as well as directly involved personnel, would be available during the appeals process.

The proposed uniform time period requirement is not expected to increase industry's labor or capital costs. Currently, the majority of appeals of FSIS decisions or actions related to inspection activities mandated under the FMIA, PPIA, and EPIA are filed within several months of the appellant's notification of the contested decision or action. For example, between April 2016 and March 2018, the Agency received 1,301 appeals from official establishments subject to Federal inspection to contest Noncompliance Records issued to address findings of regulatory violations. Of these appeals, sixty-two (62) percent were filed within 30 calendar days, thirty (30) percent were filed between 31 and 180 calendar days, and eight (8) percent were filed after 180 calendar days. Further, the proposed time period requirement will lengthen the amount of time that an appeal may be filed for certain types of Agency decisions or actions. Therefore, the proposed uniform time period requirement would encourage the timely filing of appeals without imposing substantial cost burdens on current industry practices.

**Regulatory Flexibility Act**

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule is not expected to increase costs to the industry. The proposed rule may provide some cost savings to industry related to the uniform filing of appeals of certain Agency decisions or actions, but any benefits with the proposed rule would not be significant. FSIS is also requesting comment from industry on the expected benefits of this proposed uniform appeals process.

**Paperwork Reduction Act**

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**E-Government Act**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

**Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are

[1] Labeling appeals are specifically addressed in the FSIS regulations at 9 CFR 317.12, 317.69, 317.380, 381.130, 381.412, 381.469, 381.519.

[2] The proposed time period requirement for appeals of refused entry decisions or actions would not affect the existing uniform regulatory requirement that imported meat, poultry, or egg product that is refused entry must be disposed of within 45 days after notice is provided at the original port of entry to take such action (327.13(a)(5), 381.202(a)(4), 590.945(a)(4)).

inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) *fax:* (202) 690–7442; or (3) *email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

**Environmental Impact**

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4 (b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4 (b)(6)).

FSIS has determined that this proposed rule, which would establish a uniform time period requirement for the filing of appeals of certain Agency inspection decisions or actions, and clarify and simplify appeals procedures generally, will not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(6) of the U.S. Department of Agriculture regulations.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs has determined that this notice is not a ''major rule,'' as defined by 5 U.S.C. 804(2).

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**List of Subjects**

*9 CFR Part 327*

Imported products.

*9 CFR Part 351*

Certification of technical animal fats for export.

*9 CFR Part 354*

Voluntary inspection of rabbits and edible products thereof.

*9 CFR Part 355*

Certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition.

*9 CFR Part 381*

Poultry products inspection regulations.

*9 CFR Part 500*

Rules of practice.

*9 CFR Part 592*

Voluntary inspection of egg products.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR parts 327, 351, 354, 355, 381, 500, and 592 as follows:

## PART 327—IMPORTED PRODUCTS

■ 1. The authority citation for part 327 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Revise § 327.10 paragraph (d)(2) to read as follows:

### § 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(d) * * *

(2) An official import establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector or other Agency employee who is supervising its enforcement whenever the employee finds that the official import establishment has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision or action and the reasons therefor will be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision or action in accordance with 9 CFR 500.9. The appeal must state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping privilege was wrongfully cancelled.

* * * * *

■ 3. Revise § 327.24 to read as follows:

### § 327.24 Appeals; how made.

Any appeal of a decision or action of any program employee will be made to his/her immediate supervisor having responsibility over the subject matter of the appeal in accordance with 9 CFR 500.9.

## PART 351—CERTIFICATION OF TECHINCAL ANIMAL FATS FOR EXPORT

■ 4. The authority citation for part 351 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

■ 5. Revise § 351.21 to read as follows:

### § 351.21 Certification of certain animal fat for export.

Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

## PART 354—VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

■ 6. The authority citation for part 354 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

■ 7. Revise § 354.134 to read as follows:

### § 354.134 Appeal inspections; how made.

Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

## PART 355—CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY, AND CONDITION

■ 8. The authority citation for part 355 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

■ 9. Revise § 355.39 to read as follows:

### § 355.39 Appeals from decisions made under this part.

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 10. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C. 1633, 1901–1906; 21 U.S.C. 451–472; 7 CFR 2.18, 2.53.

■ 11. Revise § 381.35 to read as follows:

### § 381.35 Appeal inspections; how made.

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

■ 12. Revise § 381.202 paragraph (d) to read as follows:

### § 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(d) Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9. The poultry or poultry products involved in any appeal must be identified by U.S. retained tags and segregated in a manner approved by the inspector or other Agency employee pending completion of an appeal inspection.

* * * * *

■ 13. Revise § 381.204 paragraph (f)(2) to read as follows:

### § 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

* * * * *

(f) * * *

* * * * *

(2) An official import establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector or other Agency employee who is supervising its enforcement whenever the employee finds that the official import establishment has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision or action and the reasons therefor will be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision or action in accordance with 9 CFR 500.9. The appeal must state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping privilege was wrongfully cancelled.

* * * * *

## PART 500—RULES OF PRACTICE

■ 14. The authority citation for part 500 continues to read as follows:

**Authority:** 21 U.S.C. 451–470, 601–695; 1031–1056; 7 U.S.C. 450, 1901–1906; (33 U.S.C. 1251 *et seq.*); 7 CFR 2.18, 2.53.

■ 15. In § 500.1 revise paragraph (c) and add paragraph (d) to read as follows:

### § 500.1 Definitions.

* * * * *

(c) A ''suspension'' is an interruption in the assignment of program employees to all or part of an establishment; and

(d) An establishment subject to Federal inspection or facility receiving voluntary inspection services under the regulations is ''adversely affected'' when that person has a legally cognizable interest, and the decision or action has caused or is substantially likely to cause injury to that interest.

* * * * *

■ 16. Add § 500.9 to read as follows:

**§ 500.9 Procedures for the filing of initial appeals.**

(a) Any establishment subject to Federal inspection or facility under voluntary inspection and adversely affected by a decision or action of an inspector or other Agency employee related to an inspection activity mandated under the FMIA, PPIA, or EPIA or related to voluntary reimbursable inspection services allowed under the AMA may appeal the decision or action. Such initial appeal must be made within 30 calendar days after receipt of notification of the originating contested decision or action. It may be supported by any argument or evidence that the appellant may wish to offer as to why the contested decision or action should be reconsidered.

(b) Any appeal of a decision or action of an inspector or other Agency employee shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal.

## PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 17. The authority citation for part 592 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

■ 18. Revise § 592.400 to read as follows:

**§ 592.400 How to file an appeal.**

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

**§§ 592.410 through 592.440 [Removed]**

■ 19. Remove §§ 592.410 through 592.440.

Done in Washington, DC.

**Paul Kiecker,**

*Administrator.*

[FR Doc. 2021–14947 Filed 7–14–21; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0569; Project Identifier MCAI–2020–01692–T]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes. This proposed AD was prompted by a report of a manufacturing issue involving misalignment of a cabin seat pin and plate that can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. This proposed AD would require an inspection of certain cabin seats for discrepancies and corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 30, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0569; Project Identifier MCAI–2020–01692–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial

information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0284, dated December 18, 2020 (EASA AD 2020–0284) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes.

This proposed AD was prompted by a report of a manufacturing issue involving misalignment of a seat pin and plate which can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. The FAA is proposing this AD to address cabin seats having improper or no engagement of the recline locking mechanism during taxi, take-off, or landing, which could result in reduced seat performance under crash loads and possible injury to seat occupants. See the MCAI for additional background information.

## Related Service Information Under 1 CFR Part 51

EASA AD 2020–0284 describes procedures for an inspection of certain cabin seats for discrepancies (a gap between the seat pin and plate), and corrective action (adjustment, deactivation, or repair), as applicable. EASA AD 2020–0284 also prohibits installation of certain cabin seats. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## 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 the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0284 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

## Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2020–0284 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0284 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0284 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0284. Service information specified in EASA AD 2020–0284 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569 after the FAA final rule is published.

## Costs of Compliance

The FAA estimates that this proposed AD affects 565 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $85 per hour = $85 | None | $85 | $48,025 |

The FAA estimates the following costs to do any necessary on-condition adjustments or deactivations that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 1 work-hour × $85 per hour = $85 | $0 | $85 |

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

According to the manufacturer, some or all of the costs of this proposed AD

may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

## 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.

The FAA is 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

The FAA 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) Would not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Dassault Aviation:** Docket No. FAA–2021–0569; Project Identifier MCAI–2020–01692–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by August 30, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Dassault Aviation Model FALCON 7X, FALCON 900EX, and FALCON 2000EX airplanes, certificated in any category.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a report of a manufacturing issue involving misalignment of a seat pin and plate that can prevent the recline locking mechanism from properly engaging when the seat is in taxi, take-off, or landing position. The FAA is issuing this AD to address cabin seats having improper or no engagement of the recline locking mechanism during taxi, take-off, or landing, which could result in reduced seat performance under crash loads and possible injury to seat occupants.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0284, dated December 18, 2020 (EASA AD 2020–0284).

**(h) Exceptions to EASA AD 2020–0284**

(1) Where EASA AD 2020–0284 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0284 does not apply to this AD.

(3) Where paragraph (2) of EASA AD 2020–0284 specifies action if ''any discrepancy'' is detected for this AD, a discrepancy is a gap between the seat pin and plate.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2020–0284 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(k) Related Information**

(1) For information about EASA AD 2020–0284, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0569.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

Issued on July 9, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–14965 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2021–0565; Project Identifier 2018–SW–111–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Leonardo S.p.a. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a Model AW189 helicopters. This proposed AD was prompted by a report of an incorrect connection of the inflation hoses to the tee manifolds of the inflation line on the emergency flotation system (EFS) assembly. This proposed AD would require visually inspecting the yellow sleeves and hoses installed on each EFS assembly and depending on the inspection results, accomplishing the corrective actions in the applicable service information as specified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 30, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0565.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0565 or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0565; Project Identifier 2018–SW–111–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0279, dated December 14, 2018 (EASA AD 2018–0279), to correct an unsafe condition for Leonardo S.p.a. (formerly Finmeccanica Helicopter Division, AgustaWestland) Model AW189 helicopters.

This proposed AD was prompted by a report of a discrepancy found during a maintenance inspection related to the connection of the inflation hoses to the helicopter tee manifolds. EASA states the yellow sleeve on the right-hand (RH) aft EFS assembly was installed on the straight-to-straight hose instead of the straight-to-45 degree hose, which caused the two hoses to be incorrectly connected to the tee manifolds at the inflation line. The FAA is proposing this AD to prevent partial inflation of the flotation bags which could prevent a timely egress from the helicopter and consequent injury to helicopter occupants. See EASA AD 2018–0279 for additional background information.

### Related Service Information Under 1 CFR Part 51

EASA AD 2018–0279 requires a visual inspection of each affected EFS assembly for correct installation of the yellow sleeves and proper connection of the inflation hoses to the float assembly and the bottle assembly. Depending on these inspection results, if an incorrect installation of the yellow sleeve or an incorrect connection of the inflation hoses is detected, EASA AD 2018–0279 requires, before next flight, removing incorrectly installed yellow sleeves, and incorrectly installed hoses, restoring markings on re-installed yellow sleeves, and re-connecting or re-installing hoses

in accordance with the applicable service information. EASA AD 2018–0279 also prohibits installing any affected EFS assembly on any helicopter.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

These products have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

### Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0279, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

### Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2018–0279 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0279 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2018–0279 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2018–0279. Service information specified in EASA AD 2018–0279 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0565 after the FAA final rule is published.

### Differences Between This Proposed AD and the EASA AD

EASA AD 2018–0279 applies to Model AW189 helicopters, all serial numbers (S/Ns), whereas this proposed AD would only apply to Model AW189 helicopters with EFS assemblies having certain part-numbered aft assemblies with certain S/Ns installed.

### Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting each EFS assembly would take about 0.75 work-hours for an estimated cost of $64 per inspection and $260 for the U.S. fleet.

Performing the corrective actions on each EFS assembly would take about 1.25 work-hours for an estimated cost of $113 per EFS assembly.

### 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.

The FAA is 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

The FAA 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) Would not affect intrastate aviation in Alaska, and

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Leonardo S.p.a.:** Docket No. FAA–2021–0565; Project Identifier 2018–SW–111–AD.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by August 30, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Leonardo S.p.a. Model AW189 helicopters, certificated in any category, with an affected emergency flotation system (EFS) assembly as defined in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0279, dated December 14, 2018 (EASA AD 2018–0279).

**(d) Subject**

Joint Aircraft Service Component (JASC) Codes: 3212, Emergency Flotation Section; 2560, Emergency Equipment.

**(e) Unsafe Condition**

This proposed AD was prompted by a report of an incorrect connection of the inflation hoses to the tee manifolds of the inflation line on the EFS assembly. The FAA is issuing this AD to detect incorrect installation of the inflation hoses on the EFS assembly. The unsafe condition, if not addressed, could result in partial inflation of

the flotation bags in a ditching event, preventing a timely egress from the helicopter and consequent injury to the helicopter occupants.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0279.

**(h) Exceptions to EASA AD 2018–0279**

(1) Where EASA AD 2018–0279 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2018–0279 requires compliance from its effective date, this AD requires using the effective date of this AD.

(3) Where the service information required by EASA AD 2018–0279 specifies recording compliance with the service bulletin in the helicopter logbook, this AD does not include that requirement.

(4) Where EASA AD 2018–0279 identifies all Model AW189 helicopters, all serial numbers in the applicability, this AD is only applicable to Model AW189 with an affected EFS assembly as defined in the definitions paragraph of the EASA AD.

(5) This AD does not require the ''Remarks'' section of EASA AD 2018–0279.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2018–0279 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation 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 manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

**(k) Related Information**

(1) For EASA AD 2018–0279, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0565.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

(3) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on July 9, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021–15021 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2021–0006; Notice No. 203]**

**RIN: 1513–AC83**

## Proposed Establishment of the Rocky Reach Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 50-square mile ''Rocky Reach'' American viticultural area (AVA) in portions of Chelan and Douglas Counties, Washington. The proposed AVA is located entirely within the existing Columbia Valley AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

**DATES:** TTB must receive your comments on or before September 13, 2021.

**ADDRESSES:** You may electronically submit comments to TTB on this proposal using the comment form for this document as posted within Docket No. TTB–2021–0006 on the *Regulations.gov* website at *https://www.regulations.gov.* Within that docket, you also may view copies of this document, its supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 203. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section below for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of

American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**Petition To Establish the Rocky Reach AVA**

TTB received a petition from Dr. Kevin Pogue, a professor of geology at Whitman College, proposing to establish the ''Rocky Reach'' AVA. Dr. Pogue submitted the petition on behalf of local vineyard owners and winemakers. The proposed AVA is located in Chelan and Douglas Counties, Washington, and is entirely within the existing Columbia Valley AVA (27 CFR 9.74). The petition notes that, although the proposed AVA covers 50 square miles, the Columbia River and the Rocky Reach Reservoir constitute approximately 24 percent of the total area. Within the proposed AVA, there are 7 commercial vineyards which cover a total of 117 acres. The distinguishing features of the proposed Rocky Reach AVA are its topography, geology, soils, and climate.

**Proposed Rocky Reach AVA**

*Name Evidence*

The proposed Rocky Reach AVA takes its name from the Rocky Reach Dam and the Rocky Reach Reservoir (also known as Lake Entiat), both of which are within the proposed AVA. Steamboat captains first applied the name ''Rocky Reach'' to the region in the late 1800's, to describe the rapids within a stretch, or ''reach,'' of the Columbia River. The petition included other examples of current use of the name ''Rocky Reach'' to describe the region of the proposed AVA. For example, the Rocky Reach Trail is a recreational trail within the proposed AVA, and the Rocky Reach Discovery Center provides educational and informational exhibits to visitors in the region. Rocky Reach Estates is a residential development within the proposed AVA. Finally, a local newspaper article refers to a 2018 wildfire in the region of the proposed AVA as the ''Rocky Reach Fire.''

*Boundary Evidence*

The proposed Rocky Reach AVA is located along both sides of the Columbia River and the Rocky Reach Reservoir in the western portion of the established Columbia Valley AVA. The proposed eastern and western boundaries are parallel to the Columbia River and follow elevation contours that approximate the extent of the river terraces. The northern boundary approximates the southernmost extent of the Cordilleran ice sheet during the last ice age glaciation, beyond which the geology and soils change. The southern boundary approximates the southern limit of exposures of metamorphic bedrock along the Columbia River and is also near the northern limit of urbanization associated with the cities of Wenatchee and East Wenatchee.

*Distinguishing Features*

According to the petition, the distinguishing features of the proposed Rocky Reach AVA are its topography, geology, soils, and climate.

Topography

The proposed Rocky Reach AVA is located along a stretch of the Columbia River where the river has eroded a deep canyon between the foothills of the Cascade Range to the west and the Waterville Plateau and Badger Mountain to the east. Flat-topped terraces are located near the floor of the canyon and low along the canyon sides. Elevations within the proposed AVA are below 1,600 feet. According to the petition, the level terraces within the proposed AVA have long been used for agricultural purposes, including viticulture, due to the ease of farming on the nearly-level ground.

West of the proposed AVA, elevations rise rapidly to over 3,000 feet, and the terrain is rugged and mountainous. To the east of the proposed AVA, elevations are also higher, rising to an average of 2,500 feet on the Waterville Plateau. According to the petition, the terrain is also much steeper to the east of the proposed AVA. To the north of the proposed AVA, within the established Lake Chelan AVA (27 CFR 9.215), glaciers eroded a deep and broad glacial trough that is now filled by Lake Chelan. South of the proposed AVA, the valley of the Columbia River abruptly widens where the bedrock changes from hard, erosion-resistant metamorphic rocks to much softer sedimentary rocks.

Geology

According to the petition, 95 percent of the surface bedrock within the established Columbia Valley AVA consists of Cenozoic volcanic and sedimentary rock, predominantly Miocene Columbia River basalt, which is silica-poor and iron-rich. However, within the proposed Rocky Reach AVA, Columbia River erosion has removed the basalt and carved a deep valley into the underlying Mesozoic crystalline basement rocks. According to the petition, the region north of the proposed AVA, specifically the established Lake Chelan AVA, is the only other region within the Columbia River AVA that has this crystalline basement bedrock. These rocks consist primarily of metamorphosed

sedimentary and igneous rocks that are silica-rich and dominated by minerals like quartz and mica that are not found in the regions to the east, south, and west of the proposed AVA, which have basalt bedrock. As a result, grapevine roots that reach the bedrock of the proposed AVA come into contact with a chemical environment that is distinct from that associated with basalt bedrock.

Soils

The petition states the soils of the proposed AVA formed from wind-deposited sand and silt overlying cobblestone gravel, and sand deposited by ice-age floods. The soils are typically clay-poor and well- to excessively-well drained. The thickness of the sand and silt is generally greater on the higher terraces within the proposed AVA, as their greater age has allowed more time for soils to be deposited. Most of the vineyards in the proposed AVA are on the lower terraces, where the soils are very coarse-grained and consist largely of cobblestones deposited by glacial floods and outwash. According to the petition, the stony surfaces of the lower terraces warm quickly, and the hot stones radiate heat to the vines and promote faster and more complete ripening. The coarser soils also more efficiently transmit water to deeper soil horizons, which encourages vines planted in those soils to have deeper roots than vines planted in silty or sandy soils. Finally, the petition notes that vineyards in the stony soils do not require the use of cover crops since erosion is not an issue due to the coarse texture.

To the north of the proposed AVA, the soils of the glaciated valleys formed from glacial till, which is sediment deposited directly by melting glacial ice. The soils also contain volcanic ash and pumice, which are uncommon within the proposed Rocky Reach AVA. Loess and sand dominate the soils in the regions of the Columbia Valley AVA that are to the south and east of the proposed AVA. These soils are finer than the coarse-grained sands of the proposed AVA and contain a basalt substratum that is lacking in soils within the proposed AVA. The petition did not include soil information for the region west of the proposed AVA.

Climate

The proposed Rocky Reach AVA is located at low elevations within the deep valley of the Columbia River. According to the petition, the low elevations allow the proposed AVA to have a warmer and longer growing season than the higher elevations of the surrounding mountains and plateaus. The petition included information on the average temperature, extreme minimum and maximum temperatures, average maximum and minimum temperatures, and average soil temperatures from two locations within the proposed AVA, two locations north of the proposed AVA, and one location to the east of the proposed AVA. The data from within and to the north of the proposed AVA was collected from 2015–2017, while data from the region to the east was only available for 2017. Temperature data was not provided for the regions to the west or south of the proposed AVA.

TABLE 1—TEMPERATURES IN DEGREES FAHRENHEIT (F)

| Weather station (direction from proposed AVA) | Average temperature | Average minimum temperature | Average maximum temperatures | Extreme minimum temperature | Extreme maximum temperature | Average soil temperature |
|---|---|---|---|---|---|---|
| **2015** | | | | | | |
| Boyd District (north) | 62.8 | 50.8 | 75.6 | 31.3 | 105.4 | 68.1 |
| Chelan South (north) | 66.1 | 56.1 | 77.3 | 34.6 | 104.6 | 68.5 |
| Brays Landing (within) | 64.7 | 51.5 | 77.9 | 32.2 | 107.4 | 69.6 |
| Orondo (within) | 67.4 | 54.9 | 81.3 | 34.4 | 108.9 | 71.2 |
| **2016** | | | | | | |
| Boyd District (north) | 60.8 | 49 | 73 | 30.2 | 96.7 | 66.8 |
| Chelan South (north) | 64.2 | 54.3 | 75.1 | 34.1 | 100.1 | 65.7 |
| Brays Landing (within) | 63 | 50.2 | 75.5 | 29.2 | 100.4 | 67.3 |
| Orondo (within) | 65.7 | 53.7 | 78.6 | 35 | 103 | 69 |
| **2017** | | | | | | |
| Boyd District (north) | 60.3 | 48.2 | 73.3 | 29.9 | 100 | 66.1 |
| Chelan South (north) | 63.6 | 53.5 | 75 | 34.1 | 101.3 | 65.6 |
| Brays Landing (within) | 62.4 | 49.1 | 75.8 | 29.7 | 102.5 | 66.7 |
| Orondo (within) | 64.9 | 52.7 | 78.3 | 32.5 | 103.5 | 68.9 |
| Waterville North (east) | 57.8 | 47.8 | 68.1 | 28.7 | 95.2 | 62.5 |

The data indicates that the proposed Rocky Reach AVA generally has warmer average annual temperatures than the regions to the north, as well as higher maximum temperatures. Although the data suggests that the region to the east of the proposed AVA is cooler than the proposed AVA, the data is only from one year. Therefore, TTB is unable to determine if temperature does in fact distinguish the proposed AVA from the region to the east.

*Summary of Distinguishing Features*

The following table summarizes the characteristics of the proposed Rocky Reach AVA and the surrounding regions.

TABLE 2—SUMMARY OF DISTINGUISHING FEATURES

| Location | Topography | Geology | Soils | Climate |
|---|---|---|---|---|
| Proposed Rocky Reach AVA. | Canyon floor of the Columbia River, with flat-topped terraces and elevations below 1,600 feet. | Mesozoic crystalline basement bedrock that is high in silica, mica, and quartz. | Wind-deposited sand and silt over cobblestone gravel and sand deposited by ice-age floods; clay-poor; well- to excessively well-drained. | Warmer average annual temperatures than the regions to the north, as well as higher maximum temperatures. |
| North | Deep, broad glacial trough | Mesozoic crystalline basement bedrock that is high in silica, mica, and quartz. | Soils formed from glacial till; contains volcanic ash and pumice. | Cooler temperatures. |
| East | Waterville Plateau with elevations of an average of 2,500 feet and steep slopes. | Cenozoic volcanic and sedimentary rock that is silica-poor and high in iron. | Loess and sand; fine-grained, and contains a basalt substratum that is lacking in soils within the proposed AVA. | Insufficient data to determine if climate is distinguishable for this region. |
| South | Valley of the Columbia River widens abruptly. | Cenozoic volcanic and sedimentary rock that is silica-poor and high in iron. | Loess and sand; fine-grained, and contains a basalt substratum that is lacking in soils within the proposed AVA. | Not provided. |
| West | Rugged mountains with elevations over 3,000 feet. | Cenozoic volcanic and sedimentary rock that is silica-poor and high in iron. | Not provided | Not provided. |

*Comparison of the Proposed Rocky Reach AVA to the Existing Columbia Valley AVA*

The Columbia Valley AVA was established by T.D. ATF–190, which published in the **Federal Register** on November 13, 1984 (49 FR 44895). T.D. ATF–190 describes the Columbia Valley AVA as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers. Growing season lengths within the Columbia Valley AVA are over 150 days, and annual precipitation amounts are less than 15 inches. Elevations within the Columbia Valley AVA are below 2,000 feet.

The proposed Rocky Reach AVA shares some of the general viticultural features of the larger Columbia Valley AVA. For instance, elevations within the proposed AVA are below 2,000 feet, and much of the proposed AVA is relatively flat. The petition also states that the proposed AVA also has a growing season longer than 150 days. However, the proposed AVA also has characteristics that distinguish it from the larger Columbia Valley AVA. For example, the proposed AVA lacks the basalt bedrock and loess-based soils that define most of the Columbia Valley AVA. Additionally, although the terrain within the proposed AVA is relatively flat, it is within a deep canyon of the Columbia River, rather than on a broad plain.

**TTB Determination**

TTB concludes that the petition to establish the 50-square mile ''Rocky Reach'' AVA merits consideration and public comment, as invited in this document.

*Boundary Description*

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

*Maps*

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Rocky Reach AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''Rocky Reach,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Rocky Reach'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. The approval of the proposed Rocky Reach AVA would not affect any existing AVA, and any bottlers using ''Columbia Valley'' as an appellation of origin, or in a brand name, for wines made from grapes grown within the Rocky Reach AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed Rocky Reach AVA would allow vintners to use ''Rocky Reach'' or ''Columbia Valley'' as appellations of origin for wines made from grapes grown within the proposed Rocky Reach AVA, if the wines meet the eligibility requirements for the appellation.

**Public Participation**

*Comments Invited*

TTB invites comments from interested members of the public on whether TTB should establish the proposed Rocky Reach AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, geology, soils, and climate, and other required information submitted in support of the AVA petition. In addition, because the proposed Rocky Reach AVA would be within the existing Columbia Valley AVA, TTB is interested in comments on

whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing Columbia Valley AVA. TTB is also interested in comments on whether the geographic features of the proposed Rocky Reach AVA are so distinguishable from the Columbia Valley AVA that the proposed AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Rocky Reach AVA on wine labels that include the term ''Rocky Reach'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

*Submitting Comments*

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 203 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality and Disclosure of Comments*

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition, supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received.

**Regulatory Flexibility Act**

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

**Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

**List of Subjects in 27 CFR Part 9**

Wine.

**Proposed Regulatory Amendment**

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

## Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____ to read as follows:

**§ 9.____ Rocky Reach.**

(a) *Name.* The name of the viticultural area described in this section is ''Rocky Reach''. For purposes of part 4 of this chapter, ''Rocky Reach'' is a term of viticultural significance.

(b) *Approved maps.* The 8 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

(1) Ardenvoir, WA, 2003;
(2) Chelan, WA, 2004;
(3) Entiat, WA, 2003;
(4) Orondo, WA, 2003;
(5) Rocky Reach Dam, WA, 2003;
(6) Waterville, WA, 2014;
(7) Wenatchee, WA, 2003; and
(8) Winesap, WA, 2004.

(c) *Boundary.* The Rocky Reach viticultural area is located in Chelan and Douglas Counties in Washington. The boundary of the Rocky Reach viticultural area is as described in paragraphs (c)(1) through (13) of this section:

(1) The beginning point is on the Wenatchee map at the intersection of the 1,200-foot elevation contour and the western boundary of section 15, T23N/R20E. From the beginning point, proceed northeast along the 1,200-foot elevation contour, crossing over the Rocky Reach Dam map and onto the northwest corner of the Orondo map; then

(2) Continue northeasterly, then southwesterly along the 1,200-foot elevation contour, crossing back onto the Rocky Reach Dam map and continuing southwesterly along the 1,200-foot elevation contour to its intersection with the unnamed creek flowing from Spencer Lake; then

(3) Proceed northeasterly along the 1,200-foot elevation contour, crossing over the unnamed creek and continuing across the southeastern corner of the Ardenvoir map and onto the Entiat map; then

(4) Continue northeasterly then westerly along the 1,200-foot elevation contour, crossing back onto the Ardenvoir map, and continuing along the elevation contour to its intersection with the R20E/R21E boundary, which is concurrent with the western boundary of section 18, T25N/R21E; then

(5) Proceed north along the R20E/R21E boundary, crossing over the Entiat River and the Entiat Ditch, to the intersection of the range boundary and the 1,200-foot elevation contour; then

(6) Proceed easterly along the 1,200-foot elevation contour, crossing onto the Winesap map, and continuing northeasterly along the 1,200-foot elevation contour to its intersection with the boundary between sections 11 and 12, T26N/R21E; then

(7) Proceed north along the boundary between sections 11 and 12 for approximately 300 feet to its intersection with the 1,400-foot elevation contour; then

(8) Proceed northeast, then south, then easterly along the 1,400-foot elevation contour, crossing Knapp Coulee and onto the Chelan map, and continuing east along the 1,400-foot elevation contour to its intersection with the northern boundary of section 1, T26N/R22E; then

(9) Proceed south-southeasterly in a straight line, crossing the Columbia River, to the intersection of the 1,600-foot elevation contour and the R22E/R23E boundary; then

(10) Proceed generally westerly along the 1,600-foot elevation contour, crossing over the southeastern corner of the Winesap map and onto the Entiat map, and continuing southwesterly along the 1,600-foot elevation contour to its intersection with an unnamed stream in section 35, T26N/R21E; then

(11) Proceed westerly (downstream) along the unnamed stream for 0.45 mile to its intersection with the 1,200-foot elevation contour; then

(12) Proceed southerly along the 1,200-foot elevation contour, crossing over the Orondo map and onto the Wenatchee map to the intersection of the elevation contour with the southern boundary of section 14, T23N/R20E; then

(13) Proceed west-northwest in a straight line for 1.47 miles, crossing the Columbia River, to the beginning point.

Signed: June 21, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: June 21 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2021–15054 Filed 7–14–21; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2021–0005; Notice No. 202]**

**RIN: 1513–AC81**

## Proposed Establishment of the Paulsell Valley Viticultural Area

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 34,155-acre ''Paulsell Valley'' viticultural area in Stanislaus County, California. The proposed AVA is not located within, nor does it contain, any other viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

**DATES:** TTB must receive your comments on or before September 13, 2021.

**ADDRESSES:** You may electronically submit comments to TTB on this proposal using the comment form for this document as posted within Docket No. TTB–2021–0005 on the ''*Regulations.gov*'' website at *https://www.regulations.gov.* Within that docket, you also may view copies of this document, the related petition, supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 202. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section below for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

### Background on Viticultural Areas

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s)

showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

**Petition To Establish the Paulsell Valley AVA**

TTB received a petition from Patrick Shabram, on behalf of Rock Ridge Ranch, proposing to establish the ''Paulsell Valley'' AVA. The proposed AVA is located in Stanislaus County, California, and is not within any existing AVA. Within proposed AVA, there are 3 commercial vineyards which cover a total of approximately 826 acres. The petition also notes that a fourth vineyard is planned for the proposed AVA and would contain an additional 700 acres of vines. The distinguishing features of the proposed Paulsell Valley AVA include its topography, climate, and soils.

**Proposed Paulsell Valley AVA**

*Name Evidence*

The proposed Paulsell Valley AVA is located in a valley carved by Dry Creek in and around the unincorporated community of Paulsell, California. The petition notes that, although the name ''Paulsell Valley'' is not currently identified by the USGS Board on Geographic Names or on USGS topographic maps, the name is nonetheless used to describe the region of the proposed AVA. For example, the 1957 Soil Survey of Eastern Stanislaus County, created by the U.S. Department of Agriculture Soil Conservation Service, describes the Paulsell series soil as being found ''along Dry Creek in the Paulsell Valley.'' [1] A 1961 soil association map from the same Federal agency further describes the Paulsell soil series as ''deep, clay soils on lacustrine deposits in Paulsell Valley.'' [2]

The name ''Paulsell Valley'' has also been used extensively in articles in the local newspaper relating to the Oakdale Irrigation District's (OID) proposal to expand water delivery into the region of the proposed AVA. For example, one article states, ''Additional farmers in the Paulsell Valley east of Modesto are also interested in tapping into OID's water supply * * *.'' [3] Another article describes ''options for OID to deliver water to the Paulsell Valley in eastern Stanislaus * * *.'' [4] A third article carries the headline, ''OID rejects request to help fund Paulsell Valley expansion study.'' [5] Finally, an article describes the efforts of Stanislaus County farmers ''such as those in the Paulsell Valley southeast of Oakdale'' to purchase water from the OID.[6]

*Boundary Evidence*

The proposed Paulsell Valley AVA is located on the lowest foothills of the Sierra Nevada Mountains, above the San Joaquin Valley floor. The proposed northern boundary follows a series of roads and straight lines between points to separate the proposed AVA from the fluvial valley of the Stanislaus River. The proposed eastern boundary largely follows a series of roads to separate the proposed AVA from the higher foothills and mountains within the Sierra Nevada. The proposed southern boundary is largely formed by the shoreline of the Modesto Reservoir and the Modesto Main Canal. The proposed western boundary follows a series of roads and straight lines between points to separate the proposed AVA from the lower elevations of the San Joaquin Valley.

*Distinguishing Features*

According to the petition, the distinguishing features of the proposed Paulsell Valley AVA are its topography, climate, and soils. The petition also proposed geology as a distinguishing feature of the proposed AVA. However, based on the petition's descriptions, geology appears to be too integral to the region's soils to be considered separately from that feature. Therefore, TTB does not consider geology to be a separate distinguishing feature of the proposed AVA.

Topography

According to the petition, the landscape of the proposed Paulsell Valley AVA is dominated by rolling hills marked by cut arroyos, but also interspersed with steep, isolated hills. This topography is referred to as ''mound-intermound relief.'' Because of the mound-intermound topography, the petition states that the fluvial valley known as ''Paulsell Valley'' can be difficult to define in areas, as the isolated hills do not form the typical drainage divides common to many other fluvial valleys. Elevations within the proposed AVA are between 140 and 612 feet, with most of the proposed AVA in the 180–400 foot range.

The topography of the proposed Paulsell Valley AVA affects viticulture. According to the petition, the gentle slopes within the proposed AVA ensure good drainage for vineyards. The isolated nature of higher mounds within the proposed AVA decreases shadows on the valley floor, allowing most vineyards to receive long hours of solar radiation. Furthermore, soils eroding off the higher slopes to the east settle in the lower elevations of the proposed AVA and help ensure that the soils are not leached of nutrients.

To the north of the proposed Paulsell Valley AVA is the floodplain of the Stanislaus River, which is described as a ''more traditional'' valley carved by the Stanislaus River. Along the floodplain are alluvial terraces and fans that differ from the mound-intermound topography of the proposed AVA. Elevations to the north of the proposed AVA are generally below 300 feet. To the east of the proposed AVA, the landscape transitions to the Sierra Nevada Mountains, which can rise to several thousand feet. South of the proposed AVA is the Modesto Reservoir. To the southwest and southeast of the proposed AVA, mound-intermound relief similar to that of the proposed AVA is also present, but it becomes less pronounced because the upper depositional layers have been weathered and eroded away. Although the hills in these regions are lower than those within the proposed AVA, the petition states that they occur in greater frequency. West of the proposed AVA, the terrain transitions to the San Joaquin Valley floor, which has significantly flatter topography and elevations that are typically below 200 feet.

Climate

According to the petition, the climate of the proposed Paulsell Valley AVA distinguishes it from the regions to the east, west, and southwest. Climate data was not available from the regions to the immediate north and immediate south of the proposed AVA. The petition first describes the growing degree day

[1] U.S. Department of Agriculture Soil Conservation Service and University of California Experiment Station, *Soil Survey: Eastern Stanislaus Area,* Series 1957, No. 20, 1964, page 17.

[2] U.S. Department of Agriculture Soil Conservation Service and University of California Agriculture Experiment Station, *General Soil Map: Eastern Stanislaus County,* 1961.

[3] Sbranti, J.N., ''Oakdale Irrigation District considers expanding water deliveries to farms and homes,'' *The Modesto Bee,* May 6, 2014. Accessed online at *https://www.modbee.com/latest-news/article3164325.html.*

[4] Sbranti, J.N., ''OID water sales plan bashed by county advisory committee,'' *The Modesto Bee,* November 19, 2014. Accessed online at *https://www.modbee.com/news/special-reports/groundwater-crisis/article4025625.html.*

[5] Sbranti. J.N., ''OID rejects request to help fund Paulsell Valley expansion study,'' *The Modesto Bee,* September 16, 2014. Accessed online at *https://www.modbee.com/news/local/article3172373.html.*

[6] Sbranti, J.N., ''OID to discuss selling water to outside agencies during closed-door meeting,'' *The Modesto Bee,* November 4, 2014. Accessed online at *https://www.modbee.com/news/local/oakdale/article3546951.html.*

(GDD)[7] accumulations of the proposed AVA and the surrounding regions. The petition also included GDD data from a weather station within the Blue Oak Vineyard to the southwest of the proposed AVA. However, because data was only available from this station from 2016 and 2017, and more complete data from the southwest region was also provided, TTB did not include the Blue Oak Vineyard data in the following table.

TABLE 1—2017 GDD ACCUMULATIONS

| Weather station location (direction from proposed AVA) | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|
| Rock Ridge Ranch (within) | 4,607 | 4,758 | 5,204 | 5,015 | 4,846 | 4,952 |
| Rock Creek Vineyard (within) | N/A | N/A | 4,922 | 4,756 | 4,461 | 4,455 |
| Warnerville (within) | N/A | 4,268 | 4,534 | 4,389 | 4,201 | 4,330 |
| Oakdale (west) | 3,780 | 4,035 | 4,250 | 4,165 | 4,212 | 4,308 |
| Denair (southwest) | 3,934 | 4,131 | 4,338 | 4,437 | 4,142 | 4,120 |
| Green Springs (east) | 4,624 | 4,586 | N/A | 4,702 | 4,601 | 4,711 |

The GDD accumulations for the proposed Paulsell Valley are higher than those to the west of the proposed AVA within the San Joaquin Valley, and similar to slightly higher than those of the region to the east. The petition suggests that the differences between GDD accumulations in the San Joaquin Valley and Paulsell Valley and the region to the east are more the result of lower minimum temperatures on the San Joaquin Valley floor rather than lower maximum temperatures. As evidence, the petition provided data from within the proposed AVA and the San Joaquin Valley on the average growing season low temperatures for the same time period as the GDD accumulations data. Once again, because only two years of data was available from the Blue Oak Vineyard, TTB did not include that information in the following table.

TABLE 2—AVERAGE GROWING SEASON LOW TEMPERATURES

| Weather station location (direction from proposed AVA) | Average minimum temperature (degrees Fahrenheit) |
|---|---|
| Rock Ridge Ranch (within) | 57.9 |
| Rock Creek Vineyard (within) | 55.4 |
| Warnerville (within) | 54.8 |
| Oakdale (west) | 53.9 |

According to the petition, in the region of the proposed AVA, a general pattern exists of precipitation increasing from west to east. The petition included information on average precipitation amounts from 2012–2017, which is summarized in the following table.

TABLE 3—ANNUAL PRECIPITATION IN INCHES

| Weather station location (direction from proposed AVA) | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|
| Rock Ridge Ranch (within) | N/A | 8.3 | N/A | 9.6 | 17.9 | 24.0 |
| Rock Creek Vineyard (within) | N/A | N/A | 7.6 | 9.2 | 17.8 | 25.4 |
| Warnerville (within) | 18.2 | 10.6 | 8.8 | 10.6 | 20.5 | 26.4 |
| Oakdale (west) | 8.6 | 9.7 | 6.6 | 11.4 | 15.9 | N/A |
| Denair (southwest) | 7.7 | 6.8 | 6.6 | 8.9 | 14.7 | 19.6 |
| Green Springs (east) | N/A | N/A | N/A | N/A | 30.5 | 37.6 |

The data supports the claim that precipitation amounts generally increase from west to east. The precipitation amounts for Oakdale, within the San Joaquin Valley, are generally lower than those of the proposed AVA. Although data from the Green Springs weather station was only available from 2016 and 2017, the rainfall amounts for those two years is significantly higher than those for the proposed AVA and the San Joaquin Valley, as would be expected for an eastern location. Therefore, TTB included the data in the table.

The climate of the proposed Paulsell Valley AVA has an effect on viticulture. According to the petition, temperatures impact the timing of bud break, grape development and sugar accumulations, and harvest dates. Hence, grapes grown within the proposed AVA experience different bud break, flowering, veraison, and harvest dates than the regions to the south and west which have lower GDD accumulations. Precipitation amounts in the proposed AVA offer more soil moisture than regions in the San Joaquin Valley, thus reducing the need for irrigation. Additionally, the level of

[7] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2nd Ed. 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

precipitation in the proposed AVA may partly help to alleviate some of the concerns related to certain diseases and the accumulation of excess juice that can dilute grape flavors, which may impact viticulture in the wetter regions to the east.

Soils

According to the petition, the region of the proposed AVA was heavily deposited by ancient volcanic activity that was primarily pyroclastic in nature (*i.e.,* lacking lava flow). Layers of volcanic tuff, which is rock created from the deposition of volcanic ash instead of from direct lava flow, form the parent material for the most common soil types. Additionally, alluvial fans associated with volcanic activity and significant flooding events provide an additional source for soils within the proposed AVA. The most common soils within the proposed AVA are the Pentz series soils, ranging from Pentz cobbly loam to Pentz sandy loam. These soils are described as shallow, well-drained soils that formed in material weathered from tuffaceous sediments and are frequently found on hilly terrain. Pentz soils account from 23 percent of the soils within the proposed AVA.

Associated with the Pentz soils and common to the proposed AVA are the Peters series soils, which account for 11 percent of the soils within the proposed AVA. These soils are very similar to the Pentz soils, but occur on nearly-level to steep terrain. The Peters-Pentz complex is also present within the proposed AVA. The petition defines a complex as similar soil types mixed at such a scale that they are not defined as one type or the other. The Peters-Pentz complex makes up a little more than 22 percent of the soils within the proposed AVA.

Other soil series of note within the proposed AVA are the Keyes, Raynor, and Paulsell series. Keyes soils comprise 10 percent of the soils within the proposed AVA, while Raynor and Paulsell soils make up 8 and 7 percent, respectively. Keyes soils are formed on material weathered from basic andesitic sediment and are found on alluvial fans and terraces or in mound-intermound relief. Raynor clay is formed from andesitic mudstone, while Paulsell clay is an alluvial soil formed from former lake sediment.

The petition notes that Peters, Pentz, and Keyes soils are all found in the regions to the west and southeast of the proposed AVA, as tuffaceous and fluvial deposits are not limited to the proposed AVA. Raynor and Paulsell soils are also found elsewhere. However, the petition states that sharp contrasts in soils exist to the north, northeast, and south of the proposed Paulsell Valley AVA. To the northeast, the Amador and Auburn series are more common. These soils are formed from tuffaceous sediments, similar to the Peters and Pentz soils. The Auburn soil, however, has metamorphic parent material, specifically amphibolite schist. Other soils in the regions to the northeast of the proposed AVA are derived from metamorphosed igneous rock, such as the Exchequer soils, or sedimentary rock, such as the Hornitos soils.

The petition states that to the south of the proposed AVA, Hopeton clays, Montpellier coarse sandy loam, and Whitney sandy loams are more common. These soils are formed from deposited sediments usually of granitic origin, or weakly consolidated sandstone of weathered ingenuous materials, and lack volcanic tuff material. Additionally, the petition states that to the north of the proposed AVA, alluvial sandy soils are found in deposits along the Stanislaus River floodplain, including Honcut, Hanford, and Columbia series soil. Tailings and dredge from former mining operations are also abundant along the river floodplain.

According to the petition, the soils of a region can affect overall grape characteristics. Holding capacity impacts how much moisture can be utilized by the vine from rainfall. Good drainage helps prevent soil-borne pathogens that can harm vines. The mineral content of the soil is often credited with creating subtle distinction in flavor. Hence, the petition asserts that soils of the Paulsell Valley, which are derived of ash and fluvial fans mixed with ash, have a different mineral content and holding capacity than the soils of the surrounding regions, and have the potential to produce subtle flavor characteristics to grapes grown in these soils.

*Summary of Distinguishing Features*

The following table summarizes the characteristics of the proposed Paulsell Valley AVA and the surrounding regions.

TABLE 4—SUMMARY OF DISTINGUISHING FEATURES

| Location | Topography | Climate | Soils |
|---|---|---|---|
| Proposed Paulsell Valley AVA. | Rolling hills, mound-intermound relief; elevations between 140 and 612 feet. | Average GDDs between 4,201 and 5,204; average growing season low temperatures between 54.8 and 57.9 degrees; Annual rainfall amounts between 7.6 and 26.4 degrees. | Pentz, Peters, Keyes, Raynor, and Paulsell series and the Peters-Pentz complex; primarily formed from volcanic tuff and alluvial fans associated with volcanic activity and severe flooding. |
| North | Floodplain of the Stanislaus River; elevations generally below 300 feet. | Not available | Honcut, Hanford, and Columbia series; alluvial sandy soils and tailings and dredge from former mining operations. |
| East | Sierra Nevada Mountains; elevations up to several thousand feet. | Similar to slightly lower GDD accumulations; higher annual rainfall amounts. | Amador, Auburn, Exchequer, and Hornitos series; derived from tuffaceous sediments, metamorphic or sedimentary parent material. |
| South | Modesto Reservoir | Lower GDD accumulations; temperature; lower annual rainfall amounts. | Hopeton clays, Montpellier coarse sandy loam, and Whitney sandy loams; formed from deposited sediments of granitic origin or weakly consolidated sandstone of weathered ingenuous materials; lack volcanic tuff. |
| West | San Joaquin Valley; significantly flatter terrain; elevations typically below 200 feet. | Lower GDD accumulations; lower average growing season low temperature; lower annual rainfall amounts. | Similar to proposed AVA. |

**TTB Determination**

TTB concludes that the petition to establish the 34,155-acre ''Paulsell Valley'' AVA merits consideration and public comment, as invited in this document.

*Boundary Description*

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

*Maps*

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Paulsell Valley AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''Paulsell Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Paulsell Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin if this proposed rule is adopted as a final rule.

The approval of the proposed Paulsell Valley AVA would not affect any existing AVA. If approved, the establishment of the proposed Paulsell Valley AVA would allow vintners to use ''Paulsell Valley'' as an appellation of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

**Public Participation**

*Comments Invited*

TTB invites comments from interested members of the public on whether TTB should establish the proposed Paulsell Valley AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, climate, soils, and other required information submitted in support of the AVA petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Paulsell Valley AVA on wine labels that include the term ''Paulsell Valley'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

*Submitting Comments*

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 202 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

*Confidentiality and Disclosure of Comments*

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition, supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received.

**Regulatory Flexibility Act**

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

**Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

**List of Subjects in 27 CFR Part 9**

Wine.

**Proposed Regulatory Amendment**

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas

■ 2. Add § 9. _____ to read as follows:

**§ 9. _____ Paulsell Valley.**

(a) *Name.* The name of the viticultural area described in this section is ''Paulsell Valley''. For purposes of part 4 of this chapter, ''Paulsell Valley'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

(1) Knights Ferry, California, 2015;

(2) Keystone, California, 2015;

(3) Cooperstown, California, 2015; and

(4) Paulsell, California, 2015.

(c) *Boundary.* The Paulsell Valley viticultural area is located in Stanislaus County, California. The boundary of the Paulsell Valley viticultural area is as described in paragraphs (c)(1) through (20) of this section:

(1) The beginning point is on the Knights Ferry map at the intersection of Willms Road, Kennedy Road/Sonora Road, and State Highway 108/State Highway 120. From the beginning point, proceed southeasterly along Willms Road for 7.2 miles, crossing over the Keystone map and onto the Cooperstown map, to the intersection of Willms Road and Warnerville Road at the Warnerville Cemetery; then

(2) Proceed west, then south along Warnerville Road for a total of 0.5 mile to its intersection with Crabtree Road at the railroad tracks west of the town of Warnerville; then

(3) Proceed in a southerly direction along Crabtree Road for 6.7 miles to its intersection with the canal known locally as the Modesto Main Canal; then

(4) Proceed westerly along the canal, crossing onto the Paulsell map, and continuing along the canal for a total of 1.6 miles to the Modesto Reservoir; then

(5) Proceed along the eastern shore, then northern shore, of the Modesto Reservoir for 12.9 miles to the fifth intersection of the shore with an unnamed, intermittent creek at the northernmost point of the reservoir; then

(6) Proceed southwesterly in a straight line to the northern terminus of Reservoir Road; then

(7) Proceed south-southwest along Reservoir Road for 2.2 miles to its intersection with the 200-foot elevation contour; then

(8) Proceed northwest in a straight line for 1.2 miles to the intersection of Hazeldean Road and Tim Bell Road; then

(9) Proceed north along Tim Bell Road for 3.1 miles to its intersection with Claribel Road south of the town of Paulsell; then

(10) Proceed west along Claribel Road for 2.4 miles, crossing Cashman Creek, to the intersection of the road with the 260-foot elevation contour; then

(11) Proceed north in a straight line for 2 miles to the intersection of Warnerville Road and the 300-foot elevation contour east of Cashman Creek; then

(12) Proceed northeast in a straight line, crossing onto the Knights Ferry map and continuing for a total of 1.1 miles to the intersection of Fogarty Road and a railroad track; then

(13) Proceed east in a straight line for 0.9 mile to Paulsell Lateral; then

(14) Proceed northerly along Paulsell Lateral for 2.4 miles to its intersection with Cashman Creek; then

(15) Proceed northwest in a straight line for 1.3 miles to State Highway 108/State Highway 120; then

(16) Proceed northeast in a straight line for 2.4 miles to the third intersection of State Highway 108/State Highway 120 with the 300-foot elevation contour; then

(17) Proceed southeast along State Highway 108/State Highway 120 for 1 mile to its intersection with the 260-foot elevation contour; then

(18) Proceed northeasterly along the 260-elevation contour for 1.4 miles to its intersection with Sonora Road southeast of Knights Ferry; then

(19) Proceed southeast along Sonora Road for 0.1 mile to its intersection with Kennedy Road; then

(20) Proceed northeast, then east, then south along Kennedy Road/Sonora Road for 0.4 mile, returning to the beginning point.

Signed: June 21, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: June 21, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2021–15053 Filed 7–14–21; 8:45 am]

**BILLING CODE 4810–31–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2021–0505]**

**RIN 1625–AA08**

## Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters located between Sandy Point, Anne Arundel County, MD, and Kent Island, Queen Anne's County, MD, during a paddling event on September 26, 2021. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 16, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0505 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

ABC Events, Inc. of Arnold, MD, has notified the Coast Guard that it will be conducting the Bay Bridge Paddle from 8 a.m. to noon on September 26, 2021. The annual canoe, kayak and stand up paddle board event for elite and intermediate paddlers includes up to 400 paddlers in two classes operating on two race courses in the Chesapeake Bay, under and between the north and south bridges that consist of the William P. Lane, Jr. (US–50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD, and Kent Island, Queen Anne's County, MD. The first

course, for elite paddlers, is a 9-statute mile/14.5-kilometer race course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, proceeds southerly along the shoreline to a point on the course located between north bridge piers 13 and 13A, then easterly along and between the bridges toward the eastern shore at Kent Island and turns around upon reaching a point near Kent Island, then proceeds westerly along and between the bridges toward the western shore, turns upon reaching a point on the course located between north bridge piers 24 and 25, proceeds northerly to the Sandy Point Shoal Lighthouse, and proceeds westerly to a finish at the east beach area of Sandy Point State Park. The second course, for intermediate paddlers, is a 3.1-statute mile/5-kilometer course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, and follows the elite paddlers to the north bridge, then easterly along and between the bridges toward the eastern shore at Kent Island and turns northerly upon reaching a point on the course located between north bridge piers 24 and 25, and proceeds to a finish at the east beach area of Sandy Point State Park. Hazards from the paddle races include numerous event participants crossing designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to the Sandy Point State Park public boat launch facility and marina. The COTP Maryland-National Capital Region has determined that potential hazards associated with the paddle races would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Chesapeake Bay between Sandy Point and Kent Island, MD.

The purpose of this rulemaking is to protect event participants, non-participants and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

## III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 7 a.m. to 1 p.m. on September 26, 2021. The regulated area would cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N, longitude 076°23′47.93″ W; thence eastward to latitude 39°01′02.08″ N, longitude 076°22′40.24″ W; thence southeastward to eastern shoreline at latitude 38°59′13.70″ N, longitude 076°19′58.40″ W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N, longitude 076°24′28.36″ W; thence southward to latitude 38°59′38.36″ N, longitude 076°23′59.67″ W; thence eastward to latitude 38°59′26.93″ N, longitude 076°23′25.53″ W; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N, longitude 076°20′10.45″ W, located between Sandy Point and Kent Island, MD.

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the paddle races, scheduled from 8 a.m. to noon on September 26, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have the authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Bay Bridge Paddle participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a non-participant. Official patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Official patrols would direct non-participants while within the regulated area. Official patrols enforcing the regulated area can be contacted on VHF–FM channel 16 and channel 22A.

The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Chesapeake Bay for 6 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 6 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0505 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0505 to read as follows:

### § 100.T05–0505 Bay Bridge Paddle, Chesapeake Bay, Between Sandy Point and Kent Island, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P.

Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01′05.23″ N, longitude 076°23′47.93″ W; thence eastward to latitude 39°01′02.08″ N, longitude 076°22′40.24″ W; thence southeastward to eastern shoreline at latitude 38°59′13.70″ N, longitude 076°19′58.40″ W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′17.08″ N, longitude 076°24′28.36″ W; thence southward to latitude 38°59′38.36″ N, longitude 076°23′59.67″ W; thence eastward to latitude 38°59′26.93″ N, longitude 076°23′25.53″ W; thence eastward to the eastern shoreline at latitude 38°58′40.32″ N, longitude 076°20′10.45″ W, located between Sandy Point and Kent Island, MD. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Coast Guard Event Patrol Commander (Event PATCOM)* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor participating in the Bay Bridge Paddle or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for participants and vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or Event PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or Event PATCOM.

(3) Official patrols will direct non-participants while within the regulated area. Official patrols enforcing the regulated area can be contacted on VHF–FM channel 16 and channel 22A.

(4) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 1 p.m. on September 26, 2021.

Dated: July 9, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021–15060 Filed 7–14–21; 8:45 am]

BILLING CODE 9110–04–P

# Notices

Federal Register

Vol. 86, No. 133

Thursday, July 15, 2021

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

### Submission for OMB Review; Comment Request

July 8, 2021.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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.

Comments regarding these information collections are best assured of having their full effect if received by August 16, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agricultural Statistics Service**

*Title:* Hemp Acreage and Production Survey.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* As defined in the 2018 Farm Bill, the term ''hemp'' means the plant species Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Delta-9 tetrahydrocannabinol, or THC, is the primary intoxicating component of cannabis. Cannabis with a THC level exceeding 0.3 percent is considered marijuana, which remains classified as a schedule I controlled substance regulated by the Drug Enforcement Administration (DEA) under the Controlled Substances Act (CSA). Under the Agricultural Act of 2014 (2014 Farm Bill), Public Law 113–79, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. The authority for hemp production provided in the 2014 Farm Bill was extended by the 2018 Farm Bill, which was signed into law on December 20, 2018.

Hemp is a commodity that can be used for numerous industrial and horticultural purposes including fabric, paper, construction materials, food products, cosmetics, production of cannabinoids (such as cannabidiol or CBD), and other products.

In determining the type of data that would need to be collected and the frequency of the data collections, NASS management attended a joint meeting with representatives from the USDA's Economic Research Service (ERS), Farm Service Agency (FSA), Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and the Office of the Secretary.

*Need and Use of the Information:* The data will be collected under the authority of the Domestic Hemp Production Program, which is mandated by the Agriculture Improvement Act of 2018 (2018 Farm Bill). In addition the data will be collected under the authority of Title 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

*Description of Respondents:* Businesses or other for-profits and Farms.

*Number of Respondents:* 20,000.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 7,531.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–15063 Filed 7–14–21; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2021–0017]**

### Notice of Request for a New Information Collection: Overtime and Holiday Inspection Fees for Small and Very Small Establishments

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection to reduce overtime and holiday inspection fees for small and very small meat, poultry, and egg products establishments. This is a new information collection with an

estimated annual burden of 724 hours. FSIS is reducing holiday and overtime fees under the American Rescue Plan Act, enacted on March 11, 2021. Through this legislation, Congress provided FSIS with $100 million in budget authority to reduce the costs of overtime inspection for small and very small official meat and poultry establishments and egg products plants.

**DATES:** Submit comments on or before September 13, 2021.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–0017. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Overtime and Holiday Inspection Fees for Small and Very Small Establishments.

*OMB Number:* 0583–NEW.

*Type of Request:* Request for a new information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

As authorized under the American Plan Rescue Act, FSIS intends to reduce overtime and holiday inspection fees for small and very small meat, poultry, and egg products establishments. FSIS will collect information on FSIS Form 5200–16, *Overtime/Holiday Rate Reduction Form,* to determine whether an establishment inspected by FSIS qualifies for an overtime and holiday inspection fee reduction, and, if so, the amount of the reduction. If an establishment experiences any change in qualifying circumstances, it must notify FSIS by resubmitting the FSIS Form 5200–16, *Overtime/Holiday Rate Reduction Form.*

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 10 minutes per response.

*Estimated total number of respondents:* 3,944.

*Estimated number of responses per respondent:* 1–2.

*Estimated annual number of responses:* 3,944.

*Estimated initial annual burden on respondents:* 724 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign

Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

**Paul Kiecker,**

*Administrator.*

[FR Doc. 2021–15012 Filed 7–14–21; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2021–0014]**

### Overtime and Holiday Inspection Fee Reductions for Small and Very Small Establishments

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In the American Rescue Plan Act, enacted on March 11, 2021, Congress provided the Food Safety and Inspection Service (FSIS) with $100 million in budget authority to reduce the costs of overtime inspection for small and very small official meat and poultry establishments and egg products plants. FSIS will implement this provision by reducing overtime and holiday inspection fees for small establishments by 30 percent and very small establishments by 75 percent. FSIS has developed an Overtime/Holiday Rate Reduction form that official establishments will need to submit to request an overtime or holiday inspection fee reduction. FSIS will review the form to determine whether an establishment qualifies for the fee reduction. This notice contains information on how to complete and submit the form to FSIS and describes the procedures FSIS will follow to implement the American Rescue Plan Act's overtime and holiday inspection fee reduction provisions.

**DATES:** Establishments are encouraged to submit their completed Overtime/Holiday Rate Reduction forms by August 16, 2021 to expedite the process. However, establishments may submit their forms at any time. All establishments that submit their forms by March 11, 2022, and that qualify for a fee reduction, will receive a partial refund for overtime and holiday inspection fees paid since October 11, 2020, *i.e.,* the first day of the pay period after beginning of Fiscal Year 2021.

**ADDRESSES:** Small and very small establishments should submit their completed forms to the FSIS inspection personnel assigned to their establishment or, alternatively, FAX the completed form to the appropriate FSIS District Office, ''Attention Grant Curator.'' Contact information for the FSIS District Offices, including FAX numbers, is available at: *https://www.fsis.usda.gov/contactus/fsis-offices/office-field-operations-ofo.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

For billing issues and to request refunds contact the Financial Service Center Customer Contact Center: (515) 334–2000 option 1 or email at *fsis.billing@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments and of meat (including *Siluriformes*) and poultry processed at official establishments. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processed at official plants. Although firms that process egg products are defined as ''plants'' by the EPIA, when generally discussing businesses affected by the American Rescue Plan Act in this document, we will refer to them as ''establishments.'' Under the FMIA, PPIA, and EPIA, FSIS bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation, while official meat, poultry and egg product establishments are required to pay for inspection services requested and performed on an overtime basis or on holidays (21 U.S.C. 468, 21 U.S.C. 695, and 21 U.S.C. 1053)).

FSIS' regulations (9 CFR 391.3, 590.126, and 590.128) contain formulas for calculating fees for overtime and holiday inspection. FSIS uses these formulas and publishes annual rates in the **Federal Register** before the start of each calendar year (see 85 FR 79992). FSIS applies the rates on the first FSIS pay period at the beginning of the calendar year. The overtime and holiday fees apply to all establishments regardless of their size and average annual sales.

The overtime and holiday inspection fees for all establishments may have a disproportionate financial impact on small and very small establishments compared to large establishments that can more easily absorb the extra charges due to their production volume. Additionally, large establishments often operate a full second shift, giving them a total of 16 hours instead of 8 hours of inspection per day before they would have to pay for overtime. Higher production volume and operation of a second shift without additional cost for large establishments may put smaller establishments at a competitive disadvantage. The resulting additional cost per pound of product caused by overtime and holiday fees is much higher for smaller establishments. Thus, the full fees may hamper their ability to continue to operate, be competitive, and expand operations.

### II. Funding and Fee Reductions

In the American Rescue Plan Act of 2021 (Pub. L. 117–2, 135 Stat. 242), Congress provided FSIS with $100 million in budget authority to reduce the costs of overtime inspection for federally-inspected small and very small meat, poultry, and egg products establishments. Under the American Rescue Plan Act, the definitions of ''small establishment'' and ''very small establishment'' have the meaning given to those terms in FSIS' final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP)'' (PR/HACCP)(61 FR 38806, July 25, 1996). These definitions, and refinements for assessing the number of establishment employees and average annual sales that FSIS has made for purposes of implementing the overtime and holiday inspection fee reduction, are discussed in more detail in the ''Eligibility'' and ''Overtime/Holiday Rate Reduction form'' sections below.

Although the American Rescue Plan Act did not include specific amounts for the overtime and holiday fee reduction, in a March 15, 2021 letter to Secretary

Vilsack, four members of Congress urged the Secretary to prioritize reducing overtime and holiday inspection fees for very small and small official establishments based off the provisions included in legislation introduced in the 116th Congress, the *Small Packer Overtime and Holiday Fee Relief for COVID–19 Act of 2020.*[1] As noted in the letter, this proposed legislation would direct ''USDA–FSIS to reduce the fees charged to very small establishments by at least 75 percent and to small establishments by at least 30 percent.'' The Congressional representatives explained that these fee reductions are necessary to address the economic disincentives currently in place for small and very small official establishments to work longer hours. They also stated that these fee reductions would help to reduce the disparity between very small and small establishments versus large establishments that are able to avoid overtime inspection fees because they have the capacity to operate two full shifts.

Because the FMIA, PPIA, and EPIA require that official establishments pay for overtime and holiday inspection, FSIS is obligated to charge small and very small establishments for these types of inspection services (21 U.S.C. 468, 21 U.S.C. 695, and 21 U.S.C. 1053). Thus, providing a fee exemption to these establishments is not an option. Instead, FSIS will use the authority to reduce overtime and holiday inspection fees granted to the Agency by the American Rescue Plan Act to reduce overtime and holiday inspection fees for small establishments by 30 percent and very small establishments by 75 percent. Consistent with the law, FSIS will offer overtime and holiday inspection at the reduced fees from FY 2021 to FY 2030, or until all appropriated funds for overtime and holiday inspection are expended.

## III. Eligibility

Only small and very small official meat, poultry, or egg products establishments are eligible to receive overtime and holiday inspection at the reduced rates discussed above. For purposes of determining eligibility, an official establishment is defined as any entity that slaughters livestock or poultry and/or processes meat, poultry, or egg products at which inspection is required by the FMIA, PPIA, or EPIA. Facilities that receive voluntary inspection services, establishments that function solely as Official Import Inspection Establishments, or solely as exporting facilities are not eligible for the fee reduction.

As noted above, under the American Rescue Plan Act, ''small establishment'' and ''very small establishment'' have the meaning given to those terms in FSIS' PR/HACCP final rule (see 61 FR 38806 and Pub. L. 117–2). As defined in the PR/HACCP final rule, an establishment is ''small'' if it has 10 or more but fewer than 500 employees, and an establishment is ''very small'' if it has fewer than 10 employees or less than $2.5 million in annual sales (61 FR 38806). Employees mean all individuals employed on a full-time, part-time, temporary, or other basis. The American Rescue Plan Act directs USDA to ''reduce the amount of overtime inspection costs borne by federally-inspected small and very small establishments engaged in meat, poultry, and egg product processing'' subject to the FMIA, PPIA, and EPIA, providing the Secretary with discretion to determine how to implement the reductions (American Rescue Plan Act of 2021, § 1001(d)).

The Secretary has determined that § 1001(d) forecloses USDA from offering overtime discounts to establishments that are not ''small establishments'' or ''very small establishments,'' as defined in the PR/HACCP final rule. But Congress did not specify how the overtime discounts should be divided among small and very small establishments. This leaves it to the Secretary's discretion to determine which individual establishments will receive the discounts. Because the Act grants the Secretary such broad discretion and because funds for reducing overtime and holiday inspection costs are limited, FSIS will apply the terms ''small establishment'' and ''very small establishment,'' as defined in the PR/HACCP final rule, so as to reduce overtime and holiday inspection fees only for small and very small establishments unaffiliated with multiple or large businesses in a way that would effectively place them within the large establishment definition. Otherwise, providing overtime and holiday inspection fee reductions to any establishment that simply meets the numerical definitions of ''very small'' and ''small'' in the PR/HACCP final rule would result in the diversion of some of the assistance funding to large businesses, depriving small and very small establishments of the maximum funding available. Therefore, an application of the PR/HACCP final rule business size categories that considers affiliation with multiple or large businesses is consistent with the intent of the relevant provisions of the American Rescue Plan Act, *i.e.,* to assist very small and small businesses often disparately affected by the COVID–19 pandemic. The definition of an affiliated company and the method FSIS will use to assess the number of establishment employees and average annual sales for purposes of the fee reduction are discussed in more detail below.

## IV. Overtime/Holiday Rate Reduction Form

As noted above, FSIS has developed an Overtime/Holiday Rate Reduction form to collect information to determine whether an establishment inspected by FSIS qualifies for an overtime and holiday inspection fee reduction and, if so, the amount of the reduction. FSIS has developed this new form because the Agency currently does not have complete data on establishment size and average annual sales, and the form will allow the Agency to collect information to determine whether an establishment is a subsidiary, affiliate, or part of some other business structure that would prevent it from being eligible for a fee reduction. The form also serves as an attestation from the establishment that the data provided are accurate. The form is optional in that those small and very small establishments that do not use overtime or holiday inspection services, or that are not interested in receiving a fee reduction, are not required to complete it. However, small and very small official establishments that would like to request a fee reduction must complete the form to receive the benefit.

In addition to the definitions for ''official establishment'' and ''employees'' discussed above, the form includes definitions for ''affiliated companies'' and ''company'' for purposes of determining whether an official establishment qualifies for a fee reduction. For purposes of the form, companies are considered affiliated with each other when one controls the other or a third-party controls both. It does not matter whether control is exercised, so long as the power to control exists. For example, a corporate company that owns one or more establishments is affiliated with those

[1] March 15, 2021, letter to Secretary Vilsack available at: *https://www.moran.senate.gov/public/_cache/files/0/f/0f4997fc-e4ad-4d6f-9ef4-b22ed44806b8/98F78F4F910F5AD3F9FC0F0F5269FA1C.small-packer-overtime-letter-to-vilsack-3.15.21.pdf.*

H.R.6977—Small Packer Overtime and Holiday Fee Relief for COVID–19 Act of 2020 (116th Congress 2019–2020) available at: *https://www.congress.gov/bill/116th-congress/house-bill/6977.*

S–3797—Small Packer Overtime and Holiday Fee Relief for COVID–19 Act of 2020 (116th Congress 2019–2020 available at: *https://www.congress.gov/bill/116th-congress/senate-bill/3797.*

establishments, and the establishments are affiliated with the corporate company and each other. Affiliated companies can be domestic or foreign. Affiliated companies do not typically include entities that perform contracted administrative services, including human resource support and cleaning services, as defined by the Small Business Administration (SBA) in 13 CFR 121.103. For purposes of the form, a ''company'' is any organization or entity (including an *establishment*) that buys or sells good or services. A company may be organized in various forms, including partnerships and corporations, and can be privately held or publicly traded.

To complete the form, establishments must answer a series of questions designed to collect data on the total number of employees employed by the establishment and any affiliated companies, as well as the average annual sales for the establishment. As stated in the form, the number of employees is the average number of employees. The average is calculated by summing the number of employees at the end of each pay period over the preceding 52 weeks and dividing by the total number of pay periods. In addition, for purposes of the form, establishments should determine their annual average sales based on their sales over the past five years or, for establishments that have been in business for less than five years, on the number of years they have been in business. This is consistent with the SBA's regulations for calculating a business's annual receipts (13 CFR 121.104). Thus, under this approach, the average annual sales of an establishment that has been in business for five or more completed fiscal years means the establishment's total sales over its most recently completed five fiscal years divided by five. Establishments that have been in business fewer than five years should use the annual sales for their fully completed years in business divided by their number of fully completed fiscal years. Because FSIS intends to use data collected on the form to determine whether an official establishment is qualified for a rate reduction and the amount of the reduction, the establishment must also attest that data provided are accurate. Official establishments that are not affiliated with other companies will only need to report the number of employees employed by the establishment and whether the establishment's average annual sales are less than $2.5 million or $2.5 million or more.

Establishments may obtain an Overtime/Holiday Rate Reduction form from the FSIS inspection personnel assigned to the establishment or may download and print the form from *http://www.fsis.usda.gov/sites/default/files/2021-07/FSIS-5200-16-OvertimeHolidayRateReductionForm_v6-4re508.pdf.* At this time, FSIS will only be accepting paper forms, but will work to provide for electronic submission in the future. Establishments should submit the completed paper form to the FSIS front line supervisor assigned to the establishment. The frontline supervisor will submit the completed form to the District Office for processing. Alternatively, establishments that prefer to submit the form themselves may FAX the completed form to the appropriate District Office, ''Attention Grant Curator.''

*Submission dates and refunds.* Establishments are encouraged to submit their completed Overtime/Holiday Rate Reduction forms as soon as possible but no later than August 16, 2021 to expedite the process. All establishments that submit their forms by March 11, 2022,[2] and that qualify for a fee reduction will receive a partial refund for overtime and holiday inspection fees paid since October 11, 2020, *i.e.,* the first day of the first pay period in fiscal year 2021. Establishments may request that FSIS provide the refund as a lump sum or as a credit to be applied to future overtime and holiday inspection fees. After March 11, 2022, FSIS will continue to reduce holiday and overtime inspection fees for establishments that qualify but will no longer provide partial refunds for fees paid since October 11, 2020. Establishments may submit a benefit eligibility form to request an overtime and holiday inspection fee reduction at any time. If the establishment qualifies for a fee reduction and submits its form after March 11, 2022, it will receive the reduction beginning on the date it submitted its benefit eligibility form, provided appropriated funds are still available. As noted above, FSIS will offer overtime and holiday inspection at the reduced rates from FY 2021 to FY 2030, or until all appropriated funds for overtime and holiday inspection are expended.

## V. Determining Establishment Eligibility and Fee Reduction

After an establishment's completed Overtime/Holiday Rate Reduction form is received by the District Office, the District Office's Grant Curator will review the form to determine whether an official establishment is eligible for an overtime and holiday inspection fee reduction and, if so, whether the establishment qualifies for the small establishment or very small establishment reduced fee.

When reviewing an establishment's form, the Grant Curator will first assess the information to determine whether the establishment is affiliated with other companies, including other establishments. If the establishment is affiliated with other companies and the total number of employees employed by the establishment and its affiliated companies is less than 500, the establishment would qualify for an overtime and holiday inspection fee reduction. If the establishment together with its affiliated companies employ 500 or more employees, the establishment would not qualify for a fee reduction.

If an establishment qualifies for a fee reduction, the Grant Curator will conduct an additional review to determine if the establishment qualifies for the small establishment or very small establishment reduction rate. The amount of the fee reduction will be based on the number of employees or average annual sales for the establishment as a discrete entity without considering employees or average annual sales associated with any affiliated companies. Thus, if the establishment itself employs fewer than 10 employees or has less than $2.5 million in average annual sales, the establishment would qualify as a ''very small establishment'' for purposes of the fee reduction and would receive a 75 percent reduction on overtime and holiday inspection fees. The establishment would qualify for the ''very small establishment'' fee reduction even if the total number of employees employed by all affiliated companies is over 10, but less than 500, and if the average annual sales for all affiliated companies is greater than $2.5 million. If the establishment employs more than 10 employees but fewer than 500 employees and its annual average sales are greater than $2.5 million, it would qualify as a ''small establishment'' for purposes of the fee reduction and would receive a 30 percent reduction on overtime and holiday inspection fees. This approach will allow FSIS to maintain and update individual establishment HACCP size information in the Public Health Information System (PHIS), while also providing the greatest fee reductions to those establishments that would benefit the most. See Table 1 for an overview of applicant establishments that qualify

[2] March 11, 2022 is one year from the date the American Rescue Plan Act was enacted: March 11, 2021.

for a fee reduction and the amount of their reduction.

TABLE 1—OVERTIME AND HOLIDAY INSPECTION RATE REDUCTION: ELIGIBILITY AND FEE REDUCTION

| Applicant average # of employees | Applicant + affiliated companies average # of employees | Applicant HACCP size in PHIS | Applicant average annual income | Applicant + affiliated companies average annual income | Applicant eligibility for rate reduction/ percentage |
|---|---|---|---|---|---|
| ≤ 9 | ≤ 9 | VS | Any | Any | Yes/75%. |
| ≤ 9 | ≥10 and ≤ 499 | VS | Any | Any | Yes/75%. |
| ≥10 and ≤ 499 | ≥10 and ≤ 499 | VS | <2.5 million | Any | Yes/75%. |
| ≤ 9 | ≥ 500 | VS | N/A | N/A | No. |
| ≥10 and ≤ 499 | ≥10 and ≤ 499 | S | ≥2.5 million | Any | Yes/30%. |
| ≥10 and ≤ 499 | ≥ 500 | VS | <2.5 million | N/A | No. |
| ≥10 and ≤ 499 | ≥ 500 | S | ≥2.5 million | N/A | No. |
| ≥ 500 | ≥500 | L | N/A | N/A | No. |

Establishments that have questions regarding their eligibility for a fee reduction should contact their FSIS District Office. Contact information for the FSIS District Offices is available at: *https://www.fsis.usda.gov/contactus/fsis-offices/office-field-operations-ofo.*

**Fee Reduction Eligibility Renewal, New Establishments, and Change in Amount of Fee Reduction**

At a set date every three years, FSIS will request that establishments receiving an overtime and holiday inspection fee reduction reaffirm their fee reduction eligibility through a notification to FSIS. FSIS will verify information provided by establishments to ensure that establishments remain eligible for the fee reduction. The first fee reduction renewal date will be June 30, 2024, which will be effective the first full pay period (approximately two weeks) after July 1, 2024, and every three years after that. When it is time for establishments to renew their fee reduction eligibility, FSIS will include a reminder to reaffirm the Overtime/Holiday Rate Reduction in the establishment's account statement with instructions on how to submit the information to FSIS. The fee reduction eligibility forms also will continue to be available by request from FSIS inspection personnel and online. Establishments must reaffirm their status by the renewal date to continue to receive the fee reduction. Thus, for the first renewal date, if an establishment has not reaffirmed its eligibility for fee reduction by June 30, 2024, FSIS will begin billing the full overtime and holiday inspection rate on the next full pay period after July 1, 2024. If an establishment reaffirms its eligibility after the June 30, 2024, renewal date and continues to qualify for a fee reduction, FSIS will apply the fee reduction as soon as possible after the reaffirmation is received.

New establishments that apply for a grant of inspection before June 30, 2024, and would like to request a holiday and overtime fee reduction should submit an Overtime/Holiday Rate Reduction form along with their application for a Federal grant of inspection. If the establishment qualifies for a fee reduction, FSIS will apply the fee reduction when it issues the establishment's grant of inspection. Such establishments also will need to reaffirm their fee reduction eligibility by the June 30, 2024, renewal date to continue to receive the fee reduction benefit.

An establishment that has a change that would affect its eligibility or the amount of its fee reduction, *e.g.,* a small establishment has a reduction in employees or annual sales such that it qualifies as very small, must submit a new Overtime/Holiday Rate Reduction form to FSIS as close as possible to the time the change occurs so that the Agency may make the associated change to the establishment's fee reduction. FSIS also will apply any new fee reduction to qualified establishments as soon as possible after it is notified of the change. Establishments that submit forms attesting to a change in eligibility prior to June 30, 2024, will still be required to reaffirm their eligibility by the June 30, 2024 renewal date to continue to receive a fee reduction. Persons making false, fictitious, or fraudulent statements or entries on the form are subject to a $10,000 fine or imprisonment for not more than 5 years or both as prescribed by 18 U.S.C. 1001.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the information collection or recordkeeping requirements included in this notice have been submitted for approval to OMB.

*Title:* Overtime and Holiday Inspection Fees for Small and Very Small Establishments.

*Type of Request:* Request for a new information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Under this notice, FSIS intends to reduce overtime and holiday inspection fees for small and very small meat, poultry, and egg products establishments. FSIS will collect information on FSIS Form 5200–16, *Overtime/Holiday Rate Reduction Form,* to determine whether an establishment inspected by FSIS qualifies for an overtime and holiday inspection fee reduction, and, if so, the amount of the reduction. If an establishment experiences any change in qualifying circumstances, it must notify FSIS by resubmitting the FSIS Form 5200–16, *Overtime/Holiday Rate Reduction Form.*

This is a request for a new information collection. FSIS has made the following estimates based upon an information collection assessment:

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 10 minutes per response.

*Estimated total number of respondents:* 3,944.

*Estimated number of responses per respondent:* 1–2.

*Estimated annual number of responses:* 3,944.

*Estimated initial annual burden on respondents:* 724 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

**Environmental Impact**

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4 (b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4 (b)(6)).

FSIS has determined that this notice, which describes how FSIS will implement the American Rescue Plan Act's small and very small establishment overtime and holiday inspection fee reduction, will not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(6) of the U.S. Department of Agriculture regulations.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS website located at: *https://www.fsis.usda.gov/policy/federal-register-rulemaking.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS website. Through the website, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/news-events/news-press-releases/news-feeds-subscriptions.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) Mail: USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

**Paul Kiecker,**

*Administrator.*

[FR Doc. 2021–15011 Filed 7–14–21; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Food Delivery Portal (FDP)

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection to provide FNS and WIC State agencies with an ongoing/annual data set that can be used to assess State agencies' compliance with WIC vendor management requirements and estimate State agencies' progress in eliminating fraud, waste, and abuse.

**DATES:** Written comments must be received on or before September 13, 2021.

**ADDRESSES:** Comments may be submitted via email to the attention of FDP Help Desk at *SM.fn.FDPHelp@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Amy Herring, at *amy.herring@usda.gov* or (703) 305–2376.

**SUPPLEMENTARY INFORMATION:** 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 that were 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, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Food Delivery Portal (FDP) Data Collection (formerly The Integrity Profile (TIP) Data Collection).

*Form Number:* None.

*OMB Number:* 0584–0401.

*Expiration Date:* September 30, 2021.

*Type of Request:* Revision of a Currently Approved Collection.

*Abstract:* Each year, WIC State agencies administering the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) are required by 7 CFR 246.12(j)(5) to submit to FNS an annual summary of the results of their vendor monitoring efforts in order to provide Congress, senior FNS officials, as well as the general public, assurance that every reasonable effort is being made to ensure integrity in the WIC Program. The number of WIC State agencies in fiscal year 2020 is 89. This includes 50 geographic State agencies, 33 State agencies operated by Indian Tribal Organizations, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands. Through FY 2021, States report compliance and monitoring data in The Integrity Profile (TIP) system. That system is being replaced with an upgraded, web-based system called Food Delivery Portal (FDP). Starting FY 2022, all WIC State agencies will use the upgraded web-based system.

The existing TIP system was designed and developed using the WIC Program requirements current as of 2005. Since 2005, there have been changes to the requirements, policies, technology, and guidance that the current system cannot support. It is critical that FNS implements a more robust data collection system to align with current security protocols and compliance guidance, support data storage and web components, ensure cost effectiveness, allow for more data-driven decision-making through increased data analytic functionality, enhance FNS reporting capabilities, reduce grantee burden through automated calculations and consolidated reporting, and add data validation features to reduce reporting errors. With this update, the TIP system will be replaced with the Food Delivery Portal (FDP).

The TIP system currently collects data via three automated forms: FNS–698 Profile of Integrity Practices and Procedures (PIPP) Report, FNS–699 The Integrity Profile (TIP) Report, and FNS–700 Vendor Record. Revisions and consolidations in data collection in the FDP will eliminate these physical forms for the annual collection, instead allowing each State agency to provide updates using FDP. The screens in FDP provide a more flexible method of data capture, that focuses on the data that has changed for the year rather than recapturing all data elements each time. As a part of the upgrade effort, existing data in the TIP system will be migrated to the new FDP.

There is an increase in the burden hours because FNS intends to seek feedback from the State agencies on the system. However, the responses for this collection will decrease as the FNS program needs have changed, and Seneca Nation no longer administers WIC. The State agency is currently required to generate a complete data package in TIP each year for each vendor. The current system requires each State agency to submit data for all of its vendors within a single file. The proposed changes for FDP allow each State agency to enter the majority of its vendor information once and then only update the fields that have changed within the year, reducing the data entry and monitoring burden. There is no recordkeeping burden associated with this information collection request.

*Estimate of Burden:* Public reporting burden for this collection of information is based on the fields in the new online application, and the total number of vendor records estimated to be entered into FDP by WIC State agencies.

The highest total burden for a single record is estimated at 10 minutes (0.167 hours) for completing manual data entry for all fields in a new record. This estimate is based upon each vendor operating as a WIC authorized vendor at some point during the year. It includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. It is estimated to take 30 minutes (0.50 hours) for the data upload,

**Entering Vendor Data**

Each State agency maintains their vendor data records within their state-level system of record. They report to FDP the finalized records for each fiscal year. State agencies have the following two options for reporting annual vendor records. In FY 2019, there were 41,675 vendor records reported in TIP across all 89 State agencies. Of these 89 State agencies, 16 State agencies used Option 1 and 73 State agencies used Option 2.

*Option 1:* State agencies manually update or add new records to the FDP system using the application screens. The FDP system stores and pre-populates information for vendors from the previous year's submission making updating existing entries quicker. FNS estimates that 16 out of 89 State agencies (with a total of 456 vendors—430 existing and 26 new) will update existing and enter new vendors using Option 1.

To update an existing record, State agencies must update any applicable changes to contract information (including status determinations), redemption data, monitoring activities, compliance investigations, sanctions, and administrative reviews on applicable existing vendors, taking approximately 5 minutes (0.083 hours per vendor). On average, these State agencies each update 26.9 records (430 records divided by 16 State agencies, rounded to nearest tenth). FNS estimates a total of 35.7 hours to update existing records (0.083 hours per vendor × 430 responses).

To enter a new record, State agencies must complete all data fields for new vendors authorized during the fiscal year, taking approximately 10 minutes (0.167 hours per vendor) to complete the record. On average, these State agencies each update 1.6 records (26 records divided by 16 State agencies, rounded to nearest tenth). FNS estimates a total of 4.3 hours to enter the new records (0.167 hours × 26 responses).

*Option 2:* State agencies upload data files in the FDP system with all vendor data. FNS estimates out of 89 State agencies, 73 State agencies (with a total of 41,219 vendor records), will upload their data using Option 2. FNS estimates that it will take 30 minutes (0.50 hours) for a State agency to upload its vendor data, with small to medium State agencies taking up to a minute to upload data and large State agencies taking up to 60 minutes to upload data. The total hours requested for State agencies using Option 2 is 36.5 hours (0.50 hours per upload x 73 State agencies).

**Data Preparation**

Table 1 depicts the estimated time for each State agency to prepare its vendor data for submission in FDP. The estimated time varies as some State agencies' MIS automatically generate the data each fiscal year while other State agencies manually compile the

data from multiple sources. FNS estimates that data preparation takes 1 to 30 hours with a median of 10 hours. For this estimate, median is used instead of mean as the data is skewed, based upon the number of records reported by each State agency on authorized vendors. FNS estimates the burden hours needed to comply with this requirement is 890 hours (89 State agencies × 10 hours per submission).

**SA System Feedback**

Table 1 depicts the estimated time that each State agency might spend reviewing and responding to FNS requests for feedback on the system on an annual basis. FNS estimates that it will take approximately 2.5 hours per State agency to provide this feedback, for an estimated 222.5 hours.

*Affected Public:* State, Local, and Tribal Government. Respondent groups identified include State, Tribal, and WIC agencies in the District of Columbia and in U.S. territories.

*Estimated Number of Respondents:* The total estimated number of respondents is 194.

*Estimated Number of Responses per Respondent:* For update Option 1, the frequency for the manual entry of a new record is 1.6 and 26.9 for the manual update of existing records, while the frequency for Option 2 (Data Upload) is one. Respondents prepare the data and respond to system feedback once per year. For all of the respondents across the entire collection, FNS estimates a frequency of 3.644.

*Estimated Total Annual Responses:* 707 responses.

*Estimated Time per Response:* The estimated time of response varies from 5 minutes (.083 hours) to 10 hours depending on respondent group, as shown in the table below, with an average estimated time of 1.682 hours for all participants.

*Estimated Total Annual Burden on Respondents:* 1,189 hours. See the table below for estimated total annual burden for each type of respondent.

TABLE 1—ESTIMATE OF BURDEN HOURS

| Respondent category | Type of respondents (optional) | Instruments | Form | Number of respondents | Frequency of response | Total annual responses | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|---|---|
| State Government .... | State Program Staff | Manual entry of a new record. | FDP | 16 | 1.6 | 26 | 0.167 | 4.3 |
| State Government .... | State Program Staff | Manual update existing record. | FDP | 16 | 26.9 | 430 | 0.083 | 35.7 |
| State Government .... | State Program Staff | Data Upload ..... | FDP | 73 | 1 | 73 | 0.5 | 36.5 |
| State Government .... | State Program Staff | Data Preparation for this ICR. | ..... | 89 | 1 | 89 | 10.0 | 890.0 |
| State Government .... | State Program Staff | SA System Feedback | ..... | 89 | 1 | 89 | 2.5 | 222.5 |
| Total ..... | ..... | ..... | ..... | 194 | 3.644 | 707 | 1.682 | 1,189 |

**Cynthia Long,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2021–15051 Filed 7–14–21; 8:45 am]

**BILLING CODE 3410–30–P**

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

**TIME AND DATE:** July 29, 2021, 2:00 p.m. EDT.

**PLACE:** The meeting will be held virtually via ZOOM. The access information will be provided by email to registrants. Registration is required via the below link: *https://www.zoomgov.com/meeting/register/vJItcO2upz0vHfhSClfE_1y6RQrMF_rI7QA.*

After registering, you will receive a confirmation email containing information about joining the meeting.

**PLACE:** Public Meeting Hosted via Zoom.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Thursday, July 29, 2021, at 2:00 p.m. EDT. This meeting serves to fulfill its quarterly July public meeting requirement. The Board will review the CSB's progress in meeting its mission and highlight safety products newly released through investigations and safety recommendations.

**CONTACT PERSON FOR FURTHER INFORMATION:** Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

**ADDITIONAL INFORMATION:**

**Background**

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

**Public Participation**

The meeting is free and open to the public. This meeting will only be available via ZOOM. Close captions (CC) will be provided.

Dated: July 11, 2021.

**Tamara Qureshi,**

*Assistant General Counsel, Chemical Safety and Hazard Investigation Board.*

[FR Doc. 2021–15135 Filed 7–13–21; 11:15 am]

**BILLING CODE 6350–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewable Energy and Energy Efficiency Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a virtual meeting via WebEx on Thursday July 29, 2021, hosted by the U.S. Department of Commerce. The meeting is open to the public with registration instructions provided below.

**DATES:** July 29, 2021, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time EDT. Members of the public wishing to participate must register in advance with the REEEAC Designated Federal Officer (DFO) Cora Dickson at the contact information below by 5:00 p.m. EDT on Friday, July 23, 2021, in order

to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

**ADDRESSES:** To register, please contact Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants will be emailed the login information for the meeting, which will be conducted via WebEx.

**FOR FURTHER INFORMATION CONTACT:** Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 5, 2020. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the Committee, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On July 29, 2021, the REEEAC will hold the second meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, covering four broad themes: Trade promotion and market access, global decarbonization, clean energy supply chains, and technology and innovation. To receive an agenda please make a request to REEEAC DFO Cora Dickson per above. The agenda will be made available no later than July 23, 2021.

The Committee meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATE caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact REEEAC DFO Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EDT on Friday, July 23, 2021. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, DFO, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EDT on Friday, July 23, 2021. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

**Man Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2021–15019 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Civil Nuclear Trade Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed topics for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

**DATES:** The meeting is scheduled for Wednesday, July 28, 2021, from 10:00 a.m. to 12:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EDT on Friday, July 23, 2021.

**ADDRESSES:** The meeting will be held virtually via MS Teams. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted via email to Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, at *jonathan.chesebro@trade.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–482–1297; email: *jonathan.chesebro@trade.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background:* The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 5, 2020. This meeting is being convened under the seventh charter of the CINTAC.

On July 28, 2021, the CINTAC will hold the second meeting of its current charter term. The Committee will discuss major issues affecting the competitiveness of the U.S. civil nuclear energy industry, determine its subcommittee structure, and discuss a proposed letter on trade barriers impacting key export markets. An agenda will be made available by June 23, 2021 upon request to Jonathan Chesebro.

Members of the public wishing to attend the public session of the meeting

must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EDT on Friday, July 23, 2021 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, July 23, 2021. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before or after the meeting. Comments may be submitted to Mr. Jonathan Chesebro at *Jonathan.chesebro@trade.gov.* For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, July 23, 2021. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: July 9, 2021.

**Man Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2021–15018 Filed 7–14–21; 8:45 am]

**BILLING CODE 3510–DR–P**

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Rescission of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

**DATES:** Applicable July 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

### Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

| | Period of review |
|---|---|
| **AD Proceedings** | |
| Malaysia: | |
| Stainless Steel Butt-Weld Pipe Fittings, A–557–809 | 02/01/2020–01/31/2021 |
| People's Republic of China: | |
| Certain Frozen Warmwater Shrimp, A–570–893 | 02/01/2020–01/31/2021 |
| Mattresses, A–570–092 | 06/04/2019–11/30/2020 |
| Polyethylene Terephthalate Film, Sheet, and Strip, A–570–924 | 11/01/2019–10/31/2020 |
| Philippines: | |
| Stainless Steel Butt-Weld Pipe Fittings, A–565–801 | 02/01/2020–01/31/2021 |
| Socialist Republic of Vietnam: | |
| Certain Frozen Warmwater Shrimp, A–552–802 | 02/01/2020–01/31/2021 |
| Thailand: | |
| Certain Frozen Warmwater Shrimp, A–549–822 | 02/01/2020–01/31/2021 |
| **CVD Proceedings** | |
| India: | |
| Carbon and Alloy Steel Threaded Rod, C–533–888 | 07/29/2019–12/31/2020 |
| Indonesia: | |
| Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses, C–560–824 | 01/01/2019–12/31/2019 |
| Biodiesel, C–560–831 | 01/01/2020–12/31/2020 |

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 511 (January 6, 2021); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 8166 (February 4, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 12599 (March 4, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 17124 (April 1, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 23925 (May 5, 2021); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 31282 (June 11, 2021).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

| | Period of review |
|---|---|
| People's Republic of China: | |
| Certain Amorphous Silica Fabric, C–570–039 | 01/01/2020–12/31/2020 |
| Republic of Turkey: | |
| Circular Welded Carbon Steel Pipes and Tubes, C–489–502 | 01/01/2020–12/31/2020 |

**Assessment**

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

**Notification to Importers**

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

**Notification Regarding Administrative Protective Order**

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 12, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–15071 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Manufacturing Extension Partnership Advisory Board

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Tuesday, August 31, 2021.

**DATES:** The meeting will be held on Tuesday, August 31, 2021 from 1:00 p.m. to 5:00 p.m. Mountain Time.

**ADDRESSES:** The meeting will be held at the Arizona Grand Resort & Spa, 8000 Arizona Grand Pkwy, Phoenix, Arizona 85044. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below. This meeting could switch to a virtual format only. Interested parties should be sure to check the NIST MEP Advisory Board website for the most up-to-date information at *http://www.nist.gov/mep/about/advisory-board.cfm.* Everyone who registers and provides contact information will receive notice if there is a change to the meeting venue from in-person to virtual.

**FOR FURTHER INFORMATION CONTACT:** Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800; telephone number (301) 975–2785; email: *cheryl.gendron@nist.gov.*

**SUPPLEMENTARY INFORMATION:** The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69), as amended by the American Innovation and Competitiveness Act, Pub. L. 114–329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Tuesday, August 31, 2021 from 1:00 p.m. to 5:00 p.m. Mountain Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no

more than three to five minutes each. Requests must be submitted by email to *cheryl.gendron@nist.gov* and must be received by August 20, 2021 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the meeting are invited to submit written statements electronically by email to *cheryl.gendron@nist.gov.*

*Admittance Instructions:* Anyone wishing to attend the MEP Advisory Board meeting must submit their name, email address and phone number to Cheryl Gendron (*Cheryl.Gendron@nist.gov* or 301–975–2785) no later than Wednesday, August 25, 2021, 5:00 p.m. Eastern Time.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2021–15081 Filed 7–14–21; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB232]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice of availability.

**SUMMARY:** Notice is hereby given that the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and Section (10)(a)(1)(A) enhancement permit have been issued for the Russian River Coho Salmon Captive Broodstock Program Hatchery Genetic Management Plan (HGMP). The program propagates endangered coho salmon of the Central California Coast (CCC) Evolutionary Significant Unit (ESU). This notice is being provided for information purposes only, and as such, there is no public comment period associated with this notice.

**ADDRESSES:** The Final EA, FONSI, Section (10)(a)(1)(A) enhancement permit and supporting documents are available by visiting the NMFS website (*www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents*).

**FOR FURTHER INFORMATION CONTACT:** Bob Coey at: 707–575–6090 or via email: *Bob.Coey@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Endangered Species Act—Listed Species Covered in This Notice

- *Coho salmon (Oncorhynchus kisutch):* Endangered Central California Coast (CCC) ESU.
- *Steelhead (Oncorhynchus mykiss):* Threatened CCC Distinct Population Segment (DPS).
- *Chinook salmon (Oncorhynchus tshawytscha):* Threatened California Coastal (CC) ESU.

#### Background

On September 30, 2019, the California Department of Fish and Wildlife (CDFW) and the United States Army Corps of Engineers (Corps) submitted an Endangered Species Act (ESA) Section 10(a)(1)(A) permit application (Permit Application 21501) along with a proposed HGMP for the artificial propagation of individuals in the CCC coho salmon ESU at the Don Clausen Fish Hatchery (DCFH). Since 2017, NMFS' West Coast Region's California Coastal Office has provided technical assistance to the Corps and CDFW on the development of the HGMP. The Proposed Action, as described in the HGMP, involves the operation of a hatchery program at DCFH, which produces CCC coho salmon.

The Russian River Coho Salmon Captive Broodstock Program (RRCSCBP) is a conservation program intended to prevent extirpation and establish self-sustaining populations of CCC coho salmon in Sonoma, Marin, and Mendocino counties, where populations are currently at a high-risk of extinction. The RRCSCBP will continue to collect CCC coho for broodstock, conduct routine hatchery activities including broodstock collection, egg incubation, rearing, tissue sampling, marking, and release of 500,000 juveniles and 700 adult coho salmon into rivers and streams in Sonoma, Marin, and Mendocino counties associated with the northern portion of the CCC ESU. Measures will be applied in the hatchery program to reduce the risk of incidental adverse genetic, ecological, and demographic effects on natural-origin CCC steelhead, CC Chinook salmon, and CCC coho salmon populations.

From November 26, 2018 to December 26, 2018, the HGMP and draft EA were available for public review and comment (83 FR 60405; November 26, 2018). During the public comment period, NMFS received no comments. NMFS has determined that there are no significant impacts associated with the project and issued a FONSI for the program on December 21, 2020. The ESA Section 10(a)(1)(A) permit issued January 13, 2021, will allow the Corps to perform broodstock collection, propagation, rearing, release, and monitoring activities throughout Sonoma, Marin, and Mendocino counties, in accordance with the HGMP for 10 years (expiring December 31, 2028).

#### Authority

Enhancement permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*), and regulations governing listed fish and wildlife permits (50 CFR parts 222–227). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permit.

Dated: July 12, 2021.

**Margaret Miller,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–15075 Filed 7–14–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB223]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Geophysical Survey of the Queen Charlotte Fault

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) to incidentally harass marine mammals

during a marine geophysical survey of the Queen Charlotte Fault in the Northeast Pacific Ocean.

**DATES:** The authorization is effective for a period of one year, from July 9, 2021, through July 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Availability

Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-geophysical-survey-queen.* In case of problems accessing these documents, please call the contact listed above.

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified 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 incidental take authorization may be 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) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

## Summary of Request

On December 3, 2019, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a geophysical survey of the Queen Charlotte Fault (QCF) off of Alaska and British Columbia, Canada. L–DEO submitted a revised version of the application on April 2, 2020. On April 10, 2020, L–DEO informed NMFS that the planned survey would be deferred to 2021 as a result of issues related to the COVID–19 pandemic. L–DEO subsequently submitted revised versions of the application on October 22 and December 16, 2020, the latter of which was deemed adequate and complete. A final, revised version was submitted on January 11, 2021. L–DEO's request is for take of 21 species of marine mammals by Level B harassment. In addition, NMFS proposes to authorize take by Level A harassment for seven of these species.

## Description of Proposed Activity

### *Overview*

Researchers from L–DEO, the University of New Mexico, and Western Washington University, with funding from NSF, plan to conduct a high-energy seismic survey from the Research Vessel (R/V) *Marcus G. Langseth* (*Langseth*) at the QCF in the northeast Pacific Ocean during late summer 2021. Other research collaborators include Dalhousie University, the Geological Survey of Canada, and the U.S. Geological Survey. The two-dimensional (2–D) seismic survey will occur within the Exclusive Economic Zones (EEZ) of the United States and Canada, including in Canadian territorial waters. The survey will use a 36-airgun towed array with a total discharge volume of ~6,600 cubic inches ($in^3$) as an acoustic source, acquiring return signals using both a towed streamer as well as ocean bottom seismometers (OBSs).

The study will use 2–D seismic surveying to characterize crustal and uppermost mantle velocity structure, fault zone architecture and rheology, and seismicity of the QCF. The QCF system is an approximately 1,200 kilometer (km)-long onshore-offshore transform system connecting the Cascadia and Alaska-Aleutian subduction zones; the QCF is the approximately 900 km-long offshore component of the transform system. The purpose of the study is to characterize an approximately 450-km segment of the fault that encompasses systematic variations in key parameters in space and time: (1) changes in fault obliquity relative to Pacific-North American plate motion leading to increased convergence from north to south; (2) Pacific plate age and theoretical mechanical thickness decrease from north to south; and (3) a shift in Pacific plate motion at approximately 12–6 million years ago that may have increased convergence along the entire length of the fault, possibly initiating underthrusting in the southern portion of the study area. Current understanding of how these variations are expressed through seismicity, crustal-scale deformation, and lithospheric structure and dynamics is limited due to lack of instrumentation and modern seismic imaging.

### *Dates and Duration*

The survey is expected to last for approximately 36 days, including approximately 27 days of seismic operations, 3 days of equipment deployment/retrieval, 2 days of transits, and 4 contingency days (accounting for potential delays due to, *e.g.,* weather). R/V *Langseth* will likely leave out of and return to port in Ketchikan, Alaska, during July-August 2021.

### *Specific Geographic Region*

The survey will occur within the area of approximately 52–57° N and approximately 131–137° W. Representative survey tracklines are shown in Figure 1. Some deviation in actual track lines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The survey will occur within the EEZs of the United States and Canada, including Alaskan state waters and Canadian territorial waters, ranging in depth from 50–2,800 meters (m). Approximately 4,250 km of transect lines will be surveyed, with 13 percent of the transect lines in Canadian territorial waters. Most of the survey (69 percent) will occur in deep water (≤ 1,000 m), 30 percent will occur in intermediate water (100–1,000 m deep), and approximately 1 percent will take place in shallow water <100 m deep.

Note that the MMPA does not apply in Canadian territorial waters. L–DEO is subject only to Canadian law in conducting that portion of the survey. However, NMFS has calculated the expected level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our determination under the MMPA that the activity will have a negligible impact on the affected species (see Estimated Take and Negligible Impact Analysis and Determination).

BILLING CODE 3510–22–P

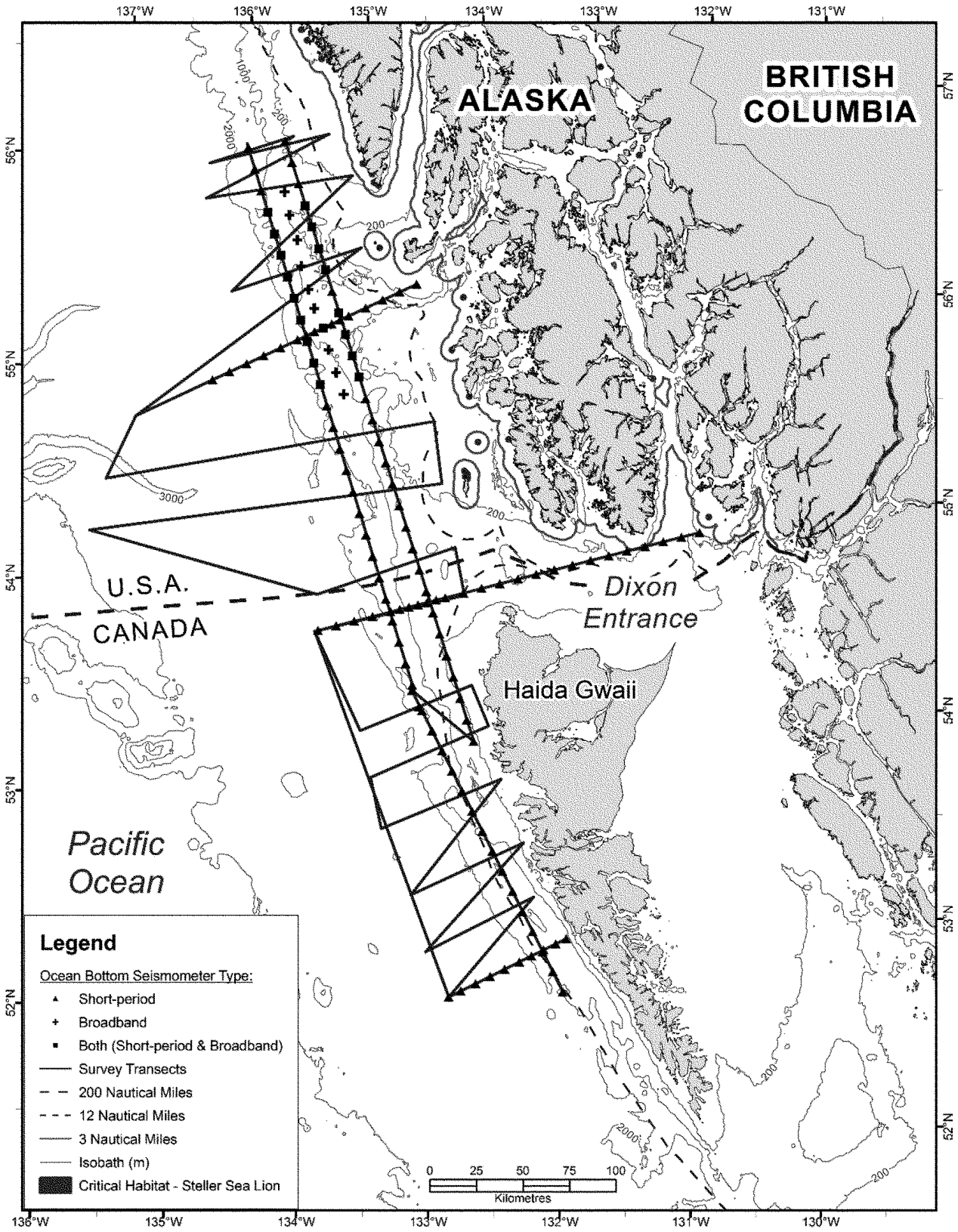



**Figure 1. Location of the Seismic Survey in the Northeast Pacific Ocean**

BILLING CODE 3510–22–C

*Detailed Description of Specific Activity*

The procedures to be used for the survey will be similar to those used during previous seismic surveys by L–DEO and will use conventional seismic methodology. The survey will involve one source vessel, the R/V *Langseth*. R/V *Langseth* will deploy an array of 36 airguns as an energy source with a total volume of 6,600 cubic inches (in$^3$). The array consists of 36 elements, including 20 Bolt 1500LL airguns with volumes of 180 to 360 in$^3$ and 16 Bolt 1900LLX airguns with volumes of 40 to 120 in$^3$. The airgun array configuration is illustrated in Figure 2–11 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF–USGS, 2011). (The PEIS is available online at: *www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf*). The vessel speed during seismic operations will be approximately 4.2 knots (kn) (~7.8 km/hour) during the survey and the airgun array will be towed at a depth of 12 m. The receiving system will consist of OBSs and a towed hydrophone streamer with a nominal length of 15 km (OBS and multi-channel seismic (MCS) shooting). As the airguns are towed along the survey lines, the hydrophone streamer will transfer the data to the on-board processing system, and the OBSs will receive and store the returning acoustic signals internally for later analysis.

Approximately 60 short-period OBSs will be deployed and subsequently retrieved at a total of 123 sites in multiple phases from a second vessel, the Canadian Coast Guard ship *John P. Tully* (CCGS *Tully*). Along OBS refraction lines, OBSs will be deployed by CCGS *Tully* at 10 km intervals, with a spacing of 5 km over the central 40 km of the fault zone for fault-normal crossings. Twenty-eight broadband OBS instruments will also collect data during the survey and will be deployed prior to the active-source seismic survey, depending on logistical constraints. When an OBS is ready to be retrieved, an acoustic release transponder (pinger) interrogates the instrument at a frequency of 8–11 kilohertz (kHz); a response is received at 11.5–13 kHz. The burn-wire release assembly is then activated, and the instrument is released from its 80-kg anchor to float to the surface. Take of marine mammals is not expected to occur incidental to L–DEO's use of OBSs.

The airguns will fire at a shot interval of 50 m (approximately 23 seconds (s)) during MCS shooting with the hydrophone streamer (approximately 42 percent of survey effort), at a 150-m interval (approximately 69 s) during refraction surveying to OBSs (approximately 29 percent of survey effort), and at a shot interval of every minute (approximately 130 m) during turns (approximately 29 percent of survey effort).

Short-period OBSs will be deployed first along five OBS refraction lines by CCGS *Tully*. Two OBS lines run parallel to the coast, and three are perpendicular to the coast; one perpendicular line is located off Southeast Alaska, one is off Haida Gwaii, British Columbia, and another is located in Dixon Entrance. Please see Figure 1 for all location references. Following refraction shooting of a single line, short-period instruments on that line will be recovered, serviced, and redeployed on a subsequent refraction line while MCS data will be acquired by the *Langseth*. MCS lines will be acquired off Southeast Alaska, Haida Gwaii, and Dixon Entrance. The coast-parallel OBS refraction transect nearest to shore will only be surveyed once at OBS shot spacing. The other coast-parallel OBS refraction transect (on the ocean side) will be acquired twice, once during refraction and once during reflection surveys. In addition, portions of the three coast-perpendicular OBS refraction lines will also be surveyed twice, once for OBS shot spacing and once for MCS shot spacing. The coincident reflection/refraction profiles that run parallel to the coast will be acquired in multiple segments to ensure straight-line geometry. Sawtooth transits during which seismic data will be acquired will take place between transect lines when possible; otherwise, boxcar turns will be performed to save time. Both reflection and refraction surveys will use the same airgun array with the same discharge volume. There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard, and 25 percent has been added to the assumed survey line-kms to account for this potential.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) will be operated from R/V *Langseth* continuously during the seismic surveys, but not during transit to and from the survey area. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP, or ADCP because they will be operated only during seismic acquisition, and it is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, given the other sources' characteristics (*e.g.,* narrow downward-directed beam), marine mammals would experience no more than one or two brief ping exposures from them, if any exposure were to occur. No take of marine mammals is expected to occur incidental to the use of these sources, regardless of whether they are used in conjunction with the airgun array. Required mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

**Comments and Responses**

A notice of proposed IHA was published in the **Federal Register** on June 4, 2021 (86 FR 30006). During the 30-day public comment period, NMFS did not receive any substantive public comments.

**Changes From the Proposed IHA**

The primary change from the proposed IHA is the addition of take authorization for the North Pacific right whale. In the notice of proposed IHA, we described available information regarding North Pacific right whale occurrence in the survey region and determined that encounter was unlikely and that authorization of take was not warranted. Following publication of the notice of proposed IHA, on approximately June 15, 2021, a North Pacific right whale was observed in Canadian waters off Haida Gwaii during survey effort by the Department of Fisheries and Oceans Canada (Kloster, 2021). As a result, NMFS has authorized North Pacific right whale take, as described in greater detail in Estimated Take, given the potential for a repeat encounter during L–DEO's survey.

In addition, we rectify an error in the estimated take of Steller sea lions occurring within Canadian territorial waters. Estimates of take that may occur within foreign territorial waters are not authorized under the MMPA, but are considered in making a finding of negligible impact on the affected species or stocks. In this case, we incorrectly applied a density value to L–DEO survey effort in deep water, when in fact the density of Steller sea lions in the deep depth stratum is correctly assumed to be zero (DoN, 2021). Through correction of this error, the estimated take of Steller sea lions in Canadian

territorial waters is revised from 2,522 to 2,278. Please see Table 7.

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All MMPA stock information presented in Table 1 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.,* 2020; Muto *et al.,* 2020) and draft 2020 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*). Where available, abundance and status information is also presented for marine mammals in British Columbia waters. Twenty-two species (with 29 managed stocks) are considered to have the potential to occur in the survey area.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | British Columbia abundance [3] | PBR | Annual M/SI [4] |
|---|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | | |
| Family Balaenidae: | | | | | | | |
| North Pacific right whale. | *Eubalaena japonica* | Eastern North Pacific (ENP). | E/D; Y | 31 (0.226; 26; 2008) | | 0.05 | 0 |
| Family Eschrichtiidae: | | | | | | | |
| Gray whale | *Eschrichtius robustus* | Eastern North Pacific (ENP)*. | -; N | 26,960 (0.05; 25,849; 2016). | | 801 | 131 |
| | | Western North Pacific (WNP)*. | E/D; Y | 290 (n/a; 271; 2016) | | 0.12 | Unk |
| Family Balaenopteridae (rorquals): | | | | | | | |
| Humpback whale | *Megaptera novaeangliae kuzira.* | Central North Pacific (CNP)*. | E/D; Y | 10,103 (0.3; 7,891; 2006). | 1,029 | 83 | 26 |
| Minke whale | *Balaenoptera acutorostrata scammoni.* | Alaska* | -; N | Unknown | 522 | Undet. | 0 |
| Sei whale | *B. borealis borealis* | ENP | E/D; Y | 519 (0.4; 374; 2014) | | 0.75 | ≥0.2 |
| Fin whale | *B. physalus physalus* | Northeast Pacific* | E/D; Y | Unknown | 329 | Undet. | 0.6 |
| Blue whale | *B. musculus musculus* | ENP | E/D; Y | 1,496 (0.44; 1,050; 2014). | | [7] 1.2 | ≥19.4 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | | |
| Family Physeteridae: | | | | | | | |
| Sperm whale | *Physeter macrocephalus* | North Pacific* | E/D; Y | Unknown | | Undet. | 3.5 |
| Family Ziphiidae (beaked whales): | | | | | | | |
| Cuvier's beaked whale | *Ziphius cavirostris* | Alaska* | -; N | Unknown | | Undet. | 0 |
| Baird's beaked whale | *Berardius bairdii* | Alaska* | -; N | Unknown | | Undet. | 0 |
| Stejneger's beaked whale. | *Mesoplodon stejnegeri* | Alaska* | -; N | Unknown | | Undet. | 0 |
| Family Delphinidae: | | | | | | | |
| Pacific white-sided dolphin. | *Lagenorhynchus obliquidens.* | North Pacific [6] | -; N | 26,880 (n/a; 26,880; 1990). | 22,160 | Undet. | 0 |
| Northern right whale dolphin. | *Lissodelphis borealis* | CA/OR/WA | -; N | 26,556 (0.44; 18,608; 2014). | | 179 | 3.8 |
| Risso's dolphin | *Grampus griseus* | CA/OR/WA | -; N | 6,336 (0.32; 4,817; 2014). | | 46 | ≥3.7 |
| Killer whale | *Orcinus orca* [5] | ENP Offshore | -; N | 300 (0.1; 276; 2012) | 371 | 2.8 | 0 |
| | | ENP Gulf of Alaska, Aleutian Islands, and Bering Sea Transient. | -; N | 587 (n/a; 2012) | | 5.9 | 0.8 |
| | | ENP West Coast Transient | -; N | 349 (n/a; 2018) | | 3.5 | 0.4 |
| | | ENP Alaska Resident | -; N | 2,347 (n/a; 2012) | | 24 | 1 |
| | | Northern Resident | -; N | 302 (n/a; 2018) | | 2.2 | 0.2 |

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | British Columbia abundance [3] | PBR | Annual M/SI [4] |
|---|---|---|---|---|---|---|---|
| Family Phocoenidae (porpoises): | | | | | | | |
| Harbor porpoise | *Phocoena phocoena vomerina.* | Southeast Alaska * | –; Y | Unknown | 8,091 | Undet. | 34 |
| Dall's porpoise | *Phocoenoides dalli dalli* | Alaska [6] | -; N | 83,400 (0.097; n/a; 1991). | 5,303 | Undet. | 38 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | | |
| Northern fur seal | *Callorhinus ursinus* | Pribilof Islands/Eastern Pacific. | D; Y | 608,143 (0.2; 514,738; 2018). | | 11,067 | 387 |
| California sea lion | *Zalophus californianus* | United States | –/-; N | 257,606 (N/A, 233,515, 2014). | | 14,011 | ≥321 |
| Steller sea lion | *Eumetopias jubatus jubatus.* | Western U.S. * | E/D; Y | 52,932 (n/a; 2019) | 15,348 | 318 | 255 |
| | *E. j. monteriensis* | Eastern U.S. * | –/-; N | 43,201 (n/a; 2017) | | 2,592 | 112 |
| Family Phocidae (earless seals): | | | | | | | |
| Harbor seal | *Phoca vitulina richardii* | Sitka/Chatham Strait | -; N | 13,289 (n/a; 11,883; 2015). | 24,916 | 356 | 77 |
| | | Dixon/Cape Decision | -; N | 23,478 (n/a; 21,453; 2015). | | 644 | 69 |
| | | Clarence Strait | -; N | 27,659 (n/a; 24,854; 2015). | | 746 | 40 |
| Northern elephant seal | *Mirounga angustirostris* | California Breeding | -; N | 179,000 (n/a; 81,368; 2010). | | 4,882 | 8.8 |

*Stocks marked with an asterisk were addressed in further detail in the notice of proposed IHA (86 FR 30006; June 4, 2021).

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For most stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Total abundance estimates for animals in British Columbia based on surveys of the Strait of Georgia, Johnstone Strait, Queen Charlotte Sound, Hecate Strait, and Dixon Entrance. This column represents estimated abundance of animals in British Columbia, where available, but does not necessarily represent additional stocks. Please see Best *et al.* (2015) and Pitcher *et al.* (2007) for additional information.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2020 SARs.

[5] Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2020).

[6] Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

[7] This stock is known to spend a portion of time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for blue whales is 2.1 (7/12 allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

Table 1 denotes the status of species and stocks under the U.S. MMPA and ESA. We note also that under Canada's Species at Risk Act, the sei whale and blue whale are listed as endangered; the fin whale and northern resident, offshore, and transient populations of killer whales are listed as threatened; and the humpback whale, harbor porpoise, and Steller sea lion are considered species of special concern.

The North Pacific right whale historically occurred across the North Pacific Ocean in subpolar to temperate waters, including waters off the coast of British Columbia (Scarff, 1986; Clapham *et al.,* 2004). Sightings of this endangered species are now extremely rare, occurring primarily in the Okhotsk Sea and the eastern Bering Sea (Brownell *et al.,* 2001; Shelden *et al.,* 2005; Wade *et al.,* 2006; Zerbini *et al.,* 2010). The summer range of the eastern North Pacific stock includes the Gulf of Alaska (GOA) and the Bering Sea, while the winter calving grounds remain unknown. Sightings in GOA are extremely rare. During three separate marine mammal surveys in the northern GOA from 2013–2019, including one dedicated to right whales, right whales were acoustically detected off Kodiak Island but were not visually observed (Muto *et al.,* 2020).

In 2013, two North Pacific right whale sightings were made off the coast of British Columbia (U.S. Department of the Navy, 2015), representing the first sightings in Canadian waters since the 1950s. Individual sightings in Canadian waters were subsequently recorded in 2018 and 2020 (Muto *et al.,* 2020). There have also been four sightings, each of a single North Pacific right whale, in California waters within approximately the last 30 years (most recently in 2017) (Carretta *et al.,* 1994; Brownell *et al.,* 2001; Price, 2017). This historical paucity of sightings in the region led NMFS to conclude that there would be a very low probability of encountering this species in the action area and, therefore, that take should not be proposed for authorization. However, following the June 2021 sighting of a single right whale in Canadian waters discussed above, we have determined that an encounter could occur and, therefore, that take should be authorized. This sighting, and the subsequent decision to authorize take, is not necessarily inconsistent with the analysis presented in the notice of

proposed authorization. Rather, this sighting is consistent with the recent historical record of infrequent, unpredictable occurrence in the region. The fact that this most recent sighting has occurred within the survey area and nearly contemporaneous with the planned survey means that there is some heightened potential for encounter that should be considered in authorizing take that may occur incidental to the survey activity. See Estimated Take for additional discussion.

Two populations of gray whales are recognized, eastern and western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). A number of whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011). Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season. Based on guidance provided through interagency consultation under section 7 of the ESA, approximately 0.1 percent of gray whales occurring in southeast Alaska and northern British Columbia are likely to be from the Western North Pacific stock; the rest would be from the Eastern North Pacific stock.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS delineated 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1.

In the eastern North Pacific, three humpback whale DPSs may occur: the Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). Individuals encountered in the proposed survey area would likely be from the Hawaii DPS, followed by the Mexico DPS; individuals from the Central America DPS are unlikely to feed in northern British Columbia and Southeast Alaska (Ford *et al.,* 2014). According to Wade (2017), in southeast Alaska and northern British Columbia, encountered whales are most likely to be from the Hawaii DPS (96.1 percent), but could be from the Mexico DPS (3.8 percent).

Additional detailed information regarding the potentially affected stocks of marine mammals was provided in the notice of proposed IHA (86 FR 30006; June 4, 2021). No new information is available, and we do not reprint that discussion here. Please see the notice of proposed IHA for additional information.

*Important Habitat*

Several biologically important areas (BIA) for marine mammals are recognized in southeast Alaska, and critical habitat is designated in southeast Alaska for the Steller sea lion (58 FR 45269; August 27, 1993) and the Mexico DPS of humpback whale (86 FR 21082; April 21, 2021). Note that although the eastern DPS of Steller sea lion was delisted in 2013, the change in listing status does not affect the designated critical habitat. Critical habitat is defined by section 3 of the ESA as (1) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (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 by the Secretary that such areas are essential for the conservation of the species.

Mexico DPS humpback whale critical habitat includes marine waters in Washington, Oregon, California, and Alaska. Only the areas designated in southeast Alaska fall within the survey area. The relevant designated critical habitat (Unit 10) extends from 139°24′ W, southeastward to the U.S. border with Canada. The area also extends offshore to a boundary drawn along the 2,000-m isobath. The essential feature for Mexico DPS humpback whale critical habitat is prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth. This area was drawn to encompass well-established feeding grounds in southeast Alaska and an identified feeding BIA (86 FR 21082; April 21, 2021). Humpback whales occur year-round in this unit, with highest densities occurring in summer and fall (Baker *et al.,* 1985, 1986).

Critical habitat for humpback whales has been designated under Canadian law in four locations in British Columbia (DFO, 2013), including in the waters of the survey area off Haida Gwaii (Langara Island and Southeast Moresby Island). These areas show persistent aggregations of humpback whales and have features such as prey availability, suitable acoustic environment, water quality, and physical space that allow for feeding, foraging, socializing, and resting (DFO, 2013).

Designated Steller sea lion critical habitat includes terrestrial, aquatic, and air zones that extend 3,000 ft (0.9 km) landward, seaward, and above each major rookery and major haul-out in Alaska. Within the survey area, critical habitat is located on islands off the coast of southeast Alaska (*e.g.,* Sitka, Coronation Island, Noyes Island, and Forrester Island). The physical and biological features identified for the aquatic areas of Steller sea lion designated critical habitat that occur within the survey area are those that support foraging, such as adequate prey resources and available foraging habitat. The proposed survey tracklines do not directly overlap any areas of Steller sea lion critical habitat, though the extent of the estimated ensonified area associated with the survey would overlap with units of Steller sea lion critical habitat. However, the brief duration of ensonification for any critical habitat unit leads us to conclude that any impacts on Steller sea lion habitat would be insignificant and would not affect the conservation value of the critical habitat.

For humpback whales, seasonal feeding BIAs for spring (March–May), summer (June–August), and fall (September–November) are recognized in southeast Alaska (Ferguson *et al.,* 2015). It should be noted that the aforementioned designated critical habitat in the survey area was based in large part on the same information that informed an understanding of the BIAs. Though the BIAs are not synonymous with critical habitat designated under the ESA, they were regarded by the humpback whale critical habitat review team as an important source of information and informative to their review of areas that meet the definition of critical habitat for humpback whales (86 FR 21082; April 21, 2021). The aforementioned southeast Alaska unit of designated critical habitat encompasses the BIAs, with the offshore and

nearshore boundaries corresponding with the BIA boundary.

A separate feeding BIA is recognized in southeast Alaska for gray whales. Once considered only a migratory pathway, the Gulf of Alaska is now known to provide foraging and overwintering habitat for ENP gray whales (Ferguson *et al.,* 2015). Based on the regular occurrence of feeding gray whales (including repeat sightings of individuals across years) off southeast Alaska, an area off of Sitka is recognized. The greatest densities of gray whales on the feeding area in southeast Alaska occur from May to November. However, this area is located to the north of the proposed survey area and would not be expected to be meaningfully impacted by the survey activities. A separate migratory BIA is recognized as extending along the continental shelf throughout the Gulf of Alaska. During their annual migration, most gray whales pass through the Gulf of Alaska in the fall (November through January; southbound) and again in the spring (March through May; northbound) (Ferguson *et al.,* 2015). Therefore, the planned survey would not be expected to impact gray whale migratory habitat due to the timing of the survey in late summer. No important behaviors of gray whales in either the feeding or migratory BIAs are expected to be affected. For more information on BIAs, please see Ferguson *et al.* (2015) or visit *https://oceannoise.noaa.gov/biologically-important-areas.*

*Unusual Mortality Events (UME)*

A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' For more information on UMEs, please visit: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events.* There is a currently ongoing UME affecting gray whales throughout their migratory range.

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. As of July 1, 2021, there have been a total of 480 whales reported in the event, with approximately 225 dead whales in Mexico, 237 whales in the United States (70 in California; 11 in Oregon; 55 in Washington, 101 in Alaska), and 18 whales in British Columbia, Canada. For the United States, the historical 18-year 5-month average (Jan–May) is 14.8 whales for the four states for this same time-period. Several dead whales have been emaciated with moderate to heavy whale lice (cyamid) loads. Necropsies have been conducted on a subset of whales with additional findings of vessel strike in three whales and entanglement in one whale. In Mexico, 50–55 percent of the free-ranging whales observed in the lagoons in winter have been reported as ''skinny'' compared to the annual average of 10–12 percent ''skinny'' whales normally seen. The cause of the UME is as yet undetermined. For more information, please visit: *www.fisheries.noaa.gov/national/marine-life-distress/2019–2020-gray-whale-unusual-mortality-event-along-west-coast-and.*

Another recent, notable UME involved large whales and occurred in the western Gulf of Alaska and off of British Columbia, Canada. Beginning in May 2015, elevated large whale mortalities (primarily fin and humpback whales) occurred in the areas around Kodiak Island, Afognak Island, Chirikof Island, the Semidi Islands, and the southern shoreline of the Alaska Peninsula. Although most carcasses have been non-retrievable as they were discovered floating and in a state of moderate to severe decomposition, the UME is likely attributable to ecological factors, *i.e.,* the 2015 El Niño, ''warm water blob,'' and the Pacific Coast domoic acid bloom. The UME was closed in 2016. More information is available online at *www.fisheries.noaa.gov/national/marine-life-distress/2015-2016-large-whale-unusual-mortality-event-western-gulf-alaska.*

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids,

especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twenty-two marine mammal species (17 cetacean and 5 pinniped (3 otariid and 2 phocid) species) are considered herein. Of the cetacean species that may be present, seven are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* porpoises).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary of the ways that L–DEO's specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology and over a similar amount of time, and affecting similar species (*e.g.,* 83 FR 29212, June 22, 2018; 84 FR 14200, April 9, 2019; 85 FR 19580, April 7, 2020). No significant new information is available, and we refer the reader to these documents for additional detail. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by L–DEO's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. The notice of proposed IHA (86 FR 30006; June 4, 2021) provided a discussion and background information regarding active acoustic sound sources and acoustic terminology, which is not repeated here. Please see that notice for additional information.

*Summary on Specific Potential Effects of Acoustic Sound Sources*

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Due to the characteristics of airgun arrays as a distributed sound source, maximum estimated Level A harassment isopleths for species of certain hearing groups are assumed to fall within the near field of the array. For these species, *i.e.,* mid-frequency cetaceans and all pinnipeds, animals in the vicinity of L–DEO's proposed seismic survey activity are unlikely to incur PTS. For low-frequency cetaceans and high-frequency cetaceans, potential exposures sufficient to cause low-level PTS may occur on the basis of cumulative exposure level and instantaneous exposure to peak pressure levels, respectively. However, when considered in conjunction with the potential for aversive behavior, relative motion of the exposed animal and the sound source, and the anticipated efficacy of the proposed mitigation requirements, a reasonable conclusion may be drawn that PTS is not a likely outcome for any species. However, we propose to authorize take by Level A harassment, where indicated by the quantitative exposure analysis, for species from the low- and high-frequency cetacean hearing groups. Please see Estimated Take and Mitigation for further discussion.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

*Vessel Strike*

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011). The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent (Vanderlaan and Taggart, 2007).

Ship strikes generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity and which typically involves larger vessels moving at faster speeds. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for 3 percent of recorded collisions, while no such incidents were reported for geophysical survey vessels during that time period.

For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 kn. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels (approximately 10 kn), the probability of serious injury or mortality resulting from a strike (if it occurred) is less than 50 percent (Vanderlaan and Taggart, 2007; Conn and Silber, 2013). However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. We anticipate that vessel collisions involving seismic data acquisition vessels towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speeds of vessels towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers, and the small number of seismic survey cruises relative to commercial ship traffic, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated or proposed for authorization, and this potential effect of the specified activity will not be discussed further in the following analysis.

The potential effects of L–DEO's specified survey activity are expected to be limited to Level B harassment consisting of behavioral harassment and/or temporary auditory effects and, for certain species of low- and high-frequency cetaceans only, low-level permanent auditory effects. No permanent auditory effects for any species belonging to other hearing groups, or significant impacts to marine mammal habitat, including prey, are expected.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are primarily by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high-frequency cetaceans (*i.e.,* porpoises). The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take numbers.

*Acoustic Thresholds*

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 microPascal (root mean square) (μPa (rms)) for the impulsive sources (*i.e.,* seismic airguns) evaluated here.

*Level A Harassment*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L–DEO's seismic survey includes the use of impulsive (seismic airguns) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset acoustic thresholds * (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | *Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | *Cell 2:* $L_{E,LF,24h}$: 199 dB. |
| Mid-Frequency (MF) Cetaceans | *Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | *Cell 4:* $L_{E,MF,24h}$: 198 dB. |
| High-Frequency (HF) Cetaceans | *Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | *Cell 6:* $L_{E,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (PW) (Underwater) | *Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | *Cell 8:* $L_{E,PW,24h}$: 201 dB. |
| Otariid Pinnipeds (OW) (Underwater) | *Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB | *Cell 10:* $L_{E,OW,24h}$: 219 dB. |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure ($L_{pk}$) has a reference value of 1 μPa, and cumulative sound exposure level ($L_E$) has a reference value of 1μPa$^2$s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity and other relevant information that will feed into identifying the area ensonified above the acoustic thresholds.

L–DEO's modeling methodologies are described in greater detail in Appendix A of L–DEO's IHA application. The 2D survey will acquire data using the 36-airgun array with a total discharge volume of 6,600 in$^3$ at a maximum tow depth of 12 m. L–DEO's modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). To validate the model results, L–DEO measured propagation of pulses from the 36-airgun array at a tow depth of 6 m in the Gulf of Mexico, for deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

L–DEO collected a MCS data set from R/V *Langseth* (array towed at 9 m depth) on an 8-km streamer in 2012 on the shelf of the Cascadia Margin off of Washington in water up to 200 m deep that allowed Crone *et al.* (2014) to analyze the hydrophone streamer data (>1,100 individual shots). These empirical data were then analyzed to determine in situ sound levels for shallow and upper intermediate water depths. These data suggest that modeled radii were 2–3 times larger than the measured radii in shallow water. Similarly, data collected by Crone *et al.* (2017) during a survey off New Jersey in 2014 and 2015 confirmed that in situ measurements collected by the R/V *Langseth* hydrophone streamer were 2–3 times smaller than the predicted radii.

L–DEO model results are used to determine the assumed radial distance to the 160-dB rms threshold for these arrays in deep water (>1,000 m) (down to a maximum water depth of 2,000 m). Water depths in the project area may be up to 2,800 m, but marine mammals in the region are generally not anticipated to dive below 2,000 m (*e.g.,* Costa and Williams, 1999). L–DEO typically derives estimated distances for intermediate water depths by applying a correction factor of 1.5 to the model results for deep water. In this case, the estimated radial distance for intermediate (100–1,000 m) and shallow (<100 m) water depths is taken from Crone *et al.* (2014), as these empirical data were collected in the same region as this survey. A correction factor of 1.15 was applied to account for differences in array tow depth.

The estimated distances to the Level B harassment isopleths for the array are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

| Source and volume | Tow depth (m) | Water depth (m) | Level B harassment zone (m) |
|---|---|---|---|
| 36 airgun array; 6,600 in$^3$ | 12 | >1000 | [1] 6,733 |
| | | 100–1000 | [2] 9,468 |
| | | <100 | [2] 12,650 |

[1] Distance based on L–DEO model results.
[2] Based on empirical data from Crone *et al.* (2014) with scaling.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS source modeling software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both cumulative sound exposure level ($SEL_{cum}$) and peak sound pressure metrics (NMFS 2018). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The $SEL_{cum}$ metric considers both level and duration of

exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new $SEL_{cum}$ thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for $SEL_{cum}$ and peak SPL for the *Langseth* airgun arrays were derived from calculating the modified far-field signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for estimating Level B harassment distances with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and information specific to the planned survey (*i.e.,* the 2.2 m/s source velocity and (worst-case) 23-s shot interval), potential radial distances to auditory injury zones were then calculated for $SEL_{cum}$ thresholds.

Inputs to the User Spreadsheets in the form of estimated source levels are shown in Appendix A of L–DEO's application. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the airgun arrays are also provided in Appendix A of the application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics ($SEL_{cum}$ and Peak $SPL_{flat}$) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

| Source (volume) | Threshold | Level A harassment zone (m) | | | | |
|---|---|---|---|---|---|---|
| | | LF cetaceans | MF cetaceans | HF cetaceans | Phocids | Otariids |
| 36-airgun array (6,600 in$^3$) | $SEL_{cum}$ | 320 | 0 | 1 | 10 | 0 |
| | Peak | 39 | 14 | 268 | 44 | 11 |

Note that because of some of the assumptions included in the methods used (*e.g.,* stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as this seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds given very small modeled zones of injury for those species (all estimated zones less than 15 m for mid-frequency cetaceans and otariid pinnipeds, up to a maximum of 44 m for phocid pinnipeds), in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is

destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds peak SPL isopleth distances would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m. We provided additional discussion and quantitative support for this theoretical argument in the notice of proposed IHA. Please see that notice (86 FR 30006; June 4, 2021) for additional information.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean, otariid pinniped, or phocid pinniped and do not authorize any Level A harassment for these species.

*Marine Mammal Occurrence*

Information about the presence, density, and group dynamics of marine mammals that informs the take calculations was provided in our notice of proposed IHA (86 FR 30006; June 4, 2021). That information is not re-printed here. For additional detail, please see the notice of proposed IHA. Density values were provided in Table 6 of that notice. No new density information is available since we published the notice of proposed IHA, and no changes have been made. We relied largely upon the Navy's Marine Species Density Database (DoN, 2019, 2021), which is currently the most comprehensive compendium for density data available for the GOA and the only source of density data available for southeast Alaska.

As described above in Changes from the Proposed IHA, the estimated take of Steller sea lions in Canadian territorial waters was incorrect. The correct density values were provided in Table 6 of the notice of proposed IHA; however, an erroneous density value was applied in producing the incorrect estimate provided in Table 8 of the notice of proposed IHA. That error has been corrected herein (see Table 7).

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L–DEO model results) was used to draw a buffer around every transect line in GIS to determine the total ensonified area in each depth category. Estimated incidents of exposure above Level A and Level B harassment criteria are presented in Table 6. For additional details regarding calculations of ensonified area, please see Appendix D of L–DEO's application. As noted previously, L–DEO has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the line-kms to be surveyed. This accounts for the possibility that additional operational days are required, but likely results in an overestimate of actual exposures.

For North Pacific right whales, the recent observation of an individual whale in Canadian waters where the survey will occur means that the potential for an encounter, while still unpredictable, is heightened. While we here assume that a North Pacific right whale encounter may occur, we also assume that such an event is unlikely (during two weeks of survey effort, the DFO researchers had a single encounter) and would occur no more than once during the survey. In order to determine the appropriate take number for authorization, we reviewed available information for North Pacific right whales. While most observations outside of typical habitat near Kodiak Island in the northern GOA and in the eastern Bering Sea have been of single individuals, the average group size during observations in more typical habitat is of two whales (Shelden *et al.,* 2005; Waite *et al.,* 2003; Wade *et al.,* 2011; Muto *et al.,* 2020). The assumption that an encounter will occur once, in conjunction with a conservative assumption that the encounter could be with an average group, supports a determination that authorization of two takes is appropriate as a precautionary approach to ensuring that potential effects to North Pacific right whales are evaluated and that unauthorized take is avoided. We also note that application of density data from the Navy's northern GOA Temporary Marine Activities Area would produce an estimate of two exposures. Although it is likely that this density information is not an accurate representation of North Pacific right whale occurrence off of southeast Alaska and British Columbia, this approach provides additional support for the authorization of two takes.

As previously noted, NMFS cannot authorize incidental take under the MMPA that may occur within the territorial seas of foreign nations (from 0–12 nmi (22.2 km) from shore), as the MMPA does not apply in those waters. However, NMFS has still calculated the estimated level of incidental take in the entire activity area (including Canadian territorial waters) as part of the analysis supporting our determination under the MMPA that the activity will have a negligible impact on the affected species. The total estimated take in U.S. and Canadian waters is presented in Table 7 (see Negligible Impact Analysis and Determination).

The estimated marine mammal exposures above harassment thresholds are generally assumed here to equate to take, and the estimates form the basis for our take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.,* mid-frequency cetaceans and all pinnipeds, the estimated exposures above Level A harassment thresholds have been added to the estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is authorized. Estimated exposures and take numbers for authorization are shown in Table 6. Regarding humpback whale take numbers, we assume that whales encountered will follow Wade (2017), *i.e.,* that 96.1 percent of takes would accrue to the Hawaii DPS and 3.8 percent to the Mexico DPS. Of the estimated take of gray whales, and based on guidance provided through interagency consultation under section 7 of the ESA, we assume that 0.1 percent of encountered whales would be from the WNP stock and authorize take accordingly. For Steller sea lions, 2.2 percent are assumed to belong to the western DPS (Hastings *et al.,* 2020).

TABLE 6—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

| Species | Stock | Estimated Level B harassment | Estimated Level A harassment | Authorized Level B harassment | Authorized Level A harassment | Total take | Percent of stock [1] |
|---|---|---|---|---|---|---|---|
| North Pacific right whale [2] | | 2 | 0 | 2 | 0 | 2 | 6.1 |
| Gray whale | WNP | 1,450 | 45 | 2 | 0 | 2 | 0.7 |
| | ENP | | | 1,448 | 45 | 1,493 | 5.5 |
| Humpback whale | | 403 | 14 | 403 | 14 | 417 | 4.1 |
| Blue whale | | 31 | 1 | 31 | 1 | 32 | 2.1 |
| Fin whale [3] | | 873 | 44 | 873 | 44 | 917 | n/a |
| Sei whale | | 34 | 1 | 34 | 1 | 35 | 6.7 |
| Minke whale [3] | | 57 | 2 | 57 | 2 | 59 | n/a |
| Sperm whale [3] | | 131 | 0 | 131 | 0 | 131 | n/a |
| Baird's beaked whale [3] | | 29 | 0 | 29 | 0 | 29 | n/a |
| Stejneger's beaked whale [3] | | 120 | 0 | 120 | 0 | 120 | n/a |
| Cuvier's beaked whale [3] | | 114 | 0 | 114 | 0 | 114 | n/a |
| Pacific white-sided dolphin | | 1,371 | 3 | 1,374 | 0 | 1,374 | 5.1 |
| Northern right whale dolphin | | 922 | 5 | 927 | 0 | 927 | 3.5 |
| Risso's dolphin [4] | | 1 | 0 | 22 | 0 | 22 | 0.3 |
| Killer whale | Offshore | 290 | 0 | 290 | 0 | 290 | 96.7 |
| | GOA/BSAI Transient | | | | | | 49.4 |
| | WC Transient | | | | | | 83.1 |
| | AK Resident | | | | | | 12.4 |
| | Northern Resident | | | | | | 96.0 |
| Dall's porpoise | | 5,661 | 178 | 5,661 | 178 | 5,839 | 7.0 |
| Harbor porpoise | | 990 | 26 | 990 | 26 | 1,016 | n/a |
| Northern fur seal | | 5,804 | 8 | 5,812 | 0 | 5,812 | 1.0 |
| California sea lion | | 1,256 | 1 | 1,258 | 0 | 1,258 | 0.5 |
| Steller sea lion | WDPS | 2,433 | 2 | 54 | 0 | 54 | 0.1 |
| | EDPS | | | 2,381 | 0 | 2,381 | 5.5 |
| Northern elephant seal | | 6,811 | 39 | 6,850 | 0 | 6,850 | 3.8 |
| Harbor seal | Sitka/Chatham Strait | 5,992 | 21 | 6,012 | 0 | 6,012 | 45.2 |
| | Dixon/Cape Decision | | | | | | 25.6 |
| | Clarence Strait | | | | | | 21.7 |

[1] In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all takes occurred within each stock. Where necessary, additional discussion is provided in the Small Numbers section.
[2] Take number represents qualitative consideration of likelihood of encounter, average group size, and available density information.
[3] As noted in Table 1, there is no estimate of abundance available for these species.
[4] Estimated exposure of one Risso's dolphin increased to group size of 22 (Barlow, 2016).

## Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In order to satisfy the MMPA's least practicable adverse impact standard, NMFS has evaluated a suite of basic mitigation protocols for seismic surveys that are required regardless of the status of a stock. Additional or enhanced protections may be required for species whose stocks are in particularly poor health and/or are subject to some significant additional stressor that lessens that stock's ability to weather the effects of the specified activities without worsening its status. We reviewed seismic mitigation protocols required or recommended elsewhere (*e.g.,* HESS, 1999; DOC, 2013; IBAMA, 2018; Kyhn *et al.,* 2011; JNCC, 2017; DEWHA, 2008; BOEM, 2016; DFO, 2008; GHFS, 2015; MMOA, 2016; Nowacek *et al.,* 2013; Nowacek and Southall, 2016), recommendations received during public comment periods for previous actions, and the available scientific literature. We also considered recommendations given in a number of review articles (*e.g.,* Weir and Dolman, 2007; Compton *et al.,* 2008; Parsons *et al.,* 2009; Wright and Cosentino, 2015; Stone, 2015b). This exhaustive review and consideration of public comments regarding previous, similar activities has led to development of the protocols included here.

### *Vessel-Based Visual Mitigation Monitoring*

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSOs)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone (EZ),

within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone and, to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the EZ to be monitored for the presence of marine mammals that may enter the EZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the EZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m EZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000-m zone (EZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the EZ and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the EZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the EZ.

L–DEO must use dedicated, trained, NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up, and monitoring must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the EZ) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

*Passive Acoustic Monitoring*

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an EZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM will take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring serves to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 5 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in

the applicable EZ in the previous 2 hours;

• NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and

• Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of 5 hours in any 24-hour period.

*Establishment of Exclusion and Pre-Start Clearance Zones*

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs will establish a minimum EZ with a 500-m radius. The 500-m EZ will be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source will be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the acoustic source, and includes the EZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone will prevent airgun operations from beginning (*i.e.,* ramp-up).

The 500-m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of $SEL_{cum}$ and peak sound pressure level (SPL)), while also providing a consistent, reasonably observable zone within which PSOs will typically be able to conduct effective observational effort. Additionally, a 500-m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the EZ, doubling the EZ size during pre-clearance.

An extended EZ of 1,500 m must be enforced for all beaked whales. No buffer of this extended EZ is required.

*Pre-Start Clearance and Ramp-Up*

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no protected species are observed within the pre-clearance zone (or extended EZ, for beaked whales) prior to the beginning of ramp-up. During pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-start clearance and ramp-up requirements:

• The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended EZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);

• Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;

• One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

• Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended EZ, for beaked whales) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as killer whales);

• Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;

• PSOs must monitor the pre-start clearance zone (and extended EZ) during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;

• Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;

• If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable EZ. For any longer shutdown, pre-start clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-start clearance watch of 30 minutes is not required; and

• Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 min.

*Shutdown*

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The operator must also establish and

maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable EZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable EZ, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the EZ. The animal would be considered to have cleared the EZ if it is visually observed to have departed the EZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the EZ for 15 minutes for small odontocetes and pinnipeds, or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as killer whales.

The shutdown requirement can be waived for small dolphins if an individual is detected within the EZ. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Lagenorhynchus* and *Lissodelphis*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012, 2018). The potential for increased shutdowns resulting from such a measure would require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger EZ).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any of the following are observed at any distance:

- Any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult);
- An aggregation of six or more large whales; and/or
- A North Pacific right whale.

*Vessel Strike Avoidance*

1. Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.

2. Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.

4. All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.

5. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

6. When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

7. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the required measures, as well as other measures considered by NMFS described above, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

*Mitigation Measures in Canadian Waters*

As stated previously, NMFS cannot authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. L–DEO is required to adhere to the mitigation measures described above while operating within the U.S. EEZ and Canadian EEZ. The requirements do not apply within Canadian territorial waters. DFO may prescribe mitigation measures that would apply to L–DEO's survey operations within the Canadian EEZ and Canadian territorial waters but NMFS is currently unaware of the specifics of any potential measures. While operating within the Canadian EEZ but outside Canadian territorial waters, if mitigation requirements prescribed by NMFS differ from the requirements established under Canadian law, L–DEO would adhere to the most protective measure. For operations in Canadian territorial waters, L–DEO would implement measures required under Canadian law (if any).

**Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

*Vessel-Based Visual Monitoring*

As described above, PSO observations will take place during daytime airgun operations. During seismic operations, at least five visual PSOs will be based aboard the *Langseth.* Two visual PSOs will be on duty at all time during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate

experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Date and participants of PSO briefings;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
- Date and time when first and last heard;
- Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
- Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

*Reporting*

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and provide full documentation of methods, results, and interpretation pertaining to all monitoring.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

*Reporting Injured or Dead Marine Mammals*

*Discovery of injured or dead marine mammals*—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;
• If available, photographs or video footage of the animal(s); and
• General circumstances under which the animal was discovered.

*Vessel strike*—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR, NMFS and to the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Vessel's speed during and leading up to the incident;
• Vessel's course/heading and what operations were being conducted (if applicable);
• Status of all sound sources in use;
• Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
• Species identification (if known) or description of the animal(s) involved;
• Estimated size and length of the animal that was struck;
• Description of the behavior of the animal immediately preceding and following the strike;
• If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
• Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
• To the extent practicable, photographs or video footage of the animal(s).

*Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals*

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise L–DEO of the need to implement shutdown for all active acoustic sources operating within 50 km of the stranding. Procedures related to shutdowns for live stranding or milling marine mammals include the following:

• If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise L–DEO that the shutdown around the animals' location is no longer needed.
• Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises L–DEO that all live animals involved have left the area (either of their own volition or following an intervention).
• If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with L–DEO will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

*Additional Information Requests*—If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L–DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

• Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
• If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 1, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

As described above, we authorize only the takes estimated to occur outside of Canadian territorial waters (Table 6); however, for the purposes of our negligible impact analysis and determination, we consider the total number of takes that are anticipated to occur as a result of the entire survey (including the portion of the survey that would occur within the Canadian territorial waters (approximately 13 percent of the survey) (Table 7).

TABLE 7—TOTAL ESTIMATED TAKE INCLUDING CANADIAN TERRITORIAL WATERS

| Species | Level B harassment (excluding Canadian territorial waters) | Level A harassment (excluding Canadian territorial waters) | Level B harassment (Canadian territorial waters) | Level A harassment (Canadian territorial waters) | Total Level B harassment | Total Level A harassment |
|---|---|---|---|---|---|---|
| North Pacific right whale | 2 | 0 | 0 | 0 | 2 | 0 |
| Gray whale, WNP | 2 | 0 | 1 | 0 | 3 | 0 |
| Gray whale, ENP | 1,448 | 45 | 666 | 16 | 2,114 | 61 |
| Humpback whale | 403 | 14 | 165 | 4 | 568 | 18 |
| Blue whale | 31 | 1 | 4 | 0 | 35 | 1 |
| Fin whale | 873 | 44 | 69 | 1 | 942 | 45 |
| Sei whale | 34 | 1 | 7 | 0 | 41 | 1 |
| Minke whale | 57 | 2 | 14 | 0 | 71 | 2 |
| Sperm whale | 131 | 0 | 22 | 0 | 153 | 0 |
| Baird's beaked whale | 29 | 0 | 2 | 0 | 31 | 0 |
| Stejneger's beaked whale | 120 | 0 | 9 | 0 | 129 | 0 |
| Cuvier's beaked whale | 114 | 0 | 9 | 0 | 123 | 0 |
| Pacific white-sided dolphin | 1,374 | 0 | 191 | 0 | 1,565 | 0 |
| Northern right whale dolphin | 927 | 0 | 451 | 0 | 1,378 | 0 |
| Risso's dolphin | 22 | 0 | 22 | 0 | 44 | 0 |
| Killer whale | 290 | 0 | 89 | 0 | 379 | 0 |
| Dall's porpoise | 5,661 | 178 | 1,825 | 36 | 7,486 | 214 |
| Harbor porpoise | 990 | 26 | 455 | 9 | 1,445 | 35 |
| Northern fur seal | 5,812 | 0 | 1,213 | 0 | 7,025 | 0 |
| California sea lion | 1,258 | 0 | 433 | 0 | 1,691 | 0 |
| Steller sea lion, wDPS | 54 | 0 | 46 | 0 | 100 | 0 |
| Steller sea lion, eDPS | 2,381 | 0 | 2,232 | 0 | 4,613 | 0 |
| Northern elephant seal | 6,850 | 0 | 1,429 | 0 | 8,279 | 0 |
| Harbor seal | 6,012 | 0 | 6,228 | 0 | 12,240 | 0 |

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned survey, even in the absence of mitigation, and none is authorized. Similarly, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We are authorizing a limited number of instances of Level A harassment of seven species (low- and high-frequency cetacean hearing groups only) and Level B harassment only of the remaining marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS, not total deafness, because of the constant movement of both the R/V *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Since the duration of exposure to loud sounds will be relatively short it would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the R/V *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison *et al.,* 2012).

Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (27 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The tracklines of this survey either traverse or are proximal to critical habitat for the Mexico DPS of humpback whales and for Steller sea lions, and to feeding BIAs for humpback whales in general (including both the Hawaii and Mexico DPSs/Central North Pacific stock whales that are anticipated to occur in the survey area). As described previously, the survey area is near a feeding BIA for gray whales and covers the gray whale migratory BIA. However, these BIAs would not be affected as they are spatially and temporally separated, respectively, from the survey.

Yazvenko *et al.* (2007) reported no apparent changes in the frequency of feeding activity in Western gray whales exposed to airgun sounds in their feeding grounds near Sakhalin Island. Goldbogen *et al.* (2013) found blue whales feeding on highly concentrated prey in shallow depths (such as the conditions expected within humpback feeding BIAs) were less likely to respond and cease foraging than whales feeding on deep, dispersed prey when exposed to simulated sonar sources, suggesting that the benefits of feeding for humpbacks foraging on high-density prey may outweigh perceived harm from the acoustic stimulus, such as the seismic survey (Southall *et al.,* 2016). Additionally, L–DEO will shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce impacts to cooperatively foraging animals. For all habitats, no physical impacts to habitat are anticipated from seismic activities. While SPLs of sufficient strength have

been known to cause injury to fish and fish and invertebrate mortality, in feeding habitats, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area and any injury or mortality of prey species would be localized around the survey and not of a degree that would adversely impact marine mammal foraging. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing important habitat areas, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within these areas.

Critical habitat for Steller sea lions has been established at three rookeries in southeast Alaska (Hazy Island, White Sisters Island, and Forrester Island near Dixon Entrance), at several major haul-outs, and including aquatic zones that extend 0.9 km seaward and air zones extending 0.9 km above the rookeries. Steller sea lions occupy rookeries and pup from late-May through early-July (NMFS. 2008), indicating that L–DEO's survey is unlikely to impact important sea lion behaviors in critical habitat. Impacts to Steller sea lions within these areas, and throughout the survey area, as well as impacts to other pinniped species, are expected to be limited to short-term behavioral disturbance, with no lasting biological consequences.

*Negligible Impact Conclusions*

The survey would be of short duration (27 days of seismic operations), and the acoustic ''footprint'' of the survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. Short term exposures to survey operations are not likely to significantly disrupt marine mammal behavior, and the potential for longer-term avoidance of important areas is limited.

The mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities associated with NMFS-issued IHAs, we expect that the mitigation will be effective in preventing, at least to some extent, potential PTS in marine mammals that may otherwise occur in the absence of the mitigation (although all authorized PTS has been accounted for in this analysis).

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's survey would result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the authorized take to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The activity is temporary and of relatively short duration (27 days);
- The anticipated impacts of the activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of potential PTS that may occur are expected to be very small in number. Instances of potential PTS that are incurred in marine mammals are expected to be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal; and
- The required mitigation measures, including visual and acoustic monitoring and shutdowns are expected to minimize potential impacts to marine mammals (both amount and severity).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation and monitoring measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

There are several stocks for which the estimated instances of take appear high when compared to the stock abundance (Table 6), or for which there is no currently accepted stock abundance estimate. These include the fin whale, minke whale, sperm whale, three species of beaked whale, four stocks of killer whales, harbor porpoise, and one stock of harbor seal. However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from those referenced above and discussed below), the proposed take is less than one-third of the best available stock abundance (recognizing that some of those takes may be repeats of the same individual, thus rendering the actual percentage even lower), and noting that we generally excluded consideration of abundance information for British Columbia in considering the amount of take relative to the best available stock abundance information.

The stock abundance estimates for the fin, minke, beaked, and sperm whale stocks that occur in the survey area are unknown, according to the latest SARs. The same is true for the harbor porpoise. Therefore, we reviewed other scientific information in making our small numbers determinations for these species. As noted previously, partial

abundance estimates of 1,233 and 2,020 minke whales are available for shelf and nearshore waters between the Kenai Peninsula and Amchitka Pass and for the eastern Bering Sea shelf, respectively. For the minke whale, these partial abundance estimates alone are sufficient to demonstrate that the proposed take number of 59 is of small numbers. The same surveys produced partial abundance estimates of 1,652 and 1,061 fin whales, for the same areas, respectively. Considering these two partial abundance estimates in conjunction with the British Columbia abundance estimate of 329 whales produces a total partial estimate of 3,042 whales for shelf and nearshore waters between the Kenai Peninsula and Amchitka Pass, the eastern Bering Sea shelf, and British Columbia. Given that the Northeast Pacific stock of fin whale's range is described as covering the entire GOA and Bering Sea, we reasonably assume that a total abundance estimate for the stock would show that the take number proposed for authorization (917) is small. In addition, for these stocks as well as for other stocks discussed below whose range spans the GOA, given that the estimated take will take place in a relatively small portion of the stock's range, it is likely there would be repeat takes of a smaller number of individuals, and therefore, the number of individual animals taken will be lower.

As noted previously, Kato and Miyashita (1998) produced an abundance estimate of 102,112 sperm whales in the western North Pacific. However, this estimate is believed to be positively biased. We therefore refer to Barlow and Taylor (2005)'s estimate of 26,300 sperm whales in the northeast temperate Pacific to demonstrate that the take number of 136 is a small number. There is no abundance information available for any Alaskan stock of beaked whale. However, the take numbers are sufficiently small (ranging from 29–120) that we can safely assume that they are small relative to any reasonable assumption of likely population abundance for these stocks. As an example, we review available abundance information for other stocks of Cuvier's beaked whales, which is widely distributed throughout deep waters of all oceans and is typically the most commonly encountered beaked whale in its range. Where some degree of bias correction, which is critical to an accurate abundance estimate for cryptic species like beaked whales, is incorporated to the estimate, we see typical estimates in the thousands of animals, demonstrating that the authorized take numbers are reasonably considered small. Current abundance estimates include the Western North Atlantic stock (5,744 animals; CV = 0.36), the Hawaii Pelagic stock (4,431 animals, CV = 0.41), and the California/Oregon/Washington stock (3,274 animals; CV = 0.67).

For the southeast Alaska stock of harbor porpoise, whose range is defined as from Dixon Entrance to Cape Suckling (including inland waters), the SAR describes a partial abundance estimate, covering inland waters but not coastal waters, totaling 1,354 porpoise. This most recent abundance estimate is based on survey effort in inland waters during 2010–12 (Dahlheim *et al.,* 2015). An older abundance estimate, based on survey effort conducted in 1997, covering both coastal and inland waters of the stock's range, provides a more complete abundance estimate of 11,146 animals (Hobbs and Waite, 2010). This estimate is sufficient to demonstrate that the take number (1,016) is small.

For the potentially affected stocks of killer whale, it would be unreasonable to assume that all takes would accrue to any one stock. Although the Gulf of Alaska, Aleutian Islands, and Bering Sea (GOA/BSAI) transient stock could occur in southeast Alaska, it is unlikely that any significant proportion of encountered whales would belong to this stock, which is generally considered to occur mainly from Prince William Sound through the Aleutian Islands and Bering Sea. Transient killer whales in Canadian waters are considered part of the West Coast transient stock, further minimizing the potential for encounter with the GOA/BSAI transient stock. We assume that only nominal, if any, take would actually accrue to this stock. Similarly, the offshore stock is encountered only rarely compared with resident and transient stocks. Seasonal sighting data collected in southeast Alaska waters between 1991 and 2007 shows a ratio of offshore and resident killer whale sightings of 0.05 (Dahlheim *et al.,* 2009), and it is unlikely that any amount of take accruing to this stock would exceed small numbers. We anticipate that most killer whales encountered would be transient or resident whales. For the remaining stocks, we assume that take would accrue to each stock in a manner roughly approximate to the stocks' relative abundances, *i.e.,* 78 percent Alaska resident, 12 percent West Coast transient, and 10 percent northern resident. This would equate to approximately 226 takes from the Alaska resident stock (9.6 percent of the stock abundance); 35 takes from the West Coast transient stock (10 percent of the stock abundance), and 29 takes from the northern resident stock (9.6 percent of the stock abundance). Based on the assumptions described in this paragraph, we find that the authorized taking is of no greater than small numbers for any stock of killer whale.

If all authorized takes are allotted to each individual harbor seal stock, the estimated instances of take would be greater than one-third of the best available abundance estimate for the Sitka/Chatham Strait stock of harbor seal. However, similar to the discussion provided above for killer whale, it would be unreasonable to assume that all takes would accrue to any one stock. Based on the location of the survey relative to the potentially affected stocks' ranges, it is unlikely that a significant proportion of the estimated takes would occur to the Sitka/Chatham Strait stock (whose range just overlaps with the northern extent of the survey area) (Muto *et al.,* 2020). A majority of takes are likely to accrue to the Dixon/Cape Decision stock, which most directly overlaps with the survey area. In the unlikely event that all takes occurred to the Dixon/Cape Decision stock, the amount of take would be of small numbers.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In the GOA, the only marine mammals under NMFS' jurisdiction that are currently hunted are Steller sea lions and harbor seals. These species are an important subsistence resource for Alaska Natives from southeast Alaska to the Aleutian Islands. There are numerous communities along the shores of the GOA that participate in subsistence hunting, including Juneau, Ketchikan, Sitka, and Yakutat in southeast Alaska (Wolfe *et al.,* 2013). According to Muto *et al.* (2019), the annual subsistence take of Steller sea lions from the eastern stock was 11, and 415 northern fur seals are taken annually. In addition, 340 harbor seals are taken annually (Muto *et al.* 2019). The seal harvest throughout Southeast Alaska is generally highest during spring and fall, but can occur any time of the year (Wolfe *et al.,* 2013).

Given the temporary nature of the activities and the fact that most

operations would occur further from shore, the survey would not be expected to have any impact on the availability of the species or stocks for subsistence users. L–DEO conducted outreach to local stakeholders, including subsistence communities, to notify subsistence hunters of the planned survey, to identify the measures that would be taken to minimize any effects on the availability of marine mammals for subsistence uses, and to provide an opportunity for comment on these measures. During operations, radio communications and Notice to Mariners would keep interested parties apprised of vessel activities. NMFS is unaware of any other subsistence uses of the affected marine mammal stocks or species that could be implicated by this action. On this basis, NMFS preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes, and requested comments or any information that may help to inform this determination. We did not receive any comments or additional information regarding potential impacts on the availability of marine mammals for subsistence uses. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**National Environmental Policy Act**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the National Science Foundation prepared an Environmental Analysis (EA) to consider the direct, indirect, and cumulative effects to the human environment from this geophysical survey of the Queen Charlotte Fault. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to L–DEO. In compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6A, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI). NSF's EA is available at *www.nsf.gov/geo/oce/envcomp/*, and NMFS' FONSI is available at *www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-geophysical-survey-queen.*

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

On July 7, 2021, the NMFS Office of Protected Resources (OPR) ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L–DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of the sei whale, fin whale, blue whale, sperm whale, Mexico DPS of humpback whale, western North Pacific DPS of gray whale, North Pacific right whale, and western DPS of Steller sea lion.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to L–DEO for conducting a marine geophysical survey of the Queen Charlotte Fault beginning in July 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 12, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–15046 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB222]**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

**DATES:** The LOA is effective from July 15, 2021, through August 15, 2021.

**ADDRESSES:** The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, 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 U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified 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.

An 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.

Except with respect to certain activities not pertinent here, the MMPA

defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

**Summary of Request and Analysis**

Shell plans to conduct sea trials of an alternative sound source known as the Low Impact Seismic Source-Tuned Pulse Source (LISS–TPS). These trials will be conducted using only the LISS–TPS sound source, covering portions of approximately 45 lease blocks centered around Lease Block AC 690 in Shell's Leopard development area. Please see Shell's application for additional detail.

The LISS–TPS source was not included in the acoustic exposure modeling developed in support of the rule. However, our rule anticipated the possibility of new and unusual technologies (NUT) and determined they would be evaluated on a case-by case basis (86 FR 5322, 5442; January 19, 2021).

The LISS–TPS source operates on the same basic principles as a traditional airgun source in that it uses compressed air to create a bubble in the water column which then goes through a series of collapses and expansions creating primarily low-frequency sounds. The difference between the two sources is that the LISS–TPS source releases a larger volume of air (the LISS–TPS source has a volume of 26,500 in$^3$, whereas the standard airgun array used in the acoustic exposure modeling supporting the rule has a total volume of 8,000 in$^3$), but at lower pressure (the LISS–TPS source operates at 1,000 pounds per square inch (psi), whereas traditional airguns are typically operated at 2,000 psi). This creates a larger bubble resulting in more of the energy being concentrated in low-frequencies. The release of the air is also ''tuned'' so that the primary signal has an extended rise time and lower peak pressure level than that of a traditional airgun array source.

The LISS–TPS source produces more sound at lower frequencies (approximately 3–7 Hz) compared to an airgun source, while producing much less sound (lower decibel levels) at frequencies above 7 Hz, meaning that the source produces significantly reduced energy at frequencies used by marine mammals for hearing and communication. This means that even for species in the low-frequency hearing group (mysticete whales) most affected by seismic survey sounds, the LISS–TPS source is expected to have less impact than a traditional airgun array in terms of overlap with frequencies the species use. Potential impacts on mid- and high-frequency hearing groups will be reduced even more.

Besides producing less energy in frequencies used by marine mammals, the LISS–TPS source produces sounds with overall lower energy at the source. Test data for the actual source planned for use in these trials were obtained at a quarry, showing that the LISS–TPS source produces significantly less output than a traditional airgun array at all frequencies above 5 Hz. For example, the LISS–TPS source level (at the typical reference distance of 1 m) has a peak sound pressure level ($SPL_{peak}$) of 236 dB and a single-shot sound exposure level (SEL) of 220 dB. These measured levels are 19 dB and 12 dB less than the modeled $SPL_{peak}$ and SEL source levels, respectively, for the 8,000-in$^3$ airgun array used in the acoustic exposure modeling (source level = 255 dB $SPL_{peak}$; 232 dB SEL). For every 6-dB reduction in source level, the approximate distance to the same threshold level would be cut in half, meaning that there would be more than an 8-fold reduction in distance to $SPL_{peak}$ thresholds. There would also be a significant reduction in the likelihood that auditory injury could result from the accumulation of energy (which is expected to dictate occurrence of injury for low-frequency cetaceans, though they are not expected to occur in the area of this planned survey). The much lower peak sound pressure levels near the source and extended rise time reduce the potential for auditory injury (Level A harassment) for all marine mammal species, since these are the two main physical characteristics of impulsive sounds that are considered most injurious.

The LISS–TPS source produces a 33 dB lower root-mean-square SPL ($SPL_{rms}$), compared with estimates for a commonly used 5,110-in$^3$ airgun array. Thus, a reduction in the source level of 33 dB would result in distances to $SPL_{rms}$ Level B harassment thresholds being less than 1/32 of the airgun array. These factors lead to a conclusion that take by Level B harassment associated with use of the LISS–TPS source would be less than would occur for a similar survey instead using the modeled airgun array as a sound source, and that use of the LISS–TPS source results in lower potential for the occurrence of Level A harassment than does use of the modeled airgun array. Based on the foregoing, we have determined there will be no effects of a magnitude or intensity different from those evaluated in support of the rule. Moreover, use of modeling results relating to use of the 72 element, 8,000 in$^3$ airgun array are expected to be significantly conservative as a proxy for use in evaluating potential impacts of use of the LISS–TPS source.

(We also note that for this LISS–TPS source, BOEM determined that Endangered Species Act (ESA) section 7 step-down review of the LISS–TPS source was required under NMFS' 2020 Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico. This step-down review was conducted in association with modification of BOEM's Permit L20–012. NMFS' ESA Interagency Consultation Division requested and received an analysis from BOEM that considered the effects associated with the LISS–TPS source. As a result of this review, NMFS determined that use of the source is

unlikely to result in additional effects beyond those previously considered in the 2020 Biological Opinion.)

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

3D NAZ was used as the most suitable proxy for survey type based on the survey design and similarities to the general 3D NAZ survey geometry. Although this planned survey would only use a single source vessel, compared with the two source vessels assumed in modeling 3D NAZ surveys, the planned line spacing is most comparable to 3D NAZ. Please see summary descriptions of modeled survey geometries in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Take numbers authorized through the LOA are considered very conservative due to differences in both the sound source and the survey geometry planned by Shell, as compared to those modeled for the rule.

The survey is planned to occur for 20 days, with 8 days occurring in Zone 6 and 12 days in Zone 7. The season is defined as summer. Note that Rice's (formerly Bryde's) whales [3] are assumed to not be present in Zone 6 (see 83 FR 29212, 29253; June 22, 2018), and no take of Rice's whale is authorized through this LOA. Note that use of the modeling results indicates that no take of Rice's whale would occur in Zone 7.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single killer whale group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

**Small Numbers Determination**

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January 19, 2021). The output of this scaling, where appropriate, is incorporated into an adjusted total take estimate that is the basis for NMFS' small numbers determination, as depicted in Table 1 for Shell's 20-day survey.

This product is used by NMFS in making the necessary small numbers determination, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock abundance reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* three-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

| Species | Authorized take | Scaled take [1] | Abundance [2] | Percent abundance |
|---|---|---|---|---|
| Sperm whale | 347 | 146.8 | 2,207 | 6.7 |
| *Kogia* spp | [3] 107 | 33.1 | 4,373 | 0.8 |
| Beaked whales | 1,990 | 201.0 | 3,768 | 5.3 |
| Rough-toothed dolphin | 270 | 77.5 | 4,853 | 1.6 |
| Bottlenose dolphin | 511 | 146.7 | 176,108 | 0.1 |
| Clymene dolphin | 1,001 | 287.3 | 11,895 | 2.4 |
| Atlantic spotted dolphin | 213 | 61.1 | 74,785 | 0.1 |
| Pantropical spotted dolphin | 4,946 | 1,419.5 | 102,361 | 1.4 |
| Spinner dolphin | [4] 152 | 43.6 | 25,114 | 0.2 |
| Striped dolphin | 347 | 99.6 | 5,229 | 1.9 |
| Fraser's dolphin | 125 | 35.9 | 1,665 | 2.2 |
| Risso's dolphin | 180 | 53.1 | 3,764 | 1.4 |
| Melon-headed whale | 552 | 162.8 | 7,003 | 2.3 |
| Pygmy killer whale | 169 | 49.9 | 2,126 | 2.3 |
| False killer whale | 222 | 65.5 | 3,204 | 2.0 |
| Killer whale | 7 | n/a | 267 | 2.6 |
| Short-finned pilot whale | 216 | 63.7 | 1,981 | 3.2 |

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 4 takes by Level A harassment and 103 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

[4] Estimated take of 117 increased based on assumed average group size of 152 (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

## Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 12, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–15047 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–22–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB225]**

## Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish (MSB) Monitoring Committee will hold a public meeting.

**DATES:** The meeting will be held on Monday, July 26, 2021; from 10 a.m. to 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar. Webinar connection information will be available at *www.mafmc.org/council-events.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is for the MSB Monitoring Committee to provide recommendations regarding Atlantic mackerel, potentially including: 2021/2022 emergency action, future specifications, and/or rebuilding plan modifications and options.

## Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Collins at the Council Office, (302) 526–5253, at least 5 days prior to the meeting date.

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

Dated: July 7, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021–14782 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–22–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XB212]**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Chevron U.S.A. Inc. (Chevron) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

**DATES:** The LOA is effective from August 1, 2021, through June 1, 2022.

**ADDRESSES:** The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, 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 U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified 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.

An 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.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

**Summary of Request and Analysis**

Chevron plans to conduct a 3D borehole seismic survey using an airgun array as the sound source, covering portions of approximately 40 lease blocks centered around Lease Block G16942 (Big Foot). The survey is a type of vertical seismic profile (VSP) survey. The array consists of 32 elements, with a total volume of 5,040 cubic inches ($in^3$). Please see Chevron's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Chevron in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone); [1] (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of VSP survey effort. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). 3D NAZ was selected as the best available proxy survey type. In addition, all available acoustic exposure modeling results assume use of a 72 element, 8,000 $in^3$ array. In this case, take numbers authorized through the LOA are considered conservative due to differences in both the airgun array and the survey geometry planned by Chevron, as compared to those modeled for the rule.

The survey is planned to occur for 22 days, with 14 days occurring in Zone 5 and 8 days in Zone 7. The season is not known in advance. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

Rice's whales (formerly known as GOM Bryde's whales) [3] are generally found within a small area in the northeastern GOM in waters between 100–400 meters (m) depth along the continental shelf break (Rosel *et al.,* 2016). Whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014), and a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). Habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although a ''core habitat area'' defined in the northeastern GOM (outside the scope of the rule) contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29212, 29228, 29280 (June 22, 2018); 86 FR 5322, 5418 (January 19, 2021).

Although it is possible that Rice's whales may occur outside of their core habitat, NMFS expects that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m). Chevron's planned activity will occur in water depths of approximately 1,200–2,000 m in the central GOM. NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale).[4] However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single killer whale group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

**Small Numbers Determination**

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January 19, 2021). The output of this scaling, where appropriate, is incorporated into an adjusted total take estimate that is the basis for NMFS' small numbers determination, as depicted in Table 1 for Chevron's 22-day survey.

This product is used by NMFS in making the necessary small numbers determination, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock abundance reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* three-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

| Species | Authorized take | Scaled take [1] | Abundance [2] | % Abundance |
|---|---|---|---|---|
| Sperm whale | 673 | 284.7 | 2,207 | 12.9 |
| Kogia spp | [3] 255 | 79.6 | 4,373 | 2.0 |
| Beaked whales | 3,423 | 345.7 | 3,768 | 9.2 |

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS—Continued

| Species | Authorized take | Scaled take [1] | Abundance [2] | % Abundance |
|---|---|---|---|---|
| Rough-toothed dolphin | 491 | 140.9 | 4,853 | 2.9 |
| Bottlenose dolphin | 2,154 | 618.2 | 176,108 | 0.4 |
| Clymene dolphin | 1,552 | 445.4 | 11,895 | 3.7 |
| Atlantic spotted dolphin | 834 | 239.4 | 74,785 | 0.3 |
| Pantropical spotted dolphin | 8,521 | 2,445.5 | 102,361 | 2.4 |
| Spinner dolphin | 1,618 | 464.4 | 25,114 | 1.8 |
| Striped dolphin | 642 | 184.3 | 5,229 | 3.5 |
| Fraser's dolphin | 188 | 54.0 | 1,665 | 3.2 |
| Risso's dolphin | 429 | 126.6 | 3,764 | 3.4 |
| Melon-headed whale | 1,008 | 297.4 | 7,003 | 4.2 |
| Pygmy killer whale | 248 | 73.2 | 2,126 | 3.4 |
| False killer whale | 361 | 106.5 | 3,204 | 3.3 |
| Killer whale | 7 | n/a | 267 | 2.6 |
| Short-finned pilot whale | 251 | 74.0 | 1,981 | 3.7 |

[1] Scalar ratios were applied to "Authorized Take" values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 7 takes by Level A harassment and 248 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Chevron's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

### Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Chevron authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: July 12, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–15048 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

**[Docket No.: PTO–P–2021–0032]**

## Patent Eligibility Jurisprudence Study

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Request for information; correction.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) published a document in the **Federal Register** of July 9, 2021 requesting public comments on the current state of patent eligibility jurisprudence in the United States. This notice corrects the section of the document that identifies the individual who may be contacted for information regarding the request.

**FOR FURTHER INFORMATION CONTACT:** Courtney Stopp, USPTO, Office of Policy and International Affairs, at *Courtney.Stopp@uspto.gov* or 571–272–9300.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of July 9, 2021, in FR Doc. 2021–14628, on page 36258, in the first column, correct the information provided under the caption **FOR FURTHER INFORMATION CONTACT** to read:

**FOR FURTHER INFORMATION CONTACT:** Courtney Stopp, USPTO, Office of Policy and International Affairs, at *Courtney.Stopp@uspto.gov* or 571–272–9300. Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571–272–8400.

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2021–15010 Filed 7–14–21; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2021–SCC–0104]**

## Agency Information Collection Activities; Comment Request; 21st Century Community Learning Centers Annual Performance Report

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before September 13, 2021.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0104. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will*

*not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Daryn Hedlund, (202) 401–3008.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* 21st Century Community Learning Centers Annual Performance Report.

*OMB Control Number:* 1810–0668.

*Type of Review:* Extension without change of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 1,357.

*Total Estimated Number of Annual Burden Hours:* 39,477.

*Abstract:* The purpose of the 21st Century Community Learning Centers (21st CCLC) program, as authorized under Title IV, Part B, of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA) (20 U.S.C. 7171–7176) is to create community learning centers that provide academic enrichment opportunities for children, particularly students who attend high poverty and low-performing schools, to meet State and local student standards in core academic subjects, to offer students a broad array of enrichment activities that can complement their regular academic programs, and to offer literacy and other educational services to the families of participating children. Present in all 50 states, the District of Columbia, Puerto Rico, US Virgin Islands, and the Bureau of Indian Education, academic enrichment and youth development programs are designed to enhance participants' well-being and academic success. The Department of Education (ED) is requesting authorization for an extension with revision to collect data for 21st CCLC programs. The core purpose is to collect information on the Government Performance and Results Act (GPRA) performance indicators associated with the 21st CCLC program to report to Congress annually on the implementation and progress of 21st CCLC projects. All elements collected serve to meet the reporting requirements of the GPRAs. These metrics delivered in the form of an Annual Performance Report (APR) are the primary way the federal government determines the success and progress of the 21st CCLC program based on the statutory requirements.

Dated: July 12, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–15056 Filed 7–14–21; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21–194–000.
*Applicants:* Rainbow Energy Center, LLC.
*Description:* Self-Certification of Exempt Wholesale Generator Status of Rainbow Energy Center, LLC.
*Filed Date:* 7/8/21.
*Accession Number:* 20210708–5115.
*Comments Due:* 5 p.m. ET 7/29/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2290–009.
*Applicants:* Avista Corporation.
*Description:* Notice of Change in Status Reflect Participation in Energy Imbalance Market of Avista Corporation.
*Filed Date:* 6/30/21.
*Accession Number:* 20210630–5329.
*Comments Due:* 5 p.m. ET 7/21/21.

*Docket Numbers:* ER21–857–002; ER21–856–002.
*Applicants:* Trent River Solar, LLC, PGR Lessee P, LLC.
*Description:* Notice of Non-Material Change in Status of Trent River Solar, LLC, et al.
*Filed Date:* 6/30/21.
*Accession Number:* 20210630–5377.
*Comments Due:* 5 p.m. ET 7/21/21.

*Docket Numbers:* ER21–1191–006.
*Applicants:* Southwestern Electric Power Company.
*Description:* Tariff Amendment: Amended and Restated Minden PSA to be effective 8/1/2018.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5040.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–1790–001.
*Applicants:* California Independent System Operator Corporation.
*Description:* Compliance filing: 2021–07–09 Load, Exports and Wheeling Extension Waiver to be effective N/A.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5058.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–1917–001.
*Applicants:* Assembly Solar III, LLC.
*Description:* Tariff Amendment: Service Agreement filing to be effective 7/14/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5126.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–1961–001.
*Applicants:* Big River Solar, LLC.
*Description:* Tariff Amendment: Amendment to Market-Based Rate Application to be effective 7/15/2021.
*Filed Date:* 7/8/21.
*Accession Number:* 20210708–5053.
*Comments Due:* 5 p.m. ET 7/29/21.

*Docket Numbers:* ER21–2382–000.
*Applicants:* Shell Energy North America (US), L.P.
*Description:* Compliance filing: Spot Market Sale Above Soft Cap to be effective N/A.
*Filed Date:* 7/8/21.
*Accession Number:* 20210708–5129.
*Comments Due:* 5 p.m. ET 7/29/21.

*Docket Numbers:* ER21–2383–000.
*Applicants:* kWantix Trading Fund I, LP.

*Description:* Tariff Cancellation: Notice of Cancellation to be effective 7/9/2021.
*Filed Date:* 7/8/21.
*Accession Number:* 20210708–5133.
*Comments Due:* 5 p.m. ET 7/29/21.

*Docket Numbers:* ER21–2384–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA, SA No. 6103; Queue Nos. AC1–091/092/093/094 and AC2–184/185 to be effective 6/10/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5006.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2385–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Louise Solar (Texana Solar) Interconnection Agreement to be effective 6/30/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5026.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2386–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5855; Queue No. AF2–100 to be effective 11/10/2020.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5029.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2387–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original WMPA SA No. 6112; Queue No. AG1–317 to be effective 6/10/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5045.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2388–000.
*Applicants:* Clines Corners Wind Farm LLC.
*Description:* § 205(d) Rate Filing: Certificate of Concurrence with Red Cloud Wind LLC (ER21–2362–000) to be effective 7/8/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5056.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2389–000.
*Applicants:* Duran Mesa LLC.
*Description:* § 205(d) Rate Filing: Certificate of Concurrence with Red Cloud Wind LLC (ER21–2362–000) to be effective 7/8/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5060.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2390–000.
*Applicants:* Tecolote Wind LLC.
*Description:* § 205(d) Rate Filing: Certificate of Concurrence with Red Cloud Wind LLC (ER21–2362–000) to be effective 7/8/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5065.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2391–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA, SA# 5098 & CSA, SA# 5099; Queue No. AB1–173/AB1–173A/AB2–031 to be effective 5/21/2018.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5074.
*Comments Due:* 5 p.m. ET 7/30/21.

*Docket Numbers:* ER21–2392–000.
*Applicants:* Power Authority of the State of New York, New York Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 205: NYPA Cost Containment Mechanism for Segment A to be effective 9/15/2021.
*Filed Date:* 7/9/21.
*Accession Number:* 20210709–5082.
*Comments Due:* 5 p.m. ET 7/30/21.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF21–480–000; QF21–481–000; QF21–482–000; QF21–483–000.
*Applicants:* Arcadia Solar, LLC, WGL Georgia Project Group, LLC.
*Description:* Refund Report of Arcadia Solar, LLC, et al.
*Filed Date:* 7/7/21.
*Accession Number:* 20210707–5134.
*Comments Due:* 5 p.m. ET 7/28/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–15094 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 15021–000]**

### Bard College, New York; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.
b. *Project No.:* 15021–000.
c. *Date filed:* December 23, 2019.
d. *Applicant:* Bard College, New York.
e. *Name of Project:* Annandale Micro Hydropower Project (Annandale Project).
f. *Location:* On Saw Kill, a tributary of the Hudson River, in the Town of Red Hook, Dutchess County, New York. The project does not occupy federal land.
g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708 (2018), *amended by* the Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 127 Stat. 493 (2013).
h. *Applicant Contact:* Randy Clum, Director, Buildings and Grounds, Bard College, 30 Campus Road, Annandale-on-Hudson, NY 12504; and/or Joel Herm/Jan Borchert, Current Hydro, Inc., P.O. Box 224, Rhinebeck, NY 12572.
i. *FERC Contact:* Monir Chowdhury, (202) 502–6736 or *monir.chowdhury@ferc.gov.*
j. *Deadline for filing comments, recommendations, and terms and conditions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, and terms and conditions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed

to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15021–000.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500–1518 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Annandale Project. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *Project Description:* The Annandale Project would consist of: (1) An existing 240-foot-long dam with a maximum height of 13 feet impounding a 3-acre reservoir at a normal pool elevation of 148 feet North American Vertical datum of 1988; (2) one new 9-foot-wide, 9-foot-long, 8-foot-high concrete tank with a spiral internal shape and housing a 10-kilowatt gravitational vortex turbine-generator unit; (3) a new 60-foot-long, 480-volt underground generator lead connecting the turbine-generator unit with an electrical panel that is connected to a step-up transformer via a new 10-foot-long, 480-volt underground transmission line; (4) a new 50-foot-long, 7.6-kilovolt underground transmission line connecting the step-up transformer to the local grid; and (5) appurtenant facilities. The project is estimated to generate an average of 51 megawatt-hours annually. The applicant proposes to operate the project in a run-of-river mode.

m. A copy of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, and terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

p. Updated procedural schedule and final amendments: The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions. | September 2021. |
| Deadline for Filing Reply Comments. | October 2021. |

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 9, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–15057 Filed 7–14–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP21–958–000.

*Applicants:* NRG Power Marketing LLC, Middletown Power LLC, Generation Bridge Acquisition, LLC.

*Description:* Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of NRG Power Marketing LLC, et al. under RP21–958.

*Filed Date:* 7/6/21.

*Accession Number:* 20210706–5155.

*Comments Due:* 5 p.m. ET 7/19/21.

*Docket Numbers:* RP21–959–000.

*Applicants:* NRG Power Marketing LLC, Direct Energy Business Marketing, LLC, Generation Bridge Acquisition, LLC.

*Description:* Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of NRG Power Marketing LLC, et al. under RP21–959.

*Filed Date:* 7/6/21.

*Accession Number:* 20210706–5156.

*Comments Due:* 5 p.m. ET 7/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 9, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–15095 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket Nos. | File date | Presenter or requester |
|---|---|---|
| Prohibited: | | |
| 1. P–14803–000 | 6–29–2021 | FERC Staff.[1] |
| 2. CP16–9–012 | 6–30–2021 | FERC Staff.[2] |
| 3. CP16–9–012 | 7–1–2021 | FERC Staff.[3] |
| 4. P–405–000 | 7–6–2021 | FERC Staff.[4] |
| 5. P–2082–062, P–14803–000, P–14803–004 | 7–7–2021 | FERC Staff.[5] |
| Exempt: | | |
| P–2105–000 | 6–24–2021 | U.S. Congressman Doug LaMalfa. |

[1] Emailed comments dated 6/28/2021 from Colleen Roberts.
[2] Emailed comments dated 6/30/2021 from Lauren Quickel.
[3] Emailed comments dated 6/30/2021 from Chris Wing.
[4] Emailed comments dated 6/19/2021 from Alex Balboa.
[5] Emailed comments dated 7/6/2021 from William E. Simpson II.

Dated: July 9, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–15096 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER21–2379–000]**

### Rainbow Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rainbow Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: July 9, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–15093 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP20–27–000]**

### North Baja Pipeline, LLC; Notice of Availability of the Draft Environmental Impact Statement for The Proposed North Baja Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the North Baja XPress Project (Project), proposed by North Baja Pipeline, LLC (North Baja) in the above-referenced docket. North Baja requests authorization to modify an existing compressor station in La Paz County, Arizona, as well as install additional flow measurement facilities and piping modifications at two existing meter stations in La Paz County, Arizona and Imperial County, California, respectively. North Baja states that the purpose of the Project is enable the transport of 495,000 dekatherms per day of natural gas to the United States/Mexico border for its shipper, Sempra LNG International, LLC.

The draft EIS responds to comments that were received on the Commission's September 8, 2020 Environmental Assessment (EA) [1] and discloses downstream greenhouse gas emissions for the Project. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

The U.S. Department of the Interior Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA and the draft EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the National Environmental Policy Act analysis. The BLM may adopt and use the EA and EIS to consider the issuance of a right-of-way grant for the use of a temporary workspace requested by North Baja on BLM-administered public lands adjacent to the Ogilby Meter Station in Imperial County, California.

The draft EIS incorporates the above-referenced EA, which addressed the potential environmental effects of the construction and operation of the following Project facilities:

- One new 31,900-horsepower compressor unit and restaging of two existing 7,700-horsepower compressor units at North Baja's existing Ehrenberg Compressor Station in La Paz County, Arizona; and
- flow measurement facilities and piping modifications at North Baja's existing El Paso and Ogilby Meter Stations in La Paz County, Arizona and Imperial County, California, respectively.

The Commission mailed a copy of the Notice of Availability of the Draft Environmental Impact Statement for the Proposed North Baja XPress Project to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–27). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, including climate impacts due to downstream greenhouse gas emissions, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on August 30, 2021.

For your convenience, there are four methods you can use to submit your

[1] The Project's Environmental Assessment is available on eLibrary under accession no. 20200908–3009.

comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–27–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

**Questions?**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 9, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–15058 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–467–000]**

### Texas Gas Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on June 25, 2021, Texas Gas Transmission, LLC (Texas Gas), 9 Greenway Plaza, Suite 2800, Houston, TX 77046, filed an application under sections 7(b), 7(c), and 7(e) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, requesting authorization to construct, operate, and maintain (i) approximately 24 miles of new 20-inch diameter natural gas lateral, and auxiliary appurtenant facilities located in Henderson County, Kentucky and Posey County, Indiana; (ii) a new delivery meter and regulator (M&R) station with 0.08 miles of new 16-inch diameter interconnecting pipe located in Posey County, Indiana; (iii) upgrades to an existing receipt M&R station located in Johnson County, Indiana; and (iv) a new C50 turbine compressor unit with approximately 4,863 horsepower, piping modifications, and other associated auxiliary appurtenant facilities to be installed at Texas Gas' existing Slaughters Compressor Station in Webster County, Kentucky.

At the Slaughters Compressor Station, Texas Gas also seeks authority to (i) abandon reciprocating Unit 5 and (ii) place reciprocating Unit 6 and Unit 7 on standby to be operated only under limited circumstances.

The proposed Project will allow Texas Gas to provide up to 220,000 Dekatherms per day (Dth/d) of new firm transportation service to CenterPoint Energy Indiana South (Center Point) to serve CenterPoint's proposed new 460 megawatt (MW) natural gas-fired electric generating facilities to be located at CenterPoint's existing A.B. Brown coal-fired power plant site in Posey County, near Evansville, Indiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to J. Kyle Stephens, Vice President, Regulatory Affairs, Texas Gas Transmission, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas, 77046, or by phone at (713)-479–8033, by fax at (713) 479–1846, or by email at *Kyle.Stephens@bwpipelines.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

[1] 18 CFR (Code of Federal Regulations) 157.9.

or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

**Public Participation**

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on July 30, 2021.

*Comments*

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 30, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP21–467–000) in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP21–467–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

*Interventions*

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is July 30, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number (CP21–467–000) in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf*; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number (CP21–467–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 9 Greenway Plaza, Houston, Texas, 77046 or at *Kyle.Stephens@bwpipelines.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on July 30, 2021.

Dated: July 9, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–15092 Filed 7–14–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2021–0050; FRL–8606–01–OCSPP]**

## Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2020 to March 31, 2021 to control unforeseen pest outbreaks.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0050, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *http://www.epa.gov/dockets.*

### II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

### III. Emergency Exemptions

*A. U.S. States and Territories*

Arkansas

Department of Agriculture

*Specific exemption:* EPA authorized the use of benzobicyclon on a maximum of 25,000 acres of zero-grade, water-seeded, conventional, and imidazolinone-resistant rice fields. A time-limited tolerance in connection with a past action has been established in 40 CFR 180.693(c). Effective April 1, 2021 to August 1, 2021.

*Public health exemption:* EPA authorized the use of 1-octadecanaminium, N,N-dimethyl-N-[3-(trihydroxysilyl)propyl] chloride on non-porous, non-food-contact surfaces in American Airlines aircraft and airport facilities to control the Severe Acute

Respiratory Syndrome Coronavirus 2 (SARS–CoV–2), the causal agent of COVID–19. The use is effective January 19, 2021 to August 24, 2021.

California

Department of Pesticide Regulation

*Specific exemption:* EPA authorized the use of kasugamycin on a maximum of 100,000 acres of almond trees to control bacterial blast (*Pseudomonas syringae pv. syringae*). A time-limited tolerance in connection with a past action has been established in 40 CFR 180.614(b). Effective February 11, 2021 to April 15, 2021.

Florida

Department of Agriculture and Consumer Services

*Specific exemptions:* EPA authorized the use of streptomycin on up to 330,254 acres of citrus to manage citrus greening disease (also known as Huanglongbing). Time-limited tolerances in connection with past actions for this use have been established in 40 CFR 180.245(b). Effective December 31, 2020 to December 31, 2021.

EPA authorized the use of the insecticide clothianidin on a maximum of 125,376 acres of immature (3 to 5 years old) citrus trees to control the Asian citrus psyllid, the vector of citrus greening disease (also known as Huanglongbing) to manage disease transmission. A time-limited tolerance in connection with this action has been established in 40 CFR 180.586(b); Effective January 1, 2021 to October 31, 2021.

Georgia

Department of Agriculture

*Public health exemption:* EPA authorized the use of triethylene glycol as an indoor air treatment at various sites in Georgia when adherence to current public health guidelines is impractical, difficult to maintain, or is not expected to provide a sufficient level of protection, to control the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2), the causal agent of COVID–19. The use is effective January 14, 2021 to January 14, 2022.

Louisiana

Department of Agriculture and Forestry

*Specific exemption:* EPA authorized the use of triclopyr on a maximum of 450,000 acres of sugarcane to control divine nightshade. A time-limited tolerance in connection with this action has been established in 40 CFR 180.417(b); Effective October 2, 2020 to May 31, 2021.

Massachusetts

Department of Agriculture and Resources

*Specific exemption:* EPA authorized the use of pronamide on a maximum of 5,000 acres of cranberries to control dodder. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective April 15, 2021 to June 30, 2021.

Oklahoma

Department of Agriculture

*Public health exemption:* EPA authorized the use of 1-octadecanaminium, N,N-dimethyl-N-[3-(trihydroxysilyl)propyl] chloride on non-porous, non-food-contact surfaces in American Airlines aircraft and airport facilities to control the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2), the causal agent of COVID–19. The use is effective January 19, 2021 to August 24, 2021.

Tennessee

Department of Agriculture

*Public health exemption:* EPA authorized the use of triethylene glycol as an indoor air treatment at various sites in Tennessee when adherence to current public health guidelines is impractical, difficult to maintain, or is not expected to provide a sufficient level of protection, to control the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2), the causal agent of COVID–19. The use is effective January 14, 2021 to January 14, 2022.

*B. Federal Departments and Agencies*

Agriculture Department

Animal and Plant Health Inspector Service

*Quarantine Exemption:* EPA authorized the use of acetic acid on nonporous surfaces to decontaminate from foot and mouth disease virus; Effective April 19, 2021 to April 19, 2024.

National Aeronautics and Space Administration

*Specific exemption:* EPA authorized use of ortho-phthalaldehyde, immobilized to a porous resin, to treat the International Space Station (ISS) internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. Effective October 9, 2020 to October 9, 2021. This request was granted because without this use, the ISS would have no means of controlling microorganisms in the IATCS because there are no registered alternatives available which meet the required criteria. Since this request proposed a use of a new (unregistered) chemical, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on September 25, 2020 (85 FR 60458) (FRL–10014–21) with the public comment period closing on October 13, 2020.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: July 9, 2021.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2021–15043 Filed 7–14–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2021–0146; FRL–8682–01–OCSPP]**

## Certain New Chemicals or Significant New Uses; Statements of Findings for May 2021

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from May 1, 2021 to May 31, 2021.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–1667 email address: *Edelstein.rebecca@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0146, is available online at *http://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 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 OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

## II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from May 1, 2021 to May 31, 2021.

## III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

## IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

| EPA case No. | Chemical identity | Website link |
|---|---|---|
| J–21–0010 | Genetically modified microorganism for the production of a chemical substance (Generic Name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-509.* |

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: July 7, 2021.

**Madison Le,**

*Director, New Chemicals Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2021–15086 Filed 7–14–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL—FRL 8679–01–OA]**

## Request for Nominations for the Science Advisory Board; Contaminant Candidate List 5 Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a Panel to review the draft EPA document titled Contaminant Candidate List 5—Draft (CCL 5—Draft). This draft document presents a list of contaminants that are known or anticipated to occur in public water systems, and which may require future regulation under the Safe Drinking Water Act (SDWA). The CCL is one tool, EPA uses to identify priority contaminants for future regulatory decision making and research needs, and does not impose any requirements on any regulated entity.

**DATES:** Nominations should be submitted by August 5, 2021 per the instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Carolyn Kilgore, Designated Federal Officer (DFO), EPA Science Advisory Board by telephone/voice mail (202) 564–0230, or email at *kilgore.carolyn@epa.gov*. General information concerning the EPA SAB can be found at the EPA SAB website at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB Staff Office is forming an expert Contaminant Candidate List (CCL) 5 Panel, under the auspices of the Chartered SAB. The CCL 5 Panel will provide advice through the chartered SAB. The SAB and CCL 5 Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The CCL 5 Panel will conduct the review of CCL 5—Draft prepared by the EPA's Office of Office of Ground Water and Drinking Water (OGWDW). OGWDW develops and helps implement national drinking water standards, including the Contaminant Candidate List. EPA uses this list of unregulated contaminants to prioritize drinking water research and data collection efforts. The panel will be charged with reviewing the science, clarity, transparency and supporting documents used to develop the CCL 5—Draft. This panel will provide advice through the Chartered SAB.

*Request for Nominations:* The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in: chemical assessments with expertise in one or more of the following disciplines: Microbiology (with a focus on waterborne pathogens); public health; toxicology including developmental/reproductive toxicology; expertise on new and emerging contaminants; statistical modeling and uncertainty analysis; risk assessment, and exposure of contaminants in drinking water.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB website (see the ''Nomination of Experts'' link under ''Current Activities'' at *http://www.epa.gov/sab*). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability or ethnicity. Nominations should be submitted in time to arrive no later than August 5, 2021.

The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes: Current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a list of candidates for the Panel on the SAB website at *http://www.epa.gov/sab.* Public comments on the list of candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the lists of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form is required and allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory

committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *http://www.epa.gov/sab.* This form should not be submitted as part of a nomination.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB website at *http://www.epa.gov/sab.*

**V. Khanna Johnston,**

*Deputy Director, Science Advisory Board Staff Office.*

[FR Doc. 2021–15013 Filed 7–14–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 21–778; FR ID 37559]**

### Announcement of Next Meeting of the Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting date, time, and agenda of the FCC Consumer Advisory Committee (Committee), a federal advisory committee established under the Federal Advisory Committee Act (FACA).

**DATES:** September 10, 2021, from 10:30AM to 2:30PM EST.

**ADDRESSES:** The meeting will be held remotely using an internet videoconferencing platform and publicly available for viewing via a live stream on the Commission's website.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554; phone: 202–418–2809 (voice or Relay); email: *scott.marshall@fcc.gov;* or Gregory V. Haledjian, Deputy Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554; phone: 202–418–7440; email: *gregory.haledjian@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 21–778, released June 30, 2021, announcing the date, time, and agenda of the Committee's September 10, 2021 meeting. At this meeting, the Committee will receive presentations regarding recent Commission activities affecting consumers and will discuss upcoming developments of interest to consumers.

The meeting is open to members of the public and available via live stream at *www.fcc.gov/live.* The public also may follow a summary of the meeting on *Twitter@fcc* or via the Commission's Facebook page at *www.facebook.com/fcc.* Members of the public may submit questions that arise during the meeting to *livequestions@fcc.gov.*

Open captioning will be provided for the live stream. Other reasonable accommodations for people with disabilities are available upon request. 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 FCC's Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

Consult the Committee's web page at *www.fcc.gov/consumer-advisory-committee* for further Committee information.

Comments to the Committee may be submitted through the Designated Federal Officer or the Deputy Designated Federal Officer at the above email addresses.

Federal Communications Commission.

**Gregory Haledjian,**

*Legal Advisor, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2021–15067 Filed 7–14–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CG Docket Nos. 03–123 and 13–24; DA 21–753; FR ID 36290]**

### Comment Sought on Request for Freeze of IP CTS Compensation Level

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) seeks comment on a request by six of the seven currently certified providers of internet Protocol (IP) Captioned Telephone Service (IP CTS) to defer the reduction in the per minute level of Telecommunications Relay Service (TRS) Fund support for IP CTS previously ordered by the Commission.

**DATES:** Comments are due July 30, 2021 and replies are due August 9, 2021.

**ADDRESSES:** Comments and replies may be filed, identified by CG Docket Nos. 03–123 and 13–24, using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/filings.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy 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.

○ Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. In the event that the Commission announces the lifting of COVID–19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington DC 20554.

○ During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

**FOR FURTHER INFORMATION CONTACT:** William Wallace, Consumer and Governmental Affairs Bureau at: (202)

418–2716; email: *William.Wallace@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Public Notice,* DA 21–753, in CG Docket Nos. 03–123 and 13–24, released on June 25, 2021. 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 and Governmental Affairs Bureau at (202) 418–0530.

**Synopsis**

1. On September 30, 2020, the Commission adopted *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking,* published at 85 FR 64971, October 14, 2020, and 86 FR 7681, February 1, 2021. Pursuant to the *Report and Order,* TRS Fund compensation for the provision of IP CTS is to be reduced from the current level of $1.42 per minute to $1.30 per minute, effective July 1, 2021.

2. The Joint Providers contend that deferring the scheduled compensation reduction would better enable the Commission to consider the impact on compensation rates before adopting changes in applicable service-quality standards, as proposed in the *Further Notice of Proposed Rulemaking.* The Joint Providers point out that the currently scheduled compensation adjustment follows a series of previous adjustments ordered by the Commission over a three-year period, with the goal of bringing TRS Fund compensation into line with reasonable cost, and that these prior adjustments reduced per-minute IP CTS compensation from $1.9467 (in the 2017–18 Fund Year) to the current $1.42 level.

3. The Joint Providers also assert that ''significant uncertainty as to future costs and demand'' has resulted from the ''protracted impact of the [COVID–19] pandemic'' and the consequent adjustments made by IP CTS providers ''to ensure high quality access for users.'' As a result, the Joint Providers argue, ''a prudent approach is to halt further rate reductions, determine the appropriate standards that will be adopted for IP CTS, determine the impact of those standards on normalized costs (*i.e.,* not impacted by a worldwide pandemic), and determine a long-term rate methodology that ensures continued functional equivalence, innovation, and consumer choice for IP CTS users.''

4. The Bureau seeks comment on the Joint Providers' request. In particular, because there is insufficient information in the record to evaluate some of the assertions in the request, and because the Commission's analysis of the issues raised should be data driven, the Bureau seeks additional information on the following:

- Current estimates are that $1.30 is substantially higher than the average per-minute IP CTS cost projected for 2021–22. The $1.30 per-minute compensation rate was adopted based on pre-COVID–19 estimates of average per-minute cost. To date, the impact of the COVID–19 pandemic has been to reduce average per-minute IP CTS costs substantially *below* the $1.30 cost-based rate adopted by the Commission. Based on providers' cost and demand projections submitted in March 2021, the TRS Fund administrator estimates a weighted average cost for IP CTS (including a 10% operating margin) of $1.1169 per minute—approximately 14% lower than the scheduled $1.30 compensation. Have providers revised their projections of 2021–22 costs and demand? If so, the Bureau seeks detailed information about such revised projections and the basis on which they were revised, to enable a determination of the likelihood that average per-minute costs (plus operating margin) for the 2021–22 Fund Year will exceed the $1.30 level. Is there other reliable data supporting a compensation freeze at the $1.42 level?
- The $1.30 per-minute rate that is scheduled to become effective July 1 will expire at the end of the 2021–22 Fund Year. Is freezing the rate at a higher level necessary at this time, or could the Commission effectively address the impact of possible changes in service-quality standards when setting compensation for the subsequent rate period?
- While the Commission has proposed that metric standards be developed for IP CTS caption delay and accuracy, no such standards have been adopted to date. Nonetheless, the Bureau seeks information about any investments in quality and technology improvements currently being considered by providers. To what extent could such investments be expected to cause a net increase in a provider's per-minute service costs during the 2021–22 Fund Year?
- Given the industry's recent innovation, development, and investment in automatic speech recognition, to what extent could such investment in quality and technology improvements result in a decrease in per-minute costs?
- If the Commission were to ''freeze'' IP CTS compensation at the current $1.42 level, what increase would be needed in the proposed TRS funding requirement and the contribution factor for support of IP CTS? If such action were to be taken after the $1.30 compensation level becomes effective, should the Commission ''true up'' compensation retroactively to July 1? How should such a true-up be handled?

Federal Communications Commission.

**Gregory Haledjian,**

*Legal Advisor, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2021–15008 Filed 7–14–21; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0874; FR ID 37712]**

## Information Collection Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments and recommendations for the proposed information collection should be submitted on or before August 16, 2021.

**ADDRESSES:** Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public

Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*OMB Control Number:* 3060–0874.

*Title:* Consumer Complaint Center: Informal Consumer Complaints.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

*Number of Respondents and Responses:* 292,937 respondents; 292,937 responses.

*Estimated Time per Response:* 15 minutes (.25 hour) to 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Voluntary. The statutory authority for this collection is contained in 47 U.S.C. 208 of the Communications Act of 1934, as amended (the Act).

*Total Annual Burden:* 73,244 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014. It may be reviewed at *https://www.fcc.gov/general/privacy-act-information#systems.*

*Privacy Impact Assessment:* The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.*

*Needs and Uses:* The Commission consolidated all of the FCC informal consumer complaint intake into an online consumer complaint portal, which allows the Commission to better manage the collection of informal consumer complaints. Informal consumer complaints consist of informal consumer complaints, inquiries and comments. This revised information collection requests OMB approval for the addition of a layer of consumer reported complaint information related to the National Deaf-Blind Equipment Distribution Program rules.

The information collection burdens associated with these complaints is being transferred from OMB Control Number 3060–1225 (National Deaf-Blind Equipment Distribution Program) to OMB Control Number 3060–0874 to enable consumers to file complaints related to the National Deaf-Blind Equipment Distribution Program rules through the Commission's Consumer Complaint Center.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–15080 Filed 7–14–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL HOUSING FINANCE AGENCY

**[No. 2021–N–8]**

### Proposed Collection; Comment Request

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 60-Day notice of submission of information collection for approval from Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as ''Minority and Women Inclusion,'' which has been assigned control number 2590–0014 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on October 31, 2021.

**DATES:** Interested persons may submit comments on or before September 13, 2021.

**ADDRESSES:** Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: ''Minority and Women Inclusion, (No. 2021–N–8)'' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Minority and Women Inclusion, (No. 2021–N–8)''.

We will post all public comments we receive without change, including any

personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

**FOR FURTHER INFORMATION CONTACT:** Felicia Bland, Supervisory Examination Specialist, Office of Minority and Women Inclusion, *Felicia.Bland@fhfa.gov,* or by telephone at (202) 365–7471; or Angela Supervielle, Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** FHFA is seeking comments on its collection of information regarding the minority and gender classification of individuals serving on the boards of directors of the Federal Home Loan Banks (Banks) and of the Office of Finance under FHFA's regulations on Minority and Women Inclusion (MWI), codified at 12 CFR part 1223, which it will soon be submitting for renewal of the OMB control number under the PRA.

## A. Need for and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Banks and the Office of Finance, which issues and services the Banks' debt securities. The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible non-member entities. Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers. The Bank Act vests the management of each Bank in a board of directors that consists of two types of directors: (1) Member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected to represent members in a particular state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions, but who reside in the Bank's district and are elected on an at-large basis.[1] The Office of Finance is also governed by a board of directors, which consists of the presidents of the eleven Banks and five independent directors.[2]

Section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires that each of the Banks establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters relating to diversity in its management, employment, and business activities, in accordance with requirements established by FHFA.[3] Section 1319A also requires that each Bank implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of women and minorities ''at all levels'' of its business and activities, and submit an annual report to FHFA detailing actions taken to achieve those goals.[4]

FHFA's MWI regulations implement those statutory requirements and also extend the requirements to the Office of Finance. The MWI regulations require generally that each Bank and the Office of Finance ''develop, implement, and maintain policies and procedures to ensure, to the maximum extent possible in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity, including in management, employment, procurement, insurance, and all types of contracts.'' [5] In recognition of the fact that each Bank is required by statute to promote diversity and inclusion ''at all levels'' of its business and activities, the MWI regulations further require that the Banks' policies and procedures (as well as those of the Office of Finance) ''[e]ncourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women, and individuals with disabilities to seek or apply for employment with the regulated entity.'' [6]

In conformity with the statutory requirements, FHFA's MWI regulations require that each Bank and the Office of Finance submit to FHFA an annual report describing, among other things, its efforts to promote diversity at all levels of management and employment, and the results of those efforts.[7] In order to provide a quantitative basis upon which to assess the results of those efforts, FHFA's MWI regulations require that each Bank and the Office of Finance set forth in their respective annual reports the demographic data reported on the EEO–1 form, which they are required to file annually with the Equal Employment Opportunity Commission (EEOC).[8] The EEO–1 form requires that each respondent provide race, ethnicity and gender information for its employees, broken down into various job categories. Because the EEO–1 form does not require that a respondent provide information on board directors, FHFA cannot use the EEO–1 data to assess the effectiveness of the Federal Home Loan Bank System's efforts to ''encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors.''

Therefore, in order to enable FHFA to assess those efforts, the MWI regulations separately require that the annual reports set forth ''[d]ata showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance,'' using the same racial and ethnic classifications that are used on the EEO–1 form (which comply with OMB's ''Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting'').[9] The MWI regulations require that each Bank and the Office of Finance collect that data ''through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information.'' [10]

FHFA uses the information collected under this control number to assess the effectiveness of the policies and procedures that each Bank and the Office of Finance is required to implement to promote diversity in all of its business and activities ''at all levels'' and, specifically, to encourage diversity in the nomination and solicitation of nominees for members of its boards of directors. FHFA also uses the information to establish a baseline to

[1] *See* 12 U.S.C. 1427(a)(1), (b), (d).

[2] *See* 12 CFR 1273.7(a).

[3] *See* 12 U.S.C. 4520(a).

[4] *See* 12 U.S.C. 4520(b), (d).

[5] *See* 12 CFR 1223.21(b).

[6] *See* 12 CFR 1223.21(b)(7).

[7] *See* 12 CFR 1223.22(a).

[8] *See* 12 CFR 1223.23(b)(1). As required by 29 CFR 1602.7, each Bank and the Office of Finance annually files an EEO–1 form with the EEOC.

[9] *See* 12 CFR 1223.23(b)(10)(i).

[10] *See* 12 CFR 1223.23(b)(10)(i)(A).

analyze future trends related to the diversity of the boards of directors of the Banks and the Office of Finance and to assess the effectiveness of the strategies developed by the Banks and the Office of Finance for promoting, developing, and retaining diverse board talent.

**B. Burden Estimate**

FHFA estimates the total annual hour burden imposed upon respondents by this information collection to be 20.5 hours. This is based on estimates that 205 Bank and Office of Finance Directors will respond annually, with each response taking an average of 0.1 hours (6 minutes) (205 respondents × 0.1 hours = 20.5 hours).

**C. Comments Request**

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

**Kevin Smith,**

*Chief Information Officer, Federal Housing Finance Agency.*

[FR Doc. 2021–15091 Filed 7–14–21; 8:45 am]

**BILLING CODE 8070–01–P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

**[Docket No.: FMCS–2021–2]**

### Availability of Draft Strategic Plan and Request for Public Comment

**AGENCY:** Federal Mediation and Conciliation Service (FMCS).

**ACTION:** Notice of availability of Draft Strategic Plan; request for comments.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) announces the availability of its draft Strategic Plan for 2022–2026. The Government Performance and Results Act of 1993, as amended by the GPRA Modernization Act of 2010, requires that Federal Agencies solicit input from interested stakeholders when developing their Strategic Plans. Therefore, FMCS invites the general public and other Federal Agencies to take this opportunity to comment on FMCS's draft Strategic Plan.

**DATES:** Comments must be submitted on or before August 16, 2021.

**ADDRESSES:** You may send comments, identified by FMCS–2021–2, by any of the following methods:

- *Mail:* Office of Budget, FMCS, Floor 7, One Independence Square, 250 E Street SW, Washington, DC 20427.
- *Email: WShields@fmcs.gov.* Include FMCS–2021–2 on the subject line of the message.

Please note that at this time, the FMCS office is not open for visitors and mail is not checked daily. Therefore, we encourage emailed comments.

**FOR FURTHER INFORMATION CONTACT:** Will Shields, 202–606–3635, *WShields@fmcs.gov.*

**SUPPLEMENTARY INFORMATION:** FMCS's mission is to:

- Promote the development of sound and stable labor management relationships;
- Prevent or minimize work stoppages by assisting labor and management to settle their disputes through mediation;
- Advocate collective bargaining, mediation and voluntary arbitration as the preferred processes for settling issues between employers and representatives of employees;
- Develop and advocate the art, science and practice of conflict resolution through the use of ADR;
- Assist parties in conflict through the provision of conflict resolution services; and
- Foster the establishment and maintenance of constructive joint processes to improve labor-management relationships, employment security and organizational effectiveness.

The draft Strategic Plan sets out how FMCS will pursue its strategic goals and is available at *https://www.fmcs.gov/wp-content/uploads/2021/07/2022-2026-FMCS-Strategic-Plan-v02.pdf.* FMCS anticipates publishing its 2022–2026 Strategic Plan in February 2022 and making it available on the FMCS website, *www.fmcs.gov,* at that time.

Dated: July 9, 2021.

**William H. Shields,**

*Budget Director.*

[FR Doc. 2021–15016 Filed 7–14–21; 8:45 am]

**BILLING CODE 6732–01–P**

## GENERAL SERVICES ADMINISTRATION

**[Notice–PBS–2021–03; Docket No. 2021–0002; Sequence No. 13]**

### Federal Management Regulation; Designation of Federal Building

**AGENCY:** Public Buildings Service (PBS), General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** This bulletin announces the designation of a Federal building.

**DATES:** This bulletin expires January 17, 2022. The building designation remains in effect until canceled or superseded by another bulletin.

**FOR FURTHER INFORMATION CONTACT:** General Services Administration, Public Buildings Service (PBS), Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW, Atlanta, GA 30303, at 404–562–2763, or by email at *chandra.kelley@gsa.gov.*

**SUPPLEMENTARY INFORMATION:** This bulletin announces the designation of a Federal building. Public Law 109–331, dated October 12, 2006, designated Building No. SC0017ZZ, located at 250 E North Street in Greenville, SC, as the ''Carroll A. Campbell Jr. United States Courthouse.''

**Katy Kale,**

*Acting Administrator.*

[FR Doc. 2021–15090 Filed 7–14–21; 8:45 am]

**BILLING CODE 6820–Y1–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Title IV–E Prevention Services Clearinghouse Handbook of Standards and Procedures

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), established the Title IV–E Prevention Services Clearinghouse (hereafter, the Clearinghouse; *https://preventionservices.abtsites.com*). This **Federal Register** Notice (FRN) seeks comments by August 16, 2021 on the Clearinghouse's Handbook of Standards and Procedures, Version 1.0. Responses to this FRN will inform potential updates and clarifications to existing standards and procedures. Readers are referred to the full version of the

*Handbook of Standards and Procedures, Version 1.0* on the Clearinghouse website (*https://preventionservices.abtsites.com/review-process*). Specifically, feedback is invited on each of the steps and operational procedures of the Prevention Services Clearinghouse systematic review process.

**DATES:** The deadline for comments on this notice is August 16, 2021.

**ADDRESSES:** Interested parties may submit written questions, comments, and supplementary documents by email to *preventionservices@abtassoc.com* with ''Title IV–E PSC FRN comment'' in the subject line. To ensure that your comments have maximum effect, please identify clearly the section of the Handbook of Standards and Procedures, Version 1.0 (*https://preventionservices.abtsites.com/review-process*) that your comment addresses.

**SUPPLEMENTARY INFORMATION:**

## 1.0 Background and Legislative Context

The Family First Prevention Services Act (FFPSA) was signed into law as part of the Bipartisan Budget Act (H.R. 1892) on February 9, 2018. FFPSA amended the Social Security Act (the Act) to enable use of Federal funds available under parts B and E of title IV of the Social Security Act to provide enhanced support to children and families and prevent foster care placements through the provision of evidence-based mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services. As described in the statutory language, these services and programs are intended ''for children who are candidates for foster care or who are pregnant or parenting foster youth and the parents or kin caregivers of the children.''

The Act requires an independent systematic review of evidence to designate programs and services as ''promising,'' ''supported,'' and ''well supported'' practices, defined as follows in section 471(e)(4)(C):

- *Promising Practice:* ''A practice shall be considered to be a 'promising practice' if the practice is superior to an appropriate comparison practice using conventional standards of statistical significance (in terms of demonstrated meaningful improvements in validated measures of important child and parent outcomes, such as mental health, substance abuse, and child safety and well-being), as established by the results or outcomes of at least one study that—(1) was rated by an independent systematic review for the quality of the study design and execution and determined to be well-designed and well-executed; and (2) utilized some form of control (such as an untreated group, a placebo group, or a wait list study).''
- *Supported Practice:* ''A practice shall be considered to be a 'supported practice' if (I) the practice is superior to an appropriate comparison practice using conventional standards of statistical significance (in terms of demonstrated meaningful improvements in validated measures of important child and parent outcomes, such as mental health, substance abuse, and child safety and well-being), as established by the results or outcomes of at least one study that—(aa) was rated by an independent systematic review for the quality of the study design and execution and determined to be well-designed and well-executed; (bb) was a rigorous random-controlled trial (or, if not available, a study using a rigorous quasi-experimental research design); and (cc) was carried out in a usual care or practice setting; and (II) the study described in sub-clause (I) established that the practice has a sustained effect (when compared to a control group) for at least 6 months beyond the end of treatment.''
- *Well-supported Practice:* ''A practice shall be considered to be a 'well-supported practice' if (I) the practice is superior to an appropriate comparison practice using conventional standards of statistical significance (in terms of demonstrated meaningful improvements in validated measures of important child and parent outcomes, such as mental health, substance abuse, and child safety and well-being), as established by the results or outcomes of at least two studies that—(aa) were rated by an independent systematic review for the quality of the study design and execution and determined to be well-designed and well-executed; and (bb) were rigorous random-controlled trials (or, if not available, studies using a rigorous quasi-experimental research design); and (cc) were carried out in a usual care or practice setting; and (II) at least one of the studies described in sub-clause (I) established that the practice has a sustained effect (when compared to a control group) for at least 1 year beyond the end of treatment.''

In accordance with the statute, practices must also meet the following requirements:

- *Book or manual:* The practice has a book, manual, or other available writings that specify the components of the practice protocol and describe how to administer the practice.
- *No empirical risk of harm:* There is no empirical basis suggesting that, compared to its likely benefits, the practice constitutes a risk of harm to those receiving it.
- *Weight of evidence supports benefits:* If multiple outcome studies have been conducted, the overall weight of evidence supports the benefits of the practice.
- *Reliable and valid outcome measures:* Outcome measures are reliable and valid, and are administrated consistently and accurately across all those receiving the practice.
- *No case data for severe or frequent risk of harm:* There is no case data suggesting a risk of harm that was probably caused by the treatment and that was severe or frequent (section 471(e)(4)(C)(ii) of the Act).

In order to meet these requirements, ACF established the Clearinghouse. The Clearinghouse carries out a systematic review process implemented by trained reviewers using consistent, transparent standards and procedures. The Handbook of Standards and Procedures, Version 1.0 (*https://prevention services.abtsites.com/review-process*) provides a detailed description of the standards used to identify and review programs and services for the Clearinghouse and the procedures followed by the Clearinghouse staff. The Handbook of Standards and Procedures, Version 1.0 was informed by public comments submitted in response to **Federal Register** Notice 83 FR 29122 (*https://www.federalregister.gov/documents/2018/06/22/2018-13420/decisions-related-to-the-development-of-a-clearinghouse-of-evidence-based-practices-in-accordance*), consultations with research and practice experts, and the review processes developed and used by other prominent evidence clearinghouses.

## 2.0 Request for Information (RFI)

Through this FRN, ACF invites feedback on the Handbook of Standards and Procedures, Version 1.0 (*https://preventionservices.abtsites.com/review-process*). Specifically, feedback is invited on each of the steps of the Prevention Services Clearinghouse systematic review process:

1. Identify programs and services for review. Candidate programs and services relevant to the mission of the Clearinghouse are identified using an inclusive process that invites recommendations from stakeholders, including states, to ensure broad coverage across program or service areas (Chapter 1).

2. Select and prioritize programs and services for review. Candidate programs

and services are evaluated against the program or service eligibility criteria and prioritized for review (Chapter 2).

3. Literature search. Clearinghouse staff conduct comprehensive literature searches to locate available and relevant research on the prioritized programs and services (Chapter 3).

4. Study eligibility screening and prioritization. Studies identified in the literature searches are screened against the study eligibility criteria. Studies determined to be eligible for review are considered against prioritization criteria to determine the order and depth of their review (Chapter 4).

5. Evidence review. All eligible studies are reviewed by trained reviewers using the Clearinghouse design and execution standards. Study authors may be queried to request information deemed necessary to assign a rating. One of three ratings is assigned to prioritized studies: High, moderate, or low support of causal evidence (Chapter 5).

6. Program and service ratings. Studies that are rated as high or moderate support of causal evidence are considered in assigning each program or service one of four ratings: Well-supported, supported, promising, or does not currently meet criteria (Chapter 6). These ratings also take into consideration any evidence of risk of harm.

Feedback is also invited on the operational procedures for reviewing programs and services (Chapter 7).

Responses to this FRN will inform ongoing discussion about potential updates and clarifications to existing standards and procedures. Consistent with the practice of other prominent federal evidence reviews, standards and procedures may be revised over time as research methods evolve, the needs of the field change, and lessons are learned during the review process. Potential revisions to the Clearinghouse's standards and procedures may affect which programs and services are eligible or prioritized for review, which studies of programs and services are eligible or prioritized for review, which studies of programs and services meet design and execution ratings, and program or service ratings. ACF especially welcomes comments on how the standards and procedures might be revised to better reflect the goals and requirements of the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/*) and the President's Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/*).

Through this FRN, ACF is soliciting information from a broad array of stakeholders. This FRN is one way to ensure that activities associated with the Title IV–E Prevention Services Clearinghouse are transparent and build from the existing knowledge of states, federal agencies, researchers, evaluators, program and service developers, key stakeholders and experts, and the general public. The public will have an opportunity to comment on specific revisions to the Clearinghouse's standards and procedures through a future FRN.

To facilitate the review of submissions, please identify the chapter, section, and/or page number of the Handbook of Standards and Procedures, Version 1.0 (*https://preventionservices.abtsites.com/review-process*) that your comments address.

This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

For more information about the Prevention Services Clearinghouse, visit: *https://preventionservices.abtsites.com.*

**Naomi Goldstein,**

*Deputy Assistant Secretary for Planning, Research, and Evaluation.*

[FR Doc. 2021–15065 Filed 7–14–21; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Intent To Award 54 Single-Source Supplements for Current Senior Medicare Patrol (SMP) State Grantees

**ACTION:** Announcing the intent to award 54 single-source supplements for current Senior Medicare Patrol (SMP) state grantees.

**SUMMARY:** The Administration for Community Living (ACL) announces the intent to award 54 administrative supplements in the form of cooperative agreements to existing SMP project grantees to support the expansion and enhancement of virtual capacity of the program. This effort will benefit the SMP programs in each state, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The purpose of existing grantees' work is to empower and assist Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education with an emphasis on reaching Medicare beneficiaries with limited income and those residing in rural areas. As a result of the COVID–19 pandemic and related travel and congregation limitations and public health concerns, it has been identified that focus on expansion of virtual capacity is crucial at this time. The administrative supplements for FY 2021 will be distributed at a flat rate of $18,000 to each of the existing 54 state grantees, bringing the total for the supplement awards to $972,000.

**FOR FURTHER INFORMATION CONTACT:** For further information or comments regarding this program supplement, contact Marissa Whitehouse, U.S. Department of Health and Human Services, Administration for Community Living, Center for Integrated Programs, Office of Healthcare Information and Counseling; telephone (202) 795–7425; email *Marissa.Whitehouse@acl.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Program Name:* Senior Medicare Patrol (SMP).

*Recipient:* 54 current SMP grantees.

| Current grantee | State | FY21 ACL recommended supplement amount |
|---|---|---|
| Alabama Dept of Senior Services | Alabama | $18,000 |
| Alaska Department of Health and Social Services | Alaska | 18,000 |
| Arizona Department of Economic Security | Arizona | 18,000 |
| Arkansas Department of Human Services | Arkansas | 18,000 |

| Current grantee | State | FY21 ACL recommended supplement amount |
|---|---|---|
| California Health Advocates | California | 18,000 |
| Colorado Division of Insurance | Colorado | 18,000 |
| The Department of Rehabilitation Services | Connecticut | 18,000 |
| Delaware Division of Social Services | Delaware | 18,000 |
| Legal Counsel For The Elderly | District of Columbia | 18,000 |
| Florida Department of Elder Affairs | Florida | 18,000 |
| Eqhealth Solutions, Inc | Georgia | 18,000 |
| Guam Department of Public Health & Social Services | Guam | 18,000 |
| Hawaii Department of Health | Hawaii | 18,000 |
| Idaho Commission on Aging | Idaho | 18,000 |
| AgeOptions, Inc | Illinois | 18,000 |
| IAAAA Education Institute, Inc | Indiana | 18,000 |
| Iowa Department of Commerce | Iowa | 18,000 |
| Kansas Department for Aging and Disability Services | Kansas | 18,000 |
| Louisville-Jefferson County Metro Government | Kentucky | 18,000 |
| Eqhealth Solutions, Inc | Louisiana | 18,000 |
| Maine Department of Health and Human Services | Maine | 18,000 |
| Aging, Maryland department of | Maryland | 18,000 |
| Elder Services Of The Merrimack Valley Inc | Massachusetts | 18,000 |
| MMAP Inc | Michigan | 18,000 |
| Minnesota Department of Human Services | Minnesota | 18,000 |
| Eqhealth Solutions, Inc | Mississippi | 18,000 |
| District III Area Agency on Aging | Missouri | 18,000 |
| Missoula Aging Services | Montana | 18,000 |
| Insurance, Nebraska Department of | Nebraska | 18,000 |
| State of Nevada Aging and Disability Services Division | Nevada | 18,000 |
| New Hampshire Dept of Health and Human Services | New Hampshire | 18,000 |
| Jewish Family & Vocational Service of Middlesex County, Inc | New Jersey | 18,000 |
| Aging & Long-Term Services Department, New Mexico | New Mexico | 18,000 |
| NY Statewide Senior Action Council, Inc | New York | 18,000 |
| North Carolina Department of Insurance | North Carolina | 18,000 |
| Minot State University | North Dakota | 18,000 |
| Pro Seniors Inc | Ohio | 18,000 |
| Oklahoma State Insurance Department | Oklahoma | 18,000 |
| DHS Office of Financial Services | Oregon | 18,000 |
| Center For Advocacy For The Rights And Interests Of The Elderly | Pennsylvania | 18,000 |
| Hispanic-American Institute, Inc | Puerto Rico | 18,000 |
| Rhode Island Dept of Elderly Affairs | Rhode Island | 18,000 |
| South Carolina Department on Aging | South Carolina | 18,000 |
| South Dakota Department of Human Services | South Dakota | 18,000 |
| Upper Cumberland Development District | Tennessee | 18,000 |
| Better Business Bureau Educational Foundation | Texas | 18,000 |
| Legal Services of Virgin Islands Inc | U.S. Virgin Islands | 18,000 |
| Human Services, Utah Department of | Utah | 18,000 |
| Community of Vermont Elders | Vermont | 18,000 |
| Virginia Association Of Area Agencies On Aging | Virginia | 18,000 |
| Washington State Insurance Commissioner | Washington | 18,000 |
| Senior Services West Virginia Bureau | West Virginia | 18,000 |
| Greater Wisconsin Agency on Aging Resources, Inc | Wisconsin | 18,000 |
| Wyoming Senior Citizens, Inc | Wyoming | 18,000 |

*Period of Performance:* The awards will be issued for the Fiscal Year 2021 project period of July 1, 2021 through May 31, 2022.

*Total Award Amount:* $972,000 total in FY 2021.

*Award Type:* Cooperative Agreement.

*Statutory Authority:* The statutory authority is contained in the HIPAA of 1996 (Pub. L. 104–191).

*Basis for Award:* Upon request for access to FY 2021 HCFAC Wedge funding, the Department granted approval for ACL's Office of Healthcare Information & Counseling to access $2 million in additional, one-time funding. This funding is intended to expand and enhance the virtual capacity of the existing SMP program and will be used in a number of ways to support virtual expansion and capabilities for current SMP grantees' efforts. As a result of the COVID–19 pandemic and related travel and congregation limitations and public health concerns, it has been identified that focus on expansion of virtual capacity is crucial at this time.

The current SMP grantees are funded to carry out the SMP project mission for the period of June 1, 2018 through May 31, 2023. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time consuming and disruptive to the SMP program, and the beneficiaries being served, for ACL to establish new grantees to focus on this intended virtual expansion of the program since the intent of this funding is to expand the current program and grantees' efforts. These administrative supplements will allow the SMP grantees to expand their current capacity to work virtually to empower Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and

abuse through outreach, counseling, and education in the virtual space.

There is one SMP state grantee project in each of the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. In 2019, the most up-to-date complete year of data, the 54 SMP projects had a total of 6,875 active team members who conducted a total of 28,146 group outreach and education events, reaching an estimated 1.6 million people. In addition, the projects had 320,590 individual interactions with, or on behalf of, a Medicare beneficiary. For 2019, the SMP projects reported $2.4 million in expected Medicare recoveries. This program has successfully operated since its inception 23 years ago.

The current grantees are closely monitored and are successfully meeting all programmatic goals under the current SMP state grants.

Dated: July 12, 2021.

**Alison Barkoff,**

*Acting Administrator and Assistant Secretary for Aging, Administration for Community Living.*

[FR Doc. 2021–15022 Filed 7–14–21; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Intent To Award One Single-Source Supplement for Current Senior Medicare Patrol National Resource Center (SMPNRC) Grantee

**ACTION:** Announcing the intent to award one single-source supplement for current Senior Medicare Patrol National Resource Center (SMPNRC) grantee.

**SUMMARY:** The Administration for Community Living (ACL) announces the intent to award one administrative supplement in the form of cooperative agreement to existing SMP National Resource Center (SMPNRC) grantee to support the expansion and enhancement of virtual capacity for the SMP program. This effort will benefit the SMPNRC, and the 54 SMP project grantees which are located in each state, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The purpose of the existing SMPNRC grantee's work is to support SMP projects nationally in empowering and assisting Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education. As a result of the COVID–19 pandemic and related travel and congregation limitations and public health concerns, it has been identified that focus on expansion of virtual capacity is crucial at this time. The administrative supplement to the SMNPRC for FY 2021 will be distributed according to identified need and will total $405,312.

**FOR FURTHER INFORMATION CONTACT:** For further information or comments regarding this program supplement, contact Marissa Whitehouse, U.S. Department of Health and Human Services, Administration for Community Living, Center for Integrated Programs, Office of Healthcare Information and Counseling; telephone (202) 795–7425; email *Marissa.Whitehouse@acl.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Program Name:* Senior Medicare Patrol National Resource Center.

*Recipient:* One current grantee.

| Current grantee | FY21 ACL recommended supplement amount |
|---|---|
| Northeast Iowa Area Agency on Aging | $405,312.00 |

*Period of Performance:* The award will be issued for the Fiscal Year 2021 project period of September 1, 2021 through August 31, 2022.

*Total Award Amount:* $405,312 total in FY 2021.

*Award Type:* Cooperative Agreement.

*Statutory Authority:* The statutory authority is contained in the HIPAA of 1996 (Pub. L. 104–191).

*Basis for Award:* Upon request for access to FY 2021 HCFAC Wedge funding, the Department granted approval for ACL's Office of Healthcare Information & Counseling to access $2 million in additional, one-time funding. This funding is intended to expand and enhance the virtual capacity of the existing SMP program and will be used in a number of ways to support the virtual expansion and capabilities of the SMP program efforts nationally. As a result of the COVID–19 pandemic and related travel and congregation limitations and public health concerns, it has been identified that focus on expansion of virtual capacity is crucial at this time.

The current SMPNRC is funded to support the SMP project mission for the period of September 1, 2020 through August 31, 2025. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time consuming and disruptive to the SMP program, and the beneficiaries being served, for ACL to establish a new grantee to focus on this intended virtual expansion of the program since the intent of this funding is to expand the current program's efforts. This administrative supplement will allow the SMPNRC grantee to expand their current capacity to work virtually at the national level to empower Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education. The existing SMPNRC is uniquely placed to continue and expand this work. Efforts supported through this funding will include development of marketing and outreach materials, targeted SMP project grantee resources, and continued progress toward a new public-facing program-specific phone application.

The SMPNRC was created in 2003 to provide training, support, and technical assistance to SMP projects nationwide. The goal of this Center is to provide professional expertise, training, and technical support to maximize the effectiveness of the SMP projects in Medicare fraud prevention outreach and education. The SMPNRC ensures a fully consolidated, national approach to reaching Medicare beneficiaries with the SMP message and forges national visibility for the program. The SMPNRC provides technical assistance through online training (webinars), workshops, and the SMP networking opportunities. The current grantee is closely monitored and is successfully meeting all programmatic goals under the existing grant.

The current grantee is closely monitored and is successfully meeting all programmatic goals under the current SMPNRC grant.

Dated: July 12, 2021.

**Alison Barkoff,**

*Acting Administrator and Assistant Secretary for Aging, Administration for Community Living.*

[FR Doc. 2021–15023 Filed 7–14–21; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; State Developmental Disabilities Council—Annual Program Performance Report (PPR) (OMB Control Number 0985–0033)

**AGENCY:** Administration for Community Living, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the information collection requirements for the current PPR data collection necessary to determine grantee compliance with Part B of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act).

**DATES:** Submit written comments on the collection of information by August 30, 2021.

**ADDRESSES:** Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

**FOR FURTHER INFORMATION CONTACT:** Sara Newell-Perez at (202) 795–7413 or *Sara.Newell-Perez@acl.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Administration for Community Living (ACL) is requesting approval to collect data for the State Councils on Developmental Disabilities (State Councils) Annual Program Performance Report (PPR). On an annual basis, each Council must submit a PPR to describe the extent of annual progress achievement on the 5-year State plan goals. The PPR: (1) The Council as a planning document to track progress made in meeting state plan goals; (2) the citizenry of the State as a mechanism for monitoring progress and activities on the plans of the Council; and (3) the Department as a stewardship tool for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act and for monitoring and providing technical assistance (*e.g.,* during site visits), and support for management decision making.

**Comments in Response to the 60-Day Federal Register Notice**

A notice published in the **Federal Register** on April 1, 2021 in 86 FR 17152. There was one public comment received during the 60-day FRN.

Public comment indicated the performance measures are useful in addressing impact and the burden hour for template completion was a reasonable estimate. The respondent did indicate the need to streamline some of the narrative reporting for ease of use. ACL will explore this through additional grantee guidance and development of a web-based reporting platform with user-friendly features, such as data cloning and other such efficient features.

**Estimated Program Burden**

ACL estimates the burden associated with this collection of information as follows: The total estimated hour burden per respondent for the proposed DD Council PPR is 172 burden hours per response. The number of hours to complete the PPR multiplied by 56 State Council programs, results in a total estimated annual burden of 9,632. The burden is reflective of performance measures introduced in the FFY 2017–2021 state plan cycle. These measures hone in on individual and family advocacy, as well as systems change advocacy. One example of these measures is a reporting of the number of promising and/or best practices improved based on results of systems change activities. The PPR is an opportunity for Councils to report on the actual data and outcomes that resulted from carrying out the new State Plan activities. This extension was previously pilot tested by a Performance Measures Workgroup consisting of nine (9) State Council representatives. This workgroup deemed the PPR necessary to accurately capture and report on the progress of the State Councils. A separate workgroup consisting of nine (9) different State Council representatives further discussed data collection methodologies as it relates to the proposed PPR template. This PPR offers a comprehensive categorization and approach to collecting data necessary to report to Congress and other interested entities.

| Respondent/data collection activity | Number of respondents | Responses per respondent | Hours per response | Annual burden hours |
|---|---|---|---|---|
| State Councils on Developmental Disabilities Annual Program Performance Report (PPR) | 56 | 1 | 172 | 9,632 |
| Total | 56 | 1 | 172 | 9,632 |

Dated: July 12, 2021.

**Alison Barkoff,**

*Acting Administrator and Assistant Secretary for Aging.*

[FR Doc. 2021–15025 Filed 7–14–21; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the

treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; JUN2021 Cycle 38 NExT SEP Committee Meeting.

*Date:* August 4, 2021.

*Time:* 9:00 a.m. to 3:00 p.m.

*Agenda:* To evaluate the NCI Experimental Therapeutics Program Portfolio.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20892 (WebEx Meeting).

*Contact Persons:* Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, MD 20850, (240) 276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 12, 2021.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–15073 Filed 7–14–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2020–0187]**

### Proposed Distribution of Scheduled Navigation Safety Messages (Broadcast Notice to Mariners) by Mobile and Internet Methods

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** In 2020, the Coast Guard began making broadcast notices to mariners containing locally relevant information accessible by mobile devices and the internet. Previously, the only way to obtain this information in a timely fashion was to tune in to local Coast Guard broadcasts that take place on very high frequency (VHF) marine radio two or more times per day. The new methods of information delivery have included Rich Site Summary, also known as Really Simple Syndication (RSS) feeds, email, and other means such as map-based filtering. The Coast Guard has received public feedback indicating that mariners prefer the real-time accessibility of mobile and internet access to this information over scheduled VHF broadcasts, because access is more timely, reliable, convenient, and customizable. Also, some mariners have reported that VHF broadcast notice to mariners are bothersome, because they are perceived as unnecessary radio clutter that can be distracting when maneuvering along a dock, in ports or other areas of congested traffic. The Coast Guard is considering phasing out the process of distributing this information by routine VHF radio broadcasts, and is seeking public comment.

**DATES:** Comments must be submitted to the online docket via *https://www.regulations.gov* on or before August 16, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0187 using the Federal e-Rulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the supplementary information section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, please call or email Eugene Diotalevi, Coast Guard Navigation Center; telephone: 703–313–5800; email: *Eugene.j.diotalevi@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

We encourage you to submit comments (or related material) on the Coast Guard's proposal to distribute and make available BNM information through mobile and web-based methods. We will consider all submissions received before the comment period closes. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using the portal, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### Abbreviations

BNM Broadcast Notice to Mariners
VHF Very High Frequency
RSS Rich Site Summary or Really Simple Syndication

#### Discussion

In a previous notice (85 FR 32408, May 29, 2020), the Coast Guard provided an overview of the existing practice of distributing broadcast notices to mariners through routing broadcasts on VHF marine radio, and described new methods of digital access to this information that was being made available through web and mobile means. The Coast Guard received two comments on the May 29, 2020 this notice; both viewed the Coast Guard's initiative favorably. One comment, from a recognized maritime industry association, expressed support for the Coast Guard's plans to expand options for access to this information, indicating, ''its enactment will have a positive impact on reaching a greater number of mariners, expanded convenience, and improved timeliness of distribution.''

Since publication of the May 29, 2020 notice, the Coast Guard has expanded the improved access beyond the Fifth Coast Guard District, where the system was being tested. The Coast Guard has also been actively soliciting feedback about the program through meetings

with maritime industry groups and local harbor safety committees and through public surveys. Information gathered indicates that the maritime public finds the new mobile and web access valuable and worthwhile. Mariners also told the Coast Guard that they did not find the existing routine VHF broadcasts to be very valuable; rather, the broadcasts, which are typically announced on VHF channel 16 and then switched to channel 22, were frequently noted as bothersome, because they tended to crowd out more valuable marine radio traffic on both VHF channels, creating ''radio clutter.''

The Coast Guard is now considering phasing out routine VHF broadcasts in locations where digital mobile and web access is made available, and is seeking public comment. Before broadcasts in any particular location are phased out, mariners can anticipate that the Coast Guard will thoroughly announce and remind mariners about how to access the information by the new web and mobile methods. Only routine broadcasts are being considered for phase out; the Coast Guard will continue to choose to broadcast urgent and safety broadcasts on VHF as necessary.

This notice is issued under the authority of 14 U.S.C. 504(a)(16) and 5 U.S.C. 552(a).

Dated: July 6, 2021.

**Michael D. Emerson,**

*Director, Marine Transportation Systems.*

[FR Doc. 2021–15059 Filed 7–14–21; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2020–0278]**

### Port Access Route Study: Northern New York Bight

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability of draft report and public meeting; request for comments.

**SUMMARY:** From June 29, 2020, through June 28, 2021, the Coast Guard conducted the Northern New York Bight Port Access Route Study (NNYBPARS) and is now requesting your comments on a draft version of the study report. The goal of the study is to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to New York and New Jersey and international and domestic transit areas in the First District area of responsibility. To accomplish this goal, the Coast Guard has undertaken measures to determine whether existing or additional routing measures are necessary to improve navigation safety due to factors such as planned or potential offshore development, current port capabilities and planned improvements, increased vessel traffic, existing and potential anchorage areas, changing vessel traffic patterns, effects of weather, or navigational difficulty. We seek your comments on the content and development of the report.

**DATES:** Your comments and related material must reach the Coast Guard on or before August 30, 2021.

Although the Coast Guard prefers and highly encourages all comments and related material be submitted directly to the electronic docket, a public meeting will be held via webinar and teleconference to provide an opportunity for oral comments about the NNYBPARS draft report on Friday, July 30, 2020, beginning at 9 a.m. EST.

Additional public meetings dates may be added. Information as to the date, time, and location of these in person public meetings will be posted at *https://www.navcen.uscg.gov/?pageName=PARS* by July 23, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0278 using the Federal portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A virtual public meeting on Friday, July 30, 2020, beginning at 9 a.m. EST, will be held via webinar and teleconference.

Access information for this virtual public meeting will be posted at *https://www.navcen.uscg.gov/?pageName=PARS* by July 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

ACPARS Atlantic Coast Port Access Route Study
AIS Automatic Identification System
COMDTINST Commandant Instruction
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
IMO International Maritime Organization
MTS Marine Transportation System
NAD83 North American Datum of 1983
NNYB Northern New York Bight
PARS Port Access Route Study
PWSA Ports and Waterways Safety Act
TSS Traffic Separation Scheme
USCG United States Coast Guard

## II. Background and Purpose

The Ports and Waterways Safety Act (46 U.S.C. 70003(c)) requires the Coast Guard to conduct a Port Access Route Study (PARS), *i.e.,* a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard coordinates with Federal, State, local, tribal and foreign state agencies (as appropriate) to consider the views of maritime community representatives, environmental groups, and other interested stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as construction and operation of renewable energy facilities and other uses of the Atlantic Ocean in the study area.

In 2019, the Coast Guard announced a new study of routes used by ships to access ports on the Atlantic Coast of the United States in the **Federal Register** (84 FR 9541; March 15, 2019). This new study supplements and builds upon the ACPARS by conducting a series of PARS to examine ports along the Atlantic Coast that are economically significant or support military or critical national defense operations and related international entry and departure transit areas that are integral to the safe and efficient and unimpeded flow of commerce to/from major international shipping lanes. The NNYBPARS is one of several studies being conducted.

On June 29, 2020, the First Coast Guard District published a notice of study and public meetings; request for comments entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (85 FR 38907) to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to New York and New Jersey and international and domestic transit areas in the First District area of responsibility.

The public was afforded a 60-day comment period, and two virtual public meetings were held via teleconference and webinar to receive public input. The Coast Guard received 25 comments to this document in response to our **Federal Register** Notice, public meetings and other outreach efforts. All comments and supporting documents to this document are available in a public

docket and can be viewed at *http://www.regulations.gov.*

On April 12, 2021, we published a supplemental notice of study; request for comments entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (86 FR 18996) seeking additional information.

The public was afforded a 30-day comment period. The Coast Guard received five comments to this document in response to our **Federal Register** Notice, and other outreach efforts. All comments and supporting documents to this document are available in a public docket and can be viewed at *http://www.regulations.gov.*

During both comment periods a total of 30 comments were submitted by representatives of the maritime community, wind energy developers, non-governmental organizations, Federal and State governmental agencies, and private citizens.

Of the thirty comments, fourteen requested additional routing measures be established, twelve expressed concerns that wind farm installations will negatively affect vessel's marine radar performance, eight requested setback/buffer zones, six requested anchorages be designated, six requested additional meetings, three requested alteration of existing routing measures, and three requested expanding Vessel Traffic Services.

A synopsis of the comments and copies of the Coast Guard's Public outreach can be found in the report. The Coast Guard is opening this third and final NNYBPARS comment period to facilitate transparent public discussions on the information above as well as the draft report findings to date.

## III. Information Requested

Do you agree or disagree with the draft report's recommendations, propose actions, or continued actions, and if so, why?

## V. Public Participation and Request for Comments

We encourage you to comment on the content and development of the report through the Federal eRulemaking Portal at *https://www.regulations.gov.*

*A. Viewing the draft version of the report:* To view the draft version of the NNYBPARS report in the docket, go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then scroll down looking of the document entitled ''DRAFT REPORT Northern New York Bight PARS June 29, 2021'' under the document type ''Supporting & Related Material.''

B. *Submitting Comments:* To submit your comment online, go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then click ''Comment.'' The ''Comment'' button can be found on the following pages:

- Docket Details page when a document within the docket is open for comment,
- Document Details page when the document is open for comment, and
- Document Search Tab with all search results open for comment displaying a ''Comment'' button.

Clicking ''Comment'' on any of the above pages will display the comment form. You can enter your comment on the form, attach files (maximum of 20 files up to 10MB each), and choose whether to identify yourself as an individual, an organization, or anonymously. Be sure to complete all required fields depending on which identity you have chosen. Once you have completed all required fields and chosen an identity, the ''Submit Comment'' button is enabled. Upon completion, you will receive a Comment Tracking Number for your comment. For additional step by step instructions, please see the Frequently Asked Questions page on *http://www.regulations.gov* or by clicking *https://www.regulations.gov/faq.*

We accept anonymous comments. Comments we post to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We review all comments and materials received during the comment period, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*C. How do I find and browse for posted comments on Regulations.gov.* On the previous version of *Regulations.gov*, users browse for comments on the Docket Details page. However, since comments are made on individual documents, not dockets, new *Regulations.gov* organizes comments under their corresponding document. To access comments and documents submitted to this draft version of the study report go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then scroll down to and click on the ''notice'' entitled ''Port Access Route Study: Notice of availability of draft report and public information session; request for comments.'' This will open to the ''Document Details'' page. Then click on the ''Browse Comments'' tab. On the comment tab, you can search and filter comments. *Note:* If no comments have been posted to a document, the ''Comments'' tab will not appear on the Document Details page.

D. *If you need additional help navigating the new Regulations.gov.* For additional step by step instructions to submit a comment or to view submitted comments or other documents please see the Frequently Asked Questions (FAQs) at *http://www.regulations.gov/faqs* or call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*E. Privacy Act:* Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act, system of records notice regarding DHS's eRulemaking in the March 11, 2020, issue of the **Federal Register** (85 FR 14226).

## VI. Future Actions

Any comments received will be reviewed and considered before a final version of the NNYBPARS is announced in the **Federal Register**.

This notice is published under the authority of 46 U.S.C. 70004 and 5 U.S.C. 552(a).

Dated: June 28, 2021.

**T.G. Allan Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2021–14757 Filed 7–13–21; 4:15 pm]

**BILLING CODE P**

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7037–N–03]**

## 60-Day Notice of Proposed Information Collection: Comment Request; Implementation of the Housing for Older Persons Act of 1995 (HOPA), OMB Control No: 2529–0046

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed reinstatement, without change, of an expired, previously approved information collection requirement established under the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget

(OMB) for review, as required by the Paperwork Reduction Act of 1995. HUD is soliciting public comments on the subject proposal.

**DATES:** *Comment Due Date:* September 13, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Erik A. Heins, Director, Enforcement Support Division, Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street SW; Room 5214, Washington, DC 20410–2000; telephone (202) 402–5887 (this is not a toll-free number); or email at *Erik.A.Heins@hud.gov.* Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1–(800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Erik A. Heins, Director, Enforcement Support Division, Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 5214, Washington, DC 20410–2000; telephone (202) 402–5887 (this is not a toll-free number); or email at *Erik.A.Heins@hud.gov.* Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at: 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD is submitting this proposed reinstatement, without change, of an expired, previously approved information collection requirement to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35, as amended].

## A. Overview of Information Collection

*Title of Information Collection:* Implementation of the Housing for Older Persons Act of 1995 (HOPA).

*OMB Control Number:* 2529–0046.

*Type of Request:* Proposed reinstatement without change of an expired, previously approved information collection requirement.

*Description of the need for the information and proposed use:* The Fair Housing Act [42 U.S.C. 3601 *et seq.*], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''*housing for older persons*'' from liability for familial status discrimination: (1) Housing provided under any State or Federal program which the Secretary of HUD determines is ''*specifically designed and operated to assist elderly persons (as defined in the State or Federal program*)''; (2) housing ''*intended for, and solely occupied by persons 62 years of age or older*''*;* and (3) housing ''*intended and operated for occupancy by at least one person 55 years of age or older per unit* ['55 or older' housing].'' In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Pub. L. 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.*'' In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *At least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age of older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''*rules issued by the Secretary for verification of occupancy, which shall . . . . provide for* [age] *verification by reliable surveys and affidavits.*''

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will consider when determining, during a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date on which the alleged Fair Housing Act violation occurred.

The HOPA information collection requirements are necessary to establish a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental, or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's ''*80 percent occupancy*'' requirement and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units that are actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information would be protected from disclosure unless the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD under the Fair Housing Act. HUD's Office of Fair Housing and Equal Opportunity will only require a housing provider to disclose such confidential information to HUD if and when HUD investigates a jurisdictional familial status discrimination complaint filed against the housing provider under the Fair Housing Act, and if and when the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

*Agency form number(s), if applicable:* None.

*Members of affected public:* The HOPA requires that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or older must routinely collect and update reliable age verification information necessary to meet the eligibility criteria for the HOPA exemption. The record keeping

requirements are the responsibility of the housing provider that seeks to qualify for the HOPA exemption.

*Estimation of the total numbers of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:* Housing providers claiming eligibility for the HOPA's ''55 or older'' housing exemption must demonstrate ongoing compliance with the HOPA exemption requirements. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event, and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours [See Table below].

| Type of collection activity | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| One: Collect reliable age verification records for at least one occupant per dwelling unit to meet the HOPA's minimum ''80% occupancy'' requirement | 1,000 | 1 | 1,000 | 1 | 1,000 | $18.18 | $18.18 |
| Two: Publication of & adherence to policies & procedures that demonstrate intent to operate ''55 or older'' housing | 1,000 | 1 | 1,000 | 2 | 2,00 | 18.18 | 36,360 |
| Three: Periodic updates of age verification records | 1,000 | 1 | 1,000 | 2.50 | 2,500 | 18.18 | 45,450 |
| Total Burden Hours & Costs | | | 3,000 | | 5,500 | | 99,990 |

## B. Solicitation of Public Comments

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection in order to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of HUD's program functions; (2) Evaluate the accuracy of HUD's assessment of the paperwork burden that may result from the proposed information collection; (3) Enhance the quality, utility, and clarity of the information which must be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

**Erik Heins,**

*Director, Enforcement Support Division.*

[FR Doc. 2021–14976 Filed 7–14–21; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–32259; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before July 3, 2021, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by July 30, 2021.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State.>'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 3, 2021. Pursuant to Section 60.13 of 36

CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

**COLORADO**

**Pitkin County**

Soldner Home and Studio, 0501 Stage Rd., Aspen vicinity, SG100006799

**NEBRASKA**

**Douglas County**

Union State Bank Building, 1904 Farnam St., Omaha, SG100006794

**Grant County**

Abbott Ranch Headquarters, 83857 North NE 61, Hyannis, SG100006795

**Washington County**

Dana College Campus, 2848 College Dr., Blair, SG100006792

**PENNSYLVANIA**

**Philadelphia County**

Leader Theater, 4102–4104 Lancaster Ave., Philadelphia, SG100006793

**TEXAS**

**Travis County**

Travis Heights-Fairview Park Historic District, Roughly bounded by Edgecliff Terr., South Congress Ave., East Live Oak St., and Kenwood Ave., Austin, SG100006796

**WASHINGTON**

**King County**

Untitled Earthwork-Johnson Pit #30, 21610 37th Place South, SeaTac, SG100006801

**Snohomish County**

Longfellow Elementary School, 3715 Oakes Ave., Everett, SG100006802

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

**MARYLAND**

**Montgomery County**

NIST Historic District, 100 Bureau Dr., Gaithersburg, SG100006800

**Authority:** Section 60.13 of 36 CFR part 60.

Dated: July 7, 2021.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2021–15044 Filed 7–14–21; 8:45 am]

BILLING CODE 4312–52–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–531–532 and 731–TA–1270–1273 (Review)]**

## Polyethylene Terephthalate (PET) Resin From Canada, China, India, and Oman; Notice of Commission Determination To Conduct Full Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty orders on polyethylene terephthalate (''PET'') resin from China and India and the antidumping duty orders on PET resin from Canada, China, India, and Oman would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

**DATES:** July 7, 2021.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**SUPPLEMENTARY INFORMATION:** On July 7, 2021, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party group response to its notice of institution and the respondent interested party group response from Oman (86 FR 17197, April 1, 2021) were adequate and that the respondent interested party group responses from Canada, China, and India were inadequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–15088 Filed 7–14–21; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1204]**

## Notice of Request for Submissions on the Public Interest; Certain Chemical Mechanical Planarization Slurries and Components Thereof

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on July 8, 2021, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

**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 may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.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 soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain chemical mechanical planarization (''CMP'') slurries and components thereof, including colloidal silica imported, sold for importation, and/or sold after importation by respondents DuPont de Nemours, Inc. of Wilmington, Delaware; Rohm and Haas Electronic Materials CMP, LLC of Newark, Delaware; Rohm and Haas Electronic Materials CMP Asia Inc. (d/b/a Rohm and Haas Electronic Materials CMP Asia Inc., Taiwan Branch (U.S.A.)) of Taoyuan City, Taiwan; Rohm and Haas Electronic Materials Asia-Pacific Co., Ltd. of Miaoli, Taiwan; Rohm and Haas Electronic Materials K.K. of Tokyo, Japan; and Rohm and Haas Electronic Materials LLC of Marlborough, Massachusetts (collectively, ''Respondents''); and cease and desist orders directed to Respondents. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. 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 ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on July 8, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 remedial 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 orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 9, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1204'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.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. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection 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 in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 12, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–15087 Filed 7–14–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same, DN 3559;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, 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 Document Information System (EDIS) at *https://edis.usitc.gov.*

For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Copan Italia S.P.A. and Copan Industries, Inc. on July 9, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flocked swabs, products containing flocked swabs, and methods of using same. The complainant names as respondents: Han Chang Medic of South Korea; Wuxi NEST Biotechnology Co. Ltd. of China; NEST Scientific Inc. of Rahway, NJ; NEST Scientific USA of Rahway, NJ; Miraclean Technology Co., Ltd. of China; Huanchenyang (Shenzhen) Technology Co., Ltd. of China; HCY USA, LLC of Houston, TX; Vectornate Korea Ltd. of South Korea; Vectornate USA, Inc. of Mahwah, NJ; Innovative Product Brands, Inc. of Highland, CA; Thomas Scientific, Inc. of Swedesboro, NJ; Thomas Scientific, LLC of Swedesboro, NJ; Stellar Scientific, LLC of Owings Mills, MD; Cardinal Health, Inc. of Dublin, OH; Ksl Biomedical, Inc. of Williamsville, NY; Ksl Diagnostics, Inc. of Williamsville, NY; Jiangsu Changfeng Medical Industry Co., Ltd. of China; No Borders Dental Resources, Inc., d/b/a MediDent Supplies of Queeen Creek, AZ; BioTeke Corporation (Wuxi) Co., Ltd. of China; Fosun Pharma USA Inc. of Princeton, NJ; Hunan Runmei Gene Technology Co., Ltd. of China; VWR International, LLC of Radnor, PA; Shenzhen Cleanmo Technology Co., Ltd. of China; Cleanmo International (HK) Co., Limited of Hong Kong; Slmp, LLC d/b/a StatLab Medical Products of McKinney, TX; and Avrio Genetics LLC d/b/a Bio Testing Supplies of Allentown, PA. The complainant requests that the Commission issue a general exclusion order or in the alternative, a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant 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 requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial 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 requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments. Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3559'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

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. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

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 §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: July 9, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–15006 Filed 7–14–21; 8:45 am]

**BILLING CODE 7020–02–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–003, 50–247, 50–286, and 72–051; NRC–2021–0125]**

## Holtec Decommissioning International, LLC; Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3; Post-Shutdown Decommissioning Activities Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Public meeting and request for comment.

**SUMMARY:** On June 24, 2021, the U.S. Nuclear Regulatory Commission (NRC) noticed receipt of, and solicited public comments on, the post-shutdown decommissioning activities report (PSDAR) for the Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3 (Indian Point Energy Center (IPEC)), submitted by Holtec Decommissioning International, LLC (HDI). The PSDAR, which includes the site-specific decommissioning cost estimate (DCE), provides an overview of HDI's planned activities, schedule, projected costs, and environmental impacts for the decommissioning of the IPEC. The NRC will hold a public meeting to discuss the PSDAR and DCE and to receive comments.

**DATES:** The public meeting will be held on Thursday, July 29, 2021, from 6:00 p.m. until 9:00 p.m. (ET), at the Sleepy Hollow Hotel and Conference Center (previously the DoubleTree Hotel), located at 455 South Broadway, in Tarrytown, NY. Submit comments by October 22, 2021. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0125. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1030; email: *Richard.Guzman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2021–0125 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0125.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The IPEC PSDAR is available in ADAMS under Accession No. ML19354A698.
- Attention: The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0125 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Discussion

HDI has the authority to conduct licensed activities under Provisional License No. DPR–5, Renewed Facility License No. DPR–26, and Renewed Facility License No. DPR–64 for the IPEC, and the general license for the IPEC independent spent fuel storage installation (ISFSI). These licenses provide, among other things, that the respective facilities are subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facilities consist of three pressurized-water reactors located in Buchanan, New York, in Westchester County, all of which are permanently shutdown, and the ISFSI.

On December 19, 2019, HDI submitted to the NRC the PSDAR for the IPEC, contingent upon the transfer of the IPEC licenses to HDI (ADAMS Accession No. ML19354A698). Paragraph 50.82(a)(4)(i) of title 10 of the *Code of Federal Regulations* (10 CFR) states that a PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific DCE, including the projected cost of managing irradiated fuel. The IPEC license transfer transaction closed on May 28, 2021. Accordingly, pursuant to 10 CFR 50.82(a)(4)(ii), the NRC noticed receipt of the PSDAR, including the DCE, for IPEC and made it available for public comment on June 24, 2021 (86 FR 33383).

### III. Request for Comment and Public Meeting

The NRC will hold a public meeting to discuss the PSDAR and receive comments on Thursday, July 29, 2021, from 6:00 p.m. until 9:00 p.m. (ET), at the Sleepy Hollow Hotel and Conference Center (previously the DoubleTree Hotel), located at 455 South Broadway, in Tarrytown, NY. The NRC requests that comments that are not provided during the meeting be submitted in writing, as noted in section I, ''Obtaining Information and Submitting Comments,'' of this document, by October 22, 2021.

Dated: July 12, 2021.

For the Nuclear Regulatory Commission.

**James G. Danna,**

*Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021–15068 Filed 7–14–21; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2021–110 and CP2021–112]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* July 19, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2021–110 and CP2021–112; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 198 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 9, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 19, 2021.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2021–15074 Filed 7–14–21; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92365; File No. SR–PEARL–2021–33]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend the fees for the Exchange's MIAX Express Network Full Service (''MEO'')[3] Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

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 amend the Fee Schedule to increase the fees for its Full Service MEO Ports (the ''Proposed Access Fees''), which allow Members [4] to submit electronic orders in all products to the Exchange. The Exchange currently offers different options of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[5] a Full Service MEO Port-Single,[6] and a Limited Service MEO Port.[7] A Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine [8] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees per Matching Engine based on the table above. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) Two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[9] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described below. For illustrative purposes and as described in more detail below, the Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Purge Port fees in 2018.[10] The Exchange now proposes to increase the Full Service MEO Port fees as described below, with the highest Tier fee for a Full Service MEO Port—Bulkof $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates [11] on the Exchange across all origin types, not including Excluded Contracts [12], as compared to the Total Consolidated Volume (''TCV''),[13] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees on Members in each month the market participant is credentialed to use a Port in the production environment.

*Current Full Service MEO Port—Bulk Fees.* Currently, the Exchange assesses Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[6] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[7] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[8] ''Matching Engine'' is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[9] *See* Cboe Exchange, Inc. Fee Schedule, Logical Connectivity Fees ($750 per port per month for the first 5 BOE/FIX Logical Ports and $800 per port per month for each port over 5; $1,500 per port per month for the first 5 BOE Bulk Logical Ports, $2,500 per port per month for ports 6–30, and $3,000 per port per month for each port over 30); Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Logical Ports ($750 per port per month), Ports with Bulk Quoting Capabilities ($1,500 per port per month for the first and second ports, $2,500 per port per month for three or more); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Logical Ports ($500 per port per month), Ports with Bulk Quoting Capabilities ($600 per port per month). *See also* Nasdaq Stock Market LLC, Options 7, Pricing Schedule, Section 3 ($1,500 per port per month for the first 5 SQF ports; $1,000 per port per month for SQF ports 15–20; and $500 per port per month for all SQF ports over 21).

[10] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[11] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[12] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[13] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

*Proposed Full Service MEO Port—Bulk Fees.* The Exchange now proposes to assess Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

*Current Full Service MEO Port—Single Fees.* Currently, the Exchange assesses Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

*Proposed Full Service MEO Port—Single Fees.* The Exchange now proposes to assess Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers [14] or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that has to be assessed. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange now proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were first adopted in 2018 [15] and are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge fees for their high throughput, low latency MEI Ports in a similar fashion as the Exchange charges for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[16] This concept is not new or novel. The Exchange also notes that the proposed increased Full Service MEO Port fees are in line with, or cheaper than, the similar port fees or similar membership fees charged by other options exchanges.[17]

The Exchange has historically undercharged for Full Service MEO Ports as compared to other options exchanges [18] because the Exchange provides Full Service MEO Ports as a package for a single monthly fee. As described above, this package includes two Full Service MEO Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The proposed monthly fee increases for Full Service MEO Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Full Service MEO Ports.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems the Full Service MEO Port fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its

[14] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[15] *See supra* note 10.

[16] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[17] *See supra* note 9.

[18] *See id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing the Full Service MEO Ports, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the first two quarters of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

The Exchange notes that this is the same process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed by the Commission when MIAX Emerald adopted its own MEI Port fees.[21]

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[22] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[23] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX and MIAX Emerald, to establish or increase other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

* * * * *

As of June 30, 2021, the Exchange had only a 5.31% market share of the U.S. equity options industry for the month of June 2021.[24] The Exchange is not aware of any evidence that a market share of approximately 5–6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange's affiliate, MIAX Emerald, noted in a recent filing that once MIAX Emerald issued a notice that it was instituting MEI Port fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[25] Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market

[21] *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees, Increase Certain Network Connectivity Fees, and Increase the Number of Additional Limited Service MIAX Emerald Express Interface Ports Available to Market Makers) (adopting tiered MEI Port fee structure ranging from $5,000 to $20,500 per month).

[22] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[23] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[24] *See* ''The market at a glance'', *available at www.miaxoptions.com* (last visited June 30, 2021).

[25] *See supra* note 21.

participants can choose to drop their access to such exchange.

The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021 [26], the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $897,084. The $897,084 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[27] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[28] The $897,084 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $40,166. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI'') [29], which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. Further, the

[26] The Exchange has not yet finalized its 2021 year end results.

[27] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[28] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

[29] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 1.80% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 0.90% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 0.90% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 0.90% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $856,918. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $783,513, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network

features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 8.55% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $64,456, which is only a portion of the $2,864,716 [30] total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 2.25% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $8,949, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 1.80% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately $1,476,000 per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the access services associated with the Proposed Access Fees would be approximately $897,084 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 39% profit margin on the Proposed Access Fees ($1,476,000 in revenue minus $897,084 in expense = $578,916 profit per annum). The Exchange notes that the fees charged to each Member for

[30] The Exchange notes that the total depreciation expense is different from the total for the Exchange's recent Trading Permit filing (SR–PEARL–2021–32) because the Exchange factors in the depreciation of its own internally developed software when assessing costs for Full Service MEO Ports, resulting in a higher depreciation expense number in this filing.

Full Service MEO Ports can vary from month to month depending on the type used and the Non-Transaction Fees Volume-Based Tier that the Member achieves for that month. As such, the revenue projection is not a static number, with monthly Full Service MEO Port fees likely to fluctuate month to month.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market and the Exchange's affiliate exchanges, MIAX and MIAX Emerald, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX Pearl Equites, MIAX or MIAX Emerald.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Exchange believes the proposed changes are reasonable, equitably allocated and not unfairly discriminatory, and do not result in a ''supra-competitive'' [31] profit. Of note, the Guidance defines ''supra-competitive profit'' as profits that exceed the profits that can be obtained in a competitive market.[32] With the proposed changes, the Exchange anticipates it will have a profit margin of 39% for its Full Service MEO Ports. Based on the 2019 Audited Financial Statements of the competing options exchanges (since the 2020 Audited Financial Statements will likely not become publicly available until early July 2021, after the Exchange has submitted this filing), the Exchange's profit margin is well below the operating profit margins of other competing exchanges. For example, Nasdaq ISE, LLC's (''ISE'') operating profit margin, for all of 2019, was 83%. Nasdaq PHLX LLC's (''PHLX'') operating profit margin, for all of 2019, was 67%.

The Exchange further believes its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[33] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Purge Port fees in 2018.[34] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port—Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports—Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Guidance provides that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee. As described below, the Exchange believes substitute products and services are available to market participants, including, among other things, other options exchanges that market participants may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller and/or trading of any options products, including proprietary products, in the Over-the-Counter (''OTC'') markets.

There is also no regulatory requirement that any market participant connect to any one options exchange, that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a Sponsored User.[35] Indeed, the Exchange

[31] *See supra* note 23.

[32] *See id.*

[33] *See supra* note 9.

[34] *See supra* note 10.

[35] *See* Exchange Rule 210. The Sponsored User is subject to the fees, if any, of the Sponsoring Member. The Exchange notes that the Sponsoring

is unaware of any one options exchange whose membership includes every registered broker-dealer. Based on a recent analysis conducted by the Cboe Exchange, Inc. (''Cboe''), as of October 21, 2020, only three (3) of the broker-dealers, out of approximately 250 broker-dealers, were members of at least one exchange that lists options for trading and were members of all 16 options exchanges.[36] Additionally, the Cboe Fee Filing found that several broker-dealers were members of only a single exchange that lists options for trading and that the number of members at each exchange that trades options varies greatly.[37]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Pearl have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Pearl. There are a number of large users of the MEO Interface and broker-dealers that are members of other options exchange but not Members of MIAX Pearl. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of June 30, 2021, the Exchange had only a 5.31% market share of the U.S. equity options industry for the month of June 2021.[38] The Exchange is not aware of any evidence that a market share of approximately 5–6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[39] and Rule 19b–4(f)(2)[40] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2021–33. 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 website (*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 website viewing and printing in the Commission's Public

Member is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the Sponsored User any fees it deems appropriate, even if such fees would otherwise be considered supra-competitive, or otherwise potentially unreasonable or uncompetitive.

[36] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105) (the ''Cboe Fee Filing''). The Cboe Fee Filing cited to the October 2020 Active Broker Dealer Report, provided by the Commission's Office of Managing Executive, on October 8, 2020.

[37] *Id.*

[38] *See* ''The market at a glance'', *available at www.miaxoptions.com* (last visited June 30, 2021).

[39] 15 U.S.C. 78s(b)(3)(A)(ii).

[40] 17 CFR 240.19b–4(f)(2).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–33 and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15035 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[41] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92368; File Nos. SR–NYSE–2021–25, SR–NYSEAMER–2021–21, SR–NYSEArca–2021–24, SR–NYSECHX–2021–07, SR–NYSENAT–2021–09]**

## Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Fee Schedule To Add Meet-Me-Room Connectivity Services Available at the Mahwah Data Center

July 9, 2021.

### I. Introduction

On April 9, 2021, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'') (collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the schedule (''Fee Schedule'') to set forth several ''Meet-Me-Room'' connectivity services available at the data center in Mahwah, New Jersey (''Mahwah Data Center'') for associated fees, and establish procedures for the allocation of cabinets and power to such customers should availability become limited. The proposed rule changes were published for comment in the **Federal Register** on April 22, 2021.[3] On June 2, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.[5] The Commission has received no comment letters on the proposed rule changes. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule changes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Description of the Proposed Rule Changes

The Exchanges propose to amend the Fee Schedule to set forth several ''Meet-Me-Room'' (or ''MMR'') connectivity services available at the data center in Mahwah, New Jersey (''Mahwah Data Center''), and associated fees, and establish procedures for the allocation of cabinets and power to MMR customers should availability become limited.[7]

The Exchanges state that Intercontinental Exchange, Inc. (''ICE''), through its ICE Data Services (''IDS'') business, operates the Mahwah Data Center.[8] From the Mahwah Data Center, the Exchanges provide co-location services to any market participant that requests to receive co-location services directly from the Exchange (''Users'').[9] Services are also available to customers that are not co-location Users (''NCL Customers'') [10] (Users and NCL Customers, together the ''Mahwah Customers'').[11]

The Exchanges state that Mahwah Customers require circuits connecting into and out of the Mahwah Data Center in order to connect their equipment outside of the Mahwah Data Center to their equipment or port within the Mahwah Data Center.[12] They state that IDS and numerous third-party telecommunications service providers (''Telecoms'') provide these connections to Mahwah Customers in the form of wired circuits into and out of the Mahwah Data Center.[13] The Exchanges explain that a Telecom completes a wired circuit by placing equipment in an MMR and installing carrier circuits between the Telecom's MMR equipment and one or more points outside the Mahwah Data Center.[14] Mahwah Customers that contract with a Telecom to use its circuit connection connect to the Telecom's MMR equipment using a cross connect.[15] Once connected to the Telecom's equipment, the Mahwah Customers can then use the Telecom's circuit to transport data into and out of the Mahwah Data Center.[16]

The Exchanges state that they make the current proposals solely as a result of their determination that the Commission's interpretations of the Act's definitions of the terms

[3] *See* Securities Exchange Act Release Nos. 91598 (April 16, 2021), 86 FR 21373 (April 22, 2021) (SR–NYSE–2021–25); 91599 (April 16, 2021), 86 FR 21365 (April 22, 2021) (SR–NYSEAMER–2021–21); 91600 (April 16, 2021), 86 FR 21384 (April 22, 2021) (SR–NYSEArca–2021–24); 91601 (April 16, 2021), 86 FR 21410 (April 22, 2021) (SR–NYSECHX–2021–07); and 91602 (April 16, 2021), 86 FR 21393 (April 22, 2021) (SR–NYSENAT–2021–09) (collectively, the ''Notices''). For ease of reference, citations to the Notice(s) are to the Notice for SR–NYSE–2021–25.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92089 (June 2, 2021), 86 FR 30510 (June 8, 2021). The Commission designated July 21, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 21373.

[8] *See id.* The Exchanges themselves are indirect subsidiaries of ICE. *See id.* at 21373 n.6.

[9] *See id.* at 21373.

[10] *See id.* The Exchanges recently filed proposed rule changes regarding the IDS circuits and certain other services offered to NCL Customers. *See, e.g.,* Securities Exchange Act Release No. 91217 (February 26, 2021), 86 FR 12715 (March 4, 2021) (SR–NYSE–2021–14).

[11] *See* Notice, *supra* note 3, at 21373.

[12] *See id.*

[13] *See id.* Mahwah Customers may also use a third party wireless connection, including a proprietary wireless connection, to the Mahwah Data Center, in which case the portion of the connection closest to the Mahwah Data Center is wired. *See id.* at 21373 n.8. Regarding services offered by Telecoms, the Exchanges state that Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchanges. *See id.* at 21373 n.9.

[14] *See id.* at 21373–74. The Exchanges state that a Telecom elects which MMR it will use, or if it will use both, and that neither IDS nor the Exchange knows the termination point of a Telecom's circuit or the content of any data sent on a circuit. *See id.* at 21374 n.10.

[15] *See id.* at 21374.

[16] In addition, the Exchanges state that a Telecom may sell access to its circuits to a second Telecom, which allows the second Telecom to use the first Telecom's circuit to access the Mahwah Data Center. The second Telecom thereby gains access to the Mahwah Data Center, where it installs its equipment in an MMR, without incurring the cost of installing its own proprietary circuits to the Mahwah Data Center. According to the Exchanges, IDS does not consent to, and need not be informed of, a Telecom's sale of a circuit to another Telecom. *See id.* at 21374.

''exchange'' [17] and ''facility'' [18] apply to connectivity services described herein that are offered by entities other than the Exchanges.[19] The Exchanges state that they disagree with the Commission's interpretations, deny the services covered herein are offerings of an ''exchange'' or a ''facility'' thereof, and have sought review of the Commission's interpretations as expressed in the Wireless Approval Order in the Court of Appeals for the District of Columbia Circuit.[20]

*A. Meet-Me-Room (MMR) Services*

The Exchanges propose to change the title of the Fee Schedule to ''Wireless and Meet-Me-Room Connectivity Fees and Charges,'' and add under the heading ''C. Meet-Me-Room ('MMR') Services'' the following services available to customers in the two MMRs on the north and south sides of the Mahwah Data Center.[21]

1. Cabinet-Related Services

The Exchanges propose to add to the Fee Schedule services and fees relating to the dedicated cabinets in the MMRs that IDS provides to Telecoms to house their equipment (collectively, ''Cabinet-Related Services'').[22] According to the Exchanges, these cabinets are available in sizes based on the number of kilowatts (''kW'') allocated, subject to a maximum of 8 kW per cabinet.[23] Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all of the Telecom's cabinets.[24] The Exchanges propose an initial fee of $5,000 per dedicated MMR cabinet, and a monthly fee for power allocated to all of a Telecom's dedicated cabinets as follows: 4–8 kWs ($1,200); 9–20 kWs ($1,050); 21–40 kWs ($950); and 41+ kWs ($900) (each fee, per kW).[25]

2. Access and Service Fees

The Exchanges propose to add to the Fee Schedule the following services and fees relating to access and services that IDS provides to Telecoms (collectively, ''Access and Service Fees'').[26]

a. Data Center Fiber Cross Connect

According to the Exchanges, IDS offers fiber cross connects for an initial and monthly charge.[27] Cross connects may run between a Telecom's cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer's cabinet or port.[28] Cross connects may be bundled (*i.e.,* multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.[29] The Exchanges propose to amend the Fee Schedule to describe these services and set forth corresponding fees as follows: Furnish and install 1 cross connect ($500 initial charge plus $600 monthly charge); and furnish and install bundle of 6 cross connects ($500 initial charge plus $1,800 monthly charge).[30]

b. Conduit Sleeve Fee

According to the Exchanges, a Telecom's circuits into and out of the Mahwah Data Center run through IDS conduits.[31] Telecoms are assessed an initial charge for the installation of circuits in the IDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the IDS conduit.[32] The Exchanges propose to amend the Fee Schedule to describe these services and set forth corresponding fees as follows: Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center ($1,000 initial charge plus $2,000 monthly charge per conduit sleeve).[33]

c. Carrier Connection Fee

As noted above,[34] Telecoms contract with their customers for circuits into and out of the Mahwah Data Center.[35] According to the Exchanges, Telecoms are charged a monthly fee for providing such circuits to Mahwah Customers, on a per connection basis.[36] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: Maintain Telecom's connections to its non-Telecom data center customers ($1,150 monthly charge per connection).[37]

d. Connection to Time Protocol Feed

According to the Exchanges, IDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges.[38] Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.[39] The Exchanges propose to amend the Fee Schedule to describe this service and set forth corresponding fees as follows: Precision Time Protocol

[17] *See* 15 U.S.C. 78c(a)(1) (''The term 'exchange' means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.'').

[18] *See* 15 U.S.C. 78c(a)(2) (''The term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'').

[19] *See* Notice, *supra* note 3, at 21373; *see also* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[20] *See* Notice, *supra* note 3, at 21373; *see also Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

[21] *See* Notice, *supra* note 3, at 21374. The Exchanges state that they recently filed proposed rule changes regarding the IDS circuits and services offered to NCL Customers, and that if such proposals are approved by the Commission, then the Exchanges expect to file amendments to the present proposals to conform to the relevant changes. *See id.* at 21374 n.11 (citing Securities Exchange Act Release No. 91217 (February 26, 2021), 86 FR 12715 (March 4, 2021) (SR–NYSE–2021–14)).

[22] The Exchanges state that the Cabinet-Related Services are substantially similar to co-location services and related fees that the Exchanges offer to Users, as set forth in their price lists and fee schedules. *See id.* at 21374.

[23] *See id.*

[24] *See id.*

[25] The Exchanges also propose to add a note to the Fee Schedule stating that the monthly fee is based on total kWs allocated to all of a Telecom's cabinets. *See id.*

[26] The Exchanges state that most of the Access and Service Fees are substantially similar to services and related fees that the Exchanges offer to Users, as set forth in their price lists and fee schedules. *See id.*

[27] *See id.*

[28] *See id.* The Exchanges state that a cross connect to MMR cabinets may be purchased by the Telecom or the Telecom's customer. The same fee applies irrespective of which entity purchases the cross connect. *See id.* at 21374 n.15.

[29] *See id.* at 21374.

[30] *See id.* at 21375.

[31] The Exchanges state that there are currently three IDS conduit paths leading into the Mahwah Data Center, and a Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. *See id.* at 21374. According to the Exchanges, the number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to Mahwah Customers, and that most Telecoms that use them have one conduit sleeve. *See id.* at 21374 n.16.

[32] *See id.* at 21374.

[33] *See id.* at 21375.

[34] *See supra* notes 12–13 and accompanying text.

[35] *See* Notice, *supra* note 3, at 21374.

[36] *See id.*

[37] *See id.* at 21375.

[38] *See id.* at 21374.

[39] *See id.*

($1,000 initial charge plus $250 monthly charge).[40]

e. Expedite Fee

According to the Exchanges, IDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms.[41] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: Expedited installation/completion of MMR service ($4,000 per request).[42]

3. Service-Related Fees

The Exchanges propose to add to the Fee Schedule the following services and fees relating to services IDS provides to Telecoms (collectively, ''Service-Related Fees'').[43]

a. Change Fee

According to the Exchanges, IDS charges a Telecom a ''Change Fee'' if the Telecom requests a change to one or more existing MMR services that IDS has already established or completed for the Telecom.[44] The Change Fee is charged per order.[45] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: Change to a service that has already been installed/completed for a Telecom ($950 per request).[46]

b. Hot Hands Service

According to the Exchanges, IDS offers Telecoms a ''Hot Hands Service,'' which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom's cabinet, power recycling, and install and document the fitting of cable in a Telecom's cabinet(s).[47] A Hot Hands Service fee is charged per half hour.[48] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable ($100 per half hour).[49]

c. Shipping and Receiving

According to the Exchanges, IDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the Mahwah Data Center from the Telecom or supplier.[50] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving) ($100 per shipment).[51]

d. Visitor Security Escort

According to the Exchanges, Telecom representatives are required to be accompanied by a visitor security escort during visits to the Mahwah Data Center, for which a fee per visit is charged.[52] The Exchanges propose to amend the Fee Schedule to describe this service and set forth the corresponding fee as follows: All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center ($75 per visit).[53]

*B. Allocation of Cabinets and Power*

The Exchanges propose to establish procedures for the allocation of cabinets and power to Telecoms (''Proposed Allocation Procedures'').[54] As noted above,[55] IDS offers dedicated cabinets in the MMRs to Telecoms to house their equipment.[56] According to the Exchanges, the Exchanges allocate cabinets on a first-come/first-serve basis.[57] When a cabinet is first set up or later, a Telecom may request power upgrades (''Additional Power'') to a dedicated cabinet in addition to the power allocated to such cabinet (the ''Standard Cabinet Power''), subject to a maximum of 8 kW per cabinet.[58] The Exchanges maintain that it would be prudent to have procedures in place for the allocation of cabinets and power to Telecoms should such allocation be necessary.[59]

The Exchanges propose to add the Proposed Allocation Procedures to the Fee Schedule under the heading ''MMR Notes,'' setting forth the procedures under proposed Notes 1 and 2.[60] Proposed Note 1 would provide that, if the amount of power or cabinets available fell below specified thresholds, Telecoms would be subject to purchasing limits.[61] Note 1 would also specify when the purchasing limits would cease to apply and would provide that if a Telecom requests a number of cabinets and/or amount of Additional Power that would cause the unallocated capacity to be below the specified power and cabinet thresholds, the purchasing limits would apply only to the portion of the Telecom's order below the relevant threshold.[62]

Note 2 would provide that, if the amount of power or cabinets available fell to zero, Telecoms seeking to purchase power or cabinets would be put on a ''Cabinet Waitlist'' [63] or a

[40] *See id.* at 21375.

[41] *See id.* at 21374.

[42] *See id.* at 21375.

[43] The Exchange state that the Service-Related Fees are substantially similar to services and related fees that the Exchanges offer to Users, as set forth in their price lists and fee schedules. *See id.*

[44] *See id.*

[45] If a Telecom orders two or more services at one time, the Exchanges state that the Telecom is charged a one-time Change Fee, which would cover the multiple services. *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See supra* note 22 and accompanying text.

[56] *See* Notice, *supra* note 3, at 21375.

[57] *See id.*

[58] *See id.*

[59] *See id.*

[60] *See id.*

[61] *See id.* Specifically, the Exchanges propose to provide under the heading ''Note 1: Cabinet and Power Purchasing Limits'' that if (i) unallocated cabinet inventory is at or below 3 cabinets (''Cabinet Threshold''), or (ii) the unallocated power capacity in the MMRs is at or below 8 kW (the ''Power Threshold''), then the following limits on the purchase of new cabinets (''Purchasing Limits'') will apply: If only the Cabinet Threshold is reached, then under the following measures (the ''Cabinet Limits''), the Exchanges will limit each Telecom's purchase of new cabinets to a maximum of one dedicated cabinet. A Telecom will have to wait 30 days from the date of its signed order form before purchasing a new cabinet again. If only the Power Threshold is reached or both the Cabinet Threshold and the Power Threshold are reached, then under the following measures (the ''Combined Limits''), a Telecom may purchase either or both of a one new cabinet, subject to a maximum standard power allocation of 4 kW (''Standard Cabinets''), or additional power for new or existing cabinet, so long as the combined power usage of such purchases is no more than a maximum of 4 kW. A Telecom will have to wait 30 days from the date of its signed order form before purchasing a new Standard Cabinet or additional power again. If the Cabinet Threshold is reached before the Power Threshold, the Cabinet Limits will be in effect until the Power Threshold is reached, after which the Combined Limits will apply. *See id.* at 21376.

[62] *See id.* at 21375. Specifically, the Exchanges propose to provide that if a Telecom requests, in writing, a number of cabinets that, if provided, would cause the available cabinet inventory to be below 3 cabinets, the Cabinet Limits will only apply to the portion of the Telecom's order below the Cabinet Threshold. When unallocated cabinet inventory for the MMRs is more than 3 cabinets, the Exchanges will discontinue the Cabinet Limits. If a Telecom requests, in writing, a number of Standard Cabinets and/or an amount of additional power that, if provided, would cause the unallocated power capacity to be below the Power Threshold or Cabinet Threshold, the Combined Limits would apply only to the portion of the Telecom's order below the relevant threshold. When unallocated power capacity is above the Power Threshold, the Exchanges will discontinue the Combined Limits. If at that time the unallocated cabinet inventory is 3 or fewer cabinets, the Cabinet Limits would enter into effect. *See id.* at 21376.

[63] Specifically, the Exchanges propose to provide under the heading ''Note 2: Cabinet and Combined Waitlists'' that the Exchanges will create a cabinet

''Combined Waitlist.'' [64] In both proposed Notes 1 and 2, the Proposed Allocation Procedures would state how the procedures regarding cabinets and the procedures regarding power would relate to each other, and in each case would state what the threshold amount of power and cabinets would be to discontinue the limits.[65]

## III. Exchanges' Justification

With respect to the MMR services and fees, the Exchanges generally argue that the proposals are reasonable, equitable, not unfairly discriminatory, and would not impose a burden on competition that it not necessary or appropriate, as required by Sections 6(b)(4), (5) and (8) of the Exchange Act, because use of the proposed services is completely voluntary and their use enables Telecoms to compete with IDS in providing connectivity services to Mahwah Customers.[66] According to the Exchanges, IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[67] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants.[68] By making it possible for Telecoms to offer their customers circuits into and out of the Mahwah Data Center, the Exchanges state that the proposed MMR services allow Telecoms to compete with IDS, and that the continued availability of choices for Mahwah Customers is beneficial to both the Telecoms and the Mahwah Customers.[69] The Exchanges state that if these MMR services were not available, all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits to access the Mahwah Data Center, thereby reducing competition.[70] The Exchanges also state that the described services and fees are offered to and subscribed to by existing Telecoms, and thus expect that the impact of the proposals would be minimal.[71]

In addition, the Exchanges argue that the proposals are reasonable because use of any MMR service is completely voluntary and available to purchasers on an equal basis, with each Telecom able to determine whether to use MMR services based on the requirements of its business operations, and each Telecom being charged only for the services that it selects and for the same amount as all other Telecoms purchasing such services.[72] The Exchanges also argue that the fees proposed for the MMR fees are reasonable because, to the extent the services IDS offers to Telecoms are substantially the same as the services offered by the Exchange to Users, the fees are the same.[73] With respect to the two services not offered to Users (the Conduit Sleeve Fee and Carrier Connection Fee), the Exchanges state that the fees IDS charges Telecoms are reasonable because the services correspond to the Telecoms' usage of the IDS conduits and the Telecoms' ability to offer their circuits to their customers.[74] In addition, the Exchanges provide some cost-based justifications for why the proposals are reasonable, claiming that IDS must provide, maintain, and operate the Mahwah Data Center technology infrastructure, expand the network infrastructure to keep pace with the services available to Telecoms, and handle the installation, administration, monitoring, support, and maintenance of the MMR services.[75]

The Exchanges contend that the proposals provide for an equitable allocation of fees and are not unfairly discriminatory, again arguing generally that the proposed services would allow Telecoms to continue to compete with IDS, in addition to being voluntary and available to all market participants on an equal basis.[76] The Exchanges claim that the proposed rule changes would apply to all market participants and would not apply differently to distinct types or sizes of licensed telecommunications service providers, but rather would apply to all equally.[77]

The Exchanges argue that the proposed rule changes do not impose an unnecessary or inappropriate burden on competition because the proposals would preserve the ability of IDS to offer the services described herein,

waitlist (''Cabinet Waitlist'') if the available cabinet inventory is zero, or a Telecom requests, in writing, a number of cabinets that, if provided, would cause the available inventory to be zero. The Exchanges will place Telecoms seeking cabinets on a Cabinet Waitlist as follows: A Telecom will be placed on the Cabinet Waitlist based on the date its signed order is received. A Telecom may only have one order for a new cabinet on the Cabinet Waitlist at a time, and the order is subject to the Cabinet Limits. If a Telecom changes the size of its order while it is on the Cabinet Waitlist, it will maintain its place on the Cabinet Waitlist, provided that the Telecom may not increase the size of its order such that it would exceed the Cabinet Limits. As cabinets become available, the Exchanges will offer a cabinet to the Telecom at the top of the Cabinet Waitlist. If the Telecom's order is completed, it will be removed from the Cabinet Waitlist. A Telecom will be removed from the Cabinet Waitlist (a) at the Telecom's request or (b) if the Telecom turns down an offer of a cabinet of the same size it requested in its order. If the Exchange offer the Telecom a cabinet of a different size than the Telecom requested in its order, the Telecom may turn down the offer and remain at the top of the Cabinet Waitlist until its order is completed. A Telecom that is removed from the Cabinet Waitlist but subsequently submits a new written order for a cabinet will be added back to the bottom of the Cabinet Waitlist. When unallocated cabinet inventory is more than 3 cabinets, the Exchange will cease use of the Cabinet Waitlist. *See id.*

[64] *See id.* at 21375. Specifically, the Exchanges propose to create a power and cabinet waitlist (''Combined Waitlist'') if the unallocated power capacity is zero, or if a Telecom requests, in writing, an amount of power (whether power allocated to a Standard Cabinet or additional power) that, if provided, would cause the unallocated power capacity to be below zero. The Exchanges will place Telecoms seeking cabinets or power on the Combined Waitlist, as follows: If a Cabinet Waitlist exists when the requirements to create a Combined Waitlist are met, the Cabinet Waitlist will automatically convert to the Combined Waitlist. If a Combined Waitlist exists when the requirements to create a Cabinet Waitlist are met, no new waitlist will be created, and the Combined Waitlist will continue in effect. A Telecom will be placed on the Combined Waitlist based on the date its signed order for a cabinet and/or additional power is received. A Telecom may only have one order for a new cabinet and/or additional power on the Combined Waitlist at a time, and the order would be subject to the Combined Limits. If a Telecom changes the size of its order while it is on the Combined Waitlist, it will maintain its place on the Combined Waitlist, provided that the Telecom may not increase the size of its order such that it would exceed the Combined Limits. As additional power and/or cabinets become available, the Exchanges will offer them to the Telecom at the top of the Combined Waitlist. If the Telecom's order is completed, the order will be removed from the Combined Waitlist. If the Telecom's order is not completed, it will remain at the top of the Combined Waitlist. A Telecom will be removed from the Combined Waitlist (a) at the Telecom's request; or (b) if the Telecom turns down an offer that is the same as its order (*e.g.,* the offer includes a cabinet of the same size and/or the amount of additional power that the Telecom requested in its order). If the Exchanges offer the Telecom an offer that is different than its order, the Telecom may turn down the offer and remain at the top of the Combined Waitlist until its order is completed. A Telecom that is removed from the Combined Waitlist but subsequently submits a new written order for a cabinet and/or additional power will be added back to the bottom of the waitlist. If the Combined Waitlist is in effect, when unallocated power capacity in co-location is at 8 kW or more, the Exchanges will cease use of the Combined Waitlist. If at that time the unallocated cabinet inventory is 3 or fewer cabinets, the Cabinet Waitlist would enter into effect. *See id.* at 21376–77.

[65] *See id.* at 21375–36.

[66] *See id.* at 21377–79.

[67] ''Hosting'' is a service offered by a User to another entity in the User's space within the Mahwah Data Center. The Exchanges allow Users to act as Hosting Users for a monthly fee. *See id.* at 21377 n.21 (citing Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40)).

[68] In this regard, the Exchanges maintain that most of the Telecoms that provide circuits do so at fees lower than those of IDS, and that most Mahwah Customers use Telecom circuits into and out of the Mahwah Data Center. *See id.* at 21377.

[69] *See id.*

[70] *See id.*

[71] The Exchanges further state that they do not expect that IDS would attract any new customers as a result of the proposals. *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See id.*

[76] *See id.* at 21378–79.

[77] *See id.* at 21379.

allowing the Telecoms to compete with IDS in providing connectivity services into and out of the Mahwah Data Center.[78] According to the Exchanges, the proposals do not affect competition among national securities exchanges or among members of the Exchanges, but rather the Exchanges' filing of the proposals puts IDS at a competitive disadvantage relative to its commercial competitors that are not subject to filing requirements of Section 19(b) of the Act.[79]

Regarding the Proposed Allocation Procedures, the Exchanges argue principally that it would be reasonable to put in place procedures to establish the allocation of power and cabinets to Telecoms on an equitable basis should the need arise, and that the Proposed Allocation Procedures are consistent with those of another exchange and those recently approved for allocating cabinets and power in the context of the Exchanges' co-location service offerings.[80]

## IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Exchanges' proposed rule changes should be approved or disapproved.[81] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,[82] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [83]
- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [84] and
- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [85]

As discussed in Section III above, the Exchanges make various arguments in support of the proposals. The Commission believes that there are questions as to whether the Exchanges have provided sufficient information to demonstrate that the proposals, including the proposed fees for MMR services, are consistent with the Act.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [86] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[87] Any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[88]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposals are consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; [89] as well as any other provision of the Act, or the rules and regulations thereunder.

## V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 5, 2021. Rebuttal comments should be submitted by August 19, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[90]

The Commission asks that commenters address the sufficiency and merit of the Exchanges' statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposals 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 Nos. SR–NYSE–2021–25, SR–NYSEAMER–2021–21, SR–NYSEArca–2021–24, SR–NYSECHX–2021–07, SR–NYSENAT–2021–09 on the subject line.

[78] *See id.*

[79] *See id.* at 21379–80.

[80] *See id.* at 21378, 21378 n.26.

[81] 15 U.S.C. 78s(b)(2)(B).

[82] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[83] 15 U.S.C. 78f(b)(4).

[84] 15 U.S.C. 78f(b)(5).

[85] 15 U.S.C. 78f(b)(8).

[86] 17 CFR 201.700(b)(3).

[87] *See id.*

[88] *See id.*

[89] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[90] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Nos. SR–NYSE–2021–25, SR–NYSEAMER–2021–21, SR–NYSEArca–2021–24, SR–NYSECHX–2021–07, and SR–NYSENAT–2021–09. The 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Nos. SR–NYSE–2021–25, SR–NYSEAMER–2021–21, SR–NYSEArca–2021–24, SR–NYSECHX–2021–07, and SR–NYSENAT–2021–09 and should be submitted on or before August 5, 2021. Rebuttal comments should be submitted by August 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15038 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[91] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92358; File No. SR–EMERALD–2021–21]**

## Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Fees for the cToM Market Data Product

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's Fee Schedule (''Fee Schedule'') to establish fees for the market data product known as MIAX Emerald Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section 6(a) of the Fee Schedule to establish fees for the cToM market data product.

The Exchange previously adopted rules governing the trading of Complex Orders[3] on the Emerald System[4] in 2018.[5] Shortly thereafter, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to provide an incentive to prospective market participants to subscribe to that market data feed.[6] The Exchange has not charged fees to cToM subscribers in the over two years since it was first available for subscription.

In summary, cToM provides subscribers with the same information as the MIAX Emerald Top of Market (''ToM'') data product as it relates to the Strategy Book[7], *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is a distinct market data product from ToM. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[8]

The Exchange now proposes to amend Section 6(a) of the Fee Schedule to

[3] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[6] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[7] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[8] *See supra* note 6.

charge monthly fees to Distributors [9] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[10] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributor are the same prices that the Exchange charges for its ToM data product, and are similar to other options exchanges' data feed prices for their comparable complex order data feed products.[11]

Like it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, like the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section 6(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[14]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 3.24% of the market share.[15] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition, that market participant can and may switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of cToM.

No market participant is required by any rule or regulation to utilize the Exchange's Complex Order functionality or subscribe to the cToM data feed. Further, unlike orders on the Exchange's Simple Order Book, Complex Orders are not protected and will never trade through Priority Customer [17] orders, thus protecting the priority that is established in the Simple Order Book.[18] Additionally, unlike the continuous quoting requirements of Market Makers in the simple order market, there are no continuous quoting requirements respecting Complex Orders. It is a business decision whether market participants utilize Complex Order strategies on the Exchange and whether to purchase cToM data to help effect those strategies.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data

[9] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Section 6(a) of the Fee Schedule.

[10] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6(a) as it will not change [sic] fees for both the ToM and cToM data feeds.

[11] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees ($1,500 per month Access Fee and $1,000 per month Redistribution Fee), at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf; see also* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees ($1,500 per month Access Fee and $1,000 per month Redistribution Fee), at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf;* Nasdaq PHLX LLC Price List—U.S. Derivatives Data, PHLX Orders Fees (Internal Distributor fee of $3,000 per month and External Distributor fee of $3,500 per month), at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See supra* note 11.

[15] *See* MIAX's ''The Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited June 29, 2021).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[18] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 100. *See supra* note 5.

products.[19] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's cToM data product, other exchanges offer similar data products and complex order functionality. As such, if a market participant views another exchange's complex order functionality and related data feed(s) as more attractive than what is offered by the Exchange, then such market participant can merely choose not to utilize the Exchange's Complex Order functionality or purchase cToM. Instead, that market participant can utilize similar complex functionality elsewhere and purchase another exchange's complex data product, which likely offers similar data points, albeit based on that other market's complex order trading activity.

Selling market data, such as cToM, is also a means by which exchanges compete to attract business. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[20] The Exchange therefore believes that the proposed fees for cToM reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase cToM and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange also believes the proposed cToM fees are reasonable and not unfairly discriminatory because since the Exchange initially established the cToM data product in 2016, all Exchange Members have had the ability to receive the Exchange's cToM data free of charge for the past two years.[21]

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX PEARL, LLC and Miami International Securities Exchange, LLC), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[22] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[23] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[24] and may charge their own fees for the distribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market data. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscribers is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants deem the proposed fees to be unfair or inequitable, firms can discontinue their use of the cToM data.

Further, the Exchange no longer believes it is necessary to provide cToM data for free to attract market participants since the Exchange's Strategy Book is now established and the Exchange no longer needs to rely on such waivers to attract market participants to its Complex Order market or cToM subscribers. The Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product, and are generally lower than other options exchanges' data feed prices for their comparable data feed products.[25]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.[26] The Exchange made Complex Order functionality and cToM available in order to keep pace with changes in the U.S. options industry and evolving customer needs, and believes the data product will continue to contribute to robust competition among national securities exchanges. Other U.S. options exchanges offer complex order functionality and market data products that are substantially similar to that offered by the Exchange. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price cToM is constrained by competition among exchanges that offer similar data products and complex order functionality to their customers. As discussed, there are currently a number of similar products available to market participants and investors. Other U.S. options exchanges offer market data products that are substantially similar to cToM, which the Exchange must consider in its pricing discipline in order to compete for the market data.[27] For example, proposing fees that are excessively higher than established fees for similar data products would simply

[19] *See supra* note 11.

[20] *See id.*

[21] *See supra* note 6.

[22] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[23] *See id.*

[24] *See id.*

[25] *See supra* note 11.

[26] *Id.*

[27] *Id.*

serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2) [29] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–21. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–21, and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15030 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92364; File No. SR–MIAX–2021–29]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Purge Ports

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend the fees for Purge Ports.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Fee Schedule, Section 5(d)(ii), footnote 30.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange currently provides Market Makers [4] the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send quote purge messages to the MIAX System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange proposes to amend the monthly fee for Purge Ports under Section 5(d)(ii) of the Fee Schedule. Unlike other options exchanges that provide purge port functionality and charge fees on a per port basis,[6] the Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine [7] to which it connects via a Full Service MEI Port.[8] The Exchange currently has twenty-four (24) matching engines which means Market Makers may receive up to forty-eight (48) Purge Ports for a single monthly fee. The Exchange currently assesses Market Makers a fee of $1,500 per month, regardless of the number of Purge Ports allocated to the Market Maker. Assuming a Market Maker connects to all twenty-four (24) matching engines during a month, with two Purge Ports per matching engine, this results in a cost of $31.25 per Purge Port ($1,500 divided by 48) for the month. This fee has been unchanged since the Exchange introduced Purge Ports in 2017.[9] The Exchange now proposes to increase the fee to $7,500 per month. Market Makers will continue to receive two (2) Purge Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Market Maker connects to all twenty-four (24) matching engines during the month, with two Purge Ports per matching engine, this would result in a cost of $156.25 per Purge Port ($7,500 divided by 48).

The Exchange has historically undercharged for Purge Port as compared to other options exchanges [10] because the Exchange provides Purge Ports as a package for a single monthly fee. As described above, this package includes two Purge Ports for each of the Exchange's twenty-four (24) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The proposed monthly fee increase for Purge Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Purge Port.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [13] in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Market Maker two Purge Ports for each matching engine to which that Market Maker is connected. The Exchange currently has twenty-four (24) matching engines. Accordingly, each Market Maker that is connected to all twenty-four (24) matching engines receives a total of forty-eight (48) Purge Ports for the existing flat fee of $1,500 per month. On a per Purge Port basis, that equals $31.25 per Purge Port ($1,500 divided by 48). This flat fee has remain unchanged since the Exchange introduced Purge Ports in 2017.[14] The Exchange believes that increasing the flat monthly fee for Purge Port (regardless of the number of matching engines to which it connects and consequently regardless of the number of Purge Ports allocated to the Market Maker) is equitable, reasonable, and competitive with the fees charged by other exchanges that offer comparable purge port services. The Exchange believes that most such exchanges charge per port for each match engine. For example, BXZ charges a monthly fee of $750 per purge port per month, EDGX charges a monthly fee of $750 per purge port, Cboe charges a monthly fee of $850 per purge port,[15] and Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month.[16] When calculated on a per purge port basis, each of the above exchanges charge monthly per purge port fees that are higher than the proposed $7,500 per month ($156.25 per Purge Port).

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). In Cboe's Purge Ports Frequently Asked Questions, Cboe recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf. See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers.

[7] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5(d)(ii), note 29.

[8] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5(d)(ii), note 27.

[9] *See* Securities Exchange Act Release No. 81252 (July 28, 2017), 82 FR 36172 (August 3, 2017) (SR–MIAX–2017–36).

[10] *See supra* note 6.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 9.

[15] *See supra* note 6. Cboe further recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf.* This guidance applies to Cboe's affiliate exchanges, BZX and EDGX.

[16] *See supra* note 6.

6.76% of the market share.[17] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18] The Exchange is not aware of any evidence that a market share of approximately 6–7% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would purchase Purge Ports, and existing market participants would cease paying for Purge Ports, which are optional services offered by the Exchange. The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls because Purge Ports are optional functionality offered to Market Makers. The Exchange further believes the proposed fees are reasonable as the Exchange believes that the proposed fees are lower on a per port basis than the fees assessed by other exchanges that provide similar functionality.[20] Indeed, if the Exchange's proposed fees that are excessively higher than established fees for similar services on other exchanges, then the proposed fees would simply serve to reduce demand for the Exchange's services, which as noted, is entirely optional. The Exchange notes that Market Makers are not required by rule or regulation to purchase Purge Ports. It is entirely a business decision of each Market Maker that determines to purchase Purge Ports.

Additionally, Market Makers are not precluded from using the purge messages provided by either the MEI protocol or the cancel messages provided by the FIX protocol. Under the MEI protocol, Market Makers may request that all quotations for all underlyings, or for a specific underlying, be removed, and that new inbound quotations for all underlyings, or specific underlyings, be blocked. Under the FIX protocol, Electronic Exchange Members (''EEMs'') may also request that all, or a subset, of orders for an MPID, or all Day or GTC orders for an MPID, on the requesting session, be canceled. As such, a dedicated Purge Port is not required or necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk.

The Exchange operates in a highly competitive market in which exchanges offer various types of access services as a means to facilitate the trading activities of Members and other participants. As Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use dedicated Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select the Purge Port service will be charged the same amount for the same respective services.

As Purge Ports are only available for purging and not for activities such as order or quote entry, the Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market participants are not subject to, which, in turn, benefits all market participants. The Exchange believes the proposed fee increase will continue to encourage better use of dedicated Purge Ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. The Exchange also believes that the proposed fee increase is non-discriminatory because the proposed Purge Port fees will apply uniformly to all Market Makers. Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily request this service will be charged the same amount for the same service. Separately, the Exchange is not aware of any reason why market participants could not simply drop their Purge Ports if the Exchange were to establish unreasonable prices for its Purge Ports that, in the determination of such market participant, did not make business or economic sense for such market participant. No options market participant is required by rule, regulation, or competitive forces to utilize Purge Ports. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange's affiliate, MIAX Emerald, LLC (''MIAX Emerald''), noted in a recent filing that once MIAX Emerald issued a notice that it was adopting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[21] Accordingly, these examples show that if an exchange sets too high of a fee for non-transaction fees for its relevant marketplace, market participants can choose to no longer access that particular exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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.

The Exchange believes the proposed rule change does not impose any burden intra-market competition because the use of Purge Ports is an optional service offered by the Exchange and no Market Maker is required or under any regulatory obligation to utilize them. The Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port. The Exchange currently has twenty-four (24) matching engines which means Market Makers may receive up to forty-eight (48) Purge Ports for a single monthly fee. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered

[17] *See* MIAX's ''The Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited June 30, 2021).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[19] 15 U.S.C. 78f(b)(4).

[20] *See supra* note 6.

[21] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03).

by the Exchange or pricing offered by the Exchange's competitors. Additionally, Market Makers may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Market Makers or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for the proposed Purge Ports and connectivity, in general, are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including Purge Port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Market Makers equally.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee changes 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2)[23] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–29 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–29. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–29 and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15034 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92374; File No. SR–NYSE–2020–89]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 2, To Amend NYSE Rule 7.35C

July 9, 2021.

## I. Introduction

On October 23, 2020, New York Stock Exchange LLC (''Exchange'') 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] a proposed rule change to (1) provide the Exchange authority to facilitate a Trading Halt Auction if a security has not reopened by 3:30 p.m. following a market-wide circuit-breaker halt (''MWCB Halt''); (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM (designated market maker) Interest will not be canceled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions.[3] The proposed rule change was published for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By amendment of the proposed rule change, the Exchange has removed several of these proposed changes from the original proposal. *See infra* notes 7 and 10.

comment in the **Federal Register** on November 12, 2020.[4]

On December 18, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, extending the date for Commission action to February 10, 2020.[6] On February 5, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[7] On February 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[9] On March 17, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety.[10] The Commission has received no comment letters on the proposal.

The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 2

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.35C (Exchange-Facilitated Auctions) to provide that certain DMM Interest[11] would not be cancelled following an Exchange-facilitated Auction.[12]

These proposed changes are currently in place on a temporary basis, as described in Commentary .03 to Rule 7.35C.

Background

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[13] On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.[14] On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID–19.[15]

Rule 7.35C sets forth the procedures for Exchange-facilitated Auctions. The first time the Exchange facilitated any Auctions pursuant to Rule 7.35C was on March 19, 2020, when two DMM firms temporarily left the Trading Floor in connection with implementing their business continuity plans related to the COVID–19 pandemic. Beginning on March 23, 2020, when the Exchange temporarily closed the Trading Floor, the Exchange began facilitating Auctions on behalf of all DMM firms. During the period of March 23, 2020 through June 16, 2020, among the DMM firms, the percentage of Auctions that were facilitated by the Exchange ranged from 1% to 3.2% of the securities assigned to each DMM. During this period, the vast majority of Auctions were facilitated electronically by DMMs pursuant to Rules 7.35A and 7.35B.

In connection with both the market-wide volatility associated with the COVID–19 pandemic in March 2020 and the full and partial closing of the Trading Floor facilities, the Exchange added Commentary .03 to Rule 7.35C,[16] which is in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021.[17]

[4] *See* Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12, 2020).

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 90726 (Dec. 20, 2020), 85 FR 84431 (Dec. 28, 2020).

[7] In Amendment No. 1, the Exchange removed one of the proposed changes from the original proposal. Specifically, the Exchange removed the proposed change to adopt a new definition of Auction Reference Price for exchange-facilitated Core Open Auctions and to amend the temporary rule related to such auctions set forth in Commentary .04 to Rule 7.35C. This aspect of the original proposal is now the subject of a separate proposed rule change filed by the Exchange on February 8, 2021 (SR–NYSE–2021–13).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 91095 (Feb. 10, 2021), 86 FR 9978 (Feb. 17, 2020).

[10] In Amendment No. 2, the Exchange removed several more proposed changes from the original proposal, as modified by Amendment No. 1. Specifically, the Exchange removed the proposed changes to make permanent the temporary rules pertaining to: (i) Permitting the CEO to determine that the Exchange will facilitate a Trading Halt Auction in one or more securities following a MWCB Halt if the security has not reopened by 3:30 p.m. Eastern Time, and (ii) establishing wider Auction Collars for Trading Halt Auctions following a MWCB Halt.

[11] For purposes of Auctions, the term ''DMM Interest'' is defined in Rule 7.35(a)(8) to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes: ''DMM Auction Liquidity,'' which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(8)(A)); ''DMM Orders'' which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(8)(B)); and ''DMM After-Auction Orders,'' which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(8)(C)).

[12] In this Amendment No. 2, the Exchange is removing its proposed changes to (1) the Exchange authority to facilitate a Trading Halt Auction if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (''MWCB Halt'') by 3:30 p.m.; and (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following a MWCB Halt, which are currently temporary rules set forth in Commentaries .01 and .02 to Rule 7.35C.

[13] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[14] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[15] *See* Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

[16] *See* Securities Exchange Act Release No. 88413 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR–NYSE–2020–29) (amending Rule 7.35C to add Commentary .03) (''DMM Interest Filing'').

[17] *See* Securities Exchange Act Release No. 90795 (December 23, 2020), 85 FR 86608 (December 30, 2020) (SR–NYSE–2020–106) (Notice of filing and immediate effectiveness of proposed rule change to

The Exchange believes that Commentary .03 to Rule 7.35C, which is in effect on a temporary basis, has supported the fair and orderly operation of the Exchange during both the market volatility associated with COVID–19 and the temporary period that the Trading Floor facilities have been closed either in full or in part due to COVID–19. The Exchange further believes the functionality that has been operating on a temporary basis would continue to support the fair and orderly operation of the Exchange under any circumstances where there may be either market-wide volatility or the need for the Exchange to facilitate one or more Auctions. Accordingly, the Exchange proposes that the changes to how DMM Interest may participate in an Exchange-facilitated Auction be made permanent.

Proposed Rule Changes

As set forth in Rule 7.35C(a)(1), if the Exchange facilitates an Auction, DMM Interest would not be eligible to participate in such Auction and previously-entered DMM Interest would be cancelled. When a DMM cannot facilitate an Auction because the DMM unit is experiencing a system issue that prevents it from communicating with Exchange systems, cancelling DMM Interest following an Exchange-facilitated Auction would help ensure that DMM Interest that may be at stale prices does not participate in trading on the Exchange. On the other hand, by cancelling DMM Interest when the DMM units' systems are operating normally, DMMs may be limited in their ability to maintain price continuity with reasonable depth, *i.e.,* provide passive liquidity at the Exchange best bid and offer and at depth, immediately following an Exchange-facilitated Auction.

After a period of operating Exchange-facilitated Auctions, the Exchange identified a way to provide DMMs with a greater opportunity to provide passive liquidity immediately following an Auction, thereby dampening volatility, while still limiting DMM risk. To effect this change, the Exchange added Commentary .03 to Rule 7.35C, which provides that for the temporary period that begins on April 6, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, if the Exchange facilitates an Auction, DMM Interest (i) will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote, and (ii) will not be cancelled unless the limit price of such DMM Interest would be priced through the Auction Price or Auction Collars, as applicable, or such DMM Interest would be marketable against other unexecuted orders.[18]

The Exchange proposes to make permanent the changes to how Exchange-facilitated Auctions function, as described in Commentary .03 to Rule 7.35C. By making this functionality permanent, such rules would continue to apply both during the continuation of the current Trading Floor closure and if the Exchange were to facilitate Auctions any time after the Trading Floor fully reopens.

To effect this change, the Exchange proposes to amend 7.35C(a)(1) as follows (new text underlined, deleted text bracketed):

If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate [in]<u>if</u> such Auction <u>results in a trade, and will be eligible to participate if such Auction results in a quote</u>[ and previously-entered DMM Interest will be cancelled].

This proposed rule change would make permanent the temporary functionality set forth in paragraph (a)(1) to Commentary .03.

With this change, DMM Interest would not participate in any Exchange-facilitated Auctions that would result in a trade. This is how DMM Interest currently functions when the Exchange facilitates an Auction pursuant to either Rule 7.35C(a)(1) or Commentary .03 to Rule 7.35C. Based on experience operating pursuant to Commentary .03 to Rule 7.35C, the Exchange believes that this functionality should continue permanently when the Exchange facilitates an Auction, including, for example, when the Trading Floor is open but the DMM is unable to facilitate an Auction because of a systems or technical issue.

More specifically, when a DMM facilitates an Auction that results in a trade, the DMM determines whether to participate on the buy or sell side and, based on that direction from the DMM, DMM Orders that do not participate in the Auction and that would lock or cross other orders, which would include other DMM Orders, will be cancelled.[19] If the DMM has entered both buy and sell interest in advance of the Auction and the Exchange facilitates the Auction, the DMM would not be able to control whether the DMM's buy or sell interest would participate in a trade and the Exchange would not have that instruction from the DMM of which side of the market that the DMM would participate. As a result, there may be crossing DMM Interest that could result in a wash-sale trade that would not have occurred if the DMM had facilitated the Auction. Excluding DMM Interest from participating in an Exchange-facilitated Auction that results in a trade eliminates the potential for a wash-sale trade. In addition, the Exchange believes it promotes fair and orderly Exchange-facilitated Auctions that result in a trade to exclude DMM Interest from participating in such Auctions, because if a DMM's buy or sell interest does not reflect up-to-date prices, it could impact pricing of the Auction.

By contrast, the Exchange believes that the proposed change for DMM

extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2020). [The Commission notes that, after submitting Amendment No. 2, the Exchange extended the outside date for effectiveness of the temporary relief from April 30, 2021 to August 31, 2021. *See* Securities Exchange Act Release No. 91778 (May 5, 2021), 86 FR 25902 (May 11, 2021)].

[18] *See* DMM Interest Filing, *supra* note 10.

[19] *See* Rule 7.35A(h)(3)(C) (providing that after a Core Open or Trading Halt Auction, better at-priced DMM Orders that do not receive an allocation and that lock or cross other unexecuted orders and buy and sell better-priced DMM Orders will be cancelled after the Auction Processing Period concludes).

Interest to participate in an Exchange-facilitated Auction that results in a quote would promote fair and orderly markets. This proposed change is consistent with Commentary .03(a)(1) to Rule 7.35C, but differs from current Rule 7.35C(a)(1). A security opens on a quote if there is no buy interest willing to trade with sell interest at the same price. The Exchange believes that under such circumstances, including DMM Interest in the Exchange's quote would assist the DMMs in meeting their obligation to maintain a two-sided quote as well as to maintain continuity and depth in their assigned securities.[20] Accordingly, the Exchange believes that making this change permanent would promote fair and orderly markets in connection with Exchange-facilitated Auctions that result in a quote.

The final element of the proposed change to Rule 7.35C(a)(1) is that DMM Interest would no longer be automatically cancelled after an Exchange-facilitated Auction. The Exchange believes that this proposed change would assist DMMs in meeting their obligation, as required by Rule 104(f)(2), to provide passive liquidity in order to maintain continuity with reasonable depth in their assigned securities immediately following a Core Open Auction or Trading Halt Auction that was facilitated by the Exchange. In advance of an Auction, DMMs can enter DMM Orders, which if not traded in an Auction, would be part of the DMM Interest on the Exchange Book after the Auction. In addition, DMMs can enter DMM After-Auction Orders, which do not participate in Auctions and are specifically designed to assist the DMMs to maintain passive liquidity on the Exchange immediately following an Auction, which supports their ability to maintain continuity with reasonable depth immediately following an Auction. If DMM Interest is not automatically cancelled following an Exchange-facilitated Auction, the DMM would be better able to timely meet these obligations by ensuring that passive liquidity remains on the Exchange Book immediately following an Auction.

The Exchange believes that there remain circumstances when DMM Interest should be cancelled following an Exchange-facilitated Auction. As proposed, the Exchange would cancel unexecuted DMM Interest under the same circumstances that unexecuted orders of other member organizations would be cancelled following such Auctions.

To effect this change, the Exchange proposes to amend Rule 7.35C(g)(1), which currently describes which unexecuted orders would be cancelled if a security opens or reopens on a trade via an Exchange-facilitated Auction, and Rule 7.35C(g)(2), which currently describes which unexecuted orders would be cancelled if a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar via an Exchange-facilitated Auction. The Exchange proposes that these two subparagraphs would be replaced with the following text to incorporate that under the same circumstances, DMM Interest would similarly be cancelled (proposed new text underlined):

(1) If a security opens or reopens on a trade, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders, <u>including DMM Interest</u>, with a limit price that is better-priced than the Auction Price and were not executed in the applicable Auction will be cancelled.

(2) If a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders, <u>including DMM Interest,</u> with a limit price that is better-priced than the upper (lower) Auction Collar will be cancelled before such quote is published.

These proposed rule changes would make permanent the temporary functionality set forth in paragraphs (b)(1) and (2) to Commentary .03.

The Exchange further believes that if previously-entered DMM Interest would be marketable against either other DMM Interest or contra-side unexecuted orders, such DMM Interest should be cancelled. For example, if for a security, the Auction Reference Price is $10.00, the lower Auction Collar is $9.00 and the upper Auction Collar is $11.00, and the orders on the Exchange Book in advance of the Auction are as follows:

- Order 1—Buy DMM Order 1000 shares at $10.05
- Order 2—Sell DMM Order 1000 shares at $10.00
- Order 3—Buy DMM Order 1000 shares at $10.02
- Order 4—Sell Limit Order at $10.03,

the orders in this example would be processed as follows in an Exchange-facilitated Auction:

- Order 1 would be cancelled (because DMM Interest would not be eligible to participate in an Auction trade, and here, Order 1 is marketable with Orders 2 and 4)

[20] *See* Rule 104(f)(2).

• Order 2 would be cancelled (because DMM Interest would not be eligible to participate in an Auction trade, and here Order 2 is marketable with Order 3), and

• Order 3 would not be cancelled because it is no longer marketable with any other interest, *i.e.,* it no longer locks or crosses the price of any other contra-side interest in the Exchange Book. Order 3 would therefore be included in the opening quote.

This Exchange-facilitated Auction would result in the following quote: $10.02 (Order 3 – DMM Order) × $10.03 (Order 4 – Limit Order).

To effect this change, the Exchange proposes new subparagraph (g)(3) to Rule 7.35C to specify the additional circumstances when DMM Interest would be cancelled, as follows:

The Exchange will cancel DMM Interest that is marketable against contra-side unexecuted orders. If the contra-side unexecuted order against which such DMM Interest is marketable is DMM Interest, the DMM Interest with the earlier working time will be canceled.

This proposed rule change would make permanent the temporary functionality set forth in paragraph (b)(3) to Commentary .03.

The Exchange believes that these proposed rule changes would promote fair and orderly markets whenever the Exchange facilitates an Auction under Rule 7.35C—under any circumstance—by supporting DMMs in maintaining continuity with reasonable depth in their assigned securities immediately following an Exchange-facilitated Core Open Auction or Trading Halt Auction that was facilitated by the Exchange.

The Exchange proposes that, with these proposed changes to Rules 7.35C(a)(1) and (g), Commentary .03 to Rule 7.35C would be deleted in its entirety.

In further support of making the functionality set forth in Commentary .03 to Rule 7.35C permanent, the Exchange notes that after the Exchange implemented that Commentary, the Exchange observed improved performance relating to Exchange-facilitated Auctions.

• For the period March 23, 2020 to April 3, 2020, 4.9% of all Core Open Auctions were facilitated by the Exchange. For the period April 6, 2020 through June 16, 2020, the Exchange facilitated only 2% of all Core Open Auctions. In addition, the percentage of Exchange-facilitated Core Open Auctions that were bound by an Auction Collar decreased from 1.3% from the pre-April 6, 2020 period, to 0.58% in the April 6, 2020–June 16, 2020 period.

• In addition, the Exchange observed that after April 6, 2020, Exchange-listed securities experienced reduced volatility in the first half hour of trading. The Exchange uses a quote-based metric to measure volatility in securities,[21] and based on that metric, volatility in Exchange-listed securities between the period of April 6, 2020 and June 16, 2020 was 28.4% lower than the same measure between March 23, 2020 and April 3, 2020. In addition, the Exchange further observed that between these two periods, the difference between the Core Open Auction Price and the subsequent five-minute VWAP dropped by 31.3%.

For DMM firms that have already returned staff to the Trading Floor, this proposed change has limited application because the Exchange has not facilitated any Auctions on behalf of those firms since June 16, 2020. In addition, the Exchange anticipates that once the Trading Floor facilities open in full to DMMs, and all DMM firms have staffing on the Trading Floor, the need for Exchange-facilitated Auctions would be obviated, and the Exchange will revert to pre-pandemic rates of Exchange-facilitated Auctions, which were none. Accordingly, the proposed changes to Rule 7.35C will likely have limited application and would be available as a business continuity functionality should DMMs be unable to facilitate an Auction in one or more securities, for any reason.

There are no technology changes associated with this proposed rule change and the Exchange would be able to implement it immediately upon approval of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that Commentary .03 to Rule 7.35C, which is currently in effect on a temporary basis, has supported the fair and orderly operation of the Exchange during both the market volatility associated with COVID–19 and the temporary period that the Trading Floor facilities have been closed either in full or in part due to COVID–19. The Exchange further believes the functionality that has been operating on a temporary basis would continue to support the fair and orderly operation of the Exchange under any circumstances where there may be either market-wide volatility or the need for the Exchange to facilitate one or more Auctions.

As noted above, beginning March 19, 2020, the Exchange began facilitating auctions as provided for under Rule 7.35C for the first time, and then, beginning March 23, 2020, when the Trading Floor was temporarily closed to reduce the spread of COVID–19, began facilitating Auctions on behalf of all DMM firms. Based on that experience, the Exchange added Commentary .03 to Rule 7.35C, which is in effect only for a temporary period while the Trading Floor is closed. The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to make the changes described in Commentary .03 to Rule 7.35C permanent because it would allow DMMs to maintain continuity with reasonable depth in their assigned securities immediately following an Exchange-facilitated Auction.

As described above, the Exchange is proposing that DMM Interest would continue not to participate in an Exchange-facilitated Auction that results in a trade. As noted above, under both the current Rule and temporary Commentary .03, DMM Interest does not participate in an Exchange-facilitated Auction that results in a trade in part to prevent wash-trade sales of previously-entered DMM buy and sell interest and therefore reduces DMM units' risk. It also protects the fair and orderly operation of such Auctions because such DMM Interest may be at stale prices, and therefore could impact pricing of the Auction in a manner that does not reflect up-to-date trading interest. For this reason, the Exchange believes it would continue to promote

[21] As described in an Exchange blog post, this metric is calculated using second-to-second ''quote returns,'' which is calculated by averaging the midpoints of all NBBO updates for a security within each second of the day from 9:35 a.m. to 4:00 p.m., and then calculating the percentage rate of return of these average quote midpoints from one second to the next. The variance of returns are then calculated in aggregated time periods (*e.g.,* 5-minute buckets) and annualized from seconds to 6.5 hour trading days to 252 trading days in the years. Finally, the Exchange takes the square root of the annualized variance in the aggregated periods, which creates the Exchange's quote volatility metric. *See* NYSE Data Insights, Introducing Quote Volatility (QV)—a new metric to measure price volatility, available here: *https://www.nyse.com/data-insights/introducing-quote-volatility-qv-a-new-metric-to-measure-price-volatility.*

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

fair and orderly Auctions for DMM Interest not to participate in an Exchange-facilitated Auction that results in a trade.

By contrast, the Exchange believes that the proposed change that DMM Interest would be included in an Exchange-facilitated Auction that results in a quote would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly resumption of trading by allowing DMM Interest to be considered as part of the opening quote. A security only opens on a quote when there are no buy and sell orders that can be crossed at a single price. Accordingly, when a security opens on a quote, the DMM has an immediate obligation to maintain a two-sided quote and to provide continuity and depth. Including DMM interest in an Exchange-facilitated Auction that results in a quote would assist DMMs in meeting those obligations.

The Exchange believes it would remove impediments to and perfect the mechanism of a free and open market and a national market system not to automatically cancel DMM Interest following an Exchange-facilitated Auction because it would provide DMMs with the opportunity to provide passive liquidity immediately following an Exchange-facilitated Auction, thereby reducing volatility while still limiting DMM risk. Similarly, the Exchange believes that because DMM Interest would not be participating in an Exchange-facilitated Auction that results in a trade, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to cancel DMM Interest that would be marketable against unexecuted orders because, if not cancelled, such interest could trade at a price that would not be consistent with the Auction Price or opening or reopening quote determined in the Exchange-facilitated Auction. The proposed changes would also remove impediments to and perfect the mechanism of a free and open market because DMM Interest that, following an Exchange-facilitated Auction, would be priced through the Auction Price or Auction Collars, as applicable, would be cancelled in the same manner that other unexecuted orders would be cancelled.

The Exchange further believes that the proposed changes to Rules 7.35C(a) and (g) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange observed improved performance following Exchange-facilitated Auctions after the Exchange implemented Commentary .03 to Rule 7.35C. Accordingly, should circumstances ever arise again that would require the Exchange to facilitate any Auctions, which, based on pre-pandemic experience, would likely be rare, the Exchange believes that these proposed changes would improve the performance of Exchange-facilitated Auctions by enabling better engagement by the DMMs in both the Auction and the immediate after-market while still limiting DMM risk.

## III. Discussion and Commission Findings

After careful review, the Commission is approving the proposed rule change, as modified by Amendment No. 2, for the reasons discussed below.[24] The Commission finds that the proposed rule change, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[25]

The Exchange proposes to make permanent certain provisions of its rules that have been temporarily in effect during the course of the COVID–19 pandemic, as the Exchange has operated with fully and partially closed floor trading facilities. The Exchange proposes that, when it facilitates an auction because a DMM is unable to connect to Exchange systems, DMM Interest will not be able to participate in the auction if that auction results in a trade, but will be able to participate if the auction results in a quote (*i.e.,* if no buy interest in the auction is willing to trade with sell interest at the same price). This aspect of the proposal is consistent with Section 6(b)(5) of the Act because (1) in the case of an Exchange-facilitated auction that results in a trade, the rule is reasonably designed to prevent wash-sale trades between DMM Interest on opposite sides of the market and to prevent DMM Interest that does not reflect up-to-date prices from affecting the price of the auction; and (2) in the case of an Exchange-facilitated auction that results in a quote, to allow DMM Interest to populate the Exchange's order book after the auction, assisting DMMs in meeting their obligations to maintain a two-sided quote and continuity and depth in their assigned securities.

The Exchange also proposes that DMM Interest would no longer be automatically canceled after an Exchange-facilitated opening or reopening auction. Under the proposal, the Exchange would cancel DMM Interest after an auction under the same circumstances in which it cancels unexecuted limit orders of other member organizations, namely (1) in the case of an Exchange-facilitated auction that opens or reopens on a trade, when the interest is better-priced than the auction price, and (2) in the case of an Exchange-facilitated auction that opens or reopens on a quote, when the interest is priced better than the Auction Collar under the Exchange's rules. Other DMM Interest, however, including DMM After-Auction Orders, would not be canceled and would be incorporated into the Exchange's order book immediately upon the commencement of continuous trading following the auction. This aspect of the proposal is consistent with Section 6(b)(5) of the Act because the proposed rule is reasonably designed to permit DMMs to provide passive liquidity in continuous trading immediately following an auction and thereby meet their obligations to maintain price continuity with reasonable depth.

For these reasons, the Commission finds that this proposed rule change is consistent with the requirements of the Act and in particular Section 6(b)(5) because it is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

## IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 U.S.C. 78f(b)(5).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–89 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–89. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–89 and should be submitted on or before August 5, 2021.

## V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange removed from the original proposal the proposed changes to its permanent rules to: (i) Permit the CEO to determine that the Exchange will facilitate a Trading Halt Auction in one or more securities following a MWCB Halt if the security has not reopened by 3:30 p.m. Eastern Time, and (ii) establish wider Auction Collars for Trading Halt Auctions following a MWCB Halt.[26]

The Commission finds that Amendment No. 2 is consistent with the Act in that is designed, among other things, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[27] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change SR–NYSE–2020–89, as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15039 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[26] *See supra* note 10.

[27] 15 U.S.C. 78s(b)(2).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92360; File No. SR–EMERALD–2021–22]**

## Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Purge Ports

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a 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 Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's Fee Schedule (the ''Fee Schedule'') to amend the fees for Purge Ports.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 currently provides Market Makers[4] the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send quote purge messages to the Exchange System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange proposes to amend the monthly fee for Purge Ports under Section 5(d)(ii) of the Fee Schedule. Unlike other options exchanges that provide purge port functionality and charge fees on a per port basis,[6] the

[3] *See* Fee Schedule, Section 5(d)(ii).

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per

Continued

Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine [7] to which it connects via a Full Service MEI Port.[8] The Exchange currently has twelve (12) matching engines which means Market Makers may receive up to twenty-four (24) Purge Ports for a single monthly fee. The Exchange currently assesses Market Makers a fee of $1,500 per month, regardless of the number of Purge Ports allocated to the Market Maker. Assuming a Market Maker connects to all twelve (12) matching engines during a month, with two Purge Ports per matching engine, this results in a cost of $62.50 per Purge Port ($1,500 divided by 24) for the month. The Exchange now proposes to increase the fee to $7,500 per month. Market Makers will continue to receive two (2) Purge Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Market Maker connects to all twelve (12) matching engines during the month, with two Purge Ports per matching engine, this would result in a cost of $312.50 per Purge Port ($7,500 divided by 24).

The Exchange has historically undercharged for Purge Port as compared to other options exchanges [9] because the Exchange provides Purge Ports as a package for a single monthly fee. As described above, this package includes two Purge Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The proposed monthly fee increase for Purge Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Purge Port.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [12] in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Market Maker two Purge Ports for each matching engine to which that Market Maker is connected. The Exchange currently has twelve (12) matching engines. Accordingly, each Market Maker that is connected to all twelve (12) matching engines receives a total of twenty-four (24) Purge Ports for the existing flat fee of $1,500 per month. On a per Purge Port basis, that equals $62.50 per Purge Port ($1,500 divided by 24). The Exchange believes that increasing the flat monthly fee for Purge Port (regardless of the number of matching engines to which it connects and consequently regardless of the number of Purge Ports allocated to the Market Maker) is equitable, reasonable, and competitive with the fees charged by other exchanges that offer comparable purge port services. The Exchange believes that most such exchanges charge per port for each match engine. For example, BXZ charges a monthly fee of $750 per purge port per month, EDGX charges a monthly fee of $750 per purge port, Cboe charges a monthly fee of $850 per purge port,[13] and Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month.[14] When calculated on a per purge port basis, each of the above exchanges charge monthly per purge port fees that are higher than the proposed $7,500 per month ($312.50 per Purge Port).

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 3.27% of the market share.[15] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] The Exchange is not aware of any evidence that a market share of approximately 6–7% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would purchase Purge Ports, and existing market participants would cease paying for Purge Ports, which are optional services offered by the Exchange. The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls because Purge Ports are optional functionality offered to Market Makers. The Exchange further believes the proposed fees are reasonable as the Exchange believes that the proposed fees are lower on a per port basis than

month). In Cboe's Purge Ports Frequently Asked Questions, Cboe recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf. See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers.

[7] ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* Fee Schedule, Definitions.

[8] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* Fee Schedule, Definitions.

[9] *See supra* note 6.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 6. Cboe further recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf.* This guidance applies to Cboe's affiliate exchanges, BZX and EDGX.

[14] *See supra* note 6.

[15] *See* the Exchange's ''The Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited June 30, 2021).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] 15 U.S.C. 78f(b)(4).

the fees assessed by other exchanges that provide similar functionality.[18] Indeed, if the Exchange's proposed fees that are excessively higher than established fees for similar services on other exchanges, then the proposed fees would simply serve to reduce demand for the Exchange's services, which as noted, is entirely optional. The Exchange notes that Market Makers are not required by rule or regulation to purchase Purge Ports. It is entirely a business decision of each Market Maker that determines to purchase Purge Ports.

Additionally, Market Makers are not precluded from using the purge messages provided by either the MEI protocol or the cancel messages provided by the FIX protocol. Under the MEI protocol, Market Makers may request that all quotations for all underlyings, or for a specific underlying, be removed, and that new inbound quotations for all underlyings, or specific underlyings, be blocked. Under the FIX protocol, Electronic Exchange Members (''EEMs'') may also request that all, or a subset, of orders for an MPID, or all Day or GTC orders for an MPID, on the requesting session, be canceled. As such, a dedicated Purge Port is not required or necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk.

The Exchange operates in a highly competitive market in which exchanges offer various types of access services as a means to facilitate the trading activities of Members and other participants. As Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use dedicated Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select the Purge Port service will be charged the same amount for the same respective services.

As Purge Ports are only available for purging and not for activities such as order or quote entry, the Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market participants are not subject to, which, in turn, benefits all market participants. The Exchange believes the proposed fee increase will continue to encourage better use of dedicated Purge Ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. The Exchange also believes that the proposed fee increase is non-discriminatory because the proposed Purge Port fees will apply uniformly to all Market Makers. Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily request this service will be charged the same amount for the same service. Separately, the Exchange is not aware of any reason why market participants could not simply drop their Purge Ports if the Exchange were to establish unreasonable prices for its Purge Ports that, in the determination of such market participant, did not make business or economic sense for such market participant. No options market participant is required by rule, regulation, or competitive forces to utilize Purge Ports. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange noted in a recent filing that once it issued a notice that it was adopting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[19] Accordingly, these examples show that if an exchange sets too high of a fee for non-transaction fees for its relevant marketplace, market participants can choose to no longer access that particular exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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.

The Exchange believes the proposed rule change does not impose any burden intra-market competition because the use of Purge Ports is an optional service offered by the Exchange and no Market Maker is required or under any regulatory obligation to utilize them. The Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port. The Exchange currently has twelve (12) matching engines which means Market Makers may receive up to twenty-four (48) Purge Ports for a single monthly fee. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Market Makers may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Market Makers or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for the proposed Purge Ports and connectivity, in general, are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including Purge Port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Market Makers equally.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

[18] *See supra* note 6.

[19] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03).

Accordingly, the Exchange does not believe its proposed fee changes 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*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[20] and Rule 19b–4(f)(2)[21] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–22 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–22. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–22 and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15032 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92363; File No. SR–PEARL–2021–30]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for Purge Ports

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Pearl Fee Schedule (the ''Fee Schedule'') to amend the fees for MIAX Express Network (''MEO'')[3] Purge Ports.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 currently provides Members[5] the option to purchase Purge Ports to assist in their order activity. Purge Ports provide Members with the ability to send quote purge messages to the MIAX Pearl System.[6] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Member utilize them.

The Exchange proposes to amend the monthly fee for Purge Ports under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] *See* the Definitions Section of the Fee Schedule.

[5] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

Section (5)(d) of the Fee Schedule. Unlike other options exchanges that provide purge port functionality and charge fees on a per port basis,[7] the Exchange offers Purge Ports as a package and provides Members with the option to receive up to two (2) Purge Ports per matching engine[8] to which it connects via an MEO Purge Port. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Purge Ports for a single monthly fee. The Exchange currently assesses Members a fee of $750 per month, regardless of the number of Purge Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Purge Ports per matching engine, this results in a cost of $31.25 per Purge Port ($750 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Purge Port fees in 2018.[9] The Exchange now proposes to increase the fee to $7,500 per month. Members will continue to receive two (2) Purge Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Purge Ports per matching engine, this would result in a cost of $312.50 per Purge Port ($7,500 divided by 24).

The Exchange has historically undercharged for Purge Port as compared to other options exchanges[10] because the Exchange provides Purge Ports as a package for a single monthly fee. As described above, this package includes two Purge Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The proposed monthly fee increase for Purge Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Purge Port.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[13] in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Purge Ports for each matching engine to which that Member is connected. The Exchange currently has twelve (12) matching engines. Accordingly, each Member that is connected to all twelve (12) matching engines receives a total of twenty-four (24) Purge Ports for the existing flat fee of $1,500 per month. On a per Purge Port basis, that equals $31.25 per Purge Port ($750 divided by 24). This flat fee has remain unchanged since the Exchange adopted fees for Purge Ports in 2018.[14] The Exchange believes that increasing the flat monthly fee for Purge Port (regardless of the number of matching engines to which it connects and consequently regardless of the number of Purge Ports allocated to the Member) is equitable, reasonable, and competitive with the fees charged by other exchanges that offer comparable purge port services. The Exchange believes that most such exchanges charge per port for each match engine. For example, BXZ charges a monthly fee of $750 per purge port per month, EDGX charges a monthly fee of $750 per purge port, Cboe charges a monthly fee of $850 per purge port,[15] and Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month.[16] When calculated on a per purge port basis, each of the above exchanges charge monthly per purge port fees that are higher than the proposed $7,500 per month ($312.50 per Purge Port).

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 4.98% of the market share.[17] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[18] The Exchange is not aware of any evidence that a market share of approximately 6–7% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would purchase Purge Ports, and existing market participants would cease paying for Purge Ports, which are optional services offered by the Exchange. The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other

[7] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). In Cboe's Purge Ports Frequently Asked Questions, Cboe recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf. See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers.

[8] A ''matching engine'' is a part of the MIAX Pearl electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5)d)ii), note 29.

[9] *See* Securities Exchange Act Release No. 83867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[10] *See supra* note 7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 9.

[15] *See supra* note 7. Cboe further recommends that at least two purge ports be obtained per exchange for redundancy purposes. *See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf.* This guidance applies to Cboe's affiliate exchanges, BZX and EDGX.

[16] *See supra* note 7.

[17] *See* MIAX's ''The Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited June 30, 2021).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[19] 15 U.S.C. 78f(b)(4).

persons using any facility or system which the Exchange operates or controls because Purge Ports are optional functionality offered to Members. The Exchange further believes the proposed fees are reasonable as the Exchange believes that the proposed fees are lower on a per port basis than the fees assessed by other exchanges that provide similar functionality.[20] Indeed, if the Exchange proposed fees that are excessively higher than established fees for similar services on other exchanges, then the proposed fees would simply serve to reduce demand for the Exchange's services, which as noted, is entirely optional. The Exchange notes that Members are not required by rule or regulation to purchase Purge Ports. It is entirely a business decision of each Member that determines to purchase Purge Ports.

Additionally, Members are not precluded from using the existing purge messages provided by either the MEO protocol or the cancel messages provided by the FIX protocol. Under the MEO protocol, Members may request that all quotations for all underlyings, or for a specific underlying, be removed, and that new inbound quotations for all underlyings, or specific underlyings, be blocked. Under the FIX protocol, Members may also request that all, or a subset, of orders for an MPID, or all Day or GTC orders for an MPID, on the requesting session, be canceled. As such, a dedicated Purge Port is not required or necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk.

The Exchange operates in a highly competitive market in which exchanges offer various types of access services as a means to facilitate the trading activities of Members and other participants. As Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all Members that choose to use dedicated Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Member is required or under any regulatory obligation to utilize them. All Members that voluntarily select the Purge Port service will be charged the same amount for the same respective services.

As Purge Ports are only available for purging and not for activities such as order or quote entry, the Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Members to better manage their market risk, which, in turn, benefits all market participants. The Exchange believes the proposed fee increase will continue to encourage better use of dedicated Purge Ports. This may, concurrent with the ports that carry orders and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Members' resources. The Exchange also believes that the proposed fee increase is non-discriminatory because the proposed Purge Port fees will apply uniformly to all Members. Purge Ports are completely voluntary and no Member is required or under any regulatory obligation to utilize them. All Members that voluntarily request this service will be charged the same amount for the same service. Separately, the Exchange is not aware of any reason why market participants could not simply drop their Purge Ports if the Exchange were to establish unreasonable prices for its Purge Ports that, in the determination of such market participant, did not make business or economic sense for such market participant. No options market participant is required by rule, regulation, or competitive forces to utilize Purge Ports. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange's affiliate, MIAX Emerald, LLC (''MIAX Emerald''), noted in a recent filing that once MIAX Emerald issued a notice that it was adopting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[21] Accordingly, these examples show that if an exchange sets too high of a fee for non-transaction fees for its relevant marketplace, market participants can choose to no longer access that particular exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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.

The Exchange believes the proposed rule change does not impose any burden intra-market competition because the use of Purge Ports is an optional service offered by the Exchange and no Member is required or under any regulatory obligation to utilize them. The Exchange offers Purge Ports as a package and provides Members with the option to receive up to two (2) Purge Ports per matching engine to which it connects via an MEO Port. The Exchange currently has twelve (12) matching engines which means Members may receive up to twenty-four (24) Purge Ports for a single monthly fee. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for the proposed Purge Ports and connectivity, in general, are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including Purge Port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members equally.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this

[20] *See supra* note 7.

[21] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03).

competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee changes 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*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2)[23] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–30 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2021–30. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–30 and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15033 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92366; File No. SR–PEARL–2021–32]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to remove certain credits and amend the monthly Trading Permit[3] fees for Exchange Members.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 amend the Fee Schedule to remove certain credits and amend the monthly Trading Permit fees (''Proposed Access Fees'') for Exchange Members.

Remove ''Monthly Volume Credit''

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

Exchange established the Monthly Volume Credit in 2018 [5] to encourage Members to send increased Priority Customer [6] order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction rebates and fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX Interface [7] or MEO Interface.[8] Currently, the Exchange assesses the Monthly Volume Credit to a Member whose executed Priority Customer volume along with that of its Affiliates,[9] not including Excluded Contracts,[10] is at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[11] as set forth in the following table:

| Type of member connection | Monthly volume credit |
|---|---|
| Member that connects via the FIX Interface | $250 |
| Member that connects via the MEO Interface | 1,000 |

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. The Monthly Volume Credit is a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange now proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange now believes it is appropriate to remove this credit. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share.

Remove Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. The Trading Permit fee credit is applicable to Members that connect via both the MEO and FIX Interfaces. Currently, Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members receive a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface use. The Exchange now proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section 3b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purposes and the Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amend Trading Permit Fees

The Exchange proposes to amend Section 3b) of the Fee Schedule to increase the amount of the monthly Trading Permit fees. The Exchange issues Trading Permits to Members who are either Electronic Exchange Members [12] (''EEMs'') or Market Makers.[13] The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [14] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface and/or the MEO Interface.

*Current Trading Permit Fees.* Currently, each Member who connects to the System [15] via the FIX Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $250;

[5] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[6] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[7] ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[8] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[9] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[10] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[11] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[12] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule.

[13] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules. *See* the Definitions Section of the Fee Schedule.

[14] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[15] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $350; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

Each Member who connects to the System via the MEO Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $300;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $400; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $500.

*Proposed Trading Permit Fees.* The Exchange now proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits grant access to the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange now proposes to increase its monthly fees since it has not done so since the fees were first adopted in 2018 [16] and are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that the its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge a similar, fixed trading permit fee to certain users, and a similar, varying trading permit fee to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.[17] The Exchange notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange,[18] and, as such, this concept is not new or novel. The Exchange also notes that the proposed increased Trading Permit fees are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.[19]

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [20] in general, and furthers the objectives of Section 6(b)(4) of the Act [21] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. The Exchange deems Trading Permit fees to be Access Fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expenses the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

[16] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[17] *See* the MIAX Fee Schedule, Section 3)b); MIAX Emerald Fee Schedule, Section 3)b).

[18] *See e.g.,* NYSE Arca Options Fees and Charges, p.1 (assessing market makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, an additional $3,000 for all option issues on the exchange, and an additional $1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers $8,000 for up to 60 plus the bottom 45% of option issues, an additional $6,000 for up to 150 plus the bottom 45% of option issues, an additional $5,000 for up to 500 plus the bottom 45% of option issues, and additional $4,000 for up to 1,100 plus the bottom 45% of option issues, an additional $3,000 for all issues traded on the exchange, and an additional $2,000 for 6th to 9th ATPs; plus an addition fee for premium products). *See also* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts. *Id.*

[19] *See id.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4) and (5).

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing the Trading Permits, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2020. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2020 or for the first two quarters of 2021, the Exchange believes its 2020 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

The Exchange notes that this is the same process utilized by the Exchange's affiliate, MIAX Emerald, in a filing recently noticed by the Commission when MIAX Emerald adopted its own trading permit fees.[22]

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[23] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[24] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they will not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange, and its affiliates MIAX and MIAX Emerald, to establish or increase other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

* * * * *

As of June 30, 2021, the Exchange had only a 5.31% market share of the U.S. equity options industry for the month of June 2021.[25] The Exchange is not aware of any evidence that a market share of approximately 5–6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Similarly, the Exchange's affiliate, MIAX Emerald, noted in a recent filing that once MIAX Emerald issued a notice that it was instituting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[26] Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to drop their access to such exchange.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is

[22] *See* Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR–EMERALD–2021–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Monthly Trading Permit Fees).

[23] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[25] *See* ''The market at a glance'', *available at www.miaxoptions.com* (last visited June 30, 2021).

[26] *See supra* note 22.

reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons because, in order to attract order flow when the Exchange first launched operations, the Exchange established the Monthly Volume Credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. The Proposed Access Fees are also reasonable and equitable because they are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.[27] The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future.

The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 10.7 million order messages per second. On an average day, the Exchange handles over approximately 2.7 billion total messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Members to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange and its affiliates provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with services associated with the Proposed Access Fees. For 2021,[28] the total annual expense for providing the access services associated with the Proposed Access Fees for the Exchange is projected to be approximately $844,741. The $844,741 in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of the Exchange to provide the services associated with the Proposed Access Fees.[29] As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2021 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[30] The $844,741 in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general

[27] *See supra* note 18.

[28] The Exchange has not yet finalized its 2021 year end results.

[29] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[30] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2021 Form 1 Amendment, which will be filed in 2022.

costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2021, total third-party expense, relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $188,815. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[31] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees. Further, the Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market are accounted for separately and are not included within the scope of this filing.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 8% of the total applicable Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 4% of the total applicable Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 3% of the total applicable SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of

[31] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2021, total projected internal expense, relating to the internal costs of the Exchange to provide the access services associated with the Proposed Access Fees, is projected to be $655,925. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $549,834, which is only a portion of the $9,163,894 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 6% of the total applicable employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $66,316, which is only a portion of the $1,326,325 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 5% of the total applicable depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $39,775, which is only a portion of the $497,180 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's

network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 8% of the total applicable occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately $1,170,000 per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the access services associated with the Proposed Access Fees would be approximately $844,741 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 28% profit margin on the Proposed Access Fees ($1,170,000 in revenue minus $844,741 in expense = $325,259 profit per annum). The Exchange notes that the fees charged for Trading Permits can vary from month to month depending on the type of interface used and the Non-Transaction Fees Volume-Based Tier that is achieved for that month. As such, the revenue projection is not a static number, with monthly Trading Permit fees likely to fluctuate month to month.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Pearl expenses included herein, those expenses only cover the MIAX Pearl options market; expenses associated with the MIAX Pearl equities market and the Exchange's affiliate exchanges, MIAX and MIAX Emerald, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX Pearl Equites, MIAX or MIAX Emerald.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

The Exchange believes the proposed changes are reasonable, equitably allocated and not unfairly discriminatory, and do not result in a ''supra-competitive'' [32] profit. Of note, the Guidance defines ''supra-competitive profit'' as profits that exceed the profits that can be obtained in a competitive market.[33] With the proposed changes, the Exchange anticipates it will have a profit margin of 28% for its Trading Permit fees. Based on the 2019 Audited Financial Statements of the competing options exchanges (since the 2020 Audited Financial Statements will likely not become publicly available until early July 2021, after the Exchange has submitted this filing), the Exchange's profit margin is well below the operating profit margins of other competing exchanges. For example, Nasdaq ISE, LLC's (''ISE'') operating profit margin, for all of 2019, was 83%.[34] ISE's equity options market share for all of 2019 was 8.99%[35] while its access fees are as follows: $500 per month for Electronic Access Members; $5,000 per month for Primary Market Makers; and $2,500 per month for Competitive Market Makers.[36] Nasdaq PHLX LLC's (''PHLX'') operating profit margin, for all of 2019, was 67%.[37] PHLX's equity options market share for all of 2019 was 15.85%[38] while its permit fees are as follows: $4,000 per month for Floor Brokers; $6,000 per month for Floor Lead Market Makers and Floor Market Makers; and $4,000 per month for Remote Lead Market Makers and Remote Market Makers.[39]

The Exchange further believes its proposed fees are reasonable, equitably allocated and not unfairly discriminatory because the Exchange, and its affiliates, are still recouping the initial expenditures from building out their systems while the legacy exchanges have already paid for and built their systems.

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[33] *See id.*

[34] *See* PHLX Form 1, Exhibit D, filed June 30, 2020 *available at https://sec.report/Document/9999999997-20-003902/.*

[35] *See https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Exchange.*

[36] *See* Nasdaq ISE LLC Options 7 Pricing Schedule, Section 8.A. Access Services, at *https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207.*

[37] *See* ISE Form 1, filed June 29, 2020 *available at* Form 1—ISE—Final (1).pdf (*sec.gov*).

[38] *See supra* note 33.

[39] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 8.A. Permit and Registration Fees, at *https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207.*

The Exchange believes that the Proposed Access Fees are reasonable, equitable and not unfairly discriminatory because they are in line with, or cheaper than, the trading permit fees or similar membership fees charged by other options exchanges.[40] The Proposed Access Fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Members regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Trading Permit holders that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Guidance provides that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee. As described below, the Exchange believes substitute products and services are available to market participants, including, among other things, other options exchanges that market participants may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller and/or trading of any options products, including proprietary products, in the Over-the-Counter (''OTC'') markets. Indeed, there are currently 16 registered options exchanges that trade options, some of which have similar or lower connectivity fees.[41] Based on publicly available information, no single options exchange has more than approximately 14–15% of the market share as of June 30, 2021.[42]

There is also no regulatory requirement that any market participant connect to any one options exchange, that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a Sponsored User.[43] Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer. Based on a recent analysis conducted by the Cboe Exchange, Inc. (''Cboe''), as of October 21, 2020, only three (3) of the broker-dealers, out of approximately 250 broker-dealers, were members of at least one exchange that lists options for trading and were members of all 16 options exchanges.[44] Additionally, the Cboe Fee Filing found that several broker-dealers were members of only a single exchange that lists options for trading and that the number of members at each exchange that trades options varies greatly.[45]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for users that connect via the MEO Interface of different sizes and business models that best matches their activity on the Exchange.

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large users that connect via the MEO Interface and broker-dealers that are members of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of June 30, 2021, the Exchange had a market share of approximately 5.31% of executed

[40] *See supra* note 18.

[41] *See e.g.,* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[42] *See https://markets.cboe.com/us/options/market_statistics/.*

[43] *See* Exchange Rule 210. The Sponsored User is subject to the fees, if any, of the Sponsoring Member. The Exchange notes that the Sponsoring Member is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the Sponsored User any fees it deems appropriate, even if such fees would otherwise be considered supra-competitive, or otherwise potentially unreasonable or uncompetitive.

[44] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105) (the ''Cboe Fee Filing''). The Cboe Fee Filing cited to the October 2020 Active Broker Dealer Report, provided by the Commission's Office of Managing Executive, on October 8, 2020.

[45] *Id.*

multiply-listed equity options[46] for the month of June 2021, and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[47] and Rule 19b–4(f)(2)[48] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2021–32. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–32 and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15036 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[46] *See supra* note 25.

[47] 15 U.S.C. 78s(b)(3)(A)(ii).

[48] 17 CFR 240.19b–4(f)(2).

[49] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92367; File No. SR–PEARL–2021–31]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the MIAX Pearl Options Fee Schedule

July 9, 2021.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX Pearl Market Maker[3] Origin, to modify the volume threshold for the alternative Volume Criteria in Tier 3.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule.

executed by the Member[4] on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)[5] (as the numerator) expressed as a percentage of (divided by) TCV[6] (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[7] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX Pearl System,[8] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO[9] uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program[10] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Interval Program (''Non-Penny Classes''), where Members are assessed higher transaction fees and receive higher rebates.

Alternative Volume Criteria Threshold Change in Tier 3

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX Pearl Market Maker Origin, to modify the volume threshold for the alternative Volume Criteria in Tier 3. The MIAX Pearl Market Maker Origin currently provides an alternative Volume Criteria in Tier 3, which is based upon the total monthly volume executed in SPY options on MIAX Pearl by a Market Maker when adding liquidity. Pursuant to this alternative Volume Criteria, Market Makers will qualify for: (i) Maker rebates of ($0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of ($0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% [sic] in SPY options when adding liquidity as a percent of SPY TCV. The alternative Volume Criteria in Tier 3 is denoted by footnote ''✦'' following the Origin tables in Section 1)a) of the Fee Schedule.

The Exchange proposes to modify the threshold for the alternative Volume Criteria in Tier 3 of the Market Maker Origin from 1.20% to 1.10%. Accordingly, with the proposed change to the alternative Volume Criteria in Tier 3, Maker Makers will qualify for: (i) Maker rebates of ($0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of ($0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY options when adding liquidity as a percent of SPY TCV. Other Penny classes and Non-Penny classes will receive the Tier 3 rates in the Market Maker Origin table. The Exchange will continue to calculate the alternative Volume Criteria in Tier 3 (above 1.10% in SPY when Adding Liquidity), based on the total monthly volume that added liquidity that is executed by the Market Maker solely in SPY options on MIAX Pearl, not including Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY TCV[11] (as the denominator). The Exchange notes that Market Makers that achieve the standard Tier 3 volume percentage but do not qualify for the alternative Volume Criteria in that Tier, will continue to receive the Tier 3 rates in the Market Maker Origin table in Penny Classes and Non-Penny Classes. Members will continue to receive the highest tier based on the thresholds achieved. The Exchange proposes to make the corresponding change to the volume threshold percentage described in the explanatory paragraph in footnote ''✦'' for the alternative Volume Criteria for Tier 3 that is below the tables in Section (1)(a) of the Fee Schedule.

The purpose of this proposed change is for business and competitive reasons. With the proposed change, Members should more easily qualify for the Alternative Volume criteria in Tier 3 in order to receive the higher Maker rebates associated with SPY, QQQ and IWM options. The Exchange believes the proposed change should incentivize Market Makers to improve their posted liquidity to the benefit of the entire market, which should increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative Volume Criteria in Tier 3, the Exchange has

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[6] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the process described in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[10] *See* Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR–PEARL–2020–06).

[11] ''SPY TCV'' means total consolidated volume in SPY calculated as the total national volume in SPY for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY options). *See* the Definitions Section of the Fee Schedule.

determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange.

The Exchange cannot predict with certainty how many Market Makers would achieve the alternative Tier 3 Volume Criteria with the decreased threshold percentage, but anticipates that each Market Maker that is currently in Tier 3 with that alternative method will likely continue to reach that Tier due to that change.

The Exchange has designated these changes to be operative on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to modify the volume threshold for the alternative Volume Criteria in Tier 3 provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 15% of the market share of executed volume of multiply-listed equity and ETF options trades as of June 29, 2021, for the month of June 2021.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of June 29, 2021, the Exchange had an approximately 5.32% market share of executed volume of multiply-listed equity and ETF options for the month of June 2021.[17]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).[18] The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the volume threshold for the alternative Volume Criteria in Tier 3 is reasonable, equitable, and not unfairly discriminatory because Members should more easily qualify for the Alternative Volume criteria in Tier 3, receiving higher Maker rebates associated with SPY, QQQ and IWM options. The Exchange believes the proposed change is reasonable because it should incentivize Market Makers to improve their posted liquidity to the benefit of the entire market, which should increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative Volume Criteria in Tier 3, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange.

The Exchange believes the alternative Volume Criteria in Tier 3 is reasonable, equitable, and not unfairly discriminatory because it is a form of pricing already adopted by the Exchange [19] and a form of pricing based upon trading activity in a select group of symbols, which is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in actively traded options classes. The Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''), offers differentiated pricing for transactions in options underlying certain select symbols.[20] Other options exchanges' fee schedules distinguish by symbol and specifically assess different fees and rebates for transactions in select symbols for the same market participants.[21]

The Exchange also believes that its proposal is not unfairly discriminatory as all Market Makers can continue to qualify for the alternative Volume Criteria in Tier 3 by meeting the lowered threshold amount, which is designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer rebates pursuant to this proposal to only Market Makers because Market Makers add value through continuous quoting and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(1) and (b)(5).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[16] *See https://www.cboe.com/us/options/market_share/.*

[17] *See id.*

[18] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

[19] *See generally,* Section (1)(a) of the Fee Schedule for Market Maker Origin.

[20] *See* MIAX Options Fee Schedule, Section (1)(a)(iii).

[21] *See* Nasdaq ISE, LLC (''ISE'') Fee Schedule, Section 3, Regular Order Fees and Rebates. The ISE Fee Schedule provides for a ''Market Maker Plus'' program for Select and Non-Select Symbols, with tiered incentives for Market Makers. Further, the ISE Fee Schedule provides for a linked maker rebate for SPY, QQQ and IWM, in which the linked maker rebate applies to executions in SPY, QQQ, and IWM if the ISE Market Maker does not achieve the applicable tier in that symbol but achieves the tier (*i.e.,* any of the Market Maker Plus Tiers 2–4) for any badge/suffix combination in the other linked symbol, in which case the higher tier achieved applies to both symbols.

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes its proposal will not impose any burden on intra-market competition because the Exchange believes that its proposal will not place any category of Exchange market participant at a competitive disadvantage. The proposal to modify the volume threshold for the alternative Volume Criteria in Tier 3 is intended to improve market quality. The Exchange believes that its proposal will encourage Market Makers to improve market quality by providing the additional incentive to Market Makers in SPY, QQQ and IWM options for Market Makers that send additional SPY orders, which results in narrower bid-ask spreads and increased depth of liquidity. This in turn will attract additional order flow to the Exchange. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

The Exchange believes its proposal will not impose any burden on inter-market competition because the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2)[23] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–31 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2021–31. 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 website (*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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–31, and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15037 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34326; 812–15175]**

## Fidelity Beach Street Trust, et al.

July 9, 2021.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application to amend a prior order for exemptive relief.

**SUMMARY OF APPLICATION:** Applicants request an order (''Amended Order'') that would amend a prior order to permit the Funds, as defined below, to use Creation Baskets (as defined below) that include instruments that are not included, or are included with different weightings, in the Fund's Tracking Basket (as defined below).

**APPLICANTS:** Fidelity Beach Street Trust (''Beach Street''), Fidelity Management & Research Company LLC (''FMR''), Fidelity Distributors Company LLC (''FDC'') and Fidelity Covington Trust (''New Applicant'' and, together with Beach Street, FMR and FDC, the ''Applicants'').

**FILING DATES:** The application was filed on October 30, 2020, and amended on April 2, 2021, June 11, 2021 and June 30, 2021.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may

request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 3, 2021 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Investment Company Act of 1940 (''Act''), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: *cynthia.lo.bessette@fmr.com,* with copies to *john.ohanlon@dechert.com, allison.fumai@dechert.com* and *stephanie.capistron@dechert.com.*

**FOR FURTHER INFORMATION CONTACT:** Marc Mehrespand, Senior Counsel; Trace Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website 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.

## I. Introduction

1. On December 10, 2019, the Commission issued an order (''Prior Order'') [1] to Beach Street, FMR Co., Inc.,[2] Fidelity Management & Research Company [3] and Fidelity Distributors Corporation [4] (the ''Prior Applicants'') under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[5] The Prior Order permitted Prior Applicants to introduce a novel type of actively-managed exchange-traded fund (''ETF'') that is not required to disclose its portfolio holdings on a daily basis (each, a ''Fund''). Rather, pursuant to the Prior Order, each Business Day [6] a Fund publishes a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance (the ''Tracking Basket'').

2. Pursuant to the Prior Order, a Fund sells and redeems its shares (''Shares'') only in Creation Units and generally on an in-kind basis. Purchasers are required to purchase Creation Units by making a deposit of Deposit Instruments and shareholders redeeming their Shares receive a transfer of Redemption Instruments.[7] Under the Prior Order, the names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') are the same as the Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

3. The New Applicant is organized as a business trust under the laws of The Commonwealth of Massachusetts and is registered with the Commission as an open-end management investment company. The New Applicant consents to, and will comply with, the terms and conditions of the Prior Order, as amended by the requested Order, to the same extent as Beach Street, FMR and FDC.

4. Applicants now seek to amend the Prior Order to, in effect, give the Funds the same flexibility with respect to Creation Basket composition as afforded to ETFs relying on rule 6c–11.[8] More specifically, Applicants have requested that the Funds be allowed to use Creation Baskets that include instruments that are not included, or are included with different weightings, in the Fund's Tracking Basket.

## II. The Application

### *A. Applicants' Proposal*

5. Upon amending the Prior Order, the names and quantities of the instruments that may constitute a Creation Basket will generally be the same as the Fund's Tracking Basket, but a Fund may accept Creation Baskets that differ from the Tracking Basket. Each Business Day, before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any Creation Basket exchanged with an AP on the previous Business Day that differed from such Business Day's Tracking Basket other than with respect to cash.

6. Applicants represent that, for portfolio management or other reasons, the Funds may determine that it is desirable to use Creation Baskets that differ from the Tracking Basket [9] (beyond cash substitutions). For example, a Fund may want to use a Creation Basket that contains instruments that are not included in a Fund's Tracking Basket if the Adviser or Sub-Adviser seeks to add an instrument to the Fund's actual portfolio) without incurring transaction costs associated with the purchase of the instrument for cash. Similarly, if the Adviser or Sub-Adviser decides to sell an instrument from a Fund's actual portfolio, the

[1] *See* Fidelity Beach Street Trust, *et al.,* Investment Company Act Release No. 33683 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33712 (Dec. 10, 2019) (order). Except as specifically noted in the application, all representations and conditions contained in the application previously submitted with the Commission (File No. 812–14364), as amended and restated, and filed with the Commission on November 8, 2019 (the ''Prior Application'') remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

[2] On January 1, 2020, each of FMR Co., Inc. and certain other Fidelity investment adviser entities merged with and into Fidelity Management & Research Company. Thereafter, Fidelity Management & Research Company redomiciled as a Delaware limited liability company and was renamed Fidelity Management & Research Company LLC. As FMR Co., Inc. no longer exists, it is no longer an applicant.

[3] As described in note 2, Fidelity Management & Research Company has redomiciled as a Delaware limited liability company and been renamed Fidelity Management & Research Company LLC.

[4] On January 1, 2020, Fidelity Distributors Corporation merged with and into Fidelity Investments Institutional Services Company, Inc. (''FIISC''). Thereafter, FIISC redomiciled as a Delaware limited liability company and was renamed Fidelity Distributors Company LLC. As Fidelity Distributors Corporation no longer exists, it is no longer an applicant.

[5] The relief granted in the Prior Order under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, will expire one year from the effective date of rule 12d1–4, except as necessary to allow a Fund's receipt of Representative ETFs included in its Tracking Basket solely for purposes of effecting transactions in Creation Units, according to the terms of the Prior Application and notwithstanding the limits of Rule 12d1–4(b)(3). *See* Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

[6] All capitalized terms not otherwise defined in this notice have the meanings ascribed to them in the Prior Application.

[7] Deposit Instruments and Redemption Instruments may include cash and/or securities.

[8] The Funds are not be able to operate in reliance on rule 6c–11 because they do not disclose their portfolio holdings on a daily basis as required by the rule. *See* rule 6c–11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share).

[9] The Prior Applicants represented in the Prior Application that a Fund's Tracking Basket will solely consist of a combination of Strategy Components, Representative ETFs, and cash and cash equivalents. Applicants note that a Fund's Tracking Basket may also consist of select securities from the universe from which that Fund's investments are selected, such as a broad-based market index.

instrument may be included in a Creation Basket with the expectation that the Fund will deliver it in-kind during a redemption transaction.

7. The Funds will use the requested basket flexibility only in circumstances under which Applicants believe there will be no harm to the Funds or their shareholders, and in order to benefit the Funds and their shareholders by reducing costs, increasing efficiency and improving trading.

8. Pursuant to condition A.10 herein, each Fund will adopt and implement written policies and procedures regarding the construction of its Creation Baskets in accordance with rule 6c–11 under the Act. For purposes of the requirement to comply with the policies and procedures provision in rule 6c–11, only Creation Baskets that differ from a Fund's Tracking Basket will be treated as a ''custom basket'' under rule 6c–11(c)(3).

9. Furthermore, pursuant to condition A.9 herein, each Fund will comply with the recordkeeping requirements of rule 6c–11.[10] For purposes of the requirement to comply with the recordkeeping provision in rule 6c–11, only Creation Baskets different from a Fund's Tracking Basket will be treated as a ''custom basket'' under rule 6c–11(d)(2)(ii).

*B. Considerations Relating to the Requested Relief*

9. Applicants represent that the ability to utilize a Creation Basket that includes instruments that are not included, or are included with different weightings, in a Fund's Tracking Basket, or are included in different weightings, does not raise any new policy concerns about reverse engineering of a Fund's portfolio, self-dealing or overreaching, or selective disclosure beyond those concerns addressed in connection with the Prior Order.

10. *Reverse Engineering.* Applicants acknowledge that, by using a Creation Basket that includes instruments that are not included in a Fund's Tracking Basket, or are included in different percentages, and by publishing such Creation Basket on its website, the Fund would provide market participants with additional information about which instruments it adds or removes from the Fund's actual portfolio. However, Applicants represent that they will operate the Funds in a manner designed to minimize the risk of reverse engineering and, for the reasons set forth in the application, believe successful front-running or free-riding is highly unlikely.

11. *Self-Dealing or Overreaching.* Applicants state that APs and other market participants will not have the ability to disadvantage the Funds by manipulating or influencing the composition of Creation Baskets, including those that differ from the Tracking Basket. Like the basket and custom basket policies and procedures required of ETFs by rule 6c–11, the Funds will adopt and implement written policies and procedures that govern the construction of Creation Baskets and the process that will be used for the acceptance of Creation Baskets to safeguard the best interests of the Funds and their shareholders.[11]

12. *Selective Disclosure.* The Funds and each person acting on behalf of the Funds will continue to be required to comply with Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in rule 100(b)(2)(iii) therein shall not apply). Applicants believe that the new Creation Basket flexibility being sought by the Applicants does not raise any new concerns about selective disclosure of non-public material information. First, a Fund's use of, or conversations with APs about, Creation Baskets that would result in such disclosure would effectively be limited by the Funds' obligation to comply with Regulation Fair Disclosure. Second, as noted above, each Business Day, before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any basket accepted by the Fund on the previous Business Day that differed from such Business Day's Tracking Basket other than with respect to cash.

## III. Requested Exemptive Relief

For the reasons stated above, Applicants believe that the Prior Order, as amended, continues to meet the relevant standards for relief pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[12]

## IV. Applicants' Conditions

Applicants agree that the Amended Order granting the requested relief will be subject to all of the conditions in the Prior Order, except that condition A.9 of the Prior Order is deleted in its entirety and replaced with the conditions A.9–A.10 as follows:

9. Each Fund will comply with the recordkeeping requirements of rule 6c–11 under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Tracking Basket will be treated as a ''custom basket'' under rule 6c–11(d)(2)(ii). In addition, each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) a copy of the Tracking Basket published on the Fund's website for each Business Day; and (ii) a copy of each Creation Basket made available.

10. Each Fund will adopt and implement written policies and procedures that govern the construction of Creation Baskets, as required under rule 6c–11(c)(3) under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Tracking Basket will be treated as a ''Custom Basket''. The Fund's basket policies and procedures will be covered by the Fund's compliance program and other requirements under rule 38a–1 under the Act, as amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15015 Filed 7–14–21; 8:45 am]

BILLING CODE 8011–01–P

[10] Pursuant to condition A.9, each Fund will also maintain and preserve a copy of the Tracking Basket published on the Fund's website for each Business Day and a copy of each Creation Basket made available.

[11] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (''ETF Adopting Release''), at 80–94 (discussion of rule 6c–11 requirement for ETF policies and procedures concerning basket construction and acceptance and heightened policies and procedures for custom baskets).

[12] *See supra* note 4.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–92359; File No. SR–MIAX–2021–28]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the cToM Market Data Product

July 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to establish fees for the market data product known as MIAX Complex Top of Market (''cToM'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 amend Section 6(a) of the Fee Schedule to establish fees for the cToM market data product.

The Exchange previously adopted rules governing the trading of Complex Orders [3] on the MIAX System [4] in 2016.[5] At that time, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to provide an incentive to prospective market participants to subscribe to that market data feed.[6] The Exchange has not charged fees to cToM subscribers in the nearly five years since it was first available for subscription.

In summary, cToM provides subscribers with the same information as the MIAX Top of Market (''ToM'') data product as it relates to the Strategy Book,[7] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is a distinct market data product from ToM. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[8]

The Exchange now proposes to amend Section 6(a) of the Fee Schedule to charge monthly fees to Distributors [9] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[10] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributor are the same prices that the Exchange charges for its ToM data product, and are similar to other options exchanges' data feed prices for their comparable complex order data feed products.[11]

Like it does today for ToM, MIAX proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, like the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section 6(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to

[3] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[6] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[7] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[8] *See supra* note 6.

[9] A ''Distributor'' of MIAX data is any entity that receives a feed or file of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Distributor Agreement. *See* Section 6(a) of the Fee Schedule.

[10] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6(a) as it will not change [sic] fees for both the ToM and cToM data feeds.

[11] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees ($1,500 per month Access Fee and $1,000 per month Redistribution Fee), at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf; see also* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees ($1,500 per month Access Fee and $1,000 per month Redistribution Fee), at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf;* Nasdaq PHLX LLC Price List—U.S. Derivatives Data, PHLX Orders Fees (Internal Distributor fee of $3,000 per month and External Distributor fee of $3,500 per month), at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[14]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.75% of the market share.[15] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition, that market participant can and may switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of cToM.

No market participant is required by any rule or regulation to utilize the Exchange's Complex Order functionality or subscribe to the cToM data feed. Further, unlike orders on the Exchange's Simple Order Book, Complex Orders are not protected and will never trade through Priority Customer [17] orders, thus protecting the priority that is established in the Simple Order Book.[18] Additionally, unlike the continuous quoting requirements of Market Makers in the simple order market, there are no continuous quoting requirements respecting Complex Orders. It is a business decision whether market participants utilize Complex Order strategies on the Exchange and whether to purchase cToM data to help effect those strategies.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.[19] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's cToM data product, other exchanges offer similar data products and complex order functionality. As such, if a market participant views another exchange's complex order functionality and related data feed(s) as more attractive than what is offered by the Exchange, then such market participant can merely choose not to utilize the Exchange's Complex Order functionality or purchase cToM. Instead, that market participant can utilize similar complex functionality elsewhere and purchase another exchange's complex data product, which likely offers similar data points, albeit based on that other market's complex order trading activity.

Selling market data, such as cToM, is also a means by which exchanges compete to attract business. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[20] The Exchange therefore believes that the proposed fees for cToM reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase cToM and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange also believes the proposed cToM fees are reasonable and not unfairly discriminatory because since the Exchange initially established the cToM data product in 2016, all Exchange Members have had the ability to receive the Exchange's cToM data free of charge for the past five years.[21]

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX PEARL, LLC and MIAX Emerald, LLC), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[22] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[23] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[24] and may charge their own fees for the distribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market

[14] *See supra* note 11.

[15] *See* MIAX's ''The Market at a Glance'', *available at https://www.miaxoptions.com/* (last visited June 29, 2021).

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

[18] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 100. *See supra* note 5.

[19] *See supra* note 11.

[20] *See id.*

[21] *See supra* note 6.

[22] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[23] *See id.*

[24] *See id.*

data. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscribers is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants deem the proposed fees to be unfair or inequitable, firms can discontinue their use of the cToM data.

Further, the Exchange no longer believes it is necessary to provide cToM data for free to attract market participants since the Exchange's Strategy Book is now established and the Exchange no longer needs to rely on such waivers to attract market participants to its Complex Order market or cToM subscribers. The Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product, and are generally lower than other options exchanges' data feed prices for their comparable data feed products.[25]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.[26] The Exchange made Complex Order functionality and cToM available in order to keep pace with changes in the U.S. options industry and evolving customer needs, and believes the data product will continue to contribute to robust competition among national securities exchanges. Other U.S. options exchanges offer complex order functionality and market data products that are substantially similar to that offered by the Exchange. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price cToM is constrained by competition among exchanges that offer similar data products and complex order functionality to their customers. As discussed, there are currently a number of similar products available to market participants and investors. Other U.S. options exchanges offer market data products that are substantially similar to cToM, which the Exchange must consider in its pricing discipline in order to compete for the market data.[27] For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate [sic] burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2)[29] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2021–28. 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 website (*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

[25] *See supra* note 11.

[26] *Id.*

[27] *Id.*

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–28, and should be submitted on or before August 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–15031 Filed 7–14–21; 8:45 am]

**BILLING CODE 8011–01–P**

[30] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16955 and #16956; Mississippi Disaster Number MS–00135]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4598–DR), dated 5/04/2021.

*Incident:* Severe Winter Storms. Incident Period: 02/11/2021 through 02/19/2021.

**DATES:** Issued on 07/07/2021.

*Physical Loan Application Deadline Date:* Filing Period for counties listed below ends on 09/07/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* Filing Period for counties listed below ends on 04/07/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 5/04/2021, is hereby amended to include the counties listed below. Please contact the SBA disaster customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 to request an application. Applications for physical damages may be filed until 09/07/2021 and applications for economic injury may be file until 04/07/2022.

*Primary Counties:* Clay, Holmes, Quitman, Webster, Wilkinson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2021–15061 Filed 7–14–21; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request for Disposal of 14.1 Acres of Land at Auburn-Lewiston Airport, Auburn, ME

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

**ACTION:** Request for public comments.

**SUMMARY:** Notice is being given that the FAA is considering a request from the Cities of Auburn and Lewiston, ME to dispose of 14.1 acres of land at Auburn-Lewiston Airport, Auburn, ME. The land is not required for aeronautical use. Given its location, the disposal of land will not affect existing or future aviation development needs at the airport. An avigation easement will be placed on the property to ensure conformance with airport airspace requirements. The proceeds of the land sale will be placed in the airport's operating and maintenance account.

**DATES:** Comments must be received on or before August 16, 2021.

**ADDRESSES:** You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

**Authority:** 49 U.S.C. 47107(h)(2).

Issued in Burlington, Massachusetts on July 12, 2021.

**Julie Seltsam-Wilps,**

*Deputy Director, ANE–600.*

[FR Doc. 2021–15064 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0355; FMCSA–2011–0089; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2017–0253; FMCSA–2018–0057; FMCSA–2019–0028; FMCSA–2019–0029]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 13 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on July 12, 2021. The exemptions expire on July 12, 2023. Comments must be received on or before August 16, 2021.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2008–0355, Docket No. FMCSA–2011–0089, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2014–0382, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2018–0057, Docket No. FMCSA–2019–0028, or Docket No. FMCSA–2019–0029 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0381, FMCSA–2014–0382, FMCSA–2017–0253, FMCSA–2018–0057, FMCSA–2019–0028, or FMCSA–2019–0029 in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2008–0355, Docket No. FMCSA–2011–0089, Docket No. FMCSA–2014–0381, Docket No. FMCSA–2014–0382, Docket No. FMCSA–2017–0253, Docket No. FMCSA–2018–0057, Docket No. FMCSA–2019–0028, or Docket No. FMCSA–2019–0029), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* insert the docket number, FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0381, FMCSA–2014–0382, FMCSA–2017–0253, FMCSA–2018–0057, FMCSA–2019–0028, or FMCSA–2019–0029 in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

### *B. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0381, FMCSA–2014–0382, FMCSA–2017–0253, FMCSA–2018–0057, FMCSA–2019–0028, or FMCSA–2019–0029 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 13 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

**IV. Basis for Renewing Exemptions**

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 13 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 13 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of July 12, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Prince Austin, Jr. (OH)
Darcy Baker (OH)
Gary Bartels (SD)
Frank Cekovic (PA)
Monte DeRocini (PA)
Teddy Dixon (GA)
Jaime Dougherty (MN)
Martin Ford (WI)
David Johnston (HI)
Brent Mapes (IL)
Enrico Mucci (PA)
Charles Skelton (AL)
Kevin Wiggins (KY)

The drivers were included in docket number FMCSA–2008–0355, FMCSA–2011–0089, FMCSA–2014–0381, FMCSA–2014–0382, FMCSA–2017–0253, FMCSA–2018–0057, FMCSA–2019–0028, or FMCSA–2019–0029. Their exemptions are applicable as of July 12, 2021 and will expire on July 12, 2023.

**V. Conditions and Requirements**

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based on its evaluation of the 13 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021–15052 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2021–0024]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on July 5, 2021. The exemptions expire on July 5, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0024, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

## II. Background

On May 26, 2021, FMCSA published a notice announcing receipt of applications from three individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (86 FR 28432). The public comment period ended on June 25, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the May 26, 2021, **Federal Register** notice (86 FR 28432) and will not be repeated in this notice.

These three applicants have been seizure-free over a range of 17 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the three exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Angela Camarco (CT); Wesley Campbell (CA); and Thomas Frederick (PA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021–15050 Filed 7–14–21; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

---

# DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

**[FTA Docket No. FTA 2021–0011]**

## Request for Information on Transit Safety Concerns

**AGENCY:** Federal Transit Administration, Department of Transportation (DOT).

**ACTION:** Request for information.

**SUMMARY:** The Federal Transit Administration (FTA) is responsible for administering a Public Transportation Safety Program (Safety Program) to improve the safety performance of the Nation's transit systems. FTA adopted the principles and methods of Safety Management System (SMS) as the foundation of the Safety Program. FTA uses SMS processes and activities to proactively identify and address safety risk at the industry level. Through this Request for Information (RFI), FTA solicits input from the public regarding information and data to identify transit safety concerns that FTA should evaluate for potential action at the Federal level.

**DATES:** Comments are requested by August 16, 2021.

**ADDRESSES:** You may file comments identified by docket number FTA–2021–0011 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

*Instructions:* For detailed instructions on submitting comments, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Privacy Act:* Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/*privacy.

**FOR FURTHER INFORMATION CONTACT:** Ray Biggs, Office of Transit Safety and Oversight—Safety Risk Management and Assurance Division, 1200 New Jersey Avenue SE, Mail Stop TSO–10, Washington, DC 20590, (202) 366–7460 or *Ray.Biggs@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Through this RFI, FTA is seeking information and data from the public on safety concerns and issues recommended for additional assessment and potential action at the Federal level.

In August 2016, FTA published the Public Transportation Safety Program regulation, 49 CFR part 670, which establishes substantive and procedural rules for FTA's administration of the program to carry out the mandate of 49 U.S.C. 5329 to improve the safety of transit systems. In Part 670, FTA adopted the principles and methods of SMS and clarified that FTA will follow these principles and methods in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329.

In July 2018, FTA furthered the advancement of SMS in the transit industry by publishing the Public Transportation Agency Safety Plan regulation, 49 CFR part 673 (Part 673). Part 673 requires certain transit agencies to adopt SMS principles and methods; develop, certify, implement, and update Agency Safety Plans (ASPs); and coordinate ASP elements with other FTA programs and rules, as specified in 49 U.S.C. 5303, 5304, and 5329. In carrying out Part 673 requirements, transit agencies identify safety hazards and mitigate safety risks within their transit system through the implementation of ASPs and SMS processes and activities.

FTA expanded its safety oversight capabilities by establishing an internal SMS approach for identifying transit safety hazards and mitigating safety risks. In 2019, FTA implemented its Safety Risk Management (SRM) process to proactively address safety concerns impacting the transit industry. The SRM process follows a five-step continuous improvement approach: (1) Identify safety concerns; (2) assess safety risk; (3) develop mitigation; (4) implement mitigation; and (5) monitor safety performance. Appropriate mitigations advanced by FTA to resolve safety risk may include new proposed safety regulations, general or special directives, and safety advisories, as well as a range of technical assistance and training activities; enhanced data collection; or recommendations for further investigation, evaluation, or examination.

FTA utilizes its SRM process to address safety topics identified in FTA's SRM Action Plan. The FTA SRM Action Plan is informed by a review of National Transportation Safety Board and Transit Advisory Committee for Safety recommendations to FTA, data from the National Transit Database, and additional industry sources as appropriate. FTA is currently analyzing four safety concerns utilizing its SRM process: Inward- and outward-facing audio and image recorders, roadway worker protection, signal system safety, and end-of-railcar door messaging.

FTA is developing the next SRM Action Plan to prioritize safety concerns for future SRM analyses. The transit industry's input is critically important in identifying and proactively mitigating safety concerns impacting the larger transit community. As such, FTA requests information from the public on safety concerns that the industry believes should be considered for inclusion in FTA's next SRM Action Plan.

Respondents to this RFI may respond to any question and do not need to respond to all questions. This RFI offers transit industry personnel, researchers, contractors, government entities, transit users, and other interested parties the opportunity to inform FTA's next SRM Action Plan.

## Questions to the Public

FTA seeks to gather information and discover valid and reliable aggregate data to support the identification and evaluation of safety concerns at the Federal level. The following list of questions and topic areas are intended to guide respondents in this effort:

### *Safety Concerns*

(1) What transit safety concerns should FTA consider analyzing through its SRM process for small transit providers? Large transit providers? Rail, bus, and multimodal transit providers? Briefly describe why each identified safety concern should be considered, including any data-based evidence that may be available.

(2) Are there any new or emerging safety concerns that may not yet appear in industry data (either through near-misses or not meeting reporting thresholds, for example) that should be analyzed by FTA to proactively mitigate future impacts?

### *Sources of Information and Data*

(3) Are there additional sources of information and data, beyond those detailed in this request, that may help inform FTA's identification of high-priority safety concerns for the SRM process and potential action at the Federal level?

(4) Are there additional sources of information and data, beyond those

detailed in this request, that FTA should consider in supporting the assessment and mitigation of identified transit safety risks?

(5) Should data sources outside of those maintained by transit agencies and FTA, such as geographic or demographic data, be considered to support the identification of safety concerns and assessment and mitigation of safety risk? If so, which data sources, and why?

*Examples*

(6) What are examples of safety concerns evaluated by a transit agency that can be shared with FTA?

(7) What are examples of high-impact data that support the identification of safety concerns and hazards and the corresponding safety risk assessment and mitigation that can be shared with FTA?

(8) Is there anything else FTA should know regarding the identification of safety concerns for the SRM process?

Please clearly indicate which question(s) you address in your response and any evidence to support assertions, where practicable.

**Public Participation**

*How do I prepare and submit comments?*

To ensure that your comments are filed correctly, please include the docket number provided [FTA–2021–0011] in your comments.

Please submit one copy of your comments, including any attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, these documents must be scanned using an Optical Character Recognition process, thus allowing the Agency to search and copy certain portions of submissions.

*Will FTA consider late comments?*

FTA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, the Agency will also consider comments received after that date.

*How can comments submitted by other people be read?*

Comments received may be read at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The hours of the docket are indicated above in the same location. Comments may also be located on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note, this RFI will serve as a planning document. The RFI should not be construed as policy, a solicitation for applications, or an obligation on the part of the Government.

**Nuria I. Fernandez,**

*Administrator.*

[FR Doc. 2021–15078 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–57–P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Request for Information Concerning the Capital Investment Grants Program

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Request for Information.

**SUMMARY:** The Federal Transit Administration is seeking suggestions from all transit stakeholders (transit authorities, planning officials, States, cities, the private sector, and the public) on improvements that could be made to the evaluation process for projects seeking funding from the Capital Investment Grants (CIG) Program. Specifically, FTA seeks input on evaluation measures and data sources that can better capture the benefits and costs of transit and how the CIG program can facilitate outcomes that maximize those benefits.

**DATES:** Comments should be submitted on or before October 13, 2021. FTA will consider comments filed after this date to the extent practicable.

**ADDRESSES:** All responses MUST be submitted electronically to Docket No. FTA–2021–0010 at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Day, Director, Office of Capital Project Development, (202) 366–5159, or *Elizabeth.Day@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* To receive discretionary Capital Investment Grants (CIG) program funding from the Federal Transit Administration (FTA), an applicant must complete the multi-year, multi-step process outlined in law at 49 U.S.C. 5309 for the proposed transit capital project. The law specifies evaluation criteria covering project justification and local financial commitment that FTA must use to develop a project rating on a five-point scale from low to high. It also specifies that a project must receive a Medium or better overall rating to advance through the process and receive CIG program funding. The law establishes three categories of projects eligible under the CIG program, which are known as New Starts, Small Starts, and Core Capacity Improvement projects. Each project type has a unique set of requirements and evaluation criteria in law, although many similarities exist among them.

For New Starts and Core Capacity Improvement projects, the steps in the CIG process include project development, engineering, and construction. The CIG process for Small Starts projects includes only project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the CIG program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multi-year Federal commitment to the project. Small Starts projects receive construction funds through a single-year grant or a Small Starts grant agreement (SSGA) that defines the scope of the project and specifies the Federal commitment to the project.

There are six statutory project justification criteria that FTA must evaluate and rate individually for projects pursuing CIG funding that differ slightly between the three categories of projects. The law requires each project justification criterion to be given a ''comparable, but not necessarily equal, numerical weight'' when FTA develops a summary project justification rating. The law also requires FTA to evaluate local financial commitment. For New Starts and Core Capacity, the law requires FTA to determine whether: (A) The proposed financial plan provides for the availability of reasonable contingency to cover unanticipated cost increases or funding shortfalls; (B) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and (C) local resources are available to recapitalize, maintain, and operate the overall existing and proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, without requiring a reduction in existing public transportation services or level of service to operate the proposed project. For Small Starts projects the law requires FTA to determine that, ''each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.''

Lastly, the law requires FTA to issue policy guidance on the CIG review and

evaluation process each time FTA makes significant changes to the process or criteria, but not less frequently than once every two years. When there are significant guidance changes proposed, the document is subject to notice and comment procedures.

For more information on the existing CIG process and evaluation criteria, please see the CIG Policy Guidance found at *https://www.transit.dot.gov/funding/grant-programs/capital-investments/final-capital-investment-grant-program-interim-policy.*

Through this request for information (RFI), FTA seeks input on the CIG process and evaluation criteria to inform the development of proposed changes to the existing CIG policy guidance that would undergo formal notice and comment in the future. The timing for publication of proposed CIG policy guidance is not certain and could be impacted by enactment of reauthorization legislation. FTA looks forward to feedback from all interested parties.

**CIG Process (New Starts, Small Starts and Core Capacity Improvements)**

1. The law currently specifies that the Project Development phase for New Starts and Core Capacity Improvement projects must be completed within two years, signifying Congress' intent that projects move through the CIG process expeditiously. However, the law allows project sponsors to seek, and FTA to approve, an extension of the two-year timeframe. Is there a maximum amount of time beyond two years that FTA should allow a project sponsor to extend Project Development to remain consistent with the statutory intent?

2. In addition to the requirements specified in law that must be completed to advance from one phase of the CIG process to the next, FTA has also issued CIG policy guidance. For example, FTA specifies in the guidance that a minimum of 30 percent design be completed and a minimum of 30 percent of the non-CIG funding be committed or budgeted before a New Start or Core Capacity Improvement project may advance from the Project Development phase to the Engineering phase. FTA also specifies in the guidance that all types of CIG projects (New Starts, Small Starts, and Core Capacity) have all of the non-CIG funding committed or budgeted, all critical third-party agreements completed, and a firm and reliable cost, scope, and schedule developed before a construction grant is awarded. Should FTA alter any provisions of its CIG guidance? Please be specific as to the reason for the response and any proposed alterations.

**Economic Development Criterion (New Starts, Small Starts, and Core Capacity Improvements)**

FTA currently evaluates the Economic Development criterion for New Starts and Small Starts projects based on the extent to which a proposed project is likely to induce additional, transit-supportive development in the future. The evaluation is based on: (1) The transit-supportive plans and policies in place (*e.g.,* growth management plans, transit-supportive corridor policies; supportive zoning regulations near transit stations; and tools to implement land use policies); (2) the performance and impacts of those policies; and (3) the tools in place to maintain or increase the share of affordable housing in the project corridor (*e.g.,* evaluation of project corridor-specific affordable housing needs and supply, or plans or policies to preserve and increase affordable housing).

3. Should FTA consider under the Economic Development criterion whether a proposed CIG project is located in a federally designated community development zone (*e.g.,* designated opportunity zones, promise zones, empowerment zones, or choice neighborhoods)? Please provide reasons for answering yes or no. [See *https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions#designated; https://www.hud.gov/program_offices/field_policy_mgt/fieldpolicymgtpz; https://www.hud.gov/hudprograms/empowerment_zones,* and *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn.*]

4. Should FTA consider other ways of assessing whether local plans and policies are transit supportive and encourage affordable housing under the Economic Development criterion? Please be specific as to what different or additional metrics could be used, and what thresholds for these metrics could be deemed as transit-supportive.

**Land Use Criterion (New Starts and Small Starts)**

The Land Use criterion examines what exists in the project corridor today. FTA currently evaluates Land Use for New Starts and Small Starts projects based primarily on existing station area population densities, total existing employment served by the project, and the percentage of existing ''legally binding affordability restricted'' housing within a ½ mile of station areas as compared to the counties in which the corridor is located.

5. For equity considerations, should FTA evaluate measures under the Land Use criterion that are easy to calculate using census data, such as the minority population or the number of households in poverty along the alignment?

6. Should FTA consider ''access to opportunity'' under the Land Use criterion? If so, how specifically could FTA measure it? For example, should access provided by the project to education facilities, health care facilities, or food stores be considered? Please identify measures/data sources that would be readily available nationwide without requiring an undue burden on project sponsors to gather and FTA to verify the information.

7. In a *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies* (January 26, 2021), President Biden highlighted the Federal government's history of disconnecting neighborhoods from access to high-quality housing, jobs, public transit, and other resources. Should FTA consider under the Land Use criterion whether the project corridor has been affected by major transportation projects in the past that destroyed, divided, or isolated neighborhoods? If so, how should FTA analyze and evaluate those impacts and consider them in the Land Use criterion?

8. The more measures used to develop a criterion rating, the less influence each measure has on the outcome. How many measures are appropriate to include in total under the Land Use criterion given the questions above? Should the use of multiple, strongly correlated measures be avoided?

**Environmental Benefits Criterion (New Starts, Small Starts, and Core Capacity Improvements)**

FTA currently evaluates Environmental Benefits for New Starts projects based on the dollar value of the anticipated direct and indirect benefits of the project resulting from the change in air quality criteria pollutants, change in energy use, change in greenhouse gas emissions, and change in safety divided by the annualized capital and operating cost of the proposed project. These benefits are computed based on the change in vehicle miles traveled resulting from implementation of the proposed project. The Environmental Benefits measure for Small Starts projects is currently the dollar value of the anticipated direct and indirect benefits to safety, energy, and air quality calculated in the same way as for New Starts projects but divided by the annualized Federal share of the project.

Core Capacity Improvement projects receive an automatic Medium rating on the Environmental Benefits criterion unless the sponsor requests to be evaluated using the New Starts measures.

9. As mentioned in the existing CIG policy guidance, FTA intended to include the direct and indirect benefits to human health resulting from implementation of a proposed project in the Environmental Benefits measures, but has had difficulty in determining how to do so. How should FTA calculate the health benefits of transit projects? Please provide specific proposed measures and data sources that would be readily available across the nation without requiring an undue burden on project sponsors to gather the information or on FTA to verify the information.

10. Should FTA also consider impacts to water quality under the Environmental Benefits criterion? Please provide any available research or data on the impact of a transit project on water quality. Please identify measures/data sources that would be readily available across the nation without requiring an undue burden on project sponsors to gather the information and FTA to verify the information.

**Cost Effectiveness Criterion (New Starts, Small Starts, and Core Capacity Improvements)**

FTA currently evaluates Cost-Effectiveness by measuring the annual capital and operating and maintenance cost per trip on the project (New Starts); the annualized capital Federal share of the project per trip on the project (Small Starts); or the annualized Core Capacity Improvement share of the project per trip (Core Capacity).

11. As an incentive to encourage project sponsors to consider ''green'' elements in their proposed CIG projects, FTA currently allows the additional costs of such elements to be excluded from the Cost-Effectiveness calculation for New Starts projects. Specifically, FTA allows 50 percent of the purchase cost of ''green'' buses and 2.5 percent of the cost of facilities designed to achieve U.S. Green Council Leadership in Energy and Environmental Design (LEED) or a comparable third-party certification to be excluded. Because the Core Capacity Improvement and Small Starts Cost-Effectiveness calculations are based only on the CIG share or Federal share and not the total annualized project cost, a similar incentive is not provided for those types of projects.

(a) How could FTA further incentivize project sponsors to incorporate environmentally sustainable project elements into CIG projects? Please be specific in any suggestions provided.

(b) Are there lifecycle cost savings or other benefits that transit agencies have realized from implementing ''green'' elements (*i.e.,* evidence of fuel, maintenance, or parts savings)? Please provide examples or data.

**Mobility Improvements (New Starts and Small Starts)**

FTA currently evaluates Mobility Improvements on the total number of linked trips estimated to use the proposed CIG project, with a weight of two given to trips that would be made on the project by transit-dependent persons.

12. Should more emphasis be placed on trips made by transit-dependent persons? Why or why not?

**Capacity Needs (Core Capacity Improvements)**

The law specifies that to be eligible as a Core Capacity Improvement, a proposed project corridor must be at capacity today or will be in five years and the project must increase capacity by at least 10 percent. FTA currently uses space per passenger in the peak hour in the peak direction to evaluate Capacity Needs for light rail projects and seated load in the peak hour in the peak direction to evaluate Capacity Needs for commuter rail projects.

13. By what methods do transit agencies determine if a transit corridor is at capacity today or soon will be? Please be specific on the measures and calculations used. Are the measures based on readily available data routinely calculated by transit agencies or do they require a situation-specific analysis? Could the measures be applied in a national program evaluating various modes and corridors across the country?

14. What load factor policies do transit agencies use to determine when additional vehicles are needed on a transit line? Please provide specific examples of what load factors are used, and how they are calculated? Please include load factors used for each mode.

**Congestion Relief (New Starts, Small Starts, and Core Capacity Improvements)**

For New Starts and Small Starts projects, FTA currently evaluates the number of new weekday linked trips resulting from implementation of the proposed project to determine Congestion Relief, which serves as an indirect measure of reduced traffic congestion because those trips typically represent people who have chosen to take transit rather than drive. For Core Capacity Improvement projects, FTA evaluates the percent increase in capacity in the corridor resulting from the proposed project to determine Congestion Relief.

15. Should FTA evaluate Congestion Relief differently? If so, please identify measures/data sources that would be readily available at transit agencies across the nation without requiring an undue burden on project sponsors to gather the information and FTA to verify the information.

**Resiliency/Futureproofing (Not Currently Considered in the Evaluation Process)**

FTA regulations, at 49 CFR 602.5, define ''resilience'' as the ''ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions such as significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.''

16. Do transit agencies measure and evaluate resilience benefits of proposed capital projects? Do they use a quantitative approach? Please provide examples of specific metrics or analyses used.

17. Should resilience elements be formally incorporated into the CIG project evaluation process? If so, how might resilience be measured and incorporated? What thresholds would distinguish one project from another? Should FTA use its Hazard Mitigation Cost Effectiveness (HMCE) Tool to measure benefits and costs of resilience elements as it has done for projects considered for emergency relief funding (see *https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/hazard-mitigation-cost-effectiveness-hmce-tool*)? Please be specific in your responses.

18. The concept of ''future-proofing'' is often discussed along with resilience to ensure infrastructure projects will continue to be of value into the distant future and not become obsolete quickly. What emerging technologies may have an impact (positive or negative) on a transit system, and how can avoiding this situation be prepared for in the planning and design of CIG capital projects?

**Local Financial Commitment (New Starts, Small Starts and Core Capacity Improvements)**

Currently, FTA evaluates three factors when examining Local Financial Commitment: (1) The current financial condition of the project sponsor; (2) the amount of committed funds; and (3) the reasonableness of financial planning

assumptions and the resulting financial capacity they demonstrate. After evaluation of those three factors and calculation of a rating for Local Financial Commitment, FTA considers the CIG share request. Specifically, if the CIG share request is less than 50 percent and the calculated Local Financial Commitment rating is at least Medium, the rating is boosted one level. Small Starts and Core Capacity Improvement projects can qualify for financial warrants (automatic financial ratings) under certain circumstances.

19. Project sponsors that do not qualify for warrants (automatic financial ratings) must submit a 20-year cash-flow statement to FTA for evaluation and rating. Should FTA consider accepting cash flow statements for other time periods (*e.g.,* a 10-year, 15-year, or 25-year project cash-flow statement)? If so, please explain why and the suggested time period.

FTA welcomes any additional feedback on the CIG program, including topics not listed in the questions above.

All interested parties are encouraged to respond to this RFI. Submissions are strictly voluntary. Individuals or entities responding to the RFI should state their role as well as knowledge and experience of the CIG program. FTA may request additional clarifying information from any or all respondents. If a respondent does not wish to be contacted by FTA for additional information, a statement to that effect should be included in the response. All information submitted should be unclassified and should not contain proprietary information.

FTA is not obligated to officially respond to the information received, but the responses will greatly assist FTA in developing proposed CIG policy guidance changes.

Comments may be submitted and viewed at Docket No. FTA–2021–0010 at *http://www.regulations.gov.*

**Nuria I. Fernandez,**

*Administrator.*

[FR Doc. 2021–15079 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2021–0122]**

### Request for Comments on a Previously Approved Information Collection: Application for Coastwise Endorsement Eligibility Determinations for Foreign-Built Small Passenger Vessels

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The information to be collected is necessary for MARAD to identify the effect of potential foreign-built small passenger vessel coastwise operations on U.S. vessel builders and coastwise trade businesses. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Comments must be submitted on or before September 13, 2021.

**ADDRESSES:** You may submit comments [identified by Docket No. MARAD–2021–0122] through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Instructions:* All submissions must include the agency name and docket number for this rulemaking.

*Note:* All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Electronic Access and Filing**

A copy of the notice may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this notice will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

**FOR FURTHER INFORMATION CONTACT:** James Mead, 202–366–5723, Office of Cargo and Commercial Sealift, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *james.mead@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Coastwise Endorsement Eligibility Determinations for Foreign-built Small Passenger Vessels.

*OMB Control Number:* 2133–0529.

*Type of Request:* Renewal of a previously approved collection.

*Abstract:* Owners of foreign-built small passenger vessels desiring a coastwise endorsement to their USCG issued certificate of documentation must first obtain a Maritime Administration (MARAD) eligibility determination. Applications for MARAD small passenger vessel coastwise endorsement eligibility provide justification for a positive determination and a uniform means for MARAD to obtain relevant information necessary to perform its administrative function in accordance with statute.

*Respondents:* Owners of foreign-built small passenger vessels, prospective vessel owners and operators, vessel brokers.

*Affected Public:* Maritime businesses.

*Estimated Number of Respondents:* 138.

*Estimated Number of Responses:* 138.

*Estimated Hours per Response:* 1 hour.

*Annual Estimated Total Annual Burden Hours:* 138.

*Frequency of Response:* Annually.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

* * * * *

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021–15066 Filed 7–14–21; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0757]**

### Agency Information Collection Activity: Supportive Services for Veteran Families (SSVF) Program—Grant Application & Report

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Health Administration (VHA), 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.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 13, 2021.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–0757'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0757'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, 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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Supportive Services for Veteran Families (SSVF) Program—Grant Application & Report, VA Forms 10–10072, 10–10072a, 10–10072b and 10–10072c.

*OMB Control Number:* 2900–0757.

*Type of Review:* Reinstatement of a previously approved collection.

*Abstract:* The purpose of the Supportive Services for Veteran Families (SSVF) Program is to provide supportive services grants to private non-profit organizations and consumer cooperatives who will coordinate or provide supportive services to very low-income veteran families who are residing in permanent housing, are homeless and scheduled to become residents of permanent housing within a specified time period, or after exiting permanent housing, are seeking other housing that is responsive to such very low-income veteran family needs and preferences. The following VA forms are included in this collection, as well as templates and a certification that do not require PRA clearances.

a. Application for Supportive Services Grants, VA Form 10–10072
b. Participant Satisfaction Survey, VA Form 10–10072a
c. Quarterly Grantee Performance Report, VA Form 10–10072b
d. Renewal Application, VA Form 10–10072c
e. Applicant Budget Template
f. Financial Report Template
g. Grantee Certification

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 25,505 hours.

*Estimated Average Burden per Respondent:* 125 minutes.

*Frequency of Response:* Average of twice annually.

*Estimated Number of Respondents:* 12,270.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–15082 Filed 7–14–21; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0113]**

### Agency Information Collection Activity: Application for Fee or Roster Personnel Designation

**AGENCY:** Veteran Benefit Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veteran Benefit Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0113.''

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Application for Fee or Roster Personnel Designation.

*OMB Control Number:* 2900–0113.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–6681 solicits information on the fee personnel applicant's background and experience in the real estate valuation field. A fee

appraiser is a qualified person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran (38 CFR 36.4301). The fee appraiser's estimate of value is reviewed by a VA staff appraiser or lender's staff appraisal reviewer who uses the data to establish the VA reasonable value (38 U.S.C. 3710(b)(4), (5), (6) and 3731(f)(1)), which becomes the maximum loan guaranty amount an eligible veteran can obtain.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 25937 on May 11, 2021, pages 25937 and 25938.

*Affected Public:* Private Sector.

*Estimated Annual Burden:* 1,000 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 2,000 per year.

By direction of the Secretary:

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–15049 Filed 7–14–21; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 86 Thursday,

No. 133 July 15, 2021


Part II

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Rufa Red Knot (Calidris canutus rufa); Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R5–ES–2021–0032; FF09E21000 FXES11110900000 212]**

**1018–BF87**

# Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Rufa Red Knot (Calidris canutus rufa)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally threatened rufa red knot (*Calidris canutus rufa*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 649,066 acres (ac) (262,667 hectares (ha)) are proposed in 120 units (18 of which are further subdivided into 46 subunits) in Massachusetts, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. We also announce a public informational meeting and public hearing and the availability of a draft economic analysis of the proposed critical habitat designation.

**DATES:**

*Comment submission:* We will accept comments received or postmarked on or before September 13, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational meeting and public hearing:* On August 18, 2021, we will hold a public informational meeting from 6:00 to 7:30 p.m., Eastern Time, followed by a public hearing from 7:30 to 9:00 p.m., Eastern Time. See *Public Hearing,* in **SUPPLEMENTARY INFORMATION**, for more information.

**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–R5–ES–2021–0032, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R5–ES–2021–0032, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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 *Public Comments,* below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Eric Schrading, Field Supervisor, U.S. Fish and Wildlife Service, New Jersey Ecological Services Field Office, 4 East Jimmie Leeds Road, Suite 4, Galloway, NJ 08205; telephone 609–382–5272. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* Under the Act, when we determine that any species is an endangered or threatened species, we are required to designate critical habitat, to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

*What this document does.* This document proposes a designation of critical habitat for the rufa red knot, a threatened species of bird, in portions of 61 counties (or parishes) in 13 States.

*The basis for our action.* Under the Act, if we determine that a species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. 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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area will result in the extinction of the species.

*Peer Review.* In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the species status assessment report (Service 2020a, entire) that informed this proposed rule. The purpose of peer review is to ensure that the science behind our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We received review of the Species Status Assessment (SSA) report from two experts outside the Service. We are also conducting a peer review of this proposed critical habitat designation (including the supplemental ''Methodology'' document available on the internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032) to ensure that this proposal is based on scientifically sound data and analysis. We have invited peer reviewers to comment on our specific assumptions and conclusions in this proposed rule, and we will consider any comments received, as appropriate, before a final agency determination.

## Uncommon Acronyms Used in This Proposed Rule

For the convenience of the reader, listed below are some of the acronyms used in this proposed rule:

Act = Endangered Species Act
ASMFC = Atlantic States Marine Fisheries Commission
CFR = Code of Federal Regulations
DDFW = Delaware Division of Fish and Wildlife
DEA = draft economic analysis
DHS = Department of Homeland Security
DMR = Department of Marine Resources
DoD = Department of Defense
DHS = Department of Homeland Security
EIS = environmental impact statement
FDEP = Florida Department of Environmental Protection
FGDC = Federal Geographic Data Committee
FR = Federal Register
GDNR = Georgia Department of Natural Resources
HCP = habitat conservation plan
IEc = Industrial Economics, Incorporated
IEM = incremental effects memorandum
INRMP = integrated natural resources management plan
IPCC = Intergovernmental Panel on Climate Change
LDWF = Louisiana Department of Wildlife and Fisheries
MLLW = mean lower low water
NASA = National Aeronautics and Space Administration
NCWRC = North Carolina Wildlife Resources Commission
NERR = National Estuarine Research Reserve
NPS = National Park Service
NWR = National Wildlife Refuge
ORV = off-road vehicle
SCDNR = South Carolina Department of Natural Resources
SCDPRT = South Carolina Department of Parks, Recreation & Tourism

Service = U.S. Fish and Wildlife Service
SSA = Species Status Assessment
TNC = The Nature Conservancy
USCCSP = U.S. Climate Change Science Program

## Information Requested

### *Public Comments*

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

We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of rufa red knot habitat;

(b) What areas, that were occupied at the time of listing (specifically referring to January 12, 2015, which is the effective date for the December 11, 2014, final listing rule (79 FR 73705)) and that contain the physical or biological features essential to the conservation of the 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 listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are adequate for the conservation of the species; and

(ii) Specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

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

(4) Information on the projected and reasonably likely impacts of climate change on the rufa red knot's proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding specific areas.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) 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, in particular those based on a conservation program or plan, and why. These may include Federal, Tribal, State, county, local, or private lands with permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or conservation easements, or non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. Detailed information regarding these plans, agreements, easements, and partnerships is also requested, including:

(a) The location and size of lands covered by the plan, agreement, easement, or partnership;

(b) The duration of the plan, agreement, easement, or partnership;

(c) Who holds or manages the land;

(d) What management activities are conducted;

(e) What land uses are allowable; and

(f) If management activities are beneficial to the rufa red knot and its habitat.

(8) Ongoing or proposed conservation efforts that could result in direct or indirect ecological benefits to the associated habitat for the rufa red knot; as such, those efforts would lend to the recovery of the species and therefore areas covered may be considered for exclusion from the final critical habitat designation.

(9) 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 include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Also, 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.

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 website. 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.*

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, New Jersey Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### *Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. At this time, we have preemptively scheduled a public informational meeting and public hearing on this proposed rule. We will hold the public informational meeting and public hearing on the date and at the times listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public

hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://fws.gov/northeast/red-knot/.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule to designate critical habitat for the rufa red knot. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not. Rather, the public hearing is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing *https://fws.gov/northeast/red-knot/.* The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

*Reasonable Accommodation*

The Service is committed to providing access to the public informational meeting and public hearing for all participants. Closed captioning will be available during the public informational meeting and public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at *https://fws.gov/northeast/red-knot/* after the hearing. Participants will also have access to live audio during the public informational meeting and public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the meeting and/or hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the meeting and hearing to help ensure availability. An accessible version of the Service's public informational meeting presentation will also be posted online at *https://fws.gov/northeast/red-knot/* prior to the meeting and hearing (see **DATES**, above). See *https://fws.gov/northeast/red-knot/* for more information about reasonable accommodation.

**Previous Federal Actions**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the rufa red knot in this document. For more information on the rufa red knot or its habitat, refer to:

(1) The final listing rule published in the **Federal Register** on December 11, 2014 (79 FR 73706), available online at *http://www.regulations.gov* (at Docket No. FWS–R5–ES–2013–0097).

(2) The November 2014 Rufa Red Knot Background Information and Threats Assessment (Supplemental Document; Service 2014, entire), available online at *https://fws.gov/northeast/red-knot/* and *http://www.regulations.gov* (at Docket No. FWS–R5–ES–2013–0097). And

(3) The Species Status Assessment Report for the Rufa Red Knot (*Calidris canutus rufa*), Version 1.1, available on the internet at *https://fws.gov/northeast/red-knot/* and *http://www.regulations.gov* (Docket No. FWS–R5–ES–2021–0032).

For more information on previous Federal actions associated with listing rufa red knot, please refer to the supplemental document (''Previous Federal Actions'') on the internet at *https://fws.gov/northeast/red-knot/* and *http://www.regulations.gov* (Docket No. FWS–R5–ES–2013–0097).

On June 22, 2018, Defenders of Wildlife filed a complaint (Case 1:18–cv–01474–APM) alleging that the Service violated the Act by missing the statutory deadline to designate critical habitat (*i.e.,* 12 months following publication of the final listing rule on December 11, 2014). On February 1, 2019, the Service and Defenders of Wildlife filed with the United States District Court for the District of Columbia a joint motion to stay proceedings until June 30, 2021, whereby the Service agreed to submit to the **Federal Register** a proposed critical habitat designation. The court granted the motion on February 7, 2019. This document constitutes the proposed critical habitat designation for rufa red knot, and complies with the court order issued February 7, 2019.

**Supporting Documents**

An SSA team prepared an SSA report (Service 2020a, entire) for the rufa red knot primarily to inform the development of a draft recovery plan for the species (Service 2021, entire). The timing and thoroughness of the peer-reviewed SSA report supported the analysis and development of this proposed critical habitat rule. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the SSA report (which accompanied the draft Recovery Plan) to five independent peer reviewers; two peer reviewers provided a review of the document. The Service also sent the SSA report and draft Recovery Plan for review by more than 177 parties, which included both internal/Service biologists and managers, and external partners, including scientists with expertise in rufa red knot biology, habitat management, and threats. We received review from 24 partners, including Federal and State agencies. We are also conducting a peer review of this proposed critical habitat designation (including the supplemental ''Methodology'' document available on the internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032) during the open comment period to ensure that this proposal is based on scientifically sound data and analysis.

*Availability of Supporting Materials*

The SSA report and other materials relating to this critical habitat proposal, including coordinates or plot points or both from which the maps are generated, are included in the administrative record and are available at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032. Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at *https://www.fws.gov/northeast/red-knot/,* and may also be included in the preamble of this proposal and/or at *http://www.regulations.gov.*

**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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely, by vagrant individuals).

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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

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. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the draft recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is 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 ensure their actions are not likely to jeopardize the

continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. 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.

**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 shall 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 Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

There is currently no imminent threat of collection or vandalism identified under Factor B for the rufa red knot, and identification and mapping of critical habitat is not expected to initiate any such threat. In the proposed listing determination for rufa red knot (79 FR 73705, December 11, 2014) and our more recent SSA report (Service 2020a, entire), we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to rufa red knot and that those threats in some way can be addressed by section 7(a)(2) consultation measures. Additionally, although the species range occurs in other parts of North, Central, and South America outside of the United States, the areas within the jurisdiction of the United States serve a significant conservation value to the species during both its northbound and southbound migration to/from its breeding grounds and overwintering regions, using these migration areas as key staging and stopover areas to rest and feed. Some portions of the United States also provide significant conservation value for certain populations of overwintering rufa red knots. Our analysis of the best available scientific and commercial information indicates there are areas within the range of the species in the United States that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat for rufa red knot is prudent.

**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 rufa red knot 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) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''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 the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the rufa red knot.

**Physical or Biological Features Essential to the Conservation of the Species**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction,

or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential for the rufa red knot from studies of the species' habitat, ecology, and life history, which are described more fully in the final listing rule (79 FR 73706, December 11, 2014) and associated supplemental materials (Service 2014, entire). Additionally, these features were most recently described in the SSA report (Service 2020a, entire), in the context of the needs of individuals, populations, and the species.

With regard to ''space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; and cover or shelter,'' these characteristics are captured by the summary discussion in the following paragraphs. The characteristic of ''sites for breeding, reproduction, or rearing (or development) of offspring'' does not apply for this proposed critical habitat designation because the rufa red knot does not breed in the United States. Regarding ''habitats that are protected from disturbance,'' rufa red knots are particularly sensitive to disturbance from human activities, which are nearly ubiquitous along the U.S. coasts. Thus, management of habitats to ensure minimal human activity during those seasons when birds are present is essential to the conservation of this subspecies. Overall, rufa red knot requires both an abundance of suitable nonbreeding habitats, as well as a suitable distribution of those habitats across the landscape.

*Habitat Features*

Coastal habitats used by rufa red knots (*i.e.,* for foraging and roosting) are similar across both migration and wintering areas (Harrington 2001, p. 9), and can be generally characterized as sparsely vegetated coastal marine and estuarine habitats with large areas of exposed intertidal substrates. Migration and wintering habitats include high-energy ocean- or bay-front barrier island or mainland beaches, as well as shorelines and tidal flats in more sheltered estuaries (*e.g.,* bays, sounds, lagoons) (Harrington 2001, p. 9). Beaches used by rufa red knots may be backed by dune fields, tidal waters, salt marsh, mangroves, or human development. Unimproved tidal inlets (*e.g.,* the mouths of creeks or larger rivers) often provide an optimal mosaic of preferred habitat types. Along the U.S. Atlantic and Gulf coasts, dynamic and ephemeral features are important rufa red knot habitats, including sand spits, islets, shoals, and sandbars, features often associated with inlets (Harrington 2001, p. 8; Sitters 2005, entire; Winn and Harrington *in* Guilfoyle et al. 2006, pp. 8–10; Harrington *in* Guilfoyle et al. 2007, pp. 18–19; Harrington 2008, pp. 2, 4–5; Niles et al. 2008, p. 30; Lott et al. 2009, pp. 18–19; North Carolina Wildlife Resources Commission (NCWRC) 2013, entire).

In the United States, there has been considerable loss or degradation of dynamic and ephemeral coastal features, including the associated loss of rufa red knot habitat as a result of shoreline stabilization and other engineering practices that support coastal development (Nordstrom 2000, pp. 20, 98–107; Nordstrom and Mauriello 2001, entire; U.S. Climate Change Science Program (USCCSP) 2009, pp. 99–100; Defeo et al. 2009, p. 4; Kisiel 2009, p. 65; Titus et al. 2009, p. 5; Rice 2012, p. 6; Rice 2017, entire). In some cases, however, engineered or artificial features may be used as habitat, or may enhance habitat (Botton et al. 1994, p. 614; Niles et al. 2008, pp. 40, 46; Schwarzer 2013, pers. comm.; Breese 2013, pers. comm.; Niles et al. 2013, entire; Firmin 2020, pers. comm.). In some localized areas, rufa red knots will use artificial habitats that mimic natural conditions, such as nourished beaches, dredge spoil sites, elevated road causeways, rock structures (*e.g.,* jetties, breakwaters), or impoundments. In other areas, living shorelines or even traditional (''hard'') engineering structures may enhance rufa red knot habitat, for example by concentrating surf-cast prey items or by calming wave energies. Notwithstanding these localized examples, rufa red knots generally require areas where natural coastal processes (*e.g.,* erosion, accretion, overwashes, island migration, inlet migration) are allowed to operate in order to create and maintain optimal habitat, which is typically dynamic and ephemeral.

In all nonbreeding habitats, rufa red knots require sparse vegetation and open landscapes, affording the birds good visibility of the surrounding area in order to avoid predation (Piersma et al. 1993, pp. 338–339, 349; Niles et al. 2008, p. 44). Rufa red knots tend to migrate in large single-species flocks, and may also flock with other shorebirds, particularly when roosting or staging for spring and fall migration (Harrington 2001, p. 8). Thus, areas that provide foraging and resting habitat capable of supporting large concentrations of birds are especially important.

*Foraging Habitat:* In coastal areas, rufa red knot foraging habitats include intertidal portions of beaches, islands, and shoals; tidal flats; wind-exposed bay bottoms or oyster reefs; peat banks; brackish ponds or impoundments; and ephemeral tidal pools. Foraging substrates can include sand, mud, peat, and sand embedded with shell, gravel, or cobble (Niles *et al.* 2008, pp. 30, 47; Harrington 2001, pp. 8–9; Newstead 2014, pp. 13–14; Service 2014, pp. 63–67). Feeding birds may be concentrated at higher tides, pushed into a smaller area by rising waters and also attracted to higher food densities along the high water line, where food may be concentrated in wrack material and where horseshoe crabs (*Limulus polyphemus*) tend to nest. However, rufa red knots have also been shown to spread out and forage across the full tidal range (Service 2014, pp. 63–67; Service 2016a, pp. 76–82; Burger *et al.* 2018, entire).

*Roosting Habitat:* In many wintering and coastal stopover areas, quality high-tide roosting habitat (*i.e.,* close to feeding areas, protected from predators, with sufficient space during the highest tides, free from excessive human disturbance) is limited (Kalasz 2008, p. 9; Kalasz 2012, pers. comm.; Niles 2012, pers. comm.; Conseil Scientifique Régional du Patrimoine Naturel 2013, entire). Typical roosting areas are relatively open and flat beaches between the high water line and the primary dune line. In some locations, roosts can include shoals, sand bars, areas of upper beach between/among unstabilized dunes, overwashes, patches of mostly bare ground (*e.g.,* blowouts, depressions, salt pannes) within salt marshes, dredge spoil sites, rock structures (*e.g.,* jetties, breakwaters), or among wrack including atop mounds of seaweed deposited on the beach (Service 2014, pp. 63–67). Such areas may have microtopographic relief offering shelter from high winds, storms, and cold weather. Rufa red knots' selection of high-tide roosting areas on the coast appears to be strongly influenced by raptor predation (Niles et al. 2008, p. 28).

*Inland Habitat:* Rufa red knots use inland saline lakes as stopover habitat in the Northern Great Plains (Skagen et al. 1999, pp. 80–81; Newstead et al. 2013, p. 57). We have little information to indicate whether or not rufa red knots may also use inland freshwater habitats during migration, but certain freshwater areas (*e.g.,* wetlands, riverine sandbars) may warrant further study as potential stopover habitats (Dovichin 2014, pers. comm.; Russell 2014, entire). Small numbers of rufa red knots sometimes

use manmade freshwater habitats (*e.g.,* impoundments) along inland migration routes (Simnor 2012, pers. comm.; Russell 2014, entire; Service 2014, pp. 68–70).

*Diet:* The rufa red knot is a specialized molluscivore, eating primarily hard-shelled mollusks, though sometimes supplemented with softer invertebrate prey such as arthropods, marine worms, and horseshoe crab eggs (Harrington 2001, pp. 9–11; Piersma and van Gils 2011, p. 9). In most U.S. coastal habitats, rufa red knots feed primarily on bivalves such as small clams and mussels (including mussel spat) (Harrington 2001, pp. 10–11; Niles et al. 2008, p. 30; Service 2014, pp. 71–73). Prey size is approximately 0.16 to 0.79 inch (in) (4 to 20 millimeters (mm)) long, and up to 1.18 in (30 mm) in circumference. Foraging activity is largely dictated by tidal conditions, as rufa red knots rarely wade in water more than 0.8 to 1.2 in (2 to 3 centimeters (cm)) deep (Harrington 2001, p. 10). Due to bill morphology, rufa red knots forage on only shallow-buried prey, within the top 0.8 to 1.2 in (2 to 3 cm) of sediment (Zwarts and Blomert 1992, p. 113; Gerasimov 2009, p. 227). Long-distance migrant shorebirds, such as rufa red knots, must take advantage of seasonally abundant food resources at migration stopovers to build up fat reserves for the next nonstop, long-distance flight (Clark et al. 1993, p. 694). Although migrating rufa red knots can be found widely distributed in small numbers within suitable stopover habitats, birds tend to concentrate in those areas where abundant food resources are consistently available from year to year. The spatial distribution of rufa red knots in many different stopover areas has been correlated with the distribution of the primary prey species (Service 2014, p. 71).

A prominent departure from typical prey items occurs each spring when rufa red knots feed on the eggs of horseshoe crabs, particularly during the key migration stopover at Delaware Bay. Delaware Bay serves as the principal spring migration stopover area for the rufa red knot because of the abundance and availability of horseshoe crab eggs (Harrington 2001, pp. 2, 7; Niles et al. 2008, pp. 36–39; Clark et al. 2009, p. 85; Service 2014, pp. 73–76). Outside of Delaware Bay, horseshoe crab eggs are eaten opportunistically when available. In several areas along the Atlantic coast, horseshoe crab eggs are a preferred food resource and may be a locally important component of the diet, particularly in spring (Service 2014, pp. 71–76).

*Sensitivity to Disturbance*

We define ''disturbance'' as any human activity that is audible or visible to rufa red knots and that interrupts the normal behavior of the birds. The daily and seasonal selection of non-breeding habitats by individual rufa red knots represents an adaptive optimization of several factors and the fitness trade-offs among them. These factors include seasonal time pressures (particularly during migration) (Hedenström 2008, p. 287; Service 2014, pp. 249–250), food availability (Service 2014, p. 71), predator avoidance (Niles et al. 2008, p. 28), tides (Newstead 2014, pp. 13–14; Burger et al. 2018, entire), and weather. It is in this context that disturbance from human activities occurs, such that interruption of normal behaviors can result in reduced fitness of the affected birds (West et al. 2002, p. 319; Goss-Custard et al. 2006, p. 88). Typical rufa red knot behaviors include feeding in intertidal areas, and roosting, resting, or preening above the high water line. Rufa red knot reactions to human activity that indicate disturbance typically include stopping or slowing feeding, assuming an alert posture, calling, walking, running, or flying (Koch and Paton 2014, entire). Rufa red knots are exposed to disturbance from recreational and other human activities throughout their non-breeding range (Niles et al. 2008, pp. 105–107; Service 2014, pp. 266–272).

Among shorebird species, rufa red knots appear to be particularly reactive to the presence of humans (Burger and Niles 2013, p. 657; Koch and Paton 2014, p. 64; Hunt et al. 2018, pp. 18–19). Although population-level impacts cannot be concluded from species' differing behavioral responses to disturbance (Gill et al. 2001, p. 265; Stillman et al. 2007, p. 73), behavior-based models can be used to relate the number and magnitude of human disturbances to impacts on the fitness of individual birds (West et al. 2002, p. 319; Goss-Custard et al. 2006, p. 88). When the time and energy costs arising from disturbance were included, disturbance could be more damaging to shorebirds than permanent habitat loss (West et al. 2002, p. 319).

Excessive disturbance precludes rufa red knot use of otherwise preferred habitats (Service 2014, pp. 267–270; Watts 2017, p. 72; Hunt et al. 2018, p. 22). Disturbance can also impact shorebird energy budgets (Service 2014, pp. 270–272; Hunt et al. 2018, pp. 26–29). Both of these effects are likely to exacerbate other threats to the rufa red knot, such as habitat loss from erosion and development, reduced food availability, asynchronies in the annual cycle, and competition with gulls. Disturbance that displaces birds from preferred habitats and/or disrupts their behavioral patterns can impair the ability of rufa red knots to gain or maintain sufficient weight, which can in turn impact fitness. Studies have found a link between the weights of rufa red knots leaving Delaware Bay after their spring stopover and subsequent survival rates, and possibly also to reproductive success (Baker *et al.* 2004, p. 878; McGowan et al. 2011, p. 9; Duijins et al. 2017, entire).

*Habitat Abundance and Distribution*

Rufa red knots move among, and depend on, multiple foraging and roosting habitat areas on local, regional, and rangewide scales. As discussed above, habitat selection by rufa red knots represents trade-offs among factors including seasonal time pressures, food availability, predator avoidance, tides, weather, and human disturbance. This complex suite of factors results in shifting patterns of habitat use on daily, seasonal, and annual temporal scales. In addition, the dynamic and shifting nature of the shoreline also influences habitat selection over multiyear scales (*e.g.,* through natural cycles of erosion and accretion). Rufa red knots make regular movements within (though not between) wintering regions (Niles et al. 2012, pp. 198, 200, 202; Newstead 2014, pp. 3, 6–8; Service 2014, pp. 43–44) and to use clusters of habitats as regional stopover complexes during migration (Clark et al. 2009, pp. 87, 89; Watts 2009, entire; Service 2014, pp. 54–55).

We define ''staging areas'' as those stopover sites with abundant, predictable food resources where birds prepare for an energetic challenge (usually a long flight over a barrier such as an ocean) requiring substantial fuel stores and physiological changes without which significant fitness costs are incurred (Warnock 2010, p. 622). Staging areas are a subset of stopover habitats (Service 2020a, p. 31), and they serve as vital stepping stones between wintering and breeding areas. Shorebirds migrate along traditional routes characterized by a chain of key staging areas that are essential to successful migration; staging areas serve as vital stepping stones between wintering and breeding areas (Myers 1983, p. 23; International Wader Study Group 2003, p. 10; Service 2014, p. 49). However, even a robust network of staging areas is not sufficient to support recovery of this subspecies. Rufa red knots also require an ample supply of other coastal and inland stopover

habitats distributed across the range, allowing birds to shift among habitat patches across multiple temporal and geographic scales in response to a number of stochastic conditions. Because rufa red knots require this flexibility, even some highly suitable and important nonbreeding habitats may not be used every year, and, within a given season, usage of particular habitat patches is likely to fluctuate across days and months (Service 2014, pp. 53–60; Smith et al. 2017a, p. 3; Service 2020a, p. 32). One particular non-breeding habitat is that used by juvenile rufa red knots. Rufa red knots do not reach adulthood until 2 years of age, at which point they make their first full northern migration to their nesting grounds. Where they spend their first 2 years and their movement patterns are largely unknown. However, Florida and the Caribbean are likely important for this stage of their life (Kalasz 2021, pers. comm.).

*Sea Level Rise*

Due to background rates of sea level rise and the naturally dynamic nature of coastal habitats, we concluded at the time of listing that rufa red knots are adapted to moderate (although sometimes abrupt) rates of habitat change in their wintering and migration areas. However, we also concluded, based on overwhelming evidence, that rates of sea level rise have increased beyond those that have occurred over recent millennia and continue to accelerate (Service 2014, pp. 142–143; Intergovernmental Panel on Climate Change (IPCC) 2013, pp. 11, 25). These conclusions are further supported by newer information evaluated in the SSA report (Service 2020a, pp. 32–36). Over the period 1902 to 2015, global mean sea level rose by 0.5 feet (ft) (0.16 meters (m)) (likely range of 0.4 to 0.7 ft (0.12 to 0.21 m)) (IPCC 2019, p. 42). The rate of sea level rise since the mid-19th century has been larger than the mean rate during the previous two millennia (high confidence) (IPCC 2014a, p. 4). Extreme wave heights, which contribute to extreme sea level events and coastal erosion, have increased in the North Atlantic by around 0.3 in (0.8 cm) per year over the period 1985 to 2018 (medium confidence) (IPCC 2019, p. 42).

The rufa red knot is vulnerable to inundation of tidal flats and erosion of sandy beaches, which are typically caused or accelerated by climate-driven sea level rise (Service 2014, pp. 126–143; Vousdoukas et al. 2019, entire). In most of the rufa red knot's nonbreeding range, shorelines are expected to undergo dramatic reconfigurations over the next century as a result of accelerating sea level rise (USCCSP 2009, pp. 13, 44, 50). Extensive areas of marsh are likely to become inundated, which may reduce foraging and roosting habitats. Marshes may be able to establish farther inland, but the rate of new marsh formation (*e.g.,* intertidal sediment accumulation, development of hydric soils, colonization of marsh vegetation) may be slower than the rate of deterioration of existing marsh, particularly under the high sea level rise scenarios (Nikitina et al. 2013, p. 11; Glick et al. 2008, p. 6). The primary rufa red knot foraging habitats, intertidal flats, and sandy beaches will likely be locally or regionally inundated or eroded, but replacement habitats are likely to re-form along the shoreline in its new position (Scavia et al. 2002, p. 152; USCCSP 2009, p. 186). However, if shorelines experience a decades-long period of high instability and landward migration (*i.e.,* under higher rates of sea level rise), the formation rate of new beach habitats may be slower than the rate of loss of existing habitats (Iwamura et al. 2013, p. 6). Additionally, low-lying and narrow islands, such as those along the U.S. Gulf and Atlantic coasts, may disintegrate rather than migrate (Titus 1990, p. 67; IPCC 2014b, p. 15), representing a net loss of rufa red knot habitat. Galbraith et al. (2002, p. 178) examined several scenarios of future sea level rise and projected major losses of intertidal habitat in Delaware Bay.

Superimposed on these changes are widespread human attempts to stabilize the shoreline, which exacerbate losses of intertidal habitats by preventing their landward migration, and human infrastructure that blocks the landward migration of coastal habitats (Service 2014, pp. 143–159). The cumulative loss of habitat across the nonbreeding range could affect the ability of rufa red knots to complete their annual cycles, possibly affecting fitness and survival, and is thereby likely to negatively influence the long-term survival of the rufa red knot (Galbraith et al. 2014, p. 7 and Supplement 1).

*Summary of Physical or Biological Features*

We derive the specific physical or biological features essential to the conservation of rufa red knot from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2020a, entire; available on *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032). We have determined that rufa red knots need areas where natural coastal processes will be able to continue well into the future to allow the formation of ephemeral features and the landward migration of coastlines in response to sea level rise. Therefore, based on the information above, we identify areas that support natural coastal processes, as well as localized areas where artificially created, maintained, or enhanced habitat supports important concentrations of red knots, as physical or biological features for the rufa red knot. These features are as follows:

(1) *Beaches and tidal flats used for foraging.* This feature includes high-energy ocean- or bay-front barrier island or mainland beaches, as well as shorelines and tidal flats in more sheltered estuaries (*e.g.,* bays, sounds, lagoons). Foraging substrates can include sand, mud, peat, and sand embedded with shell, gravel, or cobble. Foraging areas are between mean lower low water and mean higher high water. Suitable foraging habitats provide abundant quantities of accessible and appropriately sized prey items (*e.g.,* mussels and mussel spat, clams, other mollusks, horseshoe crab eggs, crustaceans, polychaete worms), timed to occur in high densities during those seasons when rufa red knots are present. ''Superabundant'' prey densities, typically bivalves or horseshoe crab eggs, are needed in migration staging areas to support rapid weight gain following long-distance flights. Large areas capable of supporting concentrations of shorebirds are especially important.

(2) *Upper beach areas used for roosting, preening, resting, or sheltering.* This feature includes unvegetated or sparsely vegetated sand between the high water line and the primary dune line. Generally these sites are open, with a large viewscape for predator avoidance. Many sites have micro-topographic relief offering refuge from high winds. Large areas capable of supporting concentrations of shorebirds—close to foraging areas, with limited predation pressure and protected from human disturbance—are especially important.

(3) *Ephemeral and/or dynamic coastal features used for foraging or roosting.* This includes dynamic and ephemeral features such as sand spits, islets, shoals, and sandbars, features often associated with inlets. Other ephemeral features used by rufa red knots include tidal pools; wind-exposed bay bottoms or oyster reefs; and unvegetated overwash areas (*e.g.,* among or behind dunes, as formed by storms or extreme wave action).

(4) *Ocean vegetation deposits or surf-cast wrack used for foraging and roosting.* This feature includes Sargassum (a species of macroalgae in

oceans that inhabits shallow water and coral reefs), seagrass, or seaweed deposits with mussel spat attached, or surf-cast wrack that accumulates along beaches and supports or captures food items, such as horseshoe crab eggs. In some areas, rufa red knots may also roost atop wrack mounds.

(5) *Intertidal peat banks used for foraging and roosting.* In some areas, exposed intertidal peat banks (*e.g.,* along bay front beaches and fronting tidal marshes) provide important foraging and roosting habitat.

(6) *Features landward of the beach that support foraging or roosting.* In some areas, rufa red knots use sparsely vegetated habitats landward of the beach berm, such as unstabilized dunes, mangrove edges, brackish ponds, and patches of mostly bare ground (*e.g.,* blowouts, depressions, pannes) within salt marshes.

(7) *Artificial habitat mimicking natural conditions or maintaining the physical or biological features 1 to 6 (above).* Coastal engineering that interferes with natural coastal processes is generally considered a threat to the rufa red knot. However, in some cases, artificial habitats mimic the natural conditions described in the other physical or biological features described above. Such artificial habitats can include nourished beaches, dredged spoil deposition sites, elevated road causeways, jetties, or impoundments. Additionally, some anthropogenic structures may promote or maintain the natural physical or biological features. For example, in parts of Delaware Bay, rufa red knot habitat features are enhanced by living shorelines (*e.g.,* shell bag reefs), and in one case by a rock breakwater.

**Special Management Considerations or Protection**

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the rufa red knot may require special management considerations or protection to reduce the threats to the species; these threats are described in the final listing rule (79 FR 73706, December 11, 2014; pp. 73707–73708), the Service's supplement to the proposed and final listing rule (Service 2014, pp. 124–314), and an updated summary in the recent SSA report (Service 2020a, pp. 15–18). For rufa red knot habitat, we grouped the primary threats that may require special management considerations or protection into seven threat categories:

(1) Disturbance of foraging and roosting red knots by humans, pets and domestic animals (*e.g.,* dogs (*Canis lupus familiaris*), cats (*Felis catus*), horses (*Equus ferus caballus*)), vehicles (*e.g.,* off-road vehicles (ORVs), golf carts, segways, all-terrain vehicles, automobiles, heavy equipment, beach rakes), ships/dredges, powered and unpowered (*e.g.,* kayaks) boats, personal watercraft (*e.g.,* jet skis), bicycles, surf kites, kite boards, dune surfers, surf fishing, paddle boards, para-sails, low-flying aircraft, drones, and research activities. Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Managing access to rufa red knot foraging or roosting habitat during different seasonal windows; reducing disturbance (*e.g.,* managing sources of disturbance that could include humans, pets, vehicles, construction equipment, watercraft, and aircraft), such as through restrictions on timing, locations, and types of activities; providing designated beach access points that reduce conflict with rufa red knots; enforcing or creating dog restrictions during key periods; or minimizing boat or aircraft activity during key periods.

(2) Predation, especially by peregrine falcons (*Falco peregrinus*), hawks (*Buteo* spp. or *Accipter* spp.), red fox (*Vulpes vulpes*), coyotes (Canis latrans), raccoons (*Procyon lotor*), gulls (*Larus* spp.), feral cats, and owls (*Bubo* spp. *or Tyto* spp.). Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Conducting predator control, controlling trash that may attract predators, or relocating any unnatural perches that attract avian predators.

(3) Competition with gulls, especially laughing gulls (*Larus atricilla*). Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Controlling trash and removing any unnatural perches, both of which attract gulls; and prohibiting the feeding of gulls.

(4) Modification or loss of habitat, or both, due to residential and commercial development, uncontrolled recreational activities, beach cleaning, hard and soft beach stabilization efforts (*e.g.,* beach nourishment, sediment backpassing, sand scraping, sand fencing, dredged material disposal, inlet channelization or relocation, construction of jetties, revetments, and other armoring structures), invasive species, sand mining and dredging, erosion, and sea level rise. Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Implementing conservation measures (*e.g.,* beach profiles designed to mimic natural habitat, ensuring a close grain size match to the native beach, limiting the frequency of activities to allow recovery of the prey base, seasonal timing to allow habitat recovery before red knots return) that help reduce modification or loss of habitat; managing sediment to abate habitat impacts from coastal engineering projects and sea level rise, and to maintain habitat features such as wide beaches, tidal flats, overwash areas, and high prey densities; coordinating with landowners and local managers to improve beach management practices, such as beach cleaning and sand fencing; implementing best management practices when conducting habitat restoration activities (*e.g.,* creating living shorelines, raising marsh elevations, conducting facilitated shoreline migration, maintaining and managing water control structures to provide rufa red knot habitat); conducting public outreach and education (especially on private and possibly State lands); and addressing the impacts of potential oil spills or gas drilling activities through facility placement, spill response plans, and training.

(5) Threats to the rufa red knot's food supply that can be managed or mitigated at the local or regional level (*e.g.,* unsustainable levels of marine crab harvest, excessive driving, and certain coastal engineering practices). Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Monitoring and managing beach invertebrates; limiting vehicle use; implementing conservation measures for coastal engineering projects (*e.g.,* sediment grain size; frequency, timing, and scope of sediment placement); and managing horseshoe crab fisheries, such as for bait and biomedical uses.

(6) Insufficient water quality or pollution control that may trigger or worsen harmful algal blooms. Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Working with local pollution authorities to limit those point discharges or non-point sources that are substantially impairing water quality or contributing to the frequency or severity of red tides or other harmful blooms.

(7) Human-caused disasters and response to natural and human-caused disasters such as oil spills, oil spill response including beach cleaning and berm construction, and response to natural disasters (*e.g.,* hurricanes). Special management considerations or protection that could reduce or ameliorate this threat may include (but not be limited to): Considering oil facility placement alternatives, preparing spill response plans, conducting oil spill training, conducting debris cleanup after a natural disaster while concurrently minimizing disturbance to rufa red knots, and establishing protocols and agreements to allow storm-enhanced habitats to persist.

**Criteria Used To Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. Within areas of the species' range under U.S. jurisdiction, we determined that occupied areas are sufficient for the conservation of the species, following our evaluation of all suitable habitat across the species range that has documented use by rufa red knots.

The recovery strategy detailed in the species' draft Recovery Plan (Service 2021, entire) is to prevent loss of the rufa red knot's adaptive capacity by maintaining representation within and among four Recovery Units: (1) Southern (Atlantic coasts of Argentina and Chile), (2) North Coast of South America, (3) Western Gulf of Mexico/Central America, and (4) Southeast United States/Caribbean, and improving their resiliency and redundancy. Recovery efforts in the United States and in other portions of the subspecies' range will focus on protecting, restoring, maintaining, and managing important nonbreeding habitats for adults and juveniles. Recovery actions are designed to directly abate threats to rufa red knots in their wintering and migration ranges (which includes those areas identified as proposed critical habitat in this rule), and will also increase resiliency of populations to withstand threats that stem from climate change on their Arctic breeding grounds and elsewhere. These actions include monitoring and safeguarding ample food supplies, preventing impacts from development and shoreline stabilization, managing human disturbance, and restoring key habitats. They may also include land acquisition, facilitated migration of certain beaches or tidal flats, and restoring natural coastal processes that create and maintain rufa red knot habitat. Consistent with the Act and implementing policies, as well as recovery needs throughout the species' annual cycles, the draft Recovery Plan includes necessary recovery actions across the range of the rufa red knot. Although many Service-led recovery actions will focus on the U.S. portions of the range, the Service will also coordinate with and support the recovery efforts of foreign governments and other partners in portions of the range outside the United States.

Sources of data for this proposed critical habitat designation include 2020 eBird data (eBird 2020, website), and multiple local and regional sources as available (*e.g.,* reports, databases, and geolocator/resighting data maintained by State Fish and Wildlife Departments, universities, local governments, and nonprofit organizations across the range of the species (see SSA report; Service 2020a, entire)). For some areas where multiple sources of information were available, we used either one or both sources, ensuring that records used were not duplicated and included the best available information. Our analysis included reviewing the best available information that pertains to the habitat requirements of this species, as presented in the ''Species Biology'' and ''Subspecies Needs'' sections of the SSA report (Service 2020a, pp. 4–14); sources of this information include studies conducted at occupied sites and published in peer-reviewed articles and agency reports, and data collected during monitoring efforts, such as aerial surveys and tracking or resighting data.

A detailed step-down methodology was developed for identifying proposed critical habitat areas (see the supplemental ''Methodology'' document available on the internet at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032). In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries based on our evaluation and consideration of the following:

(1) Migration patterns/locations across the range of the subspecies within the United States, including migratory stopovers away from the coasts. This includes the migration premise that 100 percent of rufa red knots winter within or south of the United States and 100 percent of the subspecies breed north of the United States. Therefore, 100 percent of rufa red knots migrate through the United States. However, rufa red knots from the four different wintering regions (as described in Service 2020a, p. 9) are differentially reliant on the various regions of the U.S. coast for migration stopovers (Service 2020a, pp. 6–7).

(2) Landforms (*e.g.,* islands, inlet complexes) and breaks in suitable habitats (*e.g.,* sections of high-density development, open water), which are key factors in delineating units.

(3) Gaps between rufa red knot records (another key factor in delineating units).

(4) Temporal metrics to delineate seasonal occurrence windows (*i.e.,* spring migration, fall migration, wintering) and to minimize the potential for double-counting birds.

(5) Numerical metrics showing consistent habitat use by substantial numbers of rufa red knots, as an indicator that the physical and biological features of each area are essential to the conservation of the subspecies. Regarding bird numbers, we adapted the approach of the Western Hemisphere Shorebird Reserve Network, which designates as ''Sites of Regional Importance'' those areas that support at least one percent of a biogeographic population. We used one percent as a key indicator of a habitat's importance, and we applied the one percent metric to derived estimates of regional population sizes. Best available data from several sources were considered and used to estimate the wintering and/or migration population sizes for each of several U.S. regions. (The various regions were delineated based on resighting and tracking data.) Consistency of use was indicated for those areas that supported the minimum number of rufa red knots (*i.e.,* at least one percent of the estimated population for that region in that season) for at least 3 of the past 10 years. In some areas, 10-year data sets were unavailable; in those cases, we used 1 year in 3 as the minimum.

(6) Adjustments to account for differences between observational data (*e.g.,* ground and aerial surveys, eBird) versus population estimates derived from modeling.

(7) Food availability, including the rufa red knot's need to take advantage

of seasonally abundant food resources. This relates to the well-documented correlations (*e.g.,* Botton et al. 1994, p. 605; Karpanty et al. 2006, p. 1,706; Niles et al. 2008, pp. 17, 19; Smith et al. 2008, p. 15; Cohen et al. 2010a, pp. 659–661; Cohen et al. 2010b, p. 355; Fraser et al. 2010, p. 97; GDNR 2013; SCDNR 2013, p. 37; Thibault and Levisen 2013, p. 6) between the spatial distribution of rufa red knots and the distribution of their primary prey species.

(8) The subspecies' need for flexibility in the selection of wintering and migration habitats to respond to daily, seasonal, and annual changes in conditions such as weather, tides, coastal processes, predation pressure, competition, and disturbance from human activities (Service 2014, pp. 71, 195, 259; Smith et al. 2017a, p. 3).

(9) Once areas were identified to meet the criteria summarized above, the best available data was further evaluated to ensure that the area(s) were occupied at the time of listing. For example, if all data used to meet the numerical metrics were recorded after January 12, 2015 (*i.e.,* the effective date of the rufa red knot final listing rule), then a separate check was conducted to verify that the area was known to be occupied by at least some rufa red knots at the time of listing.

Once this methodology was applied and evaluated across the regions of the United States where concentrations of rufa red knots may occur, units and subunits were then drawn based on the most recent available aerial or satellite imagery. In deciding whether to draw a single large unit or multiple units/subunits, we aimed to facilitate consistent management of each unit and subunit through section 7 consultation by distinguishing concentration areas of the same ownership or jurisdiction. Additionally, we evaluated older imagery dating back as far as 2010 to estimate the range of landform movement (*e.g.,* landward island migration, landward shoreline migration, cyclic patterns of erosion/accretion, movement of shoals). Due to the dynamic nature of the coastline, units and subunits inevitably include some areas that do not currently, or may not in the future, contain the physical or biological features such as densely vegetated marsh or open water. In some instances, these areas are included to allow the dynamic physical or biological features to move across the landscape, noting that where they occur within a unit, they will be excluded by the unit descriptions.

We propose to designate as critical habitat lands that we have determined were occupied at the time of listing (*i.e.,* specifically referring to January 12, 2015, which is the effective date for the December 11, 2014, final listing rule (79 FR 73706)), that contain one or more of the physical or biological features that are essential to support life-history processes of the species, and that may require special management considerations or protection.

We propose to designate as critical habitat 120 units (18 of which are further subdivided into 46 subunits) based on one or more of the physical or biological features being present to support the rufa red knot's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes, while other units contain only some of the physical or biological features necessary to support the rufa red knot's particular use of that habitat.

For the rufa red knot, most of the units contain highly dynamic barrier beaches and intertidal seashore areas that are covered at high tide and uncovered at low tide. This area has the potential to vary year-to-year. In other words, the precise location of the physical or biological features may shift daily as a result of tides, but also may shift over time because of the intrinsically dynamic nature of shorelines, and due to sea level rise. In general, the physical or biological features we describe are the intertidal areas and sandy beaches up to the vegetated areas that do not contain the physical or biological features, noting that availability of different habitats based on the tide cycle may also cause rufa red knots to vary foraging or roosting locations throughout a day and/or forage at night.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document. We include more detailed information on the boundaries of the proposed critical habitat designation in the discussion of individual units, below. 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* under Docket No. FWS–R5–ES–2021–0032. When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by pavement, buildings, and other structures (*e.g.,* docks, maintained rights-of-way, work yards, and stormwater facilities) because such lands lack physical or biological features necessary for the rufa red knot. 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 under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

**Proposed Critical Habitat Designation**

We are proposing 120 units (18 of which are further subdivided into 46 subunits) as critical habitat for rufa red knot, all of which were occupied at the time of listing, and totaling approximately 649,066 ac (262,667 ha). Table 1, below, shows the proposed unit or subunit names, land ownership, and approximate acreage. The land ownership values in many (but not all) proposed critical habitat units also include a category called ''uncategorized lands.'' For the purposes of this analysis and proposed critical habitat designation, this category refers to open water. Although open water is not rufa red knot habitat *per se,* it is an integral part of the habitat mosaic that these birds require. Rufa red knots use the edges of certain coastal ponds, marsh blow-outs, salt pannes, and sand or mud flats that may be classified by some States as open water if they are submerged during high tides. Additionally, open waters at inlets are regularly reshaped by natural coastal processes that create and maintain dynamic and ephemeral rufa red knot habitat features, such as shoals and spits.

The areas we propose as critical habitat for the rufa red knot are presented below and organized by State, north to south. Brief descriptions of all units and subunits are presented, including the reasons why they meet the definition of critical habitat for the rufa red knot. All units contain one or more of the physical and biological features essential to the conservation of the species and that may require special management considerations or protection. Also, many of the proposed units overlap in part or whole with existing critical habitat designated for other federally threatened species (*i.e.,* the piping plover (*Charadrius melodus*), the loggerhead sea turtle (*Caretta caretta*), the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), and the West

Indian manatee (*Trichechus manatus*)), and one federally endangered species (*i.e.,* the aboriginal prickly-apple (*Harrisia aboriginum*)), as specified below (Table 2).

Additional considerations include:

(1) Most of the units contain highly dynamic barrier beaches and intertidal seashore areas that are covered at high tide and uncovered at low tide. This area has the potential to vary year-to-year. In other words, the precise location of the physical or biological features may shift daily as a result of tides, but also may shift over time somewhat because of the intrinsically dynamic nature of shorelines and due to sea level rise. In general, the physical or biological features we describe are the intertidal areas and sandy beaches up to the vegetated or developed areas that do not contain the physical or biological features.

(2) The availability of different habitats based on the tide cycle may also cause rufa red knots to vary foraging or roosting locations throughout a day and/or forage at night.

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| **Massachusetts** | | | |
| MA–1 Pleasant Bay | Federal | 126 | 51 |
| | State | 0 | 0 |
| | Private/Other | 1,596 | 646 |
| | Uncategorized | 2,634 | 1,066 |
| | Total | 4,357 | 1,763 |
| MA–2 Monomoy and South Beach Islands | Federal | 4,047 | 1,638 |
| | State | 0 | 0 |
| | Private/Other | 1,045 | 423 |
| | Uncategorized | 0 | 0 |
| | Total | 5,093 | 2,061 |
| **New York** | | | |
| NY–1 Moriches Inlet | Federal | 78 | 32 |
| | State | 63 | 25 |
| | Private/Other | 163 | 66 |
| | Uncategorized | 697 | 282 |
| | Total | 1,001 | 405 |
| NY–2 Jones Inlet | Federal | 0 | 0 |
| | State | 710 | 287 |
| | Private/Other | 1,111 | 450 |
| | Uncategorized | 0 | 0 |
| | Total | 1,821 | 737 |
| NY–3 Jamaica Bay | Federal | 5,458 | 2,209 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 5,458 | 2,209 |
| **New Jersey** | | | |
| NJ–1 Brigantine and Little Egg Inlets | Federal | 1,560 | 632 |
| | State | 3,187 | 1,291 |
| | Private/Other | 10 | 4 |
| | Uncategorized | 4,961 | 2,006 |
| | Total | 9,719 | 3,933 |
| NJ–2 Seven Mile Beach | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 536 | 217 |
| | Uncategorized | 0 | 0 |
| | Total | 536 | 217 |
| NJ–3 Hereford Inlet | Federal | 0 | 0 |
| | State | 175 | 71 |
| | Private/Other | 735 | 297 |
| | Uncategorized | 721 | 292 |
| | Total | 1,631 | 660 |
| NJ–4 Two Mile Beach | Federal | 128 | 52 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Uncategorized | 0 | 0 |
| | Total | 128 | 52 |
| NJ–5 Cape May Bayshore | Federal | 133 | 54 |
| | State | 44 | 18 |
| | Private/Other | 167 | 67 |
| | Uncategorized | 858 | 347 |
| | Total | 1,202 | 487 |
| NJ–6 Dennis Creek | Federal | 0 | 0 |
| | State | 279 | 113 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 279 | 113 |
| NJ–7 Heislerville | Federal | 0 | 0 |
| | State | 524 | 211 |
| | Private/Other | 459 | 186 |
| | Uncategorized | 127 | 52 |
| | Total | 1,110 | 449 |
| NJ–8 Egg Island | Federal | 0 | 0 |
| | State | 1,908 | 773 |
| | Private/Other | 32 | 13 |
| | Uncategorized | 14 | 5 |
| | Total | 1,955 | 791 |
| NJ–9 Newport Neck | Federal | 0 | 0 |
| | State | 202 | 82 |
| | Private/Other | 176 | 71 |
| | Uncategorized | 93 | 38 |
| | Total | 472 | 191 |
| **Delaware** | | | |
| DE–1A St. Jones North | Federal | 0 | 0 |
| | State | 37 | 15 |
| | Private/Other | 3 | 1 |
| | Uncategorized | 3 | 1 |
| | Total | 43 | 18 |
| DE–1B St. Jones South | Federal | 0 | 0 |
| | State | 1 | 0.5 |
| | Private/Other | 2 | 0.6 |
| | Uncategorized | 0 | 0 |
| | Total | 3 | 1 |
| DE–2A North Brokonbridge Gut | Federal | 0 | 0 |
| | State | 2 | 1 |
| | Private/Other | 91 | 37 |
| | Uncategorized | 0 | 0 |
| | Total | 93 | 37 |
| DE–2B South Brokonbridge Gut | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 70 | 29 |
| | Uncategorized | 0 | 0 |
| | Total | 70 | 29 |
| DE–3A Main Harbor | Federal | 0 | 0 |
| | State | 32 | 13 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 29 | 12 |
| | Total | 61 | 25 |
| DE–3B Rawley Island Roost | Federal | 0 | 0 |
| | State | 1,139 | 461 |
| | Private/Other | 153 | 62 |
| | Uncategorized | 6 | 2 |
| | Total | 1,298 | 525 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| DE–3C Slaughter Beach | Federal | 1 | 0.25 |
| | State | 59 | 24 |
| | Private/Other | 2 | 1 |
| | Uncategorized | 528 | 213 |
| | Total | 590 | 239 |
| DE–4 Prime Hook | Federal | 480 | 195 |
| | State | 0 | 0 |
| | Private/Other | 6 | 2 |
| | Uncategorized | 63 | 25 |
| | Total | 549 | 222 |
| **Virginia** | | | |
| VA–1 Assateague Island | Federal | 2,817 | 1,140 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 2,817 | 1,140 |
| VA–2A Wallops Island North | Federal | 540 | 218 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 540 | 218 |
| VA–2B Wallops Island South | Federal | 31 | 13 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 31 | 13 |
| VA–3 Assawoman Island | Federal | 633 | 256 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 633 | 256 |
| VA–4 Metompkin Island | Federal | 64 | 26 |
| | State | 56 | 22 |
| | Private/Other | 1,239 | 502 |
| | Uncategorized | 110 | 44 |
| | Total | 1,468 | 594 |
| VA–5 Cedar Island | Federal | 203 | 82 |
| | State | 77 | 31 |
| | Private/Other | 920 | 372 |
| | Uncategorized | 1,074 | 434 |
| | Total | 2,274 | 920 |
| VA–6 Parramore Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 5,631 | 2,280 |
| | Uncategorized | 1,171 | 473 |
| | Total | 6,802 | 2,753 |
| VA–7 Chimney Pole Marsh | Federal | 0 | 0 |
| | State | 1,224 | 496 |
| | Private/Other | 285 | 116 |
| | Uncategorized | 495 | 200 |
| | Total | 2,004 | 811 |
| VA–8 Hog Island | Federal | 0 | 0 |
| | State | 16 | 7 |
| | Private/Other | 2,966 | 1,201 |
| | Uncategorized | 253 | 101 |
| | Total | 3,235 | 1,309 |
| VA–9 Cobb Island | Federal | 0 | 0 |
| | State | 16 | 7 |
| | Private/Other | 1,778 | 720 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Uncategorized | 547 | 221 |
| | Total | 2,342 | 948 |
| VA–10 Little Cobb Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 82 | 33 |
| | Uncategorized | 0 | 0 |
| | Total | 82 | 33 |
| VA–11 Wreck Island | Federal | 0 | 0 |
| | State | 1,270 | 514 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 1,270 | 514 |
| VA–12 Myrtle Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 1,028 | 417 |
| | Uncategorized | 388 | 156 |
| | Total | 1,416 | 573 |
| VA–13 Smith Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 2,529 | 1,024 |
| | Uncategorized | 0 | 0 |
| | Total | 2,529 | 1,024 |
| **North Carolina** | | | |
| NC–1A Hatteras Island and Shoals | Federal | 4,940 | 1,999 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 814 | 329 |
| | Total | 5,754 | 2,329 |
| NC–1B Ocracoke Island | Federal | 1,427 | 577 |
| | State | 3,612 | 1,462 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 575 | 233 |
| | Total | 5,613 | 2,271 |
| NC–2A North Core Banks | Federal | 6,534 | 2,644 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 1,654 | 669 |
| | Total | 8,187 | 3,313 |
| NC–2B South Core Banks | Federal | 3,094 | 1,252 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 3,094 | 1,252 |
| NC–3 Shackleford Island | Federal | 4,972 | 2,012 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 4,972 | 2,012 |
| NC–4 Emerald Isle-Atlantic Beach | Federal | 0 | 0 |
| | State | 1,908 | 772 |
| | Private/Other | 122 | 50 |
| | Uncategorized | 0 | 0 |
| | Total | 2,030 | 822 |
| NC–5 New Topsail Inlet-Topsail Beach | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 1,612 | 652 |
| | Uncategorized | 0 | 0 |
| | Total | 1,612 | 652 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| NC–6 Cape Fear-Fort Fisher | Federal | 0 | 0 |
| | State | 1,713 | 693 |
| | Private/Other | 274 | 111 |
| | Uncategorized | 0.00 | 0 |
| | Total | 1,986 | 804 |
| NC–7 Ocean Isle Beach | Federal | 0 | 0 |
| | State | 182 | 73 |
| | Private/Other | 116 | 47 |
| | Uncategorized | 0 | 0 |
| | Total | 298 | 120 |
| NC–8 Sunset Beach-Bird Island | Federal | 0 | 0 |
| | State | 345 | 139 |
| | Private/Other | 39 | 16 |
| | Uncategorized | 0 | 0 |
| | Total | 384 | 155 |
| **South Carolina** | | | |
| SC–1 Garden City Beach | Federal | 0 | 0 |
| | State | 267 | 108 |
| | Private/Other | 349 | 141 |
| | Uncategorized | 0 | 0 |
| | Total | 616 | 249 |
| SC–2 Huntington Beach State Park/Litchfield Beach | Federal | 0 | 0 |
| | State | 80 | 32 |
| | Private/Other | 1,554 | 629 |
| | Uncategorized | 0 | 0 |
| | Total | 1,634 | 661 |
| SC–3 Sand and South Island Beaches | Federal | 0 | 0 |
| | State | 7,843 | 3,174 |
| | Private/Other | 129 | 52 |
| | Uncategorized | 283 | 115 |
| | Total | 8,256 | 3,341 |
| SC–4 Murphy Island Beach | Federal | 0 | 0 |
| | State | 8,312 | 3,364 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 8,312 | 3,364 |
| SC–5 North Cape Island Beach | Federal | 775 | 313 |
| | State | 495 | 200 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 1,270 | 514 |
| SC–6 South Cape and Lighthouse Island Beaches | Federal | 1,552 | 628 |
| | State | 485 | 196 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 2,037 | 824 |
| SC–7 Raccoon Key Complex and White Banks Beaches | Federal | 5,324 | 2,154 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 5,324 | 2,154 |
| SC–8 Marsh Island | Federal | 415 | 168 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 415 | 168 |
| SC–9 Bulls Island Beach | Federal | 5,200 | 2,104 |
| | State | 941 | 381 |
| | Private/Other | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Uncategorized | 0 | 0 |
| SC–10 Capers Island Beach | Total | 6,141 | 2,485 |
| | Federal | 0 | 0 |
| | State | 2,534 | 1,026 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| SC–11 Dewees Island Beach | Total | 2,534 | 1,026 |
| | Federal | 0 | 0 |
| | State | 265 | 107 |
| | Private/Other | 1,547 | 626 |
| | Uncategorized | 0 | 0 |
| SC–12 Isle of Palms Beach | Total | 1,812 | 733 |
| | Federal | 0 | 0 |
| | State | 754 | 305 |
| | Private/Other | 3,363 | 1,361 |
| | Uncategorized | 0 | 0 |
| SC–13 Sullivan's Island Beach | Total | 4,117 | 1,666 |
| | Federal | 83 | 34 |
| | State | 694 | 281 |
| | Private/Other | 1,005 | 407 |
| | Uncategorized | 0 | 0 |
| SC–14 Folly Beach | Total | 1,782 | 721 |
| | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 1,989 | 805 |
| | Uncategorized | 0 | 0 |
| SC–15 Bird Key-Stono | Total | 1,989 | 805 |
| | Federal | 0 | 0 |
| | State | 294 | 119 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| SC–16 Kiawah and Seabrook Island Beaches | Total | 294 | 119 |
| | Federal | 0 | 0 |
| | State | 1,399 | 566 |
| | Private/Other | 9,850 | 3,986 |
| | Uncategorized | 0 | 0 |
| SC–17 Deveaux Bank | Total | 11,250 | 4,553 |
| | Federal | 0 | 0 |
| | State | 1,328 | 538 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| SC–18 Edisto Island Beaches | Total | 1,328 | 538 |
| | Federal | 0 | 0 |
| | State | 650 | 263 |
| | Private/Other | 1,093 | 442 |
| | Uncategorized | 0 | 0 |
| SC–19 Pine and Otter Island Beaches | Total | 1,743 | 705 |
| | Federal | 0 | 0 |
| | State | 6,296 | 2,548 |
| | Private/Other | 6 | 2 |
| | Uncategorized | 0 | 0 |
| SC–20 Harbor and Hunting Island Beaches | Total | 6,302 | 2,550 |
| | Federal | 0 | 0 |
| | State | 3,246 | 1,313 |
| | Private/Other | 820 | 331 |
| | Uncategorized | 0 | 0 |
| SC–21 Fripp Island Beach | Total | 4,066 | 1,645 |
| | Federal | 0 | 0 |
| | State | 305 | 124 |
| | Private/Other | 429 | 174 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Uncategorized | 0 | 0 |
| | Total | 734 | 297 |
| SC–22 Hilton Head Island Beach | Federal | 0 | 0 |
| | State | 1,015 | 411 |
| | Private/Other | 667 | 270 |
| | Uncategorized | 0 | 0 |
| | Total | 1,682 | 681 |
| SC–23 Daufuskie Island Beach | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 6,370 | 2,578 |
| | Uncategorized | 0 | 0 |
| | Total | 6,370 | 2,578 |
| SC–24 Turtle Island Beach | Federal | 0 | 0 |
| | State | 1,798 | 728 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 1,798 | 728 |
| SC–25 Jones Island Beach | Federal | 785 | 318 |
| | State | 2,240 | 907 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 3,025 | 1,225 |
| **Georgia** | | | |
| GA–1 Tybee Island Beach | Federal | 0 | 0 |
| | State | 6 | 2 |
| | Private/Other | 1,721 | 697 |
| | Uncategorized | 319 | 129 |
| | Total | 2,046 | 828 |
| GA–2 Little Tybee Island Complex | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 8,265 | 3,345 |
| | Uncategorized | 0 | 0 |
| | Total | 8,265 | 3,345 |
| GA–3 Wassaw Island Beach | Federal | 3,001 | 1,215 |
| | State | 0 | 0 |
| | Private/Other | 274 | 111 |
| | Uncategorized | 1,020 | 412 |
| | Total | 4,296 | 1,738 |
| GA–4 Raccoon Key | Federal | 0 | 0 |
| | State | 1,599 | 647 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 1,599 | 647 |
| GA–5 Ossabaw Island Beach | Federal | 0 | 0 |
| | State | 28,621 | 11,591 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 3,736 | 1,503 |
| | Total | 32,357 | 13,094 |
| GA–6 St. Catherine's Island Beach | Federal | 0 | 0 |
| | State | 2,106 | 853 |
| | Private/Other | 11,810 | 4,783 |
| | Uncategorized | 2,046 | 824 |
| | Total | 15,962 | 6,460 |
| GA–7 Blackbeard Island Beach | Federal | 4,954 | 2,006 |
| | State | 80 | 32 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 1,287 | 519 |
| | Total | 6,321 | 2,557 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| GA–8 Sapelo Island Beach | Federal | 0 | 0 |
| | State | 2,481 | 845 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 2,481 | 845 |
| GA–9 Wolf Island, Egg Island, Little Egg Island, and Little Egg Island Bar. | Federal | 2,975 | 1,204 |
| | State | 240 | 97 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 2,093 | 847 |
| | Total | 5,308 | 2,148 |
| GA–10 Little St. Simon's Island Beach | Federal | 0 | 0 |
| | State | 113 | 46 |
| | Private/Other | 7,462 | 3,022 |
| | Uncategorized | 1,479 | 596 |
| | Total | 9,053 | 3,664 |
| GA–11 Sea and St. Simon's Island Beaches | Federal | 0 | 0 |
| | State | 4 | 1 |
| | Private/Other | 3,448 | 1,395 |
| | Uncategorized | 581 | 235 |
| | Total | 4,033 | 1,631 |
| GA–12 Jekyll Island Beach | Federal | 0 | 0 |
| | State | 5,944 | 2,406 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 343 | 139 |
| | Total | 6,287 | 2,545 |
| GA–13 Little Cumberland and Cumberland Island Beaches | Federal | 23,367 | 9,464 |
| | State | 1,685 | 682 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 3,085 | 1,241 |
| | Total | 28,137 | 11,387 |
| **Florida** | | | |
| FL–1 Nassau Sound-Fort George Sound-Fort George Inlet Complex. | Federal | 996 | 404 |
| | State | 522 | 211 |
| | Private/Other | 27 | 11 |
| | Uncategorized | 2,779 | 6,116 |
| | Total | 4,324 | 6,742 |
| FL–2 Ponce Inlet Complex | Federal | 16,660 | 6,742 |
| | State | 3,005 | 1,216 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 18 | 7 |
| | Total | 19,683 | 7,965 |
| FL–3 Merritt Island National Wildlife Refuge Impoundments | Federal | 6,947 | 2,811 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 6,947 | 2,811 |
| FL–4A Cape Romano Complex | Federal | 13,138 | 5,321 |
| | State | 12,605 | 5,105 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 470 | 182 |
| | Total | 26,213 | 10,608 |
| FL–4B Marco Island | Federal | 0 | 0 |
| | State | 408 | 165 |
| | Private/Other | 8 | 3 |
| | Uncategorized | 0 | 0 |
| | Total | 416 | 168 |
| FL–5 Marco Bay Complex | Federal | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | State | 3,531 | 1,429 |
| | Private/Other | 58 | 24 |
| | Uncategorized | 0 | 0 |
| | Total | 3,589 | 1,453 |
| FL–6A Cocohatchee Inlet Complex | Federal | 0 | 0 |
| | State | 9 | 4 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 9 | 4 |
| FL–6B Barefoot Beach | Federal | 0 | 0 |
| | State | 18 | 7 |
| | Private/Other | 21 | 9 |
| | Uncategorized | 0 | 0 |
| | Total | 39 | 16 |
| FL–7A Lovers Key | Federal | 0 | 0 |
| | State | 4 | 1 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 4 | 1 |
| FL–7B Estero Island | Federal | 0 | 0 |
| | State | 171 | 69 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 171 | 69 |
| FL–8 Bunche Beach | Federal | 23 | 9 |
| | State | 264 | 107 |
| | Private/Other | 47 | 19 |
| | Uncategorized | 0 | 0 |
| | Total | 334 | 135 |
| FL–9A J.N. ‘‘Ding’’ Darling National Wildlife Refuge | Federal | 3,451 | 1,397 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 3,451 | 1,397 |
| FL–9B Sanibel Island | Federal | 307 | 124 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 307 | 124 |
| FL–10A Don Pedro | Federal | 0 | 0 |
| | State | 147 | 60 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 147 | 60 |
| FL–10B Stump Pass Beach State Park | Federal | 0 | 0 |
| | State | 11 | 4 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 11 | 4 |
| FL–11 Siesta Key | Federal | 0 | 0 |
| | State | 53 | 21 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 53 | 21 |
| FL–12A Lido Key | Federal | 0 | 0 |
| | State | 81 | 33 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 81 | 33 |
| FL–12B Longboat Key | Federal | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | State | 369 | 149 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 369 | 149 |
| FL–13 North Anna Maria Island | Federal | 56 | 23 |
| | State | 889 | 360 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 945 | 383 |
| FL–14 Egmont Key | Federal | 15 | 6 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 15 | 6 |
| FL–15A Fort De Soto County Park | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 427 | 173 |
| | Uncategorized | 0 | 0 |
| | Total | 427 | 173 |
| FL–15B Shell Key Preserve | Federal | 0 | 0 |
| | State | 322 | 130 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 322 | 130 |
| FL–15C Saint Petersburg Beach | Federal | 0 | 0 |
| | State | 107 | 43 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 107 | 43 |
| FL–16 Indian Shores/Redington Beach | Federal | 0 | 0 |
| | State | 196 | 79 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 196 | 79 |
| FL–17 Belleair Beach | Federal | 0 | 0 |
| | State | 123 | 50 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 123 | 50 |
| FL–18A Caladesi Island | Federal | 0 | 0 |
| | State | 259 | 105 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 259 | 105 |
| FL–18B Honeymoon Island | Federal | 0 | 0 |
| | State | 294 | 119 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 294 | 119 |
| FL–18C Three Rooker Bar | Federal | 0 | 0 |
| | State | 335 | 136 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 335 | 136 |
| FL–19 Anclote Key | Federal | 0 | 0 |
| | State | 1,547 | 626 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 1,547 | 626 |
| FL–20 Cedar Keys Complex | Federal | 2,498 | 1,012 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | State | 7,792 | 3,153 |
| | Private/Other | 5,928 | 2,293 |
| | Uncategorized | 19,407 | 7,959 |
| | Total | 35,626 | 14,417 |
| FL–21 St. Marks National Wildlife Refuge | Federal | 2,074 | 839 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 2,074 | 839 |
| FL–22A Mashes Sands | Federal | 0 | 0 |
| | State | 262 | 106 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 262 | 106 |
| FL–22B Bald Point State Park | Federal | 0 | 0 |
| | State | 439 | 178 |
| | Private/Other | 6 | 2 |
| | Uncategorized | 0 | 0 |
| | Total | 445 | 180 |
| FL–22C Alligator Point | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 722 | 292 |
| | Uncategorized | 0 | 0 |
| | Total | 722 | 292 |
| FL–23A Turkey Point Shoal | Federal | 0 | 0 |
| | State | 531 | 215 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 531 | 215 |
| FL–23B Lanark Reef | Federal | 0 | 0 |
| | State | 805 | 326 |
| | Private/Other | 61 | 25 |
| | Uncategorized | 0 | 0 |
| | Total | 865 | 350 |
| FL–23C East Dog Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 771 | 312 |
| | Uncategorized | 0 | 0 |
| | Total | 771 | 312 |
| FL–23D West Dog Island | Federal | 0 | 0 |
| | State | 0 | 0 |
| | Private/Other | 751 | 304 |
| | Uncategorized | 0 | 0 |
| | Total | 751 | 304 |
| FL–23E McKissack Beach, Carrabelle | Federal | 0 | 0 |
| | State | 114 | 46 |
| | Private/Other | 3 | 1 |
| | Uncategorized | 0 | 0 |
| | Total | 117 | 47 |
| FL–23F East St. George Island State Park | Federal | 0 | 0 |
| | State | 978 | 396 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 978 | 396 |
| FL–23G St. George Island State Park and Bayshore Shoals | Federal | 0 | 0 |
| | State | 162 | 65 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 162 | 65 |
| FL–24A Little St. George Island State Park-West | Federal | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | State | 953 | 386 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 953 | 386 |
| FL–24B St. Vincent National Wildlife Refuge | Federal | 742 | 300 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 742 | 300 |
| FL–24C Flagg Island Shoals | Federal | 0 | 0 |
| | State | 517 | 209 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 517 | 209 |
| FL–25A Cape San Blas to Indian Pass | Federal | 0 | 0 |
| | State | 133 | 54 |
| | Private/Other | 486 | 197 |
| | Uncategorized | 0 | 0 |
| | Total | 620 | 251 |
| FL–25B St. Joseph Bay-Eastern Shore | Federal | 0 | 0 |
| | State | 761 | 308 |
| | Private/Other | 66 | 27 |
| | Uncategorized | 0 | 0 |
| | Total | 827 | 335 |
| **Alabama** | | | |
| AL–1 Dauphin Island | Federal | 484 | 196 |
| | State | 848 | 343 |
| | Private/Other | 3,834 | 1,552 |
| | Uncategorized | 0 | 0 |
| | Total | 5,167 | 2,091 |
| **Mississippi** | | | |
| MS–1 Ship Island | Federal | 2,452 | 993 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 2,452 | 993 |
| MS–2 Cat Island | Federal | 686 | 278 |
| | State | 1,305 | 528 |
| | Private/Other | 129 | 52 |
| | Uncategorized | 0 | 0 |
| | Total | 2,121 | 858 |
| **Louisiana** | | | |
| LA–1 Chandeleur Islands | Federal | 7,632 | 3,088 |
| | State | 0 | 0 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 7,632 | 3,088 |
| LA–2 Barataria Barrier Islands and Headlands | Federal | 0 | 0 |
| | State | 126 | 51 |
| | Private/Other | 7,669 | 3,104 |
| | Uncategorized | 0 | 0 |
| | Total | 7,795 | 3,155 |
| LA–3 Terrebonne Barrier Islands | Federal | 0 | 0 |
| | State | 2,900 | 1,173 |
| | Private/Other | 2,172 | 879 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Uncategorized | 0 | 0 |
| | Total | 5,072 | 2,052 |
| LA–4 Southwest Louisiana Beaches | Federal | 0 | 0 |
| | State | 1,497 | 606 |
| | Private/Other | 4,633 | 1,875 |
| | Uncategorized | 0 | 0 |
| | Total | 6,130 | 2,481 |
| **Texas** | | | |
| TX–1 Rollover Pass to Bolivar Flats | Federal | 0 | 0 |
| | State | 268 | 108 |
| | Private/Other | 996 | 403 |
| | Uncategorized | 0 | 0 |
| | Total | 1,264 | 511 |
| TX–2 West Galveston Island | Federal | 0 | 0 |
| | State | 307 | 124 |
| | Private/Other | 282 | 114 |
| | Uncategorized | 0 | 0 |
| | Total | 590 | 239 |
| TX–3 Cedar Lake to Colorado River | Federal | 0 | 0 |
| | State | 1,075 | 438 |
| | Private/Other | 128 | 52 |
| | Uncategorized | 0 | 0 |
| | Total | 1,204 | 487 |
| TX–4 Mustang Island | Federal | 0 | 0 |
| | State | 395 | 160 |
| | Private/Other | 253 | 102 |
| | Uncategorized | 0 | 0 |
| | Total | 648 | 262 |
| TX–5 Mollie Beattie Coastal Habitat | Federal | 0 | 0 |
| | State | 505 | 205 |
| | Private/Other | 218 | 88 |
| | Uncategorized | 0 | 0 |
| | Total | 723 | 293 |
| TX–6 North Padre Island | Federal | 2,487 | 1,007 |
| | State | 68 | 27 |
| | Private/Other | 262 | 106 |
| | Uncategorized | 0 | 0 |
| | Total | 2,817 | 1,140 |
| TX–7 Upper Laguna Madre/Nighthawk Bay | Federal | 273 | 111 |
| | State | 816 | 330 |
| | Private/Other | 68 | 28 |
| | Uncategorized | 0 | 0 |
| | Total | 1,157 | 469 |
| TX–8 Dagger Hill/Yarborough Pass/Nine Mile Hole | Federal | 9,731 | 3,938 |
| | State | 23,042 | 9,332 |
| | Private/Other | 0 | 0 |
| | Uncategorized | 0 | 0 |
| | Total | 32,773 | 13,270 |
| TX–9 Pintail Lake/Padre Island/La Punta Larga | Federal | 25,881 | 10,482 |
| | State | 34,165 | 13,826 |
| | Private/Other | 34,125 | 13,802 |
| | Uncategorized | 0 | 0 |
| | Total | 94,171 | 38,110 |
| TX–10 Peyton's Bay/Arroyo Colorado/Three Islands/Gabrielson Island. | Federal | 8,145 | 3,296 |
| | State | 25,316 | 10,245 |
| | Private/Other | 2,190 | 886 |
| | Uncategorized | 0 | 0 |

TABLE 1—PROPOSED CRITICAL HABITAT LAND OWNERSHIP AND UNIT SIZE FOR THE RUFA RED KNOT—Continued

| Critical habitat unit or subunit name (state) | Land ownership by type | Approximate acres | Approximate hectares |
|---|---|---|---|
| | Total | 35,651 | 14,427 |
| TX–11 South Bay/Boca Chica | Federal | 5,536 | 2,242 |
| | State | 3,923 | 1,589 |
| | Private/Other | 5,784 | 2,342 |
| | Uncategorized | 0 | 0 |
| | Total | 15,243 | 6,173 |

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

TABLE 2—CO-OCCURRING CRITICAL HABITAT DESIGNATIONS THAT OVERLAP PROPOSED CRITICAL HABITAT FOR RUFA RED KNOT

| State | Area of overlap with designated critical habitat in acres (ac)/hectares (ha) (# of proposed rufa red knot units or subunits overlapping) | | | | | Total overlap (combined) for each state in acres (ac)/ hectares (ha) |
|---|---|---|---|---|---|---|
| | Piping plover | Loggerhead sea turtle | West indian manatee | Gulf sturgeon | Aboriginal prickly-apple | |
| North Carolina | 10,621 ac/4,298 ha (10). | 3,523 ac/1,426 ha(3) | N/A | N/A | N/A | 13,874 ac/5,614 ha. |
| South Carolina | 4,955 ac/2,005 ha(13) | 5,315 ac/2,151 ha(12) | N/A | N/A | N/A | 9,302 ac/3,764 ha. |
| Georgia | 15,369 ac/6,220 ha(12). | 10,903 ac/4,412 ha(7) | N/A | N/A | N/A | 21,698 ac/8,781 ha. |
| Florida | 7,617 ac/3,082 ha (20). | 7,114 ac/2,879 ha (17). | 20,720 ac/8,385 ha (11). | 8,970 ac/3,630 ha(11) | 77 ac/31 ha (4) | 37,801 ac/15,297 ha. |
| Alabama | 2,381 ac/963 ha (1) | N/A | N/A | N/A | N/A | 2,381 ac/963 ha. |
| Mississippi | 4,538 ac/1,837 ha (2) | N/A | N/A | 1,866 ac/755 ha (2) | N/A | 4,488 ac/ 1,816 ha. |
| Louisiana | 17,154 ac/6,942 ha (4). | N/A | N/A | N/A | N/A | 17,154 ac/6,942 ha. |
| Texas | 153,726 ac/62,211 ha (11). | N/A | N/A | N/A | N/A | 153,726 ac/62,211 ha. |
| Total | 216,361 ac/87,558 ha (73). | 26,855 ac/10,868 ha (39). | 20,720 ac/8,385 ha (11). | 10,836 ac/4,385 ha (13). | 77 ac/31 ha (4) | 260,424 ac/105,388 ha. |

*Totals may not sum due to rounding.

We present brief descriptions of all units and subunits, and reasons why they meet the definition of critical habitat for the rufa red knot, below.

*Unit MA–1: Pleasant Bay*

Unit MA–1 consists of approximately 4,357 ac (1,763 ha) of highly dynamic barrier beaches and intertidal (*i.e.,* seashore that is covered at high tide and uncovered at low tide) areas in the towns of Chatham and Orleans in Barnstable County, Massachusetts. The unit includes exposed intertidal flats, shoals, mudflats, and intertidal salt marsh pannes in Little Pleasant Bay and Pleasant Bay, and ephemeral tidal pools, primary sand dunes, and beaches associated with Nauset Beach South (Orleans), North Beach (Chatham), and North Beach Island (Chatham). The unit begins in the mid-section of Little Pleasant Bay going east to ''mean lower low water'' (MLLW; *i.e.,* the lowest of the low tides per day averaged over a 19-year period) on the east side of Nauset Beach South, continuing south along Nauset Beach South and North Beach to North Beach Island at MLLW and terminating at the natural channel between North Beach Island and South Beach Island (Chatham). The western side of the unit runs offshore of the mainland, west of small islands in Pleasant and Little Pleasant Bays (Little Sipson Island, Strong Island, and Tern Island), incorporating intertidal lands associated with the islands. Lands within this unit include approximately 126 ac (51 ha; 3 percent) in Federal ownership, 1,596 ac (646 ha; 37 percent) in private/other ownership, and 2,634 ac (1,066 ha; 60 percent) that are uncategorized. General land use within this unit is primarily recreational, including off-shore and surf fishing, shellfish digging, (both recreational and commercial), boating, over-sand vehicle use, sunbathing, swimming, and walking.

Unit MA–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. The unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in the New England portion of the subspecies range. Additionally, this location consistently supports a few thousand migrating rufa red knots due to the large intertidal areas and beach habitat that provides multiple foraging and roosting habitat areas for the birds to build energy resources for migration.

Threats identified within Unit MA–1 include disturbance of foraging and roosting rufa red knots by humans and human activities including but not limited to, pets and domestic animals, ORVs, powered and unpowered boats, surf kites, and surf fishing, predation (especially by migrating raptors and owls), possible modification or loss of habitat (*e.g.,* dredging or mining of sand flats), and natural or human-caused disasters (*i.e.,* oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and addressing the impacts of potential oil spills through protective spill response plans and training (see Special Management Considerations or Protection, above). The National Park Service (NPS) manages Cape Cod National Seashore under a comprehensive shorebird management plan (NPS 2018, entire) (Shorebird

Plan). However, due to the small and isolated nature of NPS inholdings in this unit, these areas are not actively managed under the Shorebird Plan.

*Unit MA–2: Monomoy and South Beach Islands*

Unit MA–2 consists of 5,093 ac (2,061 ha) of highly dynamic barrier beaches and intertidal areas in the town of Chatham in Barnstable County, Massachusetts. The unit includes exposed intertidal sand and mud flats and shoals, ephemeral tidal pools, saltmarsh, primary sand dunes, and beaches associated with North and South Monomoy Islands, Minimoy Island, and the South Beach Island complex (multiple islands associated with South Beach as the island naturally grows and splits over time). The northeastern tip of the unit incorporates the South Beach Island complex and adjacent intertidal sand and mud flats and shoals, and runs south to include North and South Monomoy Islands, Minimoy Island (part of the Monomoy National Wildlife Refuge (NWR)), and the extensive intertidal sand flats adjacent to the islands and south of Morris Island (Chatham). Lands within this unit include approximately 4,047 ac (1,638 ha; 79 percent) in Federal ownership and 1,045 ac (423 ha; 21 percent) in private/other ownership. General land use within this unit is recreational, including off-shore and surf fishing, shellfish digging, boating, sunbathing, swimming, wildlife observation, and walking. Commercial shellfish harvesting and research also occur.

Unit MA–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in the New England portion of the subspecies range. Additionally, this location consistently supports a few thousand migrating rufa red knots due to the large intertidal areas and beach habitat that provides multiple foraging and roosting habitat areas for the birds to build energy resources for migration.

With the exception of the designated wilderness area on Monomoy NWR that incorporates North and South Monomoy Islands and Minimoy Island, the threats identified within Unit MA–2 include disturbance of foraging and roosting rufa red knots by humans and human activities, including pets and domestic animals, powered and unpowered boats, surf kites, and surf fishing. Predation (especially by migrating raptors and owls) and human-caused or natural disasters may affect the entire unit. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and addressing the impacts of potential oil spills with protective spill response plans and training (see Special Management Considerations or Protection, above). Management that benefits rufa red knots or their habitat in this unit currently occurs primarily on Federal lands, which are managed under the 2016 Monomoy NWR Comprehensive Conservation Plan (Service 2016b, entire). Ongoing research occurs throughout this unit as funds and staffing allow.

*Unit NY–1: Moriches Inlet*

Unit NY–1 consists of 1,001 ac (405 ha) of highly dynamic beach, sand flats, bay islands, back bay shoreline, intertidal areas, and surface water within the towns of Brookhaven and Southampton, Suffolk County, New York. Lands within this unit include approximately 78 ac (32 ha; 8 percent) in Federal ownership; 63 ac (25 ha; 6 percent) in State ownership, 163 ac (66 ha; 16 percent) in private/other (including the towns of Brookhaven and Southampton) ownership, and 697 ac (282 ha; 70 percent) that are uncategorized. The unit is irregularly shaped and bounded to the south by the Atlantic Ocean, to the west by West Inlet Island (Brookhaven), and to the east by the sand spit north of the Village of West Hampton Dunes (Southampton). Its northern boundary lies approximately in the middle of Moriches Bay at the widest portion of the unit. Additionally, the northern and southern areas of the unit are not contiguous, as they are separated by a vegetated dune, parking lot, and roadway system. General land use within this unit is recreational activities (*e.g.,* fishing, bird watching, boating, open space use) and commercial shell fishing. Coastal engineering structures are generally limited to the inlet jetty and revetment along the north side of Cupsogue Beach (stretches from Riches Inlet to the border of the Village of West Hampton Dunes), but beach nourishment programs are implemented along the ocean beach by the Corps (via coordination and agreements with the State of New York and Suffolk County).

Unit NY–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. The area has a relatively undeveloped character that provides protection from intensive human uses. Episodic storm events have also contributed to habitat creation, and, in turn, optimal rufa red knot habitat conditions. The bay islands and associated wetlands are managed for wildlife, which provides some limits to the amount of disturbance that rufa red knots or their habitat may experience from recreation and other human activities (*e.g.,* commercial shell fishing, dredging, and shoreline dock/pier projects).

Threats identified within Unit NY–1 include: (1) Sea level rise; (2) coastal engineering activities (*e.g.,* beach nourishment; jetty maintenance; and dredging that could remove habitat, preclude the formation of habitat such as exposed shoals, and impact adjacent shoreline habitats by altering currents and sediment transport/deposition patterns); (3) predation in nonbreeding areas; and (4) human disturbance (*e.g.,* recreational fishing and driving, and motorized boat traffic or aircraft that create noise disturbance). Special management considerations or protection measures to reduce or alleviate the threats may include reducing disturbance (*e.g.,* humans, pets, vehicles, watercraft), conducting predator control, and implementing conservation measures that help reduce modification or loss of habitat from hard and soft beach stabilization efforts (*e.g.,* time-of-year restrictions for beach nourishment and dredging activities, establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). State lands (both marine and estuarine habitats within this unit) are managed in cooperation with the New York State Wildlife Action Plan (New York State Department of Environmental Conservation 2015, entire). Additionally, the designated South Shore Estuary Reserve implements a Comprehensive Management Plan (South Shore Estuary Reserve Council 2001, entire), which encompasses both Units NY–1 and NY–2, and serves as a guidance document for municipalities and private/public sectors to conserve or protect habitats and waters within the Reserve.

*Unit NY–2: Jones Inlet*

Unit NY–2 consists of 1,821 ac (737 ha) in two areas within the Town of Hempstead, Nassau County, New York. This unit is composed of ocean beach habitat, sand flats, bay islands, and small embayments. It is irregularly shaped and is bounded to the south by the Atlantic Ocean, to the west by Point Lookout, to the north by a line running in Hempstead Bay, and to the east at the eastern extent of Zachs Bay. The northern and southern areas of the unit are not contiguous, as they are separated by a vegetated dune, parking lot, and roadway system. Lands within NY–2 include approximately 710 ac (287 ha; 39 percent) in State ownership and 1,111 ac (450 ha; 61 percent) that are under private/other ownership. General land use includes recreational activities such as bird watching, surfcast fishing, sunbathing, nature walks, swimming, boat fishing, commercial and recreational fishing and shell fishing. Coastal engineering structures, as well as docks and piers, are generally limited to (or associated with) the Jones Inlet jetties and revetments, Loop Parkway bridge, and along the north side of Jones Island near the U.S. Coast Guard Station Jones Beach, and in Zach's Bay.

Unit NY–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This location has a relatively undeveloped character that provides protection from intensive human uses that occur throughout the majority of Long Island and surrounding area. Episodic storm events have also contributed to habitat creation, and, in turn, optimal rufa red knot habitat conditions. The bay islands and associated wetlands are managed for wildlife, which provides some limits to the amount of disturbance that rufa red knots or their habitat may experience from recreation, channel maintenance activities (*e.g.,* dredging and dredge material disposal), and vector control activities (*e.g.,* aerial mosquito spraying).

Threats identified within Unit NY–2 include: (1) Sea level rise; (2) coastal engineering activities (*e.g.,* jetty maintenance; dredging that could remove habitat, preclude the formation of habitat such as exposed shoals, and impact adjacent shoreline habitats by altering currents and sediment transport/deposition patterns); (3) predation in nonbreeding areas; and (4) human disturbance (*e.g.,* recreational fishing and driving, and motorized boat traffic or aircraft that create noise disturbance). Special management considerations or protection measures to reduce or alleviate the threats may include reducing disturbance (*e.g.,* humans, pets, vehicles, and watercraft), conducting predator control, and implementing conservation measures that help reduce modification or loss of habitat from hard and soft beach stabilization efforts (*e.g.,* time-of-year restrictions for beach nourishment and dredging activities, establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). State lands (both marine and estuarine habitats within this unit) are managed in cooperation with the New York State Wildlife Action Plan (New York State Department of Environmental Conservation 2015, entire). Additionally, the designated South Shore Estuary Reserve implements a Comprehensive Management Plan (South Shore Estuary Reserve Council 2001, entire), which encompasses both this unit and Unit NY–1, and serves as a guidance document for municipalities and private/public sectors to conserve or protect habitats and waters within the Reserve.

*Unit NY–3: Jamaica Bay*

Unit NY–3 consists of a total of 5,458 ac (2,209 ha) in Queens County, New York, and falls within a back bay that is primarily within the NPS' Jamaica Bay Wildlife Refuge, Gateway National Recreation Area. This unit is irregularly shaped and is bounded in the north by a line running roughly between the northernmost bay islands and the mainland of Long Island, in the west by a line running roughly between the westernmost bay islands and the mainland of Long Island, in the east by a line running offshore of East Pond, and in the south by a line running between the southernmost bay islands and the Rockaway Barrier Spit. Lands within NY–2 are all in Federal ownership. General land use within this unit includes recreational activities (*e.g.,* wildlife viewing, bird watching, recreational fishing, and use of open space) and development. Coastal engineering structures, as well as docks and piers, are generally limited to the residential and commercial development at Broad Channel and the railroad and bridge infrastructure.

Unit NY–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, in part due to its expansive wetlands and associated flats that are protected from intensive human uses. Episodic storm events have contributed to habitat creation, and, in turn, optimal rufa red knot habitat conditions. The bay islands and associated wetlands are managed for wildlife, which provides some limits to the amount of disturbance that rufa red knots or their habitat may experience from recreation, dredging, and dredge spoil deposition activities.

Threats identified within Unit NY–3 include: (1) Sea level rise; (2) coastal engineering activities (*e.g.,* jetty maintenance; dredging that could remove habitat, preclude the formation of habitat such as exposed shoals, and impact adjacent shoreline habitats by altering currents and sediment transport/deposition patterns); (3) predation in nonbreeding areas; and (4) human disturbance (*e.g.,* recreational fishing and driving, and motorized boat traffic or aircraft that create noise disturbance). Special management considerations or protection measures to reduce or alleviate the threats may include reducing disturbance (*e.g.,* humans, pets, vehicles, and watercraft), conducting predator control, and implementing conservation measures that help reduce modification or loss of habitat from hard and soft beach stabilization efforts (*e.g.,* time-of-year restrictions for beach nourishment and dredging activities, establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). The Federal lands are managed by the NPS via the NPS Gateway National Recreation Area Final General Management Plan/Environmental Impact Statement (EIS) dated April 2014 (NPS 2014a, entire), which provides a management plan for Jamaica Bay Wildlife Refuge (included, in part, in the proposed critical habitat designation).

*Unit NJ–1: Brigantine and Little Egg Inlets*

Unit NJ–1 consists of 9,719 ac (3,933 ha) of beach, dune, shoals, open water, and tidal marsh associated with two inlets (*i.e.,* small arms of the ocean) in Ocean and Atlantic Counties, New Jersey, extending from the northern boundary of the Holgate Unit of Edwin B. Forsythe (Forsythe) NWR, west to the ''Seven Islands'' portion of Great Bay Boulevard Wildlife Management Area, and south nearly to 15th Street North in

Brigantine City. To the north, the unit encompasses the Holgate Unit of the Forsythe NWR and includes several areas within the Great Bay Boulevard Wildlife Management Area, owned by the State of New Jersey (*e.g.,* Seven Islands and other islands on either side of Great Bay Boulevard south of Big Sheepshead Creek). The unit also includes portions of Little Beach Island within the Forsythe NWR, and portions of the North Brigantine Natural Area owned by the State of New Jersey. This unit includes extensive areas of shoals and sand or mud flats, which are generally owned by the State. Lands within this unit include approximately 1,560 ac (632 ha; 16 percent) in Federal ownership, 3,187 ac (1,291 ha; 32 percent) in State ownership, 10 ac (4 ha; less than 1 percent) in private/other ownership, and 4,961 ac (2,006 ha; 51 percent) that are uncategorized. General land use within this unit is almost entirely undeveloped and managed for wildlife and other natural resource values, as well as recreation.

Unit NJ–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. This unit has an undeveloped character that provides protection from intensive human uses. The lack of hard structures and other coastal engineering practices in this unit allows optimal rufa red knot habitat conditions to be created and maintained by natural coastal processes, which is a condition that is rare in the mid-Atlantic. The Little Egg Inlet is the only unmodified inlet in New Jersey and one of only two unmodified inlets between Montauk, New York, and Chincoteague, Virginia, a shoreline distance of nearly 350 mi (563 km) (Rice 2016, pp. 24–25). Nearly all the lands in the unit are managed for wildlife, which limits disturbance of rufa red knots from recreation and other human activities.

Threats identified within Unit NJ–1 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) coastal engineering activities (*e.g.,* ongoing updrift beach nourishment; proposed enlargement of a terminal groin immediately adjacent to the unit's northern limit; ongoing and proposed dredging that could remove habitat (*e.g.,* exposed shoals), preclude habitat formation, and/or impact adjacent shoreline habitats by altering sediment transport/deposition patterns); (3) aquaculture leases; (4) predation in nonbreeding areas; and (5) human disturbance (*e.g.,* recreational fishing and driving in the fall, motorized boat traffic and aircraft year round). Special management considerations or protection measures to reduce or alleviate the threats may include managing sources of disturbance (*e.g.,* humans, pets, vehicles, watercraft, and aircraft), managing predator populations, and implementing conservation measures to abate habitat impacts from coastal engineering projects and from sea level rise (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the Edwin B. Forsythe NWR Comprehensive Conservation Plan (Service 2004a, entire). State lands within the North Brigantine Natural Area are covered by a Beach Management Plan (Service and New Jersey Department of Environmental Protection 2019, entire).

*Unit NJ–2: Seven Mile Beach*

Unit NJ–2 consists of 536 ac (217 ha) of sandy ocean-front beach in Avalon and Stone Harbor Boroughs, Cape May County, New Jersey, from the jetty at 8th Street in Avalon near Townsends Inlet and extending south to 102nd Street in Stone Harbor. The western boundary of the unit is landward of the beach and primary dune along the vegetation line where the habitat changes from sandy beach or dune with little vegetation to dense herbaceous or shrub vegetation or along developed structures when present. The eastern boundary includes emergent sand shoals and sand flats exposed at low tide. All lands within this unit are in private/other ownership. General land use within this unit includes tourism and recreation; the beach abuts high-density residential and commercial development and features many private and public beach access points.

Unit NJ–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site.

Threats identified within Unit NJ–2 include: (1) Coastal engineering activities (*e.g.,* existing hard stabilization structures, ongoing beach nourishment and sediment backpassing, ongoing sand fencing and vegetation planting); (2) existing coastal development that may block beach migration as sea level rise accelerates; (3) beach cleaning; (4) predation in nonbreeding areas (*e.g.,* human-supported feral cat concentrations and other human-commensal predators such as gulls and domestic cats); and (5) human disturbance (*e.g.,* life-guarded bathing beaches in late spring and summer, recreational fishing and driving in fall, personal watercraft, aircraft including low and slow-flying ''banner'' (advertisement) planes). Special management considerations or protection measures to reduce or alleviate the threats may include sediment management to maintain habitat features such as wide beaches and high prey densities, managing predator populations, addressing beach management practices such as beach cleaning and sand fencing, and managing disturbance from recreation and other human activities (see Special Management Considerations or Protection, above). All beaches in this unit are covered by Beach Management Plans (Avalon Borough Department of Public Works and the Avalon Environmental Commission 2008, entire; Stone Harbor Borough 2009, entire).

*Unit NJ–3: Hereford Inlet*

Unit NJ–3 consists of 1,631 ac (660 ha) of sandy oceanfront beaches, unstabilized barrier peninsula, undeveloped marsh islands, and several areas of tidal flats and shoals in Cape May County, New Jersey, extending along the ocean from 111th Street in Stone Harbor Borough south to 22nd Avenue in North Wildwood City. The unit also includes areas behind the barrier island in Middle Township, Stone Harbor, and North Wildwood extending from Stone Harbor Boulevard south along Great Channel to Nummy Island and the southern shoreline of Grassy Sound Channel. Lands within this unit include approximately 175 ac (71 ha; 11 percent) in State ownership, 735 ac (297 ha; 45 percent) in private/other ownership, and 721 ac (292 ha; 44 percent) that are uncategorized. General land use within this unit varies from intensively developed recreational beaches along parts of the ocean front, to mixed management (*i.e.,* the Stone Harbor Point municipal conservation area managed for both wildlife and lower intensity, passive recreation), to conservation lands (*i.e.,* the Cape May Coastal Wetlands Wildlife Management Area owned by the State of New Jersey). The unit also includes privately and municipally owned undeveloped marshes, as well as tidal shoals and flats that are generally owned by the State.

Unit NJ–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of

rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the mid-Atlantic Coast portion of the subspecies range. This unit also has extensive areas of conservation lands that offer protection from disturbance, as well as the unstabilized Stone Harbor Point peninsula. The peninsula not only supports migrants moving primarily along the Atlantic Coast, but is also well documented as among the most important roosting areas for those spring migrants that forage primarily in Delaware Bay (Sitters 2005, pp. 1–12).

Threats identified within Unit NJ–3 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) coastal engineering activities (*e.g.,* existing hard stabilization structures, ongoing beach nourishment, dredging for beach nourishment and navigation); (3) existing coastal development that may block habitat migration as sea level rise accelerates; (4) beach cleaning; (5) predation in nonbreeding areas (*e.g.,* peregrine falcons, human-commensal predators); and (6) human disturbance (*e.g.,* life-guarded bathing beaches, fishing, motorized boat traffic including personal watercraft, aircraft including low and slow-flying banner planes). Special management considerations or protection measures to reduce or alleviate the threats may include implementing sediment management to maintain habitat features such as tidal flats, overwash areas, and high prey densities; managing predator populations; addressing beach management practices such as beach cleaning; and managing disturbance from recreation and other human activities (see Special Management Considerations or Protection, above). Portions of the municipal beaches within Stone Harbor Borough, and all municipal beaches within North Wildwood City, are covered by Beach Management Plans (Terwilliger Consulting, Inc. 2008, entire; North Wildwood City 2018, entire).

*Unit NJ–4: Two Mile Beach*

Unit NJ–4 consists of 128 ac (52 ha) of sandy oceanfront beach in Cape May County, New Jersey, from the northeastern boundary of the Two Mile Beach Unit of Cape May NWR extending southwest to include all beach portions of the U.S. Coast Guard Loran Support Unit, ending at the eastern jetty of the Cape May Inlet. All lands within this unit are in Federal ownership (NWR and U.S. Coast Guard). General land use within this unit is primarily managed for wildlife, but also includes compatible recreation and public access on the NWR beach, and certain activities of the U.S. Coast Guard Loran Support Unit. Under an inter-agency agreement, Cape May NWR staff manage sensitive beach species on both the NWR and U.S. Coast Guard portions of the beach.

Unit NJ–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots along the mid-Atlantic Coast's portion of the subspecies range during the winter period, providing important wintering habitat for foraging and roosting. This area is significant as the northern-most winter concentration area documented to date. Birds using this unit during the late fall and early winter may be more vulnerable to disturbance due to molting of the flight feathers.

Threats identified within Unit NJ–4 include: (1) Sea level rise, (2) coastal engineering (*e.g.,* existing hard structures, an overly stabilized dune system), (3) predation in nonbreeding areas, and (4) human disturbance (*e.g.,* pedestrians, aircraft including low- and slow-flying banner planes). Special management considerations or protection measures to reduce or alleviate the threats may include management of dunes, vegetation, predator populations, and human activity, including foot and air traffic (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the Cape May NWR Comprehensive Conservation Plan (Service 2004b, entire).

*Unit NJ–5: Cape May Bayshore*

Unit NJ–5 consists of 1,202 ac (487 ha) of Delaware Bay beaches, flats, and shoals in Cape May County, New Jersey, from approximately Cloverdale Avenue in Lower Township to the jetty on the south shore of the mouth of Bidwell Creek in Middle Township. Lands within this unit include approximately 133 ac (54 ha; 11 percent) in Federal ownership, 44 ac (18 ha; 4 percent) in State ownership, 167 ac (67 ha; 14 percent) in private/other ownership, and 858 ac (347 ha; 71 percent) that are uncategorized. Areas with narrow beaches adjoining developed human communities (*e.g.,* Pierces Point, Reeds Beach) are not included in the unit. General land use within this unit includes residential development, recreation, wildlife conservation, aquaculture, and research.

Unit NJ–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also has high concentrations of horseshoe crab eggs, and wide tidal flats that are important foraging habitat.

Threats identified within Unit NJ–5 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) coastal engineering activities (*e.g.,* existing hard stabilization structures); (3) existing coastal development that may block habitat migration as sea level rise accelerates; (4) aquaculture; (5) predation in nonbreeding areas (*e.g.,* peregrine falcons); (6) vulnerable food resources (*e.g.,* past overharvest of horseshoe crabs), (7) timing asynchronies (*e.g.,* warming bay waters or erratic storms that change the peak timing of horseshoe crab spawning); (8) oil spills (*e.g.,* upstream petroleum port); and (9) human disturbance (*e.g.,* from personal watercraft and other motorized boats, aircraft including low- and slow-flying banner planes; pedestrian traffic is minimal due to a seasonal beach closure to public access). Special management considerations or protection measures to reduce or alleviate the threats may include habitat management or restoration (*e.g.,* living shorelines, facilitated shoreline migration); management of predator populations, aquaculture activities, and horseshoe crab fisheries; oil spill response planning; and management of human activities that disturb foraging rufa red knots (see Special Management Considerations or Protection, above). Management plans are in place and being actively implemented to address the horseshoe crab bait harvest (ASMFC 2012, entire) and structural aquaculture of oysters and other native bivalves (Service 2016a, entire). Federal lands in this unit are managed under the Cape May NWR Comprehensive Conservation Plan (Service 2004b, entire).

*Unit NJ–6: Dennis Creek*

Unit NJ–6 consists of 279 ac (113 ha) of Delaware Bay beaches, flats, and shoals in Cape May County, New Jersey, from the northern shore of Bidwell Creek north to about 0.5 mi (0.8 km) north of Dennis Creek. All lands within this unit are in State ownership, managed by the State of New Jersey as the Dennis Creek Wildlife Management Area. General land use within this unit

includes natural resource conservation and recreation.

Unit NJ–6 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also has high concentrations of horseshoe crab eggs and an undeveloped character that allows the operation of natural coastal processes and limits disturbance of rufa red knots from human activity.

Threats identified within Unit NJ–6 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) marsh loss and accelerated beach erosion from historical agriculture practices (*e.g.,* impoundments such as for salt hay farming) (Smith et al. 2017b, p. 36); (3) predation in nonbreeding areas (*e.g.,* peregrine falcons); (4) vulnerable food resources (*e.g.,* past overharvest of horseshoe crabs), (5) timing asynchronies (*e.g.,* warming bay waters or erratic storms that change the peak timing of horseshoe crab spawning); (6) oil spills (*e.g.,* upstream petroleum port); and (7) human disturbance. Special management considerations or protection measures to reduce or alleviate the threats may include habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration); management of predator populations and horseshoe crab fisheries; oil spill response planning; and management of human activities that disturb foraging rufa red knots (see Special Management Considerations or Protection, above). A management plan is in place and being actively implemented to address the horseshoe crab bait harvest (ASMFC 2012, entire).

*Unit NJ–7: Heislerville*

Unit NJ–7 consists of 1,110 ac (449 ha) of Delaware Bay beaches, flats, shoals, tidal marsh, and open waters in Cape May and Cumberland Counties, New Jersey, from approximately 2,000 feet (ft) (0.6 kilometers (km)) east of West Creek in Dennis Township, Cape May County and extending west to the eastern end of Bay Avenue in Maurice River Township, Cumberland County. The developed area along Bay Avenue is excluded from the unit. West of Bay Avenue, Unit NJ–7 continues north to the mouth of Andrews Ditch in Maurice River Township. This unit also includes a man-made impoundment within the Heislerville Wildlife Management Area, which is owned by the State. Lands within this unit include approximately 524 ac (211 ha; 47 percent) in State ownership, 459 ac (186 ha; 41.5 percent) in private/other ownership, and 127 ac (52 ha; 11.5 percent) that are uncategorized. All State-owned lands in this unit are managed by the State of New Jersey as the Heislerville Wildlife Management Area. General land use within this unit is undeveloped and includes natural resource conservation and recreation.

Unit NJ–7 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Specifically, the bayfront portions of this unit support high concentrations of horseshoe crab eggs, and its undeveloped character allows the operation of natural coastal processes and limits disturbance of rufa red knots from human activity. Additionally, the Heislerville impoundment portion of the unit serves as a critical alternative to bayside habitats, for roosting during high tides when bayfront beaches are narrow or submerged, or for foraging on invertebrates at lower tides during times when horseshoe crab egg availability on bayfront beaches is reduced.

Threats identified within Unit NJ–7 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) marsh loss and accelerated beach erosion from historical agriculture practices (*e.g.,* impoundments such as for salt hay farming) (Smith et al. 2017b, p. 36); (3) predation in nonbreeding areas (*e.g.,* peregrine falcons) particularly at the Heislerville impoundment; (4) vulnerable food resources (*e.g.,* past overharvest of horseshoe crabs), (5) timing asynchronies (*e.g.,* warming bay waters or erratic storms that change the peak timing of horseshoe crab spawning); (6) oil spills (*e.g.,* upstream petroleum port); and (7) human disturbance (*e.g.,* from personal watercraft and other motorized boats, aircraft including low and slow-flying banner planes; pedestrian traffic is minimal due to a seasonal beach closure to public access). Special management considerations or protection measures to reduce or alleviate the threats may include habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration; maintenance of the berms and water control structures at the Heislerville impoundment); management of predator populations and horseshoe crab fisheries; oil spill response planning; and management of human activities that disturb foraging rufa red knots (see Special Management Considerations or Protection, above). A management plan is in place and being actively implemented to address the horseshoe crab bait harvest (ASMFC 2012, entire).

*Unit NJ–8: Egg Island*

Unit NJ–8 consists of 1,955 ac (791 ha) of Delaware Bay beaches, flats, shoals, tidal marsh, and open waters in Downe Township, Cumberland County, New Jersey, from the mouth of Oranoaken Creek extending south to Egg Island point, and then northwest to about 850 ft (259 meters (m)) past Budney Avenue in the community of Fortescue. Lands within this unit include approximately 1,908 ac (773 ha; 97 percent) in State ownership, 32 ac (13 ha; 2 percent) in private/other ownership, and 14 ac (5 ha; less than 1 percent) that are uncategorized. All State-owned lands in this unit are managed by the State of New Jersey as the Egg Island Wildlife Management Area. General land use within this unit is mostly undeveloped and includes natural resource conservation and recreation, but with some areas adjoining residential development.

Unit NJ–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit has a very high concentration of rufa red knot during spring migration, serving as an important northbound stopover site. This unit also has an undeveloped character that allows the operation of natural coastal processes and limits disturbance of rufa red knots from human activity, serving as one of two significant primary roosting areas (along with Hereford Inlet) used by those rufa red knots that forage in Delaware Bay each spring (Sitters 2005, pp. 1–12).

Threats identified within Unit NJ–8 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes; (2) predation in nonbreeding areas (*e.g.,* peregrine falcons); (3) vulnerable food resources (*e.g.,* past overharvest of horseshoe crabs); (4) timing asynchronies (*e.g.,* warming bay waters or erratic storms that change the peak timing of horseshoe crab spawning); (5) oil spills (*e.g.,* upstream petroleum port); and (6) human disturbance (*e.g.,* from personal watercraft and other motorized boats, aircraft including low and slow-flying banner planes). Special management

considerations or protection measures to reduce or alleviate the threats may include habitat management or restoration (*e.g.,* living shorelines, facilitated shoreline migration), management of predator populations and horseshoe crab fisheries, oil spill response planning, and management of human activities that disturb foraging rufa red knots (see Special Management Considerations or Protection, above). A management plan is in place and being actively implemented to address the horseshoe crab bait harvest (ASMFC 2012, entire).

*Unit NJ–9: Newport Neck*

Unit NJ–9 consists of 472 ac (191 ha) of Delaware Bay beaches, flats, shoals, and tidal marsh in Downe and Lawrence Townships, Cumberland County, New Jersey, from the north bank of the mouth of Fortescue Creek extending northwest to include both sides of the mouth of Nantuxent Creek. Beaches adjacent to the developed community of Gandys Beach are not included in this unit. Lands within this unit include approximately 202 ac (82 ha; 43 percent) in State ownership, 176 ac (71 ha; 37 percent) in private/other ownership, and 93 ac (38 ha; 20 percent) that are uncategorized. General land use within this unit is undeveloped and includes natural resource conservation and recreation, with much of the unit managed by the State of New Jersey as the Fortescue Wildlife Management Area.

Unit NJ–9 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit has high concentrations of horseshoe crab eggs, and its undeveloped character allows the operation of natural coastal processes and limits disturbance of rufa red knots from human activity.

Threats identified within Unit NJ–9 include: (1) Sea level rise that may accelerate faster than landforms can migrate through natural coastal processes, (2) predation in nonbreeding areas (*e.g.,* peregrine falcons), (3) vulnerable food resources (*e.g.,* past overharvest of horseshoe crabs), (4) timing asynchronies (*e.g.,* warming bay waters or erratic storms that change the peak timing of horseshoe crab spawning), (5) oil spills (*e.g.,* upstream petroleum port), and (6) human disturbance (*e.g.,* from personal watercraft and other motorized boats, aircraft including low and slow-flying banner planes; pedestrian traffic is limited by a seasonal closure of certain beaches to public access). Special management considerations or protection measures to reduce or alleviate the threats may include habitat management or restoration (*e.g.,* living shorelines, facilitated shoreline migration), management of predator populations and horseshoe crab fisheries, oil spill response planning, and management of human activities that disturb foraging rufa red knots (see Special Management Considerations or Protection, above). A management plan is in place and being actively implemented to address the horseshoe crab bait harvest (ASMFC 2012, entire).

*Unit DE–1: St. Jones River*

Unit DE–1 consists of two subunits comprising 46 ac (19 ha) of the St. Jones River area in Kent County, Delaware. This unit consists of lands owned by the State of Delaware and private landowners.

*Subunit DE–1A: St. Jones North*

Subunit DE–1A consists of 43 ac (18 ha) of land in Kent County, Delaware. The subunit begins in the north along the shoreline at the end of South Bay Drive in South Kitts Hummock where there is a jetty into Delaware Bay, and continues to the south where it meets the St. Jones River inlet. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes or marsh. Lands within this subunit are approximately 37 ac (15 ha; 86 percent) in State ownership (Ted Harvey Wildlife Area), 3 ac (1 ha; 7 percent) of undeveloped beach privately owned by Delaware Wildlands, a conservation organization, and 3 ac (1 ha; 7 percent) that are uncategorized. General land use within this subunit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Subunit DE–1A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site for foraging birds.

Threats identified within Subunit DE–1A include disturbance of foraging and roosting rufa red knots by humans and human activities (*i.e.,* beach nourishment and sediment disposal activities), and modification or loss of habitat from sea level rise and associated erosion of the beach. Special management considerations or protection measures to reduce or alleviate the threats may include management of beach nourishment projects to ensure work is done outside the time when rufa red knots are present to avoid disturbing birds and offset losses from sea level rise (see Special Management Considerations or Protection, above). State lands in this subunit are managed as part of the Ted Harvey Wildlife Area (Delaware Division of Fish and Wildlife (DDFW) 2020a; entire), which restricts off-leash dogs, and provides designated hunting and access points that do not include the beach area used by foraging birds. This area is also designated as a National Estuarine Research Reserve (NERR) (Delaware NERR 2012, entire), which provides for long-term research and monitoring of the site conditions.

*Subunit DE–1B: St. Jones South*

Subunit DE–1B consists of approximately 3 ac (1 ha) of shoreline at the south side of the inlet to the St. Jones River, Kent County, Delaware. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide), and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit include approximately 1 ac (0.5 ha; 47 percent) in State ownership and approximately 2 ac (0.6 ha; 53 percent) in private/other ownership. General land use within this subunit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Subunit DE–1B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site for foraging birds.

Threats identified within Subunit DE–1B include modification or loss of habitat from sea level rise and associated erosion of the beach. Special management considerations or protection measures to reduce or alleviate the threats may include management of beach nourishment and

sediment disposal on eroding beaches with the project design and timing of work designed to minimize bird disturbance, and offset losses from sea level rise (see Special Management Considerations or Protection, above).

*Unit DE–2: Brokonbridge Gut*

Unit DE–2 consists of two subunits comprising 163 ac (66 ha) in the area where Brokonbridge Gut enters the Delaware Bay in Kent County, Delaware. This unit consists of lands owned by the State of Delaware and private landowners.

*Subunit DE–2A: North Brokonbridge Gut*

Subunit DE–2A consists of approximately 93 ac (37 ha) of shoreline between the north side of the Brokonbridge Gut inlet to the south side of the Murderkill River inlet, Kent County, Delaware. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide), and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit are primarily in private/other ownership (91 ac (37 ha); 98 percent) with a small portion (2 ac; 1 ha; 2 percent) owned by the State. Approximately 15 percent of the shoreline is in front of private homes and includes South Bowers Beach; the remaining 85 percent is undeveloped beach that is privately owned. General land use within this unit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Subunit DE–2A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site for foraging birds.

Threats identified within Subunit DE–2A include disturbance of foraging and roosting rufa red knots by humans and human activities (*i.e.,* beach nourishment and sediment disposal activities), and modification or loss of habitat from sea level rise and associated erosion of the beach. Special management considerations and protection measures to reduce or alleviate the threats may include management of beach nourishment and sediment disposal on eroding beaches with the project design and timing of work designed to minimize bird disturbance, and offset losses from sea level rise (see Special Management Considerations or Protection, above).

*Subunit DE–2B: South Brokonbridge Gut*

Subunit DE–2B consists of approximately 70 ac (29 ha) of shoreline at the south side of the inlet to Brokonbridge Gut, Kent County, Delaware. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide), and the western boundary is where the sandy beach turns to marshy habitat. All lands within this subunit are private/other ownership. This private land area is primarily owned and protected by a private conservation organization (Delaware Wildlands) 52 ac (21 ha; 74 percent), with the remaining approximately 18 ac (7 ha; 16 percent) as private, undeveloped land. This is a long stretch of undeveloped beach. General land use within this subunit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Subunit DE–2B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site for foraging birds.

Threats identified within Subunit DE–2B include modification or loss of habitat from sea level rise and associated erosion of the beach, and recreational activities. Special management considerations or protection measures to reduce or alleviate the threats may include: (1) Beach nourishment and sediment disposal on eroding beaches with the project design and timing of work designed to minimize bird disturbance, and offset losses from sea level rise; and (2) minimizing disturbance from recreational activities (see Special Management Considerations or Protection, above).

*Unit DE–3: Mispillion Harbor*

Unit DE–3 consists of three subunits comprising 1,949 ac (789 ha) in the Mispillion Harbor area where the Mispillion River and Cedar Creek enter the Delaware Bay in Kent and Sussex Counties, Delaware. This unit consists of lands owned primarily by the State of Delaware, with minor ownership by Federal and private/other.

*Subunit DE–3A: Main Harbor*

Subunit DE–3A consists of approximately 61 ac (25 ha) of shoreline within the main harbor area and includes the rock sill and back beach areas of Mispillion Harbor, Kent and Sussex Counties, Delaware. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) and the east side of the rock sill, and the western boundary is where the sandy beach turns to marshy habitat and the west side of the rock sill. Lands within this subunit include approximately 32 ac (13 ha; 53 percent) in State ownership and 29 ac (12 ha; 47 percent) that are uncategorized. General land use within this subunit includes recreational boat traffic related to the harbor and birding and photography from the property of the Dupont Nature Center. No walking or fishing from harbor structures is allowed.

Subunit DE–3A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This location also provides high concentrations of horseshoe crabs during the rufa red knot's spring migration period, resulting in the Mispillion Harbor area supporting the highest number of foraging rufa red knots of any area along the Delaware coast.

Threats identified within Subunit DE–3A include modification or loss of habitat from sea level rise and associated erosion of the shoreline or harbor structures, and recreational activities. Special management considerations or protection measures to reduce or alleviate the threats include beach nourishment and repairs to harbor structures with the project design and timing of work designed to avoid bird disturbance, and minimizing recreational disturbance (see Special Management Considerations or Protection, above). State lands in this subunit are managed as part of the Mispillion Marine Reserve with restrictions that prevent fishing, crabbing, hunting, or walking on the harbor structures and beach area, preventing disturbance to rufa red knots (DDFW 2020b, entire).

*Subunit DE–3B: Rawley Island Roost*

Subunit DE–3B consists of approximately 1,298 ac (525 ha) of shoreline and marsh on the north side

of the Mispillion River, extending north to Graco's Canal, Kent County, Delaware. The western boundary is Crooked Gut, and the eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide). Lands within this subunit include approximately 1,139 ac (461 ha; 88 percent) in State ownership, 153 ac (62 ha; 12 percent) in private/other ownership, and 6 ac (2 ha; less than 1 percent) that are uncategorized. Private lands are owned by a combination of a private conservation organization—The Nature Conservancy (TNC; 148 ac (60 ha))—with a small area of private, undeveloped land that has a conservation easement. General land use within this subunit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds). Hunting occurs on the State land but hunters are not present in the spring when rufa red knots are present.

Subunit DE–3B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, and includes expansive wetlands for roosting adjacent to the highest concentration of rufa red knots along the Delaware coast (Zimmerman 2010, entire). This subunit also has high concentrations of horseshoe crab eggs, and its undeveloped character allows the operation of natural coastal processes that limit disturbance of rufa red knots from human activity.

Threats identified within Subunit DE–3B include modification or loss of habitat from sea level rise and associated erosion of the beach, and recreational activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing recreational disturbance and beach nourishment and sediment disposal on eroding beaches, but as part of the Milford Neck Wildlife Area, beach nourishment projects would be designed to minimize bird disturbance (see Special Management Considerations or Protection, above). State lands in this subunit are managed by the Delaware Division of Wildlife as part of their Milford Neck Wildlife Area (DDFW 2020c, entire).

*Subunit DE–3C: Slaughter Beach*

Subunit DE–3C consists of approximately 590 ac (239 ha) of beach shoreline, marsh, and harbor structures in Sussex County, Delaware. The subunit extends from the eastern tip of the dike that outlines the outer tip of the Mispillion Harbor, south along the sandy beach of Slaughter Beach to the southern end of Isaacs Shore Drive. The western boundary is where the lightly vegetated beach becomes marsh in the northern portions of this subunit, or where property parcels end in the southern portion of this subunit. The eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide). Lands within this subunit include approximately 1 ac (0.25 ha; less than 1 percent) in Federal ownership, 59 ac (24 ha; 10 percent) in State ownership, 2 ac (1 ha; less than 1 percent) in private/other ownership, and 528 ac (213 ha; 89 percent) that are uncategorized. General land use within this subunit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Subunit DE–3C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Subunit DE–3C include modification or loss of habitat from sea level rise and associated erosion of the beach, and recreational activities. Special management considerations or protection measures to reduce or alleviate the threats may include beach nourishment and sediment disposal on eroding beaches, and minimizing recreational disturbance (see Special Management Considerations or Protection, above). This area is a public beach owned by the State of Delaware and while it does not have a specific management plan, it has been designated a horseshoe crab sanctuary by the Ecological Research and Development Group, a non-profit conservation organization.

*Unit DE–4: Prime Hook*

Unit DE–4 consists of approximately 549 ac (222 ha) of beach shoreline and associated marsh in Sussex County, Delaware. The northern boundary is about 1 mi (1.6 km) north of Fowler Beach road, the southern boundary is the end of South Bayshore Drive, the eastern boundary is the MLLW of the Delaware Bay (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide), and the western boundary in the northern portion of the unit runs along the dune line where the habitat changes from lightly vegetated sandy beach to densely vegetated dunes or marsh. The western boundary of the central portion of this unit includes marsh and shallow open water areas where birds can roost overnight and forage. The western edge of the southern portion of the unit is where property parcels end at the beach. Lands within this unit include approximately 480 ac (195 ha; 87 percent) in Federal ownership (Prime Hook NWR), 6 ac (2 ha; 1 percent) in private/other ownership, and 63 ac (25 ha; 12 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational day uses (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for shorebirds).

Unit DE–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Unit DE–4 include modification or loss of habitat from sea level rise and associated erosion of the beach, and recreational activities. Special management considerations or protection measures include a commitment to shorebird conservation and management (see Special Management Considerations or Protection, above), including implementation of the Prime Hook NWR Comprehensive Conservation Plan (Service 2013, entire). Any projects on the refuge would be designed and timed to avoid the time of year rufa red knots are present.

*Unit VA–1: Assateague Island*

Unit VA–1 consists of 2,817 ac (1,140 ha) of Assateague Island in Accomack County, Virginia, from the Virginia–Maryland State line south to the area known as ''The Hook,'' a wide peninsula that curves northwest. The western boundary is along the dune line where the habitat changes from sandy beach with little vegetation to densely vegetated dunes or marshland, as well as densely vegetated forested or herbaceous vegetation landward of the beach and primary dune. The eastern

boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. With the exception of a 27-ac (11-ha) tract owned by the NPS, the remainder of the unit is owned by the Service's Chincoteague NWR. The NPS also manages an overlay easement within the NWR as a public beach that is part of the Assateague Island National Seashore. All lands within this unit are federally owned. General land use within this unit includes low-impact recreational day use (*e.g.,* hiking, bird watching, photography, and shell collecting), and high-impact recreational beach use within designated areas (*e.g.,* swimming, sunbathing, fishing, and ORVs). In addition, scientific research (*e.g.,* survey and monitoring of natural resources, such as federally listed species) may occur year-round.

Unit VA–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, rufa red knots have been documented during the winter period at this location during the time of year that birds are seeking to build energy sources for migration; however, the number of birds observed during this period are not large enough to also meet the winter criteria.

Threats identified within Unit VA–1 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* swimming, sunbathing, fishing, and ORVs), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). Currently, Chincoteague NWR addresses some of these threats in their Comprehensive Conservation Plan (Service 2015, entire) and the Memorandum of Understanding between the NWR and NPS (Service and NPS 2017, entire).

*Unit VA–2: Wallops Island*

Unit VA–2 comprises two subunits (totaling 571 ac (231 ha)) owned and managed by NASA as part of the Wallops Flight Facility located in Accomack County. This unit (including both subunits) are being considered for exclusion under section 4(b)(2) of the Act.

*Subunit VA–2A: Wallops Island North*

Subunit VA–2A consists of 540 ac (218 ha) of Wallops Island in Accomack County, Virginia. The north and east boundaries of the subunit are Chincoteague Inlet and seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. The western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely vegetated forested or herbaceous vegetation landward of the beach and primary dune. The southern boundary tapers to a point ending at the northern end of the facility's sea wall structure, extending past the MLLW line and including the areas that are slightly inundated with less than 3 in (7.5 cm) of water. All lands within this subunit are federally owned by NASA. General land use within this subunit includes rocket and drone launches, drone and aircraft flights, recreational beach uses (*e.g.,* swimming, sunbathing, ORVs), beach renourishment and seawall repair, protected species management, facility maintenance and construction, and educational use.

Subunit VA–2A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Subunit VA–2A include: (1) Disturbance of foraging and roosting rufa red knots from recreational beach use (*e.g.,* swimming, sunbathing, ORVs), (2) natural disasters (*i.e.,* hurricanes), (3) predation, (4) noise disturbance from overflights of unmanned aerial vehicles and rocket launches, and (5) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting predator control, implementing conservation measures that help reduce modification or loss of habitat from hard and soft beach stabilization efforts (*e.g.,* time-of-year restrictions for beach nourishment and dredging activities, establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). This area is currently managed under the Wallops Island Protected Species Management Plan (NASA 2020a, entire).

*Subunit VA–2B: Wallops Island South*

Subunit VA–2B consists of 31 ac (13 ha) of Wallops Island in Accomack County, Virginia. The northern boundary is the end of the road south of the old runway, the southern boundary is Assawoman Creek, the western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely forested or herbaceous vegetation landward of the beach and primary dune, and the eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this subunit are federally owned by NASA. General land use within this subunit includes rocket and drone launches, drone and aircraft flights, beach renourishment and seawall repair, protected species management, facility maintenance and construction, ORV activity, and educational use.

Subunit VA–2B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Rufa red knots are observed in Subunit VA–2B, however, specific counts within the subunit were not available and given the high concentrations of rufa red knots on abutting Assawoman Island (Unit VA–3), this subunit was included.

Threats identified within Subunit VA–2B include: (1) Disturbance of foraging and roosting rufa red knots by ORVs, (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, (3) noise disturbance from overflights of unmanned aerial vehicles and rocket launches, and (4) accelerated loss of

shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting predator control, implementing conservation measures that help reduce modification or loss of habitat from hard and soft beach stabilization efforts (*e.g.,* time-of-year restrictions for beach nourishment and dredging activities, establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). This area is currently managed under the Wallops Island Protected Species Management Plan (NASA 2020a, entire).

*Unit VA–3: Assawoman Island*

Unit VA–3 consists of 633 ac (256 ha) of Assawoman Island in Accomack County, Virginia, from Assawoman Creek south to Kegotank Creek and Gargathy Inlet and extends east past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. The western boundary is formed by Houseboat Creek, a section of Egg Marsh, and Kegotank Bay. All lands within this unit are federally owned by Chincoteague NWR. General land use within this unit includes low-impact recreational day use (during those times of year when permitted) such as hiking, bird watching, photography, and surf fishing. Under current management, the island is closed to recreation March 15th to September 15th to provide undisturbed habitat for nesting birds. Scientific research (*e.g.,* survey and monitoring of natural resources, such as federally listed species) may occur year-round.

Unit VA–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Rufa red knots have also been documented at this location during the fall migration period, although not in large enough numbers to also meet the fall migration period criteria.

Threats identified within Unit VA–3 include: (1) Disturbance of foraging and roosting rufa red knots, including recreational beach use (*e.g.,* surf fishing), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) modification or loss of habitat including accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). This area is currently managed under the Chincoteague and Wallops Island NWR Comprehensive Conservation Plan (Service 2015, entire).

*Unit VA–4: Metompkin Island*

Unit VA–4 consists of 1,467 ac (594 ha) of Metompkin Island in Accomack County, Virginia, from Kegotank Creek and Gargathy Inlet south to the mouth of Folly Creek. The western boundary is formed by the Virginia Inside Passage of the Intercoastal Waterway and Metompkin Bay and includes extensive areas of overwash and low marsh areas along the western boundary. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 64 ac (26 ha; 5 percent) in Federal ownership (Chincoteague NWR), 56 ac (22 ha; 4 percent) in State ownership, and 1,239 ac (502 ha; 84 percent) in private/other (TNC) ownership, and 110 ac (44 ha; 7 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots (one of the highest in Virginia) during the spring migration period, serving as an important northbound stopover site. Rufa red knots also use this island during the fall migration period as a southbound stopover site, as well as during the winter period to build energy sources for migration, but not in large enough numbers to also meet the criteria for fall and winter periods. Additionally, this area harbors peat banks, which are heavily used by rufa red knots in Virginia.

Threats identified within Unit VA–4 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The majority of the island is part of the Virginia Coast Reserve (*i.e.,* reserve lands owned and managed by TNC), management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.). During the shorebird breeding season (March 15 to August 31), the southern islands are managed in partnership with the Commonwealth of Virginia, TNC, and the Service to reduce disturbance, thereby increasing productivity (Service 2015, pp. 2–9). The State-owned portion of this unit is ungranted State land managed by the Virginia Marine Resources Commission under the Virginia Administrative Code (Va. Code § 4–1030).

*Unit VA–5: Cedar Island*

Unit VA–5 consists of 2,274 ac (920 ha) of Cedar Island in Accomack County, Virginia, from an inlet between Cedar Island and the southern end of Metompkin Island south to Wachapreague Inlet. The western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely vegetated forested or herbaceous vegetation landward of the beach and primary dune, or open water including Burtons Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well

as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 203 ac (82 ha; 9 percent) in Federal ownership, 77 ac (31 ha; 4 percent) in State ownership, 920 ac (372 ha; 40 percent) in private/other ownership, and 1,074 ac (434 ha; 47 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this location harbors peat banks, which are heavily used by rufa red knots in Virginia.

Threats identified within Unit VA–5 include: (1) Recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The majority of the island is part of TNC's Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.). During the shorebird breeding season (March 15 to August 31), the southern islands are managed in partnership with the Commonwealth of Virginia, TNC, and the Service to reduce disturbance, thereby increasing productivity (Service 2015, pp. 2–9). The State-owned portion of this unit is ungranted State land managed by the Virginia Marine Resources Commission under the Virginia Administrative Code (Va. Code § 4–1030).

*Unit VA–6: Parramore Island*

Unit VA–6 consists of 6,802 ac (2,753 ha) of Parramore Island in Accomack County, Virginia, from Wachapreague Inlet south to Quinby Inlet. The western boundary is Horseshoe Lead, Drawing Channel, Swash Bay, and Revel Island Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 5,631 ac (2,280 ha; 83 percent) in private/other ownership and 1,171 ac (473 ha; 17 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–6 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this location harbors peat banks, which are heavily used by rufa red knots in Virginia.

Threats identified within Unit VA–6 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion) (see Special Management Considerations or Protection, above). The island is managed by TNC as part of TNC's Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.).

*Unit VA–7: Chimney Pole Marsh*

Unit VA–7 consists of 2,004 ac (811 ha) of Chimney Pole Marsh and the southern portion of Sandy Island in Accomack County, Virginia, within the area of Quinby Inlet and west of the gap between Parramore and Hog Islands. This unit is composed of mud flats, low marsh, sandy beaches, overwash areas, and tidal channels. The boundary of the unit on all sides extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 1,224 ac (496 ha; 61 percent) in State ownership, 285 ac (116 ha; 14 percent) in private/other ownership, and 495 ac (200 ha; 25 percent) that are uncategorized. General land use of ungranted State lands in this unit include recreational activities (*e.g.,* hunting, fishing, clamming, oystering, crabbing, picnicking, beachcombing, birdwatching).

Unit VA–7 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this location is a presumed night roost site (Cohen et al. 2010b *in* Heller 2020, p. 90).

Threats identified within Unit VA–7 include: (1) Recreational use (*e.g.,* hunting, trapping, camping), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). This unit is primarily ungranted State land managed by the Virginia Marine Resources Commission under the Virginia Administrative Code (Va. Code § 4–1030). Sandy Island is managed by TNC as part of TNC's Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.).

*Unit VA–8: Hog Island*

Unit VA–8 consists of 3,235 ac (1,309 ha) of Hog Island in Northampton County, Virginia, bounded by the Quinby Inlet to the north and Great Machipongo Inlet to the south. The

western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely vegetated forested or herbaceous vegetation landward of the beach and primary dune, or open water including Hog Island Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 16 ac (7 ha; less than 1 percent) in State ownership, 2,966 ac (1,201 ha; 92 percent) in private/other ownership, and 253 ac (101 ha; 7.8 percent) that is uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this location harbors peat banks, which are heavily used by rufa red knots in Virginia.

Threats identified within Unit VA–8 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The island is managed by TNC as part of TNC's Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.). The State-owned portion of this unit is ungranted State land managed by the Virginia Marine Resources Commission under the Virginia Administrative Code (Va. Code § 4–1030).

*Unit VA–9: Cobb Island*

Unit VA–9 consists of 2,342 ac (948 ha) of Cobb Island in Northampton County, Virginia, bounded by Great Machipongo Inlet to the north and Sandy Shoal Inlet to the south. The western boundary is formed by Hog Island Bay, Spidercrab Bay, and Cobb Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 16 ac (7 ha; less than 1 percent) in State ownership, 1,778 ac (720 ha; 76 percent) in private/other ownership, and 547 ac (221 ha; 23 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–9 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Unit VA–9 include: (1) Predation (especially from peregrine falcons), (2) disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (3) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (4) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The island is primarily managed by TNC as part of TNC's Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.). The State-owned portion of this unit is ungranted State land managed by the Virginia Marine Resources Commission under the Virginia Administrative Code (Va. Code § 4–1030).

*Unit VA–10: Little Cobb Island*

Unit VA–10 consists of 82 ac (33 ha) of Little Cobb Island in Northampton County, Virginia, and lies just west of the southern end of Cobb Island and within the waters of Cobb Bay. The boundary of this small island in all directions is the waters of Cobb Bay and the extent of the boundary seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are in private/other ownership. General land use within this unit is scientific research (*e.g.,* surveys and monitoring for nesting shorebirds); this area is closed to visitor use at all times for scientific research and safety reasons (TNC 2017, p. 1).

Unit VA–10 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

The threats identified within Unit VA–10 include: (1) Natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (2) erosional processes and accelerated loss of shoreline habitat in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing scientific research activity access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration, and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The island is owned and managed by TNC as part of the Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.).

*Unit VA–11: Wreck Island*

Unit VA–11 consists of 1,270 ac (514 ha) of Wreck Island in Northampton County, Virginia, is bounded to the north by Sandy Shoal Inlet and Red Drum Drain and New Inlet to the south. The western boundary is South Bay. The eastern boundary extends seaward

past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are State owned and managed as Wreck Island Natural Area Preserve. General land use within this unit includes recreational beach use (*e.g.,* fishing, hiking, wildlife viewing) and natural resource surveys and monitoring.

Unit VA–11 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this area is a presumed night roost site (Cohen et al. 2010 *in* Heller 2020).

Threats identified within Unit VA–11 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* fishing, hiking, wildlife viewing), (2) invasive species, (3) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (4) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). Unit VA–11 is managed by the Virginia Department of Conservation and Recreation under the Wreck Island Natural Area Preserve Management Abstract (Field 2014, entire).

*Unit VA–12: Myrtle Island*

Unit VA–12 consists of 1,416 ac (573 ha) of Myrtle Island in Northampton County, Virginia, and is composed of extensive mud flats, low marsh, sandy beaches, overwash areas, and tidal channels. The north boundary is Ship Shoal Inlet, the south boundary is Little Inlet, the west boundary is Main Ship Shoal Channel and Big Creek Marsh, and the east boundary is the Atlantic Ocean. The boundary for the island and marsh complex extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include 1,028 ac (417 ha; 73 percent) that are in private/other ownership and 388 ac (156 ha; 27 percent) that are uncategorized. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography) and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–12 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit harbors peat banks, which are heavily used by rufa red knots in Virginia.

Threats identified within Unit VA–12 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities including recreational beach use (*e.g.,* hiking, bird watching, surf fishing, photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The island is owned and managed by TNC as part of the Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.).

*Unit VA–13: Smith Island*

Unit VA–13 consists of 2,529 ac (1,024 ha) of Smith Island in Northampton County, Virginia. It is bounded to the north by Little Inlet, to the south by Smith Island Inlet, and to the west along the dune line where the habitat changes from sandy beach with little vegetation to densely vegetated dunes or marshland, as well as densely vegetated forested or herbaceous vegetation landward of the beach and primary dune, or open water including Magothy Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are in private/other ownership. General land use within this unit includes low-impact, noncommercial, recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), and scientific research (*e.g.,* surveys and monitoring for nesting shorebirds).

Unit VA–13 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Rufa red knots also use this island during the fall migration period as a southbound stopover site, as well as during the winter season period to build energy sources for migration, but not in large enough numbers to also meet the criteria for fall and winter periods.

Threats identified within Unit VA–13 include: (1) Disturbance of foraging and roosting rufa red knots by recreational beach use (*e.g.,* hiking, bird watching, surf fishing, and photography), (2) natural (*e.g.,* hurricanes) or human-caused (*e.g.,* oil spills) disasters, and (3) accelerated loss of shoreline habitat from erosional processes in response to climate change and sea level rise. Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), and establishing temporary sanctuaries and management during certain times of year to address erosion (see Special Management Considerations or Protection, above). The island is owned and managed by TNC as part of the Virginia Coast Reserve, management of which is identified in a Conservation Action Plan that outlines priorities and strategies for conservation activities (Wilke 2020, pers. comm.).

*Unit NC–1: Outer Banks*

Unit NC–1 consists of two subunits comprising 11,367 ac (4,600 ha) in Dare and Hyde Counties, North Carolina. This unit consists of Federal lands owned by the NPS and Service, and lands owned by the State of North Carolina. This unit overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover.

*Subunit NC–1A: Hatteras Island and Shoals*

Subunit NC–1A consists of 5,754 ac (2,329 ha) of Hatteras Island in Dare County, North Carolina, from the southeast side of Oregon Inlet, south along the ocean-facing side of the island (including Pea Island NWR) to Cape Point in Cape Hatteras National Seashore. From Cape Point, the subunit stretches along the ocean side of the island about 13.25 mi (21 km) west to the east side of Hatteras Inlet. This subunit includes from MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide, that are associated with the northeast side of Hatteras Inlet's navigable channel) to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins. Lands within this subunit include approximately 4,940 ac (1,999 ha; 86 percent) in Federal ownership (Cape Hatteras National Seashore and Pea Island NWR), along with 814 ac (329 ha; 14 percent) that are uncategorized. Some portions of this subunit include ocean-facing beaches in front of the villages of Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, and Hatteras. General land use within this subunit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, horseback riding and photography), commercial fishing, natural resource conservation, and open space.

Subunit NC–1A is occupied by the species and contains one or more of the physical or biological features essential to conservation of the species. This subunit contains a high concentration of rufa red knots during the winter period, providing an important wintering habitat location in the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 936 ac (379 ha) of this subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001; 73 FR 62816, October 21, 2008).

Threats identified within Subunit NC–1A include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Pamlico Sound (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under the 2006 Pea Island NWR Comprehensive Conservation Plan (Service 2006a, entire) and under the 2016 Cape Lookout National Seashore Off-Road Vehicle Management Plan/ Environmental Impact Statement (National Park Service 2016, entire).

*Subunit NC–1B: Ocracoke Island*

Subunit NC–1B consists of 5,613 ac (2,271 ha) of Ocracoke Island in Hyde County, North Carolina, from the southwest side of Hatteras Inlet along the ocean-facing side of the island to the northeast side of Ocracoke Inlet. This subunit also encompasses shallow areas and mudflats within Pamlico Sound on the west side of Ocracoke Island near Ocracoke Village. This subunit includes from MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins, including the flood-tidal and ebb-tidal deltas associated with the southwest side of Hatteras Inlet and the northeast side of Ocracoke Inlet, and the sand and mud islands identified in Pamlico Sound northeast of Ocracoke Village. Lands within this subunit include approximately 1,427 ac (577 ha; 25 percent) in Federal ownership (*i.e.,* the entire ocean-facing side of the Ocracoke Island, which is part of Cape Hatteras National Seashore), 3,612 ac (1,462 ha; 65 percent) in State ownership (*i.e.,* the shallow islands in Pamlico Sound on the north side of Ocracoke), and 575 ac (233 ha; 10 percent) that are uncategorized. General land use within this subunit includes recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, horseback riding and photography), commercial fishing, natural resource conservation, and open space.

Subunit NC–1B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound migration stopover site. Approximately 471 ac (190 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001; and 73 FR 62816, October 21, 2008).

Threats identified within Subunit NC–1B include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Pamlico Sound (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under the 2010 Cape Hatteras National Seashore ORV Management Plan and EIS (NPS 2010, entire), and State lands are managed under the 2015 North Carolina Wildlife Action Plan (State of North Carolina 2015, entire).

*Unit NC–2: Core Banks*

Unit NC–2 consists of two subunits comprising 11,281 ac (4,565 ha) in Carteret County, North Carolina. This unit consists of Federal lands owned by the NPS (Cape Lookout National Seashore). This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover.

*Subunit NC–2A: North Core Banks*

Subunit NC–2A consists of 8,187 ac (3,313 ha) in Carteret County, North Carolina. The north boundary of the subunit is the North Core Banks side of the Ocracoke Inlet channel and the

south boundary is the North Core Banks side of the New Drum Inlet channel, the west boundary is the toe of the primary dune or dense vegetation line (where the physical or biological features do not occur), and the east boundary is MLLW on the Atlantic Ocean (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). This subunit also includes MLLW on Core Sound to the MLLW on the Atlantic Ocean in washover areas associated with Old Drum Inlet, all emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the North Core Banks side of the Ocracoke Inlet channel, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the North Core Banks side of the New Drum Inlet channel. Lands within this unit include 6,534 ac (2,644 ha; 80 percent) that are Federal ownership (Cape Lookout National Seashore) and 1,654 ac (669 ha; 20 percent) that are uncategorized. General land use within this subunit includes camping, recreational day uses (*e.g.,* walking, bird watching, swimming, surfing, surf fishing, and photography), natural resource conservation, and open space.

Subunit NC–2A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 5,493 ac (2,223 ha) of this subunit overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit NC–2A include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Core and Pamlico Sound (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under the 2016 Cape Lookout National Seashore ORV Management Plan/EIS (NPS 2016, entire).

*Subunit NC–2B: South Core Banks*

Subunit NC–2B consists of 3,094 ac (1,252 ha) in Carteret County, North Carolina. The north boundary of the subunit is the South Core Banks side of the New Drum Inlet Channel, the south boundary is at the Power Squadron Spit excluding the jetty, the west boundary is at the toe of the primary dune or dense vegetation line where the physical or biological features do not occur, and the east boundary is MLLW on the Atlantic Ocean (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). This subunit also includes MLLW on Core Sound to the MLLW on the Atlantic Ocean in emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the South Core Banks side of the New Drum Inlet channel, and all emergent sand shoals associated with Cape Point. All of the lands within this subunit are under Federal ownership (Cape Lookout National Seashore). General land use within this subunit includes camping, recreational day uses (*e.g.,* walking, bird watching, swimming, surfing, surf fishing, and photography), natural resource conservation, and open space.

Subunit NC–2B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Approximately 873 ac (353 ha) of this subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001; and 73 FR 62816, October 21, 2008).

Threats identified within Subunit NC–2B include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration); managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Core Sound (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under the 2016 Cape Lookout National Seashore ORV Management Plan/EIS (NPS 2016, entire).

*Unit NC–3: Shackleford Island*

Unit NC–3 consists of 4,972 ac (2,012 ha) including all of Shackleford Island in Carteret County, North Carolina. The north boundary is MLLW along Back Sound, Bald Hill, Johnson and Lighthouse Bays south to dense vegetation where the physical or biological features do not occur. The east boundary is the Shackleford Island side of Barden Inlet channel, the south boundary is MLLW on the Atlantic Ocean, and the west boundary is the Shackleford Island side of Beaufort Inlet Channel. This unit includes emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the Shackleford Island side of the Barden Inlet channel, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Beaufort Inlet channel (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). All lands within this unit are in Federal ownership (Cape Lookout National Seashore). General land use within this unit includes camping, recreational day uses (*e.g.,* walking, bird watching, swimming, surfing, surf fishing, and photography), natural resource conservation, and open space.

Unit NC–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This

unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Approximately 2,120 ac (858 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit NC–3 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Back Sound (see Special Management Considerations or Protection, above). Federal lands within this unit are managed under the 2016 Cape Lookout National Seashore ORV Management Plan/EIS (NPS 2016, entire).

*Unit NC–4: Emerald Isle-Atlantic Beach*

Unit NC–4 consists of 2,030 ac (822 ha) of barrier island in Carteret County, North Carolina, stretching about 23 mi (37 km) from the Beaufort Inlet channel and Fort Macon State Park west to the eastern side of the Bogue Inlet channel. Unit NC–4 includes from MLLW to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Beaufort Inlet channel, not including the jetty, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Bogue Inlet channel. Lands within this unit include approximately 1,908 ac (772 ha; 94 percent) in State ownership and 122 ac (50 ha; 6 percent) in private/other ownership (which includes 1 ac (0.5 ha) in local government ownership and 121 ac (49 ha) in private ownership). General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 258 ac (104 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 1,220 ac (494 ha) overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit NC–4 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Bogue Sound (see Special Management Considerations or Protection, above). State lands within this unit are managed under the 2015 North Carolina Wildlife Action Plan (NCWRC 2015, entire).

*Unit NC–5: New Topsail Inlet-Topsail Beach*

Unit NC–5 consists of 1,612 ac (652 ha) of barrier island in Onslow and Pender Counties, North Carolina, stretching about 23 mi (37 km) from the west side of the New River Inlet channel west to the east side of the New Topsail Inlet channel. This unit includes from MLLW to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the New River Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the New Topsail Inlet channel. All lands within this unit are in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 121 ac (49 ha) of this unit overlap designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and approximately 972 ac (393 ha) overlap with designated habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit NC–5 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; (4) modification or loss of habitat or both due to residential and commercial development; and (5) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special

management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Topsail Sound (see Special Management Considerations or Protection, above).

*Unit NC–6: Cape Fear-Fort Fisher*

Unit NC–6 consists of 1,986 ac (804 ha) of coastal barrier island from Carolina Beach Inlet in New Hanover County, North Carolina to the mouth of the Cape Fear River in Brunswick County, North Carolina. The north boundary of this unit is the northeast tip of Pleasure Island south of Carolina Beach Inlet and the south boundary extends from the tip of Cape Fear west approximately 3.4 mi (5 km) to the mouth of the Cape Fear River. The west boundary is the toe of the primary dune or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. The east boundary is MLLW on the Atlantic Ocean excluding groins and jetties. This unit also includes all emergent sand shoals associated with the tip of Cape Fear, the Cape Fear River south of Military Ocean Terminal Sunny Point, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with southwest side of Carolina Beach Inlet channel and the southwest tip of Bald Head Island. Lands within this unit include approximately 1,713 ac (693 ha; 86 percent) in State ownership and 274 ac (111 ha; 14 percent) in private/other ownership. State lands in this unit contain parts of Fort Fisher State Recreation Area and Zeke's Island Estuarine Reserve. General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC–6 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Approximately 480 ac (194 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and approximately 1,009 ac (408 ha) overlap with designated habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit NC–6 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources both within the unit and the adjacent Myrtle Sound/Cape Fear River (see Special Management Considerations or Protection, above). State lands within this unit are managed under the 2015 North Carolina Wildlife Action Plan (NCWRC 2015, entire).

*Unit NC–7: Ocean Isle Beach*

Unit NC–7 consists of 298 ac (120 ha) of barrier island in Brunswick County, North Carolina, stretching about 6 mi (10 km) from the west side of Shallotte Inlet to the east side of Tubbs Inlet. The east boundary of this unit is the west side of Shallotte Inlet. The south boundary is the MLLW on the Atlantic Ocean, the west boundary is the east side of Tubbs Inlet and the north boundary is the toe of the primary dune or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Shallotte Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Tubbs Inlet channel. Lands within this unit include approximately 182 ac (73 ha; 61 percent) in State ownership and 116 ac (47 ha; 39 percent) in private/other (municipal) ownership. General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC–7 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Approximately 29 ac (12 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit NC–7 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources within the unit (see Special Management Considerations or Protection, above). State lands within this unit are managed under the 2015 North Carolina Wildlife Action Plan (NCWRC 2015, entire).

*Unit NC–8: Sunset Beach-Bird Island*

Unit NC–8 consists of 384 ac (155 ha) of barrier island in Brunswick County, North Carolina, stretching about 4.1 mi (6.6 km) from the west side of Tubbs Inlet to the east side of Little River Inlet. The east boundary of this unit is the west side of Tubbs Inlet. The south boundary is the MLLW on the Atlantic Ocean, the west boundary is the east side of Little River Inlet and the north boundary is the toe of the primary dune or where densely vegetated habitat, not

used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Tubbs Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Little River Inlet channel, excluding the jetty. Lands within this unit include approximately 345 ac (139 ha; 90 percent) in State ownership and 39 ac (16 ha; 10 percent) in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, recreational day uses (*e.g.,* sunbathing, walking, bird watching, swimming, surfing, surf fishing, and photography), commercial fishing, and natural resource conservation and open space.

Unit NC–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Approximately 61 ac (25 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit NC–8 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, powered boats, ORVs); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) response to natural and human-caused disasters (*i.e.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent saltmarsh and upland roosting habitat during migration (through restrictions on timing, locations, and types of activities), conducting habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration), managing predator populations, managing human activities that disturb foraging rufa red knots, and managing sediment sources within the unit (see Special Management Considerations or Protection, above). State lands within this unit are managed under the Management Plan for the Bird Island Component of the North Carolina Coastal Reserve (North Carolina Department of Environment and Natural Resources Division of Coastal Management 2003, entire) and the 2015 North Carolina Wildlife Action Plan (NCWRC 2015, entire).

*Unit SC–1: Garden City Beach*

Unit SC–1 consists of 616 ac (249 ha) of Garden City Beach in Georgetown and Horry Counties, South Carolina. The northern boundary of the unit begins at the Garden City pier in Horry County and extends southwest to the northern side of Murrells Inlet in Georgetown County. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northeastern side of Murrells Inlet's navigable channel. Lands within this unit include approximately 267 ac (108 ha; 43 percent) in State ownership and 349 ac (141 ha; 57 percent) in private/other ownership. General land use within this unit includes residential development, tourism, and outdoor recreational use (*e.g.,* beachgoing, boating).

Unit SC–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots in South Carolina and on the Southeastern U.S. portion of the subspecies range during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 57 ac (23 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit SC–1 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, running/walking/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing recreational access to key rufa red knot foraging and roosting habitat during migration (through restrictions on timing, locations, and types of activities) and limiting shoreline stabilization project construction windows (*e.g.,* outside of red knot migration windows) (see Special Management Considerations or Protection, above).

*Unit SC–2: Huntington Beach State Park/Litchfield Beach*

Unit SC–2 consists of 1,634 ac (661 ha) of Huntington Beach State Park and Litchfield Beach in Georgetown County, South Carolina. The unit boundary begins on the southern side of Murrells Inlet southwest and extends southwest to the northern side of Midway Inlet. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Murrells Inlet's navigable channel and the northeastern side of Midway Inlet's navigable channel. Lands within this unit include approximately 80 ac (32 ha; 5 percent) in State ownership, which includes Huntington Beach State Park, and 1,554 ac (629 ha; 95 percent) in private/other ownership. General land use within this unit includes residential development, tourism, and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, birdwatching, and hiking).

Unit SC–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots in South Carolina and on the Southeastern U.S. portion of the subspecies range during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 371 ac (150 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit SC–2 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, powered boats, running/walking/biking through or too close to flocks of rufa red knots); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to

uncontrolled recreational access, erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing recreational access to key rufa red knot foraging and roosting habitat during migration (through restrictions on timing, locations, and types of activities) and limiting shoreline stabilization project construction windows (*e.g.,* outside of red knot migration windows) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the South Carolina Department of Parks, Recreation, and Tourism's (SCDPRT) 2019 South Carolina State Comprehensive Outdoor Recreation Plan (SCDPRT 2019, entire).

*Unit SC–3: Sand and South Island Beaches*

Unit SC–3 consists of 8,256 ac (3,341 ha) of Sand and South Islands, barrier islands off the coast in Georgetown County, South Carolina. The unit boundary begins on the northeastern edge of South Island in North Inlet behind North Island following the shoreline to include Sand Island and continuing southwest to the southern tip of South Island. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlet between Sand and South Islands and the northeastern side of North Santee River Inlet's navigable channel. Lands within this unit include approximately 7,843 ac (3,174 ha; 95 percent) in State ownership, 129 ac (52 ha; 2 percent) in private/other ownership, and 283 ac (115 ha; 3 percent) that are uncategorized. General land use within this unit includes wildlife management as part of South Carolina Department of Natural Resources' (SCDNR) Tom Yawkey Wildlife Center Heritage Preserve and outdoor recreational use (*e.g.,* boating, fishing, birdwatching, wildlife viewing).

Unit SC–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound migration stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 664 ac (269 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 475 ac (192 ha) of the unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–3 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, running/walking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing access to red knot foraging and roosting habitat during migration, such as through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–4: Murphy Island Beach*

Unit SC–4 consists of 8,312 ac (3,364 ha) and includes all of Murphy Island, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the South Santee River shoreline of Murphy's Island and extends to the Alligator Creek shoreline. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlets along the shoreline of Murphy Island. Lands within this unit are entirely in State ownership and SCDNR manages Murphy Island as part of the Santee Coastal Reserve Wildlife Management Area. General land use within this unit includes wildlife management and outdoor recreational use (*e.g.,* boating, hunting, fishing, birdwatching).

Unit SC–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 253 ac (102 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–4 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–5: North Cape Island Beach*

Unit SC–5 consists of 1,270 ac (514 ha) of the entire northern portion of Cape Island, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the Cape Romain Harbor shoreline of Cape Island and extends south to the shoreline along the unnamed inlet between North Cape and South Cape Islands. The unit includes all emergent land from MLLW to the toe of the dunes

or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northern side of the navigable channel of the unnamed inlet between North Cape Island and South Cape Island. Lands within this unit include approximately 775 ac (313 ha; 61 percent) in Federal ownership and 495 ac (200 ha; 39 percent) in State ownership. General land use within this unit includes wildlife management as part of the Service's Cape Romain NWR and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, hiking, and birdwatching). North Cape Island is also classified as a Class I Wilderness Area.

Unit SC–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 49 ac (20 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–5 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2010 Cape Romain NWR Comprehensive Conservation Plan (Service 2010a, entire).

*Unit SC–6: South Cape and Lighthouse Island Beaches*

Unit SC–6 consists of 2,037 ac (824 ha) of the entire southern portion Cape Island and all of Lighthouse Island, barrier islands off the coast in Charleston County, South Carolina. The unit boundary begins at the northern tip of South Cape Island in the unnamed inlet between North Cape and South Cape Islands and extends to the western tip of Lighthouse Island in Key Inlet. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southern side of the navigable channel of the unnamed inlet between North Cape Island and South Cape Island and the emergent sand shoals associated with Key Inlet. Lands within this unit include approximately 1,552 ac (628 ha; 76 percent) in Federal ownership and 485 ac (196 ha; 24 percent) in State ownership. General land use within this unit includes wildlife management as part of the Service's Cape Romain NWR and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, and birdwatching). South Cape Island is also classified as a Class I Wilderness Area.

Unit SC–6 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 745 ac (302 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 324 ac (131 ha) of this unit overlap with the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–6 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2010 Cape Romain NWR Comprehensive Conservation Plan (Service 2010a, entire).

*Unit SC–7: Raccoon Key Complex and White Banks Beaches*

Unit SC–7 consists of 5,324 ac (2,154 ha) of the entire Raccoon Key complex and White Banks, islands off the coast in Charleston County, South Carolina. The unit boundary begins at the intersection of the Romain River and Key Inlet side of Raccoon Key and extends to the western edge of White Banks in Bulls Bay. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlets in the Raccoon Key complex. Lands within this unit are all in Federal ownership. General land use within this unit includes wildlife management as part of the Service's Cape Romain NWR and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, and birdwatching).

Unit SC–7 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during

the winter period, providing important wintering habitat on the northern Gulf coast for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit is one of three units in South Carolina that supports rufa red knots throughout the entire nonbreeding season (fall, winter, and spring). The area also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 119 ac (48 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 41 ac (17 ha) of this unit overlap with the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–7 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2010 Cape Romain NWR Comprehensive Conservation Plan (Service 2010a, entire).

*Unit SC–8: Marsh Island*

Unit SC–8 consists of 415 ac (168 ha) of all of Marsh Island, an island in Bulls Bay in Charleston County, South Carolina. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Marsh Island. Lands within this unit include are all in Federal ownership. General land use within this unit includes wildlife management as part of the Service's Cape Romain NWR and seasonal outdoor recreational use (*e.g.,* boating, fishing, and birdwatching).

Unit SC–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of red knots during the spring migration period, particularly in the spring when horseshoe crabs are spawning, as well as a high concentration of rufa red knots during the fall migration period (*i.e.,* one of six units in South Carolina that supports high concentrations of rufa red knots during fall migration). The habitat in this unit serves as an important northbound and southbound stopover site, in addition to the area having remote boat-only access and an undeveloped character that provides protection from intensive human uses.

Threats identified within Unit SC–8 include: (1) Disturbance of foraging and roosting red knots by humans and human activities despite the island being seasonally closed (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2010 Cape Romain NWR Comprehensive Conservation Plan (Service 2010a, entire).

*Unit SC–9: Bulls Island Beach*

Unit SC–9 consists of 6,141 ac (2,485 ha) of all of Bulls Island, a barrier island of the coast in Charleston County, South Carolina. The unit boundary begins on the Bulls Bay shoreline of Bulls Island and extends southwest to the Price Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northeastern side of Price Inlet's navigable channel. Lands within this unit include approximately 5,200 ac (2,104 ha; 85 percent) in Federal ownership and 941 ac (381 ha; 15 percent) in State ownership. General land use within this unit includes wildlife management as part of the Service's Cape Romain NWR and outdoor recreational use (*e.g.,* beachgoing, boating, hunting, fishing, hiking, and birdwatching).

Unit SC–9 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. This unit also contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Additionally, this unit has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 206 ac (83 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit SC–9 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of

spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2010 Cape Romain NWR Comprehensive Conservation Plan (Service 2010a, entire).

*Unit SC–10: Capers Island Beach*

Unit SC–10 consists of 2,534 ac (1,026 ha) of all of Capers Island, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the Price Inlet shoreline of Capers Island and extends southwest to the Capers Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Price's Inlet's navigable channel and the northeastern side of Capers Inlet's navigable channel. Lands within this unit are entirely in State ownership. General land use within this unit includes resource management as part of SCDNR's Capers Island Natural Heritage Preserve and outdoor recreational use (*e.g.,* beachgoing, boating, hunting, fishing, camping, and birdwatching).

Unit SC–10 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. This unit also contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Additionally, this unit has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 160 ac (65 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit SC–10 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–11: Dewees Island Beach*

Unit SC–11 consists of 1,812 ac (733 ha) of all of Dewees Island, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the Capers Inlet shoreline of Dewees Island and extends to the Dewees Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Caper's Inlet's navigable channel and the northeastern side of Dewees Inlet's navigable channel. Lands within this unit include approximately 265 ac (107 ha; 15 percent) in State ownership and 1,547 ac (626 ha; 85 percent) in private/other ownership. General land use within this unit includes low-level residential development and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–11 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots in South Carolina and the Southeastern U.S. portion of the subspecies range during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Unit SC–11 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2015 Local Comprehensive Beach Management Plan for Unincorporated Charleston County (Charleston County 2015, entire).

*Unit SC–12: Isle of Palms Beach*

Unit SC–12 consists of 4,117 ac (1,666 ha) of all of the Isle of Palms, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins at the Dewees Inlet shoreline of the Isle of Palms and extends southwest to the Breach Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Dewees Inlet's navigable channel and the northeastern side of Breach Inlet's navigable channel. Lands within this unit include approximately 754 ac (305 ha; 18 percent) in State ownership and 3,363 ac (1,361 ha; 82 percent) in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, and recreational day uses (*e.g.,* beachgoing, boating, fishing,

birdwatching) within the municipality of the City of Isle of Palms.

Unit SC–12 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Unit SC–12 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2017 Isle of Palms Local Comprehensive Beach Management Plan (City of Isle of Palms 2017, entire).

*Unit SC–13: Sullivan's Island Beach*

Unit SC–13 consists of 1,782 ac (721 ha) of all of Sullivan's Island, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the Breach Inlet shoreline of Sullivan's Island and extends southwest to the Charleston Harbor shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Breach Inlet's navigable channel. Lands within this unit include approximately 83 ac (34 ha; 5 percent) in Federal ownership as part of the NPS's Ft. Moultrie (which is part of the Ft. Sumter National Monument), 694 ac (281 ha; 39 percent) in State ownership, and 1,005 ac (407 ha; 56 percent) in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, and recreational day uses (*e.g.,* beachgoing, boating, fishing, birdwatching) within the municipality of the Town of Sullivan's Island.

Unit SC–13 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Unit SC–13 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands are managed under the Ft. Sumter National Monument General Management Plan (NPS 2003, entire). Private/other lands within this unit are managed under the 2019 Sullivan's Island Comprehensive Plan (Berkeley-Charleston-Dorchester Council of Governments 2019, entire).

*Unit SC–14: Folly Beach*

Unit SC–14 consists of 1,989 ac (805 ha) of the entire island of Folly Beach, a barrier island off the coast in Charleston County, South Carolina. The unit boundary begins on the Lighthouse Inlet shoreline of Folly Beach and extends southwest to the Folly River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Lighthouse Inlet's navigable channel and the Folly Beach side of the Folly River Inlet's navigable channel between Folly Beach and Bird Key. Lands within this unit are entirely in private/other land ownership within the city limits of municipality of the City of Folly Beach. General land use within this unit includes residential/commercial development, county parks, tourism, and outdoor recreational use (*e.g.,* beachgoing, surfing, fishing, and boating).

Unit SC–14 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound and southbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 254 ac (103 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–14 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot

foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2015 City of Folly Beach Local Comprehensive Beach Management Plan (City of Folly Beach 2015, entire).

*Unit SC–15: Bird Key-Stono*

Unit SC–15 consists of 294 ac (119 ha) of all of Bird Key-Stono, an island in the mouth of the Stono Inlet in Charleston County, South Carolina. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of the Folly River Inlet. Lands within this unit are entirely in State ownership. SCDNR manages Bird Key-Stono as a State Seabird Sanctuary. General land use within this unit includes wildlife management and outdoor recreational use (*e.g.,* boating, fishing).

Unit SC–15 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, particularly when horseshoe crabs are spawning. This unit also has remote boat-only access, seasonal closure, and an undeveloped character that provides protection from intensive human uses. Approximately 70 ac (28 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 1.4 ac (0.6 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–15 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–16: Kiawah and Seabrook Island Beaches*

Unit SC–16 consists of 11,250 ac (4,553 ha) of all of Kiawah Island and a portion of Seabrook Island, barrier islands off the coast in Charleston County, South Carolina. The unit boundary begins on the Stono Inlet shoreline of Kiawah Island and extends southwest to the tip of the Seabrook Island shoreline in the North Edisto River. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the western side of the Stono Inlet and all of Captain Sam's Inlet. Lands within this unit include approximately 1,399 ac (566 ha; 5 percent) in State ownership and 9,850 ac (3,986 ha; 95 percent) in private/other ownership within the Town limits of the Town of Kiawah Island and the Town of Seabrook Island. General land use within this unit includes residential development, tourism, golf resorts, and outdoor recreational use (*e.g.,* beachgoing, boating, kayaking, fishing, wildlife viewing).

Unit SC–16 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range (*i.e.,* the most important known spring migration staging area in the Southeast). Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 1,591 ac (644 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 2,067 ac (836 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–16 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2020 Town of Kiawah Island Local Comprehensive Beach Management Plan (Town of Kiawah Island 2020, entire) and 2019 Town of Seabrook Island Beach Management Plan (Town of Seabrook Island 2019, entire).

*Unit SC–17: Deveaux Bank*

Unit SC–17 consists of 1,328 ac (538 ha) of all of Deveaux Bank, an island in the mouth of the North Edisto River in Charleston County, South Carolina. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the rufa red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the mouth of the North Edisto River. Lands within this unit are entirely in State ownership. General land use within this unit

includes wildlife management as a SCDNR Seabird Sanctuary and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–17 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, particularly when horseshoe crabs are spawning. This unit also has remote boat-only access, partial seasonal closure, and an undeveloped character that provides protection from intensive human uses. Approximately 459 ac (186 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 664 ac (269 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–17 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–18: Edisto Island Beaches*

Unit SC–18 consists of 1,743 ac (705 ha) of the beaches of Edisto Island, a barrier island off the coast, including all of Botany Bay Island, all of Botany Bay Plantation, all of Interlude Beach, all of Edingsville Beach, and a portion of Edisto Beach State Park in Charleston and Colleton Counties, South Carolina. The unit boundary begins on the North Edisto River shoreline of Botany Bay Island and extends southwest to the undeveloped eastern half of the beachfront portion of Edisto Beach State Park southwest of Jeremy Inlet. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Frampton and Jeremy Inlets and the unnamed inlet separating Interlude Beach and Botany Bay Plantation. Lands within this unit include approximately 650 ac (263 ha; 37 percent) in State ownership and 1,093 ac (442 ha; 63 percent) in private/other ownership. General land use within this unit includes residential development, tourism, Edisto Beach State Park, and wildlife management as part of SCDNR's Botany Bay Heritage Preserve/Wildlife Management Area, and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–18 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit is one of three units in South Carolina that supports high concentrations of rufa red knots throughout the entire nonbreeding season (fall, winter, and spring). Approximately 201 ac (81 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–18 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2015 Local Comprehensive Beach Management Plan for Unincorporated Charleston County (Charleston County 2015, entire). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–19: Pine and Otter Island Beaches*

Unit SC–19 consists of 6,302 ac (2,550 ha) of all of Pine and Otter Islands, sea islands in St. Helena Sound in Colleton County, South Carolina. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fish Creek Inlet. Lands within this unit include approximately 6,296 ac (2,548 ha; 99 percent) in State ownership and 6 ac (2 ha; less than 1 percent) in private/other ownership. General land use within this unit includes natural areas and wildlife management as part of the Ashepoo-Combahee-Edisto Basin NERR and SCDNR's St. Helena Sound Heritage Preserve/Wildlife Management Area, and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–19 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range, particularly when horseshoe crabs are spawning in the spring. This unit is one of six units in South Carolina that supports high concentrations of the subspecies during

the fall migration period. The location also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 247 ac (100 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 324 ac (131 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–19 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire) and the Ashepoo-Combahee-Edisto Basin NERR Management Plan (SCDNR 2011, entire).

*Unit SC–20: Harbor and Hunting Island Beaches*

Unit SC–20 consists of 4,066 ac (1,645 ha) of Harbor and Hunting Islands, barrier islands off the coast in Beaufort County, South Carolina. The unit boundary begins on the Harbor River shoreline of Harbor Island and extends southwest to the Fripp Inlet shoreline of Hunting Island. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Johnson Creek Inlet. Lands within this unit include approximately 3,246 ac (1,313 ha; 80 percent) in State ownership and 820 ac (331 ha; 20 percent) in private/other ownership. General land use within this unit includes residential development (Harbor Island), tourism (Hunting Island State Park), and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, birdwatching, camping).

Unit SC–20 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the Southeastern U.S. portion of the subspecies range, particularly in the spring when horseshoe crabs are spawning. Additionally, this unit is one of only six units in South Carolina that supports high concentrations of rufa red knots during the fall migration period. Approximately 194 ac (78 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 662 ac (268 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit SC–20 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under SCDPRT's 2019 South Carolina State Comprehensive Outdoor Recreation Plan (SCDPRT 2019, entire).

*Unit SC–21: Fripp Island Beach*

Unit SC–21 consists of 734 ac (297 ha) of Fripp Island, a barrier island off the coast in Beaufort County, South Carolina. The unit boundary begins on the Fripp Inlet shoreline of Fripp Inlet and extends southwest to the Skull Creek Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fripp Inlet. Lands within this unit include approximately 305 ac (124 ha; 42 percent) in State ownership and 429 ac (174 ha; 58 percent) in private/other ownership. General land use within this unit includes residential development, tourism, and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–21 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site.

Threats identified within Unit SC–21 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2020 Fripp Island Beach Management Plan (Beaufort County 2020, entire).

*Unit SC–22: Hilton Head Island Beach*

Unit SC–22 consists of 1,682 ac (681 ha) of the heel of Hilton Head Island, a barrier island off the coast in Beaufort County, South Carolina. The unit boundary begins on the Port Royal Sound shoreline beginning at Oyster Shell Lane, continues southeast then turns southwest along the Atlantic Ocean shoreline, and continues to the undeveloped portion of Singleton Beach southwest of Folly Beach. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the rufa red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fish Haul Creek and unnamed inlets within the unit boundary. Lands within this unit include approximately 1,015 ac (411 ha; 60 percent) in State ownership and 667 ac (270 ha; 40 percent) in private/other ownership. General land use within this unit includes beach access for seasonal rental and residential communities, and recreational day uses (*e.g.,* beachgoing, boating, fishing, birdwatching) within the municipality of the Town of Hilton Head.

Unit SC–22 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site in South Carolina and on the Southeastern U.S. portion of the subspecies range. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit is one of three units in South Carolina that supports high concentrations of rufa red knots throughout the entire nonbreeding season (fall, winter, and spring). Approximately 73 ac (29 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit SC–22 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Private/other lands within this unit are managed under the 2017 Town of Hilton Head Island Local Comprehensive Beach Management Plan (Town of Hilton Head 2017, entire).

*Unit SC–23: Daufuskie Island Beach*

Unit SC–23 consists of 6,370 ac (2,578 ha) of all of Daufuskie Island, a sea island in Calibogue Sound in Beaufort County, South Carolina. The unit boundary begins on the Calibogue Sound shoreline of Daufuskie Island and extends southwest to the Mungen Creek shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the unit boundary. All lands within this unit are in private/other ownership. General land use within this unit includes residential development, tourism, and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–23 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also includes remote boat-only access and has a low-level of development, preventing the subspecies from experiencing intensive human uses.

Threats identified within Unit SC–23 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above).

*Unit SC–24: Turtle Island Beach*

Unit SC–24 consists of 1,798 ac (728 ha) of all of Turtle Island, a sea island in Calibogue Sound in Jasper County, South Carolina. The unit boundary begins on the New River shoreline of Turtle Island and extends southwest to the Wright River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlet in the center of the island shoreline. Lands within this unit are entirely in State ownership as SCDNR's Turtle Island Wildlife Management Area. General land use within this unit includes wildlife management and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit SC–24 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, particularly when horseshoe crabs are spawning. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses.

Threats identified within Unit SC–24 include: (1) Disturbance of foraging and roosting red knots by humans and

human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). State lands and waters within this unit are managed under the SCDNR's State Wildlife Action Plan (SCDNR 2015, entire).

*Unit SC–25: Jones Island Beach*

Unit SC–25 consists of 3,025 ac (1,224 ha) of all of Jones Island, a sea island along the Savannah River and Calibogue Sound in Jasper County, South Carolina. The unit boundary begins on the Wright River shoreline of Jones Island to the Savannah River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Wright River Inlet. Lands within this unit include approximately 785 ac (318 ha; 26 percent) in Federal ownership, which includes the Service's Tybee Island NWR, and 2,240 ac (907 ha; 74 percent) in State ownership. General land use within this unit includes wildlife management and outdoor recreational use (*e.g.,* boating, fishing).

Unit SC–25 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site, particularly when horseshoe crabs are spawning. This location also includes restrictions on public access and has an undeveloped character that provides protection from intensive human uses.

Threats identified within Unit SC–25 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and managing the collection of spawning horseshoe crabs for biomedical use (*e.g.,* limiting location and timing of collection) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2011 Savannah Coastal NWR Complex Comprehensive Conservation Plan (Service 2011, entire).

*Unit GA–1: Tybee Island Beach*

Unit GA–1 consists of 2,046 ac (828 ha) of Tybee Island (including north, mid, and south beaches), a barrier island off the coast in Chatham County, Georgia. The northern boundary of the unit begins at the Savannah River shoreline of Tybee Island and extends south to Tybee Creek Inlet, which separates Tybee Island from Little Tybee Island, and includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the eastern side of Tybee Inlet's navigable channel. Lands within this unit include approximately 6 ac (2 ha; less than 1 percent) in State ownership, 1,721 ac (697 ha; 84 percent) in private/other ownership, and 319 ac (129 ha; 15 percent) that are uncategorized. General land use within this unit includes beach access for seasonal rental and residential communities, and recreational day uses (*e.g.,* beachgoing, boating, fishing, birdwatching) within the municipality of the City of Tybee Island.

Unit GA–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 179 ac (73 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit GA–1 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, running/walking/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include managing recreational access to key rufa red knot foraging and roosting habitat during migration (through restrictions on timing, locations, and types of activities) and limiting shoreline stabilization project construction windows (*e.g.,* outside of red knot migration windows) (see Special Management Considerations or Protection, above). Private/other lands are managed by the City of Tybee Island's Best Management Practices (City of Tybee Island 2014, entire).

*Unit GA–2: Little Tybee Island Complex*

Unit GA–2 consists of 8,265 ac (3,345 ha) of the entire Little Tybee Island complex, a series of barrier islands off the coast in Chatham County, Georgia. The unit boundary begins on the western side of Tybee Creek Inlet and extends southwest to Wassaw Sound and includes Little Tybee Island, Williamson Island, and all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high

tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the western side of Tybee Inlet's navigable channel, Little Tybee Slough, and Little Tybee Creek. All lands within this unit are in State ownership and comprise the Little Tybee Island State Heritage Preserve. General land use within this unit includes outdoor recreational use (*e.g.,* beachgoing, boating, kayaking, camping, birdwatching, fishing, and shelling) and wildlife management (*e.g.,* biological monitoring/surveys).

Unit GA–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 2,138 ac (865 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 1,178 ac (479 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–2 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands in this unit are managed as a preserve by the TNC, which holds a permanent conservation easement, in cooperation with the Georgia Department of Natural Resources (GDNR) State Wildlife Action Plan (GDNR 2015, entire; TNC 2020, entire).

*Unit GA–3: Wassaw Island Beach*

Unit GA–3 consists of 4,296 ac (1,738 ha) of Wassaw Island, a barrier island off the coast in Chatham County, Georgia. The unit boundary begins on the southwestern side of Wassaw Sound off the northern tip of Wassaw Island and extends southwest to Ossabaw Sound shoreline. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Wassaw Sound off the northern tip of Wassaw Island. Lands within this unit include approximately 3,001 ac (1,215 ha; 70 percent) in Federal ownership, 274 ac (111 ha; 6 percent) in private/other ownership, and 1,020 ac (412 ha; 24 percent) that are uncategorized. General land use within this unit includes wildlife management as part of the Service's Wassaw Island NWR and outdoor recreational use (*e.g.,* beachgoing, fishing, boating, and birdwatching).

Unit GA–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 627 ac (254 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 667 ac (270 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–3 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* running/walking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing access to red knot foraging and roosting habitat during migration, such as through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2011 Savannah Coastal NWR Complex Comprehensive Conservation Plan (Service 2011, entire).

*Unit GA–4: Raccoon Key*

Unit GA–4 consists of 1,599 ac (647 ha) of all of Raccoon Key, an island in Ossabaw Sound in Chatham County, Georgia. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within Ossabaw Sound associated with Raccoon Key. All lands within this unit are in State ownership. General land use within this unit includes outdoor recreational use (*e.g.,* boating, fishing).

Unit GA–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses.

Threats identified within Unit GA–4 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* running/walking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion, and sea level rise; and (4) disturbance associated with the response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing access to red knot foraging and roosting habitat during migration, such as through restrictions on timing,

locations, and types of activities) (see Special Management Considerations or Protection, above). State lands within this unit are managed under the GDNR State Wildlife Action Plan (GDNR 2015, entire).

*Unit GA–5: Ossabaw Island Beach*

Unit GA–5 consists of 32,357 ac (13,095 ha) of Ossabaw Island, a barrier island off the coast in Chatham County, Georgia. The unit boundary begins at the Ogeechee River shoreline of Ossabaw Island and extends southwest to the St. Catherine's Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Ossabaw Sound off the northeastern tip of the island and St. Catherine's Sound off the southwestern tip of the island. Lands within this unit include approximately 28,621 ac (11,591 ha; 88 percent) in State ownership and 3,736 ac (1,503 ha; 12 percent) that are uncategorized. General land use within this unit includes wildlife management as part of the Ossabaw Island Wildlife Management Area and outdoor recreational use (*e.g.,* boating, hunting, fishing, and wildlife viewing).

Unit GA–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also has remote boat-only access and an undeveloped character that provides protection from intensive human uses. Approximately 1,571 ac (636 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 2,224 ac (900 ha) overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–5 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands within this unit are managed under the GDNR State Wildlife Action Plan (GDNR 2015, entire).

*Unit GA–6: St. Catherine's Island Beach*

Unit GA–6 consists of 15,962 ac (6,460 ha) of St. Catherine's Island, a barrier island off the coast in Liberty County, Georgia. The unit boundary begins at the St. Catherine's Sound shoreline of St. Catherine's Island and extends southwest to the Sapelo Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with St. Catherine's Sound entrance off the northern tip of the island, McQueen Inlet, and Sapelo Sound entrance off the southern tip of the island. Lands within this unit include approximately 2,106 ac (853 ha; 13 percent) in State ownership, 11,810 ac (4,783 ha; 74 percent) in private/other ownership, and 2,046 ac (824 ha; 13 percent) that are uncategorized. General land use within this unit includes private research and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit GA–6 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location serves as one of five units in Georgia that supports high concentrations of rufa red knots throughout the entire nonbreeding season. Additionally, the location includes remote boat-only access and has an undeveloped character that provides protection from intensive human uses. Approximately 1,321 ac (535 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 3,148 ac (1,274 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–6 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above).

*Unit GA–7: Blackbeard Island Beach*

Unit GA–7 consists of 6,321 ac (2,558 ha) of Blackbeard Island, a barrier island off the coast in McIntosh County, Georgia. The unit boundary begins at the Sapelo Sound shoreline of Blackbeard Island and extends southwest to the Cabretta Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the Sapelo Sound entrance off the northern tip of the island and the northeastern side of Cabretta Inlet's navigable channel. Lands within this unit include approximately 4,954 ac (2,006 ha; 78 percent) in Federal ownership, 80 ac (32 ha; 2 percent) in State ownership, and 1,287 ac (519 ha; 20 percent) that are uncategorized. General land use within this unit includes wildlife management as part of the Service's Blackbeard Island NWR and outdoor recreational

use (*e.g.,* beachgoing, boating, fishing, and birdwatching).

Unit GA–7 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This unit also includes remote boat-only access and has an undeveloped character that provides protection from intensive human uses. Approximately 517 ac (209 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 1,400 ac (567 ha) overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–7 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2011 Savannah Coastal NWR Complex Comprehensive Conservation Plan (Service 2011, entire).

*Unit GA–8: Sapelo Island Beach*

Unit GA–8 consists of 2,482 ac (845 ha) of Sapelo Island, a barrier island off the coast in McIntosh County, Georgia. The unit boundary begins at the Cabretta Inlet shoreline of Sapelo Island and extends southwest to the Doboy Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Cabretta Inlet's navigable channel. The lands within this unit are State-owned and comprise the Sapelo Island WMA and Sapelo Island NERR. General land use within this unit includes wildlife and coastal resource management and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit GA–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location serves as one of five units in Georgia that supports high concentrations of rufa red knots throughout the entire nonbreeding season, and is also important due to its low-level development, remote boat-only access, and protection from intensive human uses. Approximately 167 ac (68 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 282 ac (114 ha) overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–8 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands in this unit are managed under the GDNR State Wildlife Action Plan and Sapelo Island NERR Management Plan (GDNR 2015, entire; Sapelo Island NERR 2008, entire).

*Unit GA–9: Wolf Island, Egg Island, Little Egg Island, and Little Egg Island Bar*

Unit GA–9 consists of 5,308 ac (2,148 ha) of Wolf, Egg, and Little Egg Islands and Little Egg Island Bar, islands at the mouth of the Altamaha River in McIntosh County, Georgia. The unit boundary begins at the South River shoreline of Wolf Island and extends south to the southern side of Altamaha Sound. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the entrance to Altamaha Sound and Beacon Creek. Lands within this unit include approximately 2,975 ac (1,204 ha; 56 percent) in Federal ownership, 240 ac (97 ha; 5 percent) in State ownership, and 2,093 ac (847 ha; 39 percent) that are uncategorized. General land use within this unit includes wildlife management and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, and birdwatching). Federal land use includes management of both Wolf and Egg Islands as part of Wolf Island NWR. Additionally, Wolf Island is a Class I designated wilderness area.

Unit GA–9 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location serves as one of five units in Georgia that supports high concentrations of rufa red knots throughout the entire nonbreeding season, and is also important due to its low-level development, remote boat-only access, and protection from intensive human uses. Approximately 893 ac (361 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit GA–9 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* walking/running through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the 2011 Savannah Coastal NWR Complex Comprehensive Conservation Plan (Service 2011, entire), and State lands are managed under the GDNR State Wildlife Action Plan (GDNR 2015, entire).

*Unit GA–10: Little St. Simon's Island Beach*

Unit GA–10 consists of 9,053 ac (3,664 ha) of Little St. Simon's Island, a barrier island off the coast in Glynn County, Georgia. The unit boundary begins at the Altamaha Sound shoreline of Little St. Simon's Island and extends south to the Hampton River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the Altamaha Sound off the northeastern tip of the island, Mosquito Creek, and the northern side of Hampton River Inlet's navigable channel. Lands within this unit include approximately 113 ac (46 ha; 1 percent) in State ownership, 7,462 ac (3,022 ha; 83 percent) in private/other ownership, and 1,479 ac (596 ha; 16 percent) that are uncategorized. General land use within this unit includes ecotourism and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, birdwatching).

Unit GA–10 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location serves as one of five units in Georgia that supports high concentrations of rufa red knots throughout the entire nonbreeding season (spring, fall, and winter), and is also important due to its low-level development, remote boat-only access, and protection from intensive human uses. Approximately 2,422 ac (980 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit GA–10 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). State lands in this unit are managed under the GDNR State Wildlife Action Plan (GDNR 2015, entire). Private lands in this unit are managed under the Little St. Simon's Island Ecological Management Program and TNC (Sterling 2020, pers. comm.).

*Unit GA–11: Sea and St. Simon's Island Beaches*

Unit GA–11 consists of 4,033 ac (1,632 ha) of all of Sea Island and a portion of St. Simon's Island, barrier islands off the coast in Glynn County, Georgia. The unit boundary begins at the Hampton River shoreline of Sea Island and extends southwest to the St. Simon's Sound shoreline of St. Simon's Island. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Gould's Inlet. Lands within this unit include approximately 4 ac (2 ha; less than 1 percent) in State ownership, 3,448 ac (1,395 ha; 85 percent) in private/other ownership, and 581 ac (235 ha; 14 percent) that are uncategorized. General land use within this unit includes residential development, tourism, and outdoor recreational use (*e.g.,* beachgoing, boating, and fishing).

Unit GA–11 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 627 ac (254 ha) unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit GA–11 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and limiting shoreline stabilization project construction windows (*e.g.,* outside of rufa red knot migration windows) (see Special Management Considerations or Protection, above).

*Unit GA–12: Jekyll Island Beach*

Unit GA–12 consists of 6,287 ac (2,544 ha) of Jekyll Island, a barrier island off the coast in Glynn County, Georgia. The unit boundary begins at the St. Simon's Sound shoreline of Jekyll Island and extends south to St. Andrew Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely

vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southern side of St. Simon's Sound off the northern tip of the island. Lands within this unit include approximately 5,944 ac (2,406 ha; 94 percent) in State ownership, which includes Jekyll Island State Park, and 343 ac (139 ha; 6 percent) that are uncategorized. General land use within this unit includes tourism and outdoor recreational use (*e.g.,* beachgoing, fishing, wildlife viewing).

Unit GA–12 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat in Georgia and the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 144 ac (58 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit GA–12 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* off leash dogs, walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to uncontrolled recreational access, erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) and limiting shoreline stabilization project construction windows (*e.g.,* outside of rufa red knot migration windows) (see Special Management Considerations or Protection, above). State lands within this unit are managed under the 2011 Jekyll Island Conservation Plan and GDNR State Wildlife Action Plan (Jekyll Island Authority 2011, entire; GDNR 2015, entire).

*Unit GA–13: Little Cumberland and Cumberland Island Beaches*

Unit GA–13 consists of 28,136 ac (11,386 ha) of Little Cumberland Island and Cumberland Island, a barrier island complex off the coast in Camden County, Georgia. The unit boundary begins at the St. Andrew Sound shoreline of Little Cumberland Island and extends west across the Cumberland River and marsh to the East River and continues south to the St. Mary's River shoreline of Cumberland Island. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with St. Andrew Sound off the northern tip of Little Cumberland Island and Christmas Creek Inlet between Little Cumberland and Cumberland Islands. Lands within this unit include approximately 23,367 ac (9,464 ha; 83 percent) in Federal ownership, 1,685 ac (682 ha; 6 percent) in State ownership, and 3,085 ac (1,241 ha; 11 percent) that are uncategorized. General land use within this unit includes tourism and outdoor recreational use (*e.g.,* beachgoing, boating, fishing, birdwatching). Federal land use includes management of the majority of Cumberland Island as the Cumberland Island National Seashore. Additionally, portions of Cumberland Island are designated wilderness area.

Unit GA–13 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the Southeastern U.S. portion of the subspecies range for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location serves as one of five units in Georgia that supports high concentrations of rufa red knots throughout the entire nonbreeding season, and is also important due to its low-level development, remote boat-only access, and protection from intensive human uses. Approximately 4,761 ac (1,927 ha) of this unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 2,004 ac (811 ha) of this unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit GA–13 include: (1) Disturbance of foraging and roosting red knots by humans and human activities (*e.g.,* walking/running/biking through or too close to flocks of red knots, powered boats); (2) depredation by native and nonnative predators; (3) modification or loss of habitat or both due to erosion and sea level rise; and (4) disturbance associated with response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating red knots (*e.g.,* managing recreational access to key rufa red knot foraging and roosting habitat during migration through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). Federal lands in this unit are managed under the NPS's Cumberland Island National Seashore Foundation Document (NPS 2014b, entire).

*Unit FL–1: Nassau Sound-Fort George Sound-Fort George Inlet Complex*

Unit FL–1 consists of 4,324 ac (6,742 ha) of beach, inlet, and intertidal sandflats in Nassau and Duval Counties, Florida, from the north shore of Nassau Sound in Nassau County south to the north shore of the St. Johns River at Huguenot Memorial Park in Duval County. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. The majority of this unit is within the Talbot Islands State Parks Complex and Huguenot Memorial Park, which is a Federal and State-owned parcel leased to the City of Jacksonville. Lands within this unit include approximately 996 ac (404 ha; 23 percent) in Federal ownership, 522 ac (211 ha; 12 percent) in State ownership, 27 ac (11 ha; less than 1 percent) in private/other ownership, and 2,779 ac (6,116 ha; 64 percent) that are uncategorized. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter and spring migration periods, serving as an

important northbound and southbound stopover site. Approximately 2,381 ac (963 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 0.9 ac (0.4 ha) of the unit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Unit FL–1 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, hiking, and wildlife viewing. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating rufa red knots, such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) (see Special Management Considerations or Protection, above). The City of Jacksonville at Huguenot Memorial Park has a shorebird management plan that includes mandatory and volunteer conservation measures intended to minimize impacts to wintering and migrating aggregations of rufa red knots and their habitat (England-Thims and Miller, Inc. 2008, pp. 44–45). The Talbot Islands State Parks complex implements conservation measures intended to minimize impacts to wintering and migrating aggregations of shorebirds and their habitat, including rufa red knots (Florida Department of Environmental Protection (FDEP) 2008a, pp. 48–56 and 64–66).

*Unit FL–2: Ponce Inlet Complex*

Unit FL–2 consists of 19,683 ac (7,965 ha) of beach, inlet, and intertidal sandflats in Volusia and Brevard Counties, Florida, from approximately Ocean Edge Drive in Ormond Beach south to the south end of Merritt Island NWR along the Atlantic Ocean. This unit includes Smyrna Dunes State Park and Merritt Island NWR. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 16,660 ac (6,742 ha; 85 percent) in Federal ownership, 3,005 ac (1,216 ha; 15 percent) in State ownership, and 18 ac (7 ha; less than 1 percent) that are uncategorized. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the Southeastern U.S. portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 298 ac (120 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), 1,626 ac (658 ha) of the unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 210 ac (85 ha) of the unit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Unit FL–2 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, hiking, and wildlife viewing. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to wintering and migrating rufa red knots, such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and using best management practices during beach restoration activities to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). Merritt Island NWR lands in this unit are managed under the 2008 Merritt Island NWR Comprehensive Conservation Plan (Service 2008a, entire). Volusia County has an HCP for nesting sea turtles and wintering piping plovers, and implementation of this plan provides some protection to wintering and migrating rufa red knots and to beach habitat (Volusia County Environmental Management 2008, pp. 23, 109–110, 122, 125, 141, 156–157, 160–161, 163, 174–180).

*Unit FL–3: Merritt Island National Wildlife Refuge Impoundments*

Unit FL–3 consists of 6,947 ac (2,811 ha) of managed impoundment and intertidal mudflats in Brevard County, Florida, entirely within Merritt Island NWR (Federal ownership). The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. General land use within this unit includes recreational use including fishing, hunting, and wildlife viewing.

Unit FL–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the Southeastern U.S. portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 646 ac (261 ha) of the unit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Unit FL–3 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, hiking, and wildlife viewing. Special management considerations or protection measures to reduce or alleviate the threats may include maximizing rufa red knot habitat with impoundment management particularly during critical migratory periods (see Special Management Considerations or Protection, above). All lands within this unit are managed under the 2008 Merritt Island NWR Comprehensive Conservation Plan (Service 2008a, entire).

*Unit FL–4: Cape Romano and Marco Island*

Unit FL–4 consists of two subunits comprising 26,629 ac (10,776 ha) in Collier County, Florida. This unit consists of Federal (Ten Thousand Islands NWR), State, and private landowners. This unit partially overlaps

with occupied habitat and designated critical habitat for the federally threatened piping plover, loggerhead sea turtle, and West Indian manatee.

*Subunit FL–4A: Cape Romano Complex*

Subunit FL–4A consists of 26,213 ac (10,608 ha) of beach and intertidal sandflats in Collier County, Florida, in the wetland complex south of Marco Island and the community of Goodland. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 13,138 ac (5,321 ha; 50 percent) in Federal ownership, 12,605 ac (5,105 ha; 48 percent) in State ownership, and 470 ac (182 ha; 2 percent) that are uncategorized. Federal ownership includes Ten Thousand Islands NWR, and State ownership includes Rookery Bay NERR. General land use within this subunit includes recreational use (*e.g.,* fishing, crabbing, and boating).

Subunit FL–4A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast U.S. portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The subspecies also resides at this location year round, which indicates use by juveniles. Approximately 2,673 ac (1,082 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 14,668 ac (5,936 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Subunit FL–4A include loss of habitat due to sea level rise, disturbance from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and identifying restoration measures to minimize beach loss (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under Ten Thousand Islands NWR (Service 2000, entire). State lands include Rookery Bay NERR, which has shorebirds including rufa red knots as a target for their research, monitoring, and management activities (Rookery Bay NERR 2014, entire).

*Subunit FL–4B: Marco Island*

Subunit FL–4B consists of 416 ac (168 ha) of beach, inlet, and intertidal sandflats in Collier County, Florida, from the south side of the inlet north of Marco Island south along the Gulf of Mexico approximately 4 mi (6.5 km). The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 408 ac (165 ha; 98 percent) in State ownership and 8 ac (3 ha; 2 percent) in private/other ownership. The majority of lands within this subunit are the Rookery Bay NERR. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–4B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 384 ac (155 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2021), and 372 ac (151 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Subunit FL–4B include loss of habitat due to sea level rise, disturbance from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss (see Special Management Considerations or Protection, above). State lands within this subunit are managed under the Rookery Bay NERR, which has shorebirds including rufa red knots as a target for their research, monitoring, and management activities (Rookery Bay NERR 2014, entire).

*Unit FL–5: Marco Bay Complex*

Unit FL–5 consists of 3,589 ac (1,453 ha) of beach, inlet, and intertidal sandflats in Collier County, Florida, from the north side of the inlet north of Marco Island north along the Gulf of Mexico approximately 3.7 mi (6 km) and inclusive of the wetland complex inland to the east side of Rookery Bay. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 3,531 ac (1,429 ha; 98 percent) in State ownership and 58 ac (24 ha; 2 percent) in private/other ownership. The majority of lands within this unit are within the Rookery Bay NERR. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–5 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build

energy sources for migration. Approximately 77 ac (31 ha) of the unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 1,956 ac (791 ha) of the unit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Unit FL–5 include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss (see Special Management Considerations or Protection, above). State lands within this unit are managed under the Rookery Bay NERR, which has shorebirds including rufa red knots as a target for their research, monitoring, and management activities (Rookery Bay NERR 2014, entire).

*Unit FL–6: Cocohatchee Inlet Complex and Barefoot Beach*

Unit FL–6 consists of two subunits comprising 48 ac (20 ha) in Collier County, Florida. This unit consists of Delnor-Wiggins Pass State Park and private landowners. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened loggerhead sea turtle.

*Subunit FL–6A: Cocohatchee Inlet Complex*

Subunit FL–6A consists of 9 ac (4 ha) of beach, inlet, and intertidal sandflats in Collier County, Florida, from the south side of the Cocohatchee Inlet south along the Gulf of Mexico approximately 3,281 ft (1 km). The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely under State ownership under Delnor-Wiggins Pass State Park. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–6A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 4 ac (1 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Subunit FL–6A include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). State lands within this subunit are managed under the Delnor-Wiggins Pass State Park Unit Management Plan (FDEP 2009, entire).

*Subunit FL–6B: Barefoot Beach*

Subunit FL–6B consists of 39 ac (16 ha) of beach, inlet, and intertidal sandflats in Collier County, Florida, from the north side of the Cocohatchee Inlet north along the Gulf of Mexico approximately 3.1 mi (5 km). The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 18 ac (7 ha; 46 percent) in State ownership and 21 ac (9 ha; 54 percent) in private/other ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–6B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 20 ac (8 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Subunit FL–6B include loss of habitat due to sea level rise, disturbance to foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–7: Lovers Key and Estero Island*

Unit FL–7 consists of two subunits comprising 175 ac (70 ha) in Lee County, Florida. This unit consists of portions of Lovers Key State Park and Estero Island. This unit partially overlaps with occupied habitat and designated critical habitat for the

federally threatened piping plover and West Indian manatee.

*Subunit FL–7A: Lovers Key*

Subunit FL–7A consist of 4 ac (1 ha) of beach, inlet, and intertidal sandflats in Lee County, Florida, at the north point of Lovers Key. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Land within this subunit is entirely in State ownership under management of Lovers Key State Park. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–7A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 2.5 ac (1 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Subunit FL–7A include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). State lands within this subunit are managed under the Lovers Key State Park Unit Management Plan (FDEP 2005, entire).

*Subunit FL–7B: Estero Island*

Subunit FL–7B consist of 171 ac (69 ha) of beach, inlet, and intertidal sandflats in Lee County, Florida, from Key West Court on Fort Myers Beach south along the Gulf of Mexico to the southern point of the island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–7B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 72 ac (29 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 140 ac (57 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977).

Threats identified within Subunit FL–7B include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–8: Bunche Beach*

Unit FL–8 consists of 334 ac (135 ha) of beach, inlet, and intertidal sandflats in Lee County, Florida, in San Carlos Bay south of the Sanibel Causeway in Fort Myers. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 23 ac (9 ha; 7 percent) in Federal ownership, 264 ac (107 ha; 79 percent) in State ownership, and 47 ac (19 ha; 14 percent) in private/other ownership. Federal ownership includes Matlacha Pass NWR and State ownership includes Bunche Beach Preserve. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–8 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 328 ac (133 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 278 ac (112 ha) of the unit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 27840, September 22, 1977).

Threats identified within Unit FL–8 include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to

reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration measures to minimize beach loss (see Special Management Considerations or Protection, above). Federal and State lands within this unit are managed under the Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWR's Comprehensive Conservation Plan (Service 2010b, entire). County lands are managed under the Lee County San Carlos Bay Bunche Beach Preserve Land Management Plan (Lee County 2013, entire).

*Unit FL–9: Sanibel Island Complex*

Unit FL–9 consists of two subunits comprising 3,759 ac (1,521 ha) in Lee County, Florida. This unit consists of Federal lands that are part of the J.N. ''Ding'' Darling NWR and State lands of Sanibel Island. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened loggerhead sea turtle and West Indian manatee, and the federally endangered aboriginal prickly-apple.

*Subunit FL–9A: J.N. ''Ding'' Darling National Wildlife Refuge*

Subunit FL–9A consists of 3,451 ac (1,397 ha) of beach, inlet, intertidal sandflats, and managed impoundments in Lee County, on Sanibel Island, Florida. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in Federal ownership under J.N. ''Ding'' Darling NWR. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and wildlife viewing).

Subunit FL–9A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 11 ac (4 ha) of the subunit overlap with designated critical habitat for the federally endangered aboriginal prickly-apple (81 FR 3866, January 22, 2016), and 2,182 ac (883 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 27840, September 22, 1977).

Threats identified within Subunit FL–9A include loss of habitat due to sea level rise, disturbance of foraging and roosting rufa red knots from human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing and wildlife viewing. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by maximizing rufa red knot habitat with impoundment management particularly during winter and migratory periods (see Special Management Considerations or Protection, above). Federal lands within this subunit are managed under the J.N. ''Ding'' Darling NWR Comprehensive Conservation Plan (Service 2010c, entire).

*Subunit FL–9B: Sanibel Island*

Subunit FL–9B consists of 307 ac (124 ha) of beach, inlet, and intertidal sandflats in Lee County, Florida, on the Gulf of Mexico shoreline on Sanibel Island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–9B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 90 ac (37 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756; July 10, 2014), 265 ac (107 ha) of the subunit overlap with designated critical habitat for the federally threatened West Indian manatee (42 FR 47840, September 22, 1977, and 49 ac (20 ha) of the subunit overlap with designated critical habitat for the federally endangered aboriginal prickly-apple (81 FR 3866, January 22, 2016).

Threats identified within Subunit FL–9B include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–10: Don Pedro Complex*

Unit FL–10 consists of two subunits comprising 158 ac (64 ha) in Charlotte County, Florida. This unit consists of State lands, a portion of which are part of the Don Pedro Island State Park and Stump Pass Beach State Park. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened loggerhead sea turtle and the federally endangered aboriginal prickly-apple.

*Subunit FL–10A: Don Pedro*

Subunit FL–10A consists of 147 ac (60 ha) of beach, inlet, and intertidal sandflats in Charlotte County, Florida, on the Gulf of Mexico shoreline on Don Pedro Island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within

this subunit are entirely in State ownership, a portion of which includes Don Pedro Island State Park. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–10A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 89 ac (36 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Subunit FL–10A include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). State lands within this subunit are managed under the Don Pedro Island State Park Unit Management Plan (FDEP 2013a, entire).

*Subunit FL–10B: Stump Pass Beach State Park*

Subunit FL–10B consists of 11 ac (4 ha) of beach, inlet, and intertidal sandflats in Charlotte County, Florida, on the Gulf of Mexico at the southern point of Manasota Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership under Stump Pass Beach State Park. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–10B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 6 ac (2 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 5 ac (2 ha) of the subunit overlap with designated critical habitat for the federally endangered aboriginal prickly-apple (81 FR 3866, January 22, 2016).

Threats identified within Subunit FL–10B include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). State lands within this subunit are managed under the Stump Pass Beach State Park Unit Management Plan (FDEP 2013b, entire).

*Unit FL–11: Siesta Key*

Unit FL–11 consists of 53 ac (21 ha) of beach, inlet, and intertidal sandflats in Sarasota County, Florida, on the Gulf of Mexico shoreline on Siesta Key, Florida, from Avenida Messina (road) south to Avenida del Mare. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–11 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 24 ac (10 ha) of the unit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014).

Threats identified within Unit FL–11 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–12: Lido-Longboat Keys Complex*

Unit FL–12 consists of two subunits comprising 450 ac (182 ha) in Sarasota County, Florida. This unit consists of

State lands. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened loggerhead sea turtle and the federally endangered aboriginal prickly-apple.

*Subunit FL–12A: Lido Key*

Subunit FL–12A consists of 81 ac (33 ha) of beach, inlet, and intertidal sandflats in Sarasota County, Florida, on the Gulf of Mexico shoreline on Lido Key, Florida. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–12A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Subunit FL–12A include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Subunit FL–12B: Longboat Key*

Subunit FL–12B consists of 369 ac (149 ha) of beach, inlet, and intertidal sandflats in Sarasota County, Florida, on the Gulf of Mexico shoreline on Longboat Key, Florida. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–12B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 233 ac (94 ha) of the subunit overlap with designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 12 ac (5 ha) of the subunit overlap with designated critical habitat for the federally endangered aboriginal prickly-apple.

Threats identified within Subunit FL–12B include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–13: North Anna Maria Island*

Unit FL–13 consists of 945 ac (383 ha) of beach, inlet, and intertidal sandflats in Manatee County, Florida, on the Gulf of Mexico shoreline from the north point of Anna Maria Island, Florida, south to Cortez Road West. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 56 ac (23 ha; 6 percent) in Federal ownership and 889 ac (360 ha; 94 percent) in State ownership. Federal ownership consists of Passage Key NWR. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–13 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Unit FL–13 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). Federal lands within

this unit are managed by Passage Key NWR, which is part of the Tampa Bay Refuges Comprehensive Conservation Plan (Service 2010d, entire).

*Unit FL–14: Egmont Key*

Unit FL–14 consists of 15 ac (6 ha) of beach and intertidal sandflats in Manatee County, Florida, on the south end of Egmont Key at the mouth of Tampa Bay, Florida. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely under Federal ownership under management of Egmont Key NWR. General land use within this unit is classified as a wildlife sanctuary (and no pedestrian use).

Unit FL–14 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The subspecies also resides at this location year round, which indicates use by juveniles. Approximately 14 ac (5.5 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit FL–14 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to unauthorized access to closed areas. Special management considerations or protection measures to reduce or alleviate the threats may include supporting and maximizing enforcement of closed areas and by identifying restoration and protection measures to minimize beach loss using best management practices during beach restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). Federal lands within this unit are managed by the Egmont Key NWR, which is part of the Tampa Bay Refuges Comprehensive Conservation Plan (Service 2010d, entire).

*Unit FL–15: Fort De Soto Complex*

Unit FL–15 consists of three subunits comprising 856 ac (346 ha) in Pinellas County, Florida. This unit consists of State lands and private/other ownership. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover.

*Subunit FL–15A: Fort De Soto County Park*

Subunit FL–15A consists of 427 ac (173 ha) of beach, inlet, and intertidal sandflats in Pinellas County, Florida, in Fort De Soto County Park from North Beach south along the Gulf of Mexico to the Fort De Soto Fishing Pier at the mouth of Tampa Bay. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in county ownership (which is captured under the private/other ownership category). General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–15A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Finally, this is also an important location that supports juveniles year round. Approximately 244 ac (99 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–15A include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), shoreline hardening, harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment/restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Subunit FL–15B: Shell Key Preserve*

Subunit FL–15B consists of 322 ac (130 ha) of beach, inlet, and intertidal sandflats in Pinellas County, Florida, on Shell Key Preserve. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State/county ownership and management. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–15B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Finally, this is also an important location that supports juveniles year round. Approximately 252 ac (102 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–15B include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-

related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach restoration to limit disturbance and impacts to rufa red knots and their food resources (see Special Management Considerations or Protection, above).

*Subunit FL–15C: Saint Petersburg Beach*

Subunit FL–15C consists of 107 ac (43 ha) of beach, inlet, and intertidal sandflats in Pinellas County, Florida, on Saint Petersburg Beach from 46th Avenue south to 1st Avenue inclusive of the inlet. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–15C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site.

Threats identified within Subunit FL–15C include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment or restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–16: Indian Shores/Redington Beach*

Unit FL–16 consists of 196 ac (79 ha) of beach, inlet, and intertidal sandflats in Pinellas County, Florida, from the Indian Shores Florida Coastal Range Monument R–086 at the north end of the unit to the Redington Beach Long Pier at the south end of the unit. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–16 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Unit FL–16 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–17: Belleair Beach*

Unit FL–17 consists of 123 ac (50 ha) of beach, inlet, and intertidal sandflats in Pinellas County, Florida, on Belleair Beach from the north point (Sand Key) south to 19th Street. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–17 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration.

Threats identified within Unit FL–17 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above).

*Unit FL–18: Saint Joseph Sound Complex*

Unit FL–18 consists of three subunits comprising 888 ac (360 ha) in Pinellas County, Florida. This unit consists of State lands. This unit partially overlaps with occupied habitat and designated

critical habitat for the federally threatened piping plover.

*Subunit FL–18A: Caladesi Island*

Subunit FL–18A consists of a total of 259 ac (105 ha) of beach and intertidal sandflats in Pinellas County, Florida. This subunit includes shoreline from the southern boundary of Caladesi Island State Park to Dunedin Pass. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–18A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The entire subunit overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–18A include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment or restoration to limit disturbance and impacts to rufa red knots and their food resources) (see Special Management Considerations or Protection, above). The State lands within this subunit are managed under the Caladesi Island State Park Unit Management Plan (FDEP 2007a, entire).

*Subunit FL–18B: Honeymoon Island*

Subunit FL–18B consists of a total of 294 ac (119 ha) of beach and intertidal sandflats in Pinellas County, Florida. This subunit includes the Gulf of Mexico shoreline in Honeymoon Island State Park from Dunedin Pass to Hurricane Pass. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–18B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 127 ac (51 ha) of this subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–18B include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment or restoration to limit disturbance and impacts to rufa red knots and their food resources) (see Special Management Considerations or Protection, above). The State lands within this subunit are managed under the Honeymoon Island State Park Unit Management Plan (FDEP 2007b, entire).

*Subunit FL–18C: Three Rooker Bar*

Subunit FL–18C consists of a total of 335 ac (136 ha) of beach and intertidal sandflats in Pinellas County, Florida, on Three Rooker Island. Three Rooker Island includes shoreline from Hurricane Pass to the northern tip of Three Rooker Island and is part of the Three Rooker Bar Wildlife Management Area. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely State ownership. General land use within this subunit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Subunit FL–18C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 94 ac (38 ha) of this subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–18C include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment or restoration to limit disturbance and impacts to rufa red

knots and their food resources (see Special Management Considerations or Protection, above). The State lands within this subunit are managed under the Anclote Key Preserve State Park Unit Management Plan (FDEP 2014, entire).

*Unit FL–19: Anclote Key*

Unit FL–19 consists of 1,547 ac (626 ha) of beach and intertidal sandflats in Pasco County, Florida, on Anclote Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership under Anclote Key Preserve State Park. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–19 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Finally, this is also an important location that supports juveniles year round. Approximately 351 ac (142 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit FL–19 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). The State lands within this unit are managed under the Anclote Key Preserve State Park Unit Management Plan (FDEP 2014, entire).

*Unit FL–20: Cedar Keys Complex*

Unit FL–20 consists of 35,626 ac (14,417 ha) of beach and intertidal sandflats in Levy County, Florida, on Cedar Key and the complex of sandbars and flats seaward. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 2,498 ac (1,012 ha; 7 percent) in Federal ownership, 7,792 ac (3,153 ha; 22 percent) in State ownership, 5,928 ac (2,293 ha; 17 percent) in private/other ownership, and 19,407 ac (7,959 ha; 54 percent) that are uncategorized. Federal ownership consists of Cedar Keys NWR, and State ownership includes Waccasassa Preserve State Park. General land use within this unit includes recreational use (*e.g.,* walking/running, fishing, and surfing).

Unit FL–20 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Finally, this is also an important location that supports juveniles year round. Approximately 5,658 ac (2,290 ha) of thus unit overlap with designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Unit FL–20 include loss of habitat due to sea level rise, human-caused or natural disasters (*e.g.,* oil spills, hurricanes), harmful algal blooms including red tide, and disturbance of foraging and roosting rufa red knots by humans and human activities, including but not limited to fishing, walking, and other beach-related activities. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing disturbance to rufa red knots such as managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during winter and migratory periods (through restrictions on timing, locations, and types of activities) and by identifying restoration and protection measures to minimize beach loss using best management practices during beach replenishment or restoration to limit disturbance and impacts to rufa red knots and their food resources (*i.e.,* beach invertebrates) (see Special Management Considerations or Protection, above). Federal lands within this unit are managed under the Lower Suwannee and Cedar Keys NWR's Comprehensive Conservation Plan (Service 2001, entire), and State lands are managed under the Waccasassa Bay Preserve State Park Unit Management Plan (FDEP 2019, entire).

*Unit FL–21: St. Marks National Wildlife Refuge*

Unit FL–21 consists of 2,074 ac (839 ha) of beach, inlets, shoals, intertidal sand and mud flats and impoundments within the St. Marks NWR, Wakulla County, Florida. The unit extends from the eastern boundary of Big Cove inlet west to the inlet west of Lighthouse Pool and includes areas to the north up to 1.25 mi (2 km) into East River Pool. This unit includes from the base of the berm road to the lowest water level and areas up to 4 in (10 cm) of water depth within Lighthouse Pool, Picnic Pond, Tower Pond, Headquarters Pond, Mounds Pools 1 and 2, Stoney Bayou Pool 1, and within the open water and emergent marsh portion of East River Pool and all shoals and shoreline habitats within Sand Cove and Minnie Cove. Areas to the east of Lighthouse Road between Lighthouse Pool and Picnic Pond, and areas to the east of Picnic and Tower Ponds that have the physical or biological features, are also included. This unit includes lands from MLLW to the landward limit of the physical or biological features and any ephemeral pools, or natural brackish ponds and any emergent sand shoals in Apalachee Bay appearing near shore within 3 mi (4.8 km) of the critical habitat boundary found along the southernmost portion of Lighthouse Road and Lighthouse Levee Trail that parallels Apalachee Bay. Lands within this unit are entirely in Federal ownership. General land use within this unit includes management of impoundments for waterfowl and shorebirds and passive recreational uses (*e.g.,* birdwatching).

Unit FL–21 is occupied by the species and contains one or more of the

physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site (although the subspecies also resides at this location year round, which indicates use by juveniles). This unit is located adjacent (within 1,000 ft (305 m)) to critical habitat units for the federally threatened frosted flatwoods salamander (74 FR 6700, February 10, 2009), noting that projects within the area should consider impacts for both rufa red knot and flatwoods salamander due to close proximity. There is no overlap with designated critical habitat for any listed species.

Threats identified within Unit FL–21 include: (1) Loss of bay habitat due to sea level rise, (2) disturbances of foraging and roosting rufa red knots by humans and human activities (*e.g.,* vehicle movements along the impoundment roads, beach goers along the bay shorelines), and (3) mammalian and avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include water level management within impoundments to find a multi-species balance to maximize seasonal use by rufa red knots, reduction of human disturbances on a seasonal basis, and predator control and management such as removing perches used by avian predators in proximity to impoundments and the shoreline (see Special Management Considerations or Protection, above). Federal lands are managed under St. Marks NWR Comprehensive Conservation Plan (Service 2006b, entire).

*Unit FL–22: Eastern Franklin County Complex*

Unit FL–22 consists of three subunits comprising 1,429 ac (578 ha) in Wakulla and Franklin Counties, Florida. This unit consists of beaches within the areas of Apalachee Bay, Dickson Bay, Ochlockonee Bay, and Alligator Point. This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover. This unit consists of State lands and private/other ownership.

*Subunit FL–22A: Mashes Sands*

Subunit FL–22A consists of 262 ac (106 ha) of beach, inlet, shoals, and intertidal sandflats at Mashes Sands Park beach and the inlet and shoals of Apalachee Bay, Dickson Bay, and Ochlockonee Bay in Wakulla County, Florida, from near Ochlockonee Point in Ochlockonee Bay north towards Dickson Bay. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. This area includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit are all in State ownership but leased and managed by Wakulla County. General land use within this subunit includes recreational activities (*e.g.,* walking, dog walking, and kayaking).

Subunit FL–22A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Rufa red knots also reside at this location at lower concentrations during the fall migration period and winter period.

Threats identified within Subunit FL–22A include: (1) Loss of habitat and prey resources associated with sea level rise and shoreline hardening, (2) avian and mammalian predation, and (3) disturbance of rufa red knots from both humans and pets (dogs). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting human use (keeping dogs leashed, including those walking dogs especially during spring migration), and managing placement of kayak, canoe, and boat launches as needed (see Special Management Considerations or Protection, above). The County is currently drafting a management plan for this unit (which is expected to include shorebird protective recommendations (*e.g.,* keeping dogs on leashes)).

*Subunit FL–22B: Bald Point State Park*

Subunit FL–22B consists of 445 ac (180 ha) of Bald Point beaches and shoals in Franklin County, Florida, from a dirt road 0.35 mi (0.56 km) north of Marlin Street to the north near Bald Point, and including shoals within Ochlockonee Bay approximately 0.9 mi (1.4 km) north of Bald Point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. It includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit include approximately 439 ac (178 ha; 99 percent) in State ownership and 6 ac (2 ha; 1 percent) in private/other ownership. General land use within this subunit includes recreational activities (*e.g.,* walking, dog walking, and kayaking).

Subunit FL–22B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This location also supports rufa red knots year round, which indicates it is important for juvenile survival.

Threats identified within Subunit FL–22B include: (1) Loss of habitat and prey resources associated with sea level rise, (2) avian and mammalian predation, and (3) disturbance of roosting and foraging rufa red knots from human activities (*e.g.,* walking, kayak/canoe launch, boaters, and pets (dogs)). Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting human use (*e.g.,* keeping dogs leashed, especially during spring migration) (see Special Management Considerations or Protection, above). State land in this subunit is managed under FDEP's Division of Recreation and Parks, Unit Management Plan (FDEP 2006, entire).

*Subunit FL–22C: Alligator Point*

Subunit FL–22C consists of 722 ac (292 ha) of Alligator Point beaches and John S. Phipps Preserve beaches and shoals in Franklin County, Florida, from 0.07 mi (0.11 km) east of Florida Coastal Range Monument 210 west to the shoals associated with the northwestern end of the point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. It includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit are entirely in private/other ownership (TNC). General land use within this subunit includes recreational activities (*e.g.,* walking, dog walking, kayaking, canoeing, and fishing).

Subunit FL–22C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring

migration period, serving as an important northbound stopover site. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. Approximately 361 ac (146 ha) of the subunit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Subunit FL–22C include: (1) Loss of habitat and prey resources associated with sea level rise, (2) shoreline hardening, (3) avian and mammalian predation, and (4) disturbance of roosting and foraging rufa red knots from human activities (*e.g.,* walking, kayak/canoe launch, boaters, and dogs). The Preserve portion of this subunit is closed to the public, but trespassing is persistent via the intertidal zone, waters access, and fence jumping. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting human use (*e.g.,* keeping dogs on leashes, including those walking dogs especially during spring migration), and potential enforcement of the no trespass rule within the Preserve (violators access via boats, walking via intertidal around a jetty structure, and crossing a fence (see Special Management Considerations or Protection, above). The Preserve lands are managed under the John S. Phipps Preserve Management Plan (Seamon 2013a, entire).

*Unit FL–23: Central Franklin County Complex*

Unit FL–23 consists of seven subunits comprising 4,175 ac (1,689 ha) in Franklin County, Florida. This unit consists of beaches and barrier island areas of St. George Sound shoreline, the Carrabelle River outlet, Boggy Jordan Bayou outlet, Dog Island, and St. George Island. Lands within each subunit are either completely State-owned (five subunits) or private/other owned (two subunits). This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover and loggerhead sea turtle, and the federally endangered Gulf sturgeon.

*Subunit FL–23A: Turkey Point Shoal*

Subunit FL–23A consists of approximately 531 ac (215 ha) of an emergent, isolated shoal within the Gulf of Mexico and St. George Sound, Franklin County, Florida. This subunit includes emergent shoals approximately 1 mi (1.5 km) south of Turkey Point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including any ephemeral pools, lagoons, and emergent sand shoals adjacent to the island or reef. All lands within this subunit are in State ownership. General land use within this subunit includes occasional recreational fishing.

Subunit FL–23A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Habitat at this location also supports rufa red knots year round, indicating it is important for juvenile survival.

Threats identified within Subunit FL–23A include: (1) Loss of shoals and foraging habitat, including prey resources, from sea level rise; (2) disturbance to roosting and foraging rufa red knots from human activities (*i.e.,* recreational fishing, including with boats); and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting human use, especially during spring migration and winter months (see Special Management Considerations or Protection, above).

*Subunit FL–23B: Lanark Reef*

Subunit FL–23B consists of approximately 865 ac (350 ha) of Lanark Reef in the Gulf and St. George Sound, Franklin County, Florida. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including any ephemeral pools, lagoons, and emergent sand shoals within 3 mi (4.8 km) of the island or reef. Lands within this subunit include 805 ac (326 ha) in State ownership and 61 ac (25 ha) in private/other ownership. General land use activity in this subunit should be minimal given the area was purchased strictly for bird protection and is closed to the public; however, there are unauthorized recreational activities occurring (*i.e.,* fishing, kayaking/canoeing, boating, walkers, dog walkers).

Subunit FL–23B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site (although the habitat also supports rufa red knots during the fall migration period at lower numbers). Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The entire subunit overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and approximately 364 ac (147 ha) of the western half of the island overlap designated critical habitat for the federally threatened Gulf sturgeon (*Acipenser oxyrhynchus desotoi*) (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23B include: (1) Loss of the entire island reef, habitat, and prey resources associated with sea level rise; (2) disturbance to roosting and foraging rufa red knots from human activities (*e.g.,* boaters, walkers, dogs); and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include enforcement to minimize human disturbance especially during spring migration and winter months, and predator management (see Special Management Considerations or Protection, above). No specific resources management plan exists for Lanark Reef, although the Audubon does conduct predator management and debris cleanup when staffing and funding allow (Vandeventer 2020, pers. comm.; Korosy and Samuelsen 2020, pers. comm.).

*Subunit FL–23C: East Dog Island*

Subunit FL–23C consists of approximately 771 ac (312 ha) of East Dog Island in Franklin County, Florida, from midway between Florida Coastal Range Monuments 168 and 169 east to the tip of the island and extending around the tip to include St. George Sound shoreline and shoals approximately horizontal to Florida Coastal Range Monument 190. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and

uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, and also includes ephemeral pools, lagoons, natural brackish ponds, and any adjacent or near-shore emergent sand shoals. Lands within this subunit are entirely private/other ownership, which includes the Jeff Lewis Wilderness Preserve (owned by TNC). General land use within this subunit includes recreational use by local landowners and vacationers for beach use (*e.g.,* walking, dog walking, and shell collecting). The Preserve is closed to public access, although there is regular unauthorized use.

Subunit FL–23C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The Gulf of Mexico side of the subunit overlaps 140 ac (57 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 270 ac (109 ha) of the subunit overlap designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23C include: (1) Loss of habitat and prey resources associated with sea level rise, (2) avian predation, and (3) disturbance to roosting and foraging rufa red knots from human disturbance (*e.g.,* boaters, walkers, and dogs). Most of the subunit is closed to the public, although unauthorized use still occurs. Special management considerations or protection measures to reduce or alleviate the threats may include enforcement efforts to minimize rufa red knot disturbance from human activities, especially during spring migration and winter months (see Special Management Considerations or Protection, above). A management plan is being implemented on the Jeff Lewis Wilderness Preserve (Seamon 2013b, entire), a subset of the subunit.

*Subunit FL–23D: West Dog Island*

Subunit FL–23D consists of approximately 751 ac (304 ha) of West Dog Island in Franklin County, Florida. This subunit includes the entirety of West Dog Island from the eastern boundary at the Gulf of Mexico shoreline midway between Florida Coastal Range Monuments 168 and 169 and west 3.1 mi (5 km) to East Pass. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, as well as ephemeral and emergent sand shoals appearing in the near shore. Lands within this subunit are entirely in private/other ownership, which includes the Jeff Lewis Wilderness Preserve, owned by the TNC. General land use within this subunit includes recreational uses by local landowners and vacationers for beach use (*e.g.,* walking, dog walking, and shell collecting). The Preserve is closed to public access although unauthorized use regularly occurs.

Subunit FL–23D is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The Gulf of Mexico side of the subunit overlaps 141 ac (57 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39756, July 10, 2014), and 347 ac (140 ha) of the subunit overlap designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23D include: (1) Loss of habitat and prey resources associated with sea level rise, (2) disturbance of roosting and foraging rufa red knots as a result of unauthorized human activities (*e.g.,* boaters, walkers, dogs), and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include enforcement efforts to minimize rufa red knot disturbance from human activities, especially during spring migration and winter months (see Special Management Considerations or Protection, above). A management plan is being implemented on the Jeff Lewis Wilderness Preserve (Seamon 2013b, entire).

*Subunit FL–23E: McKissack Beach, Carrabelle*

Subunit FL–23E consists of approximately 117 ac (47 ha) of McKissack Beach in Carrabelle and associated shoals in Franklin County, Florida, from 0.18 mi (0.30 km) east of the intersection of U.S. Highway 98 and Cape Street east to the cove that forms the outlet of Boggy Jordan Bayou. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, as well as any ephemeral and emergent sand shoals appearing in the near shore. Lands within this subunit include 114 ac (46 ha) in State ownership via the Florida Trustees of the Internal Improvement Fund (although the City of Carrabelle retains a lease on McKissack Beach and Marsh), and 3 ac (1 ha) in private/other ownership. General land use within this subunit includes passive recreation (*e.g.,* beach walking, leashed dogs).

Subunit FL–23E is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The subunit overlaps 104 ac (42 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 107 ac (43 ha) of the subunit overlap designated critical habitat for the threatened Gulf sturgeon within Apalachicola Bay (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23E include: (1) Loss of habitat and prey resources associated with sea level rise, (2) disturbance to roosting and foraging rufa red knots from human activities (*e.g.,* walking, dogs), and (3) mammalian and avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include enforcement efforts to minimize human disturbance and enforce unleashed dogs, especially during spring migration and winter months, and efforts to control trash that may attract predators in the area (see Special Management Considerations or Protection, above). Management is conducted in accordance with the Florida Resilient Coastline Program's land management plan for McKissack Beach and Marsh (Apalachee Regional Planning Council 2021, entire), which includes a vulnerability assessment and an adaptation plan.

*Subunit FL–23F: East St. George Island State Park*

Subunit FL–23F consists of 978 ac (396 ha) of Dr. Julian G. Bruce St. George Island State Park Beach in Franklin County, Florida, from Florida Coastal Range Monument 105 to the eastern tip of the island at East Pass. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. All lands within this subunit are in State ownership. General land use within this subunit includes passive recreational activities (*e.g.,* beach walking, shell collecting, sunbathing, and fishing from the shoreline).

Subunit FL–23F is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the north Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The entire subunit overlaps designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), the Gulf of Mexico side of the subunit overlaps approximately 485 ac (196 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39856, July 10, 2014), and 426 ac (172 ha) of the subunit overlap designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23F include: (1) Loss of habitat and prey resources associated with sea level rise, (2) disturbance of roosting and foraging rufa red knots from human activities (*e.g.,* fishing, walkers, dogs), and (3) avian and mammalian predation. Special management considerations or protection measures to reduce or alleviate the threats may include posting concentrated areas used by the birds, conducting enforcement efforts to minimize human disturbance (especially during spring migration and winter months), and controlling trash that may attract predators (see Special Management Considerations or Protection, above). State lands are managed under the St. George Island State Park's 2016 Management Plan (FDEP 2016, entire).

*Subunit FL–23G: St. George Island State Park and Bayshore Shoals*

Subunit FL–23G consists of 162 ac (65 ha) of Goose Island and associated shoals within St. George Island State Park in Franklin County, Florida. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical and biological features, including ephemeral pools, lagoons, and any emergent sand shoals adjacent to the island. All lands within this subunit are in State ownership. General land use within this subunit includes recreational activities (*e.g.,* fishermen, oystermen, and kayakers/canoers).

Subunit FL–23G is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. This subunit overlaps 162 ac (65 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 119 ac (48 ha) of designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–23G include: (1) Loss of entire shoal, habitat, and prey resources associated with sea level rise; (2) disturbance to roosting and foraging rufa red knots as a result of human activities (*e.g.,* boaters); and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting human use, especially during spring migration and winter months (see Special Management Considerations or Protection, above). State park lands are managed under the St. George Island State Park Management Plan (FDEP 2016, entire).

*Unit FL–24: St. Vincent National Wildlife Refuge Complex*

Unit FL–24 consists of three subunits comprising 2,212 ac (895 ha) in Franklin and Gulf Counties, Florida. This unit consists of beaches of Apalachicola Bay, St. Vincent Sound, Indian Pass, St. Vincent Island, and Flagg Island. Lands within this unit are Federal (one subunit) and State (two subunits). This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover and loggerhead sea turtle, and the federally endangered Gulf sturgeon.

*Subunit FL–24A: Little St. George Island State Park-West*

Subunit FL–24A consists of 953 ac (386 ha) of Little St. George Island beach and shoals in Franklin County, Florida, from West Pass east to Florida Coastal Range Monument 25 and including bayside beach from West Pass east to the point at the Marshall Dock. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, and includes ephemeral pools, natural brackish ponds, and emergent sand shoals appearing in the near shore of the Gulf or Apalachicola Bay. All lands within this subunit are in State ownership. General land use within this subunit includes recreational activities (*e.g.,* fishermen, oystermen, and kayakers/canoers).

Subunit FL–24A is occupied by the species and contains one or more of the

physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The western tip of the subunit overlaps 82 ac (33 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), the Gulf of Mexico side overlaps 279 ac (113 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39856, July 10, 2014), and approximately 502 ac (203 ha) of the subunit overlap with designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–24A include: (1) Loss of entire inlet spit, habitat, and prey resources associated with sea level rise, (2) disturbance of roosting and foraging rufa red knots resulting from human activities (*e.g.,* boaters), and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include minimizing or restricting boat mooring on the inlet spit, especially during winter months, and removing any unnatural perches to reduce avian predation (see Special Management Considerations or Protection, above). State lands (Little St. George State Park) in this subunit are managed under the Apalachicola Bay Aquatic Preserve Management Plan (FDEP and Apalachicola NERR 2013, entire).

*Subunit FL–24B: St. Vincent National Wildlife Refuge*

Subunit FL–24B consists of 742 ac (300 ha) of St. Vincent NWR beach and shoals in Franklin and Gulf Counties, Florida, from the Refuge boat house at the confluence of St. Vincent Sound and Indian Pass east to 0.60 mi (0.96 km) north of Shell Road. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, including ephemeral pools, natural brackish ponds, and emergent sand shoals appearing in the near shore of the Gulf. Lands within this subunit are all in Federal ownership. General land use within this subunit includes recreational activities (*e.g.,* nearby use by fishermen, beach walkers, and kayakers/canoers).

Subunit FL–24B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important to juvenile survival. Both the eastern and western tip of the subunit overlap a total of 206 ac (83 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), the Gulf of Mexico side of the subunit overlaps 394 ac (159 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39856, July 10, 2014), and approximately 374 ac (152 ha) of the subunit overlap with designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–24B include: (1) Loss of habitat and prey resources associated with sea level rise, (2) disturbance to roosting and foraging rufa red knots from human activities (*e.g.,* fishermen, walkers), and (3) avian and mammalian predation. Special management considerations or protection measures to reduce or alleviate the threats may include posting concentrated areas used by the birds and enforcement efforts to minimize human disturbance, especially during winter months (see Special Management Considerations or Protection, above). Federal lands in this subunit are managed under the St. Vincent NWR Comprehensive Conservation Plan (Service 2006c, entire).

*Subunit FL–24C: Flagg Island Shoals*

Subunit FL–24C consists of 517 ac (209 ha) of the entire ebb-tidal delta referred to as Flagg Island off the southernmost tip of St. Vincent Island (near Oyster Pond outfall) in Franklin County, Florida. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, and emergent sand shoals. All lands within this subunit (which constantly change in size and shape due to the dynamic nature of the area) are in State ownership. General land use within this subunit includes passive recreational activities (*e.g.,* boat mooring, tour guide boats, beach walking, shell collecting, and fishing from the shoreline).

Subunit FL–24C is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The majority of the subunit (487 ac (197 ha)) overlaps designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39856, July 10, 2014), and approximately 476 ac (193 ha) of the subunit overlap designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–24C include: (1) Loss of the shoals habitat and prey resources associated with sea level rise, (2) disturbance to roosting and foraging rufa red knots as a result of human activities (*e.g.,* fishermen, walkers), and (3) avian predation. Special management considerations or protection measures to reduce or alleviate the threats may include posting concentrated areas used by the birds and enforcement efforts to minimize human disturbance, especially during winter months (see Special Management Considerations or Protection, above).

*Unit FL–25: Gulf County Complex*

Unit FL–25 consists of two subunits comprising 1,520 ac (616 ha) in Gulf County, Florida. This unit consists of beaches of Cape San Blas, Money, and Indian Pass beaches, and the southeastern portion of St. Joseph Bay. Lands within this unit are State owned (one subunit) and private/other ownership (one subunit). This unit partially overlaps with occupied habitat and designated critical habitat for the federally threatened piping plover and federally threatened loggerhead sea turtle.

*Subunit FL–25A: Cape San Blas to Indian Pass*

Subunit FL–25A consists of 620 ac (251 ha) of Cape San Blas, Money Bayou, and Indian Pass beaches in Gulf County, Florida, from the southwestern point of Cape San Blas to 0.11 mi (0.18 km) northeast of the Indian Pass Beach Boat Ramp. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, and emergent sand shoals in the near shore. Lands within this subunit include 133 ac (54 ha) in State ownership and 486 ac (197 ha) in private/other ownership. Adjacent Federal lands under Eglin Air Force base jurisdiction were considered and are exempt under section 4(a)(3) of the Act, but the shoal and any emergent shoal formations that appear are considered part of this subunit, starting from the MLLW south and up 0.5 mi (0.81 km) from Eglin Air Force Base lands on the southern-most side of Cape San Blas. General land use within this subunit includes recreational activities (*e.g.,* a boat ramp near Indian Pass, tour guide boats, beach walking, shell collecting, and fishing from the shoreline). Beach driving permits are also issued by Gulf County. Dogs are allowed on the beach, but enforcement of the leash law is a persistent need.

Subunit FL–25A is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival. The western-most tip of the island (Cape San Blas) overlaps with 130 ac (53 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), the Gulf of Mexico side of the subunit overlaps with 345 ac (140 ha) of designated critical habitat for the federally threatened loggerhead sea turtle (79 FR 39856, July 10, 2014), and approximately 326 ac (132 ha) of the subunit overlap designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Subunit FL–25A include: (1) Loss of the habitat and prey resources associated with sea level rise, (2) disturbance of roosting and foraging rufa red knots resulting from human activities (*e.g.,* golf carts, vehicles, fishermen, walkers, and dogs on and off leash), and (3) avian predation. Additionally, sand placement efforts are to occur soon via berms placement, but beach nourishment is possible in the future. Special management considerations or protection measures to reduce or alleviate the threats may include posting concentrated areas used by rufa red knots, reducing the number of beach driving permits issued, and continuing to enforce dog leash laws (see Special Management Considerations or Protection, above).

*Subunit FL–25B: St. Joseph Bay-Eastern Shore*

Subunit FL–25B consists of 827 ac (335 ha) of beaches and shoals within the southeastern portion of St. Joseph Bay in Gulf County, Florida, from 0.09 mi (0.14 km) east of the intersection of County Road 30A and Cape San Blas Road to the west 0.66 mi (1.1 km) and to the north 2.4 mi (3.8 km). This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, lagoons, and emergent sand shoals in the near shore. Lands within this subunit include 761 ac (308 ha) in State ownership and 66 ac (27 ha) in private/other ownership. General land use within this subunit includes recreational activities (*e.g.,* nearby boat ramps, a canoe/kayak launch). Additionally, scalloping and fishing in St. Joseph Bay is popular during the fall season.

Subunit FL–25B is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This subunit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this subunit contains a high concentration of rufa red knots during the winter period on the northern Gulf coast portion of the subspecies range, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This location also contains habitat that supports rufa red knots year round, indicating it is important for juvenile survival.

Threats identified within Subunit FL–25B include: (1) Loss of the habitat and prey resources associated with sea level rise; (2) disturbance of roosting and foraging rufa red knots as a result of human activities during low tides, which is likely the time this area is most used by the rufa red knots; (3) disturbance of foraging rufa red knots from boating and canoeing/kayaking; and (4) avian predation. Special management considerations or protection measures may include reducing human disturbance via educational materials (*e.g.,* post at boat ramps to request that boaters avoid coming near large flocks of birds) (see Special Management Considerations or Protection, above). State lands are managed under the FDEP's oversight of St. Joseph Bay and some adjacent sand shoals and uplands area via the St. Joseph Bay State Buffer Preserve's management plan (FDEP 2008b, entire).

*Unit AL–1: Dauphin Island*

Unit AL–1 consists of 5,164 ac (2,091 ha) in Mobile County, Alabama, which is one of the Mississippi-Alabama barrier islands with the Gulf of Mexico to the south and Mobile Bay to the north. The unit includes all of Dauphin Island from the historic 19th Century Fort Gaines site on the eastern side of the island, continuing approximately 16 mi (26 km) west to the MLLW on the westernmost tip, and all of Little Dauphin Island (which is uninhabited) to MLLW. Lands within this unit include approximately 484 ac (196 ha; 9 percent) in Federal ownership, 848 ac (343 ha; 16 percent) in State ownership, and 3,834 ac (1,552 ha; 74 percent) in private/other ownership. General land use within this unit includes recreational activities (*e.g.,* off-shore and surf fishing, sunbathing, swimming, and walking), the incorporated community of Dauphin Island, the Audubon Bird Sanctuary (164 ac (66 ha)) of woodland, swamp, and beach), the State's recently acquired coastal habitat conservation area on the western end of Dauphin Island, and the Little Dauphin Island unit of Bon Secour NWR.

Unit AL–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods. This location serves as an important northbound and southbound stopover site, providing multiple foraging and roosting habitats

for energy-depleted rufa red knots seeking to replenish their resources during their migration to and from breeding grounds. Approximately 2,381 ac (963 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit AL–1 include: (1) Human disturbance of foraging and roosting rufa red knots from recreational activities (*e.g.,* pets and domestic animals, ORVs, golf carts, powered boats and kayaks, and surf fishing), (2) predation (especially by raptors, red fox, and feral cats), (3) modification or loss of habitat or both due to residential and commercial development, (4) hard and soft beach stabilization efforts (*e.g.,* beach nourishment, fences, dredged material disposal), (5) erosion, including from sea level rise; and (6) human-caused or natural disasters (*e.g.,* oil spills, hurricanes). Special management considerations or protection measures to reduce or alleviate the threats may include managing access to rufa red knot foraging habitat and adjacent upland roosting habitat during migration (through law enforcement presence and through restrictions on timing, locations, and types of activities), sediment management through periodic beach nourishment, and addressing the impacts of potential oil spills through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Federal lands are currently managed by Bon Secour NWR via the Refuge's Comprehensive Conservation Plan (Service 2005, entire). State-owned lands known as Shell Mound Park or Indian Mound Park are managed by Marine Resources Division of the Alabama Department of Conservation and Natural Resources. The recently acquired habitat conservation area by the State on the west end of Dauphin Island will be managed by Mobile County and the Town of Dauphin Island.

*Unit MS–1: Ship Island*

Unit MS–1 consists of 2,452 ac (993 ha) in Harrison County, Mississippi, consisting of emergent lands and intertidal area to MLLW on Ship Island and its adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit is owned entirely by the Federal Government as part of the NPS's Gulf Islands National Seashore. Ship Island was breached by hurricane Camille in 1969, and the breach was significantly widened by hurricane Katrina in 2005; however, the unit is once again one island as a result of restoration work that occurred in 2019 and 2020. General land use within this unit includes limited recreation (*e.g.,* fishing, birding), management for nesting and wintering sea birds in addition to other wildlife species, and tourism associated with the historic Fort Massachusetts, which is frequently visited by people via a commercial ferry service. Portions of the island are closed by NPS to the public during various times of the year to prevent impacts to bird nesting. This island is also remotely located approximately 8 mi (13 km) off shore.

Unit MS–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the northern Gulf coast for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The entire 2,452-ac (993-ha) unit overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 1,666 ac (674 ha) of the unit overlap with designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Unit MS–1 include: (1) Disturbance of foraging and roosting rufa red knots by humans and human activities, such as regional modification of the natural sediment transport processes via navigation channel dredging and disturbance by powered boats; (2) predation (native predators); (3) modification or loss of habitat due to erosion and sea level rise; and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent island roosting habitat during migration (through restrictions on timing, locations, and types of activities), and managing sediment sources both within the unit and the adjacent Mississippi Sound to offset erosion and sea level rise (see Special Management Considerations or Protection, above). These Federal lands are currently managed under the Gulf Islands National Seashore Management Plan (NPS 2014c, entire).

*Unit MS–2: Cat Island*

Unit MS–2 consists of 2,121 ac (858 ha) in Harrison County, Mississippi, consisting of emergent lands and intertidal area to MLLW on Cat Island and its adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). Lands within this unit include approximately 686 ac (278 ha; 32 percent) in Federal ownership (Gulf Islands National Seashore), 1,305 ac (528 ha; 62 percent) in State ownership (managed by the Mississippi Department of Marine Resources), and 129 ac (52 ha; 6 percent) in private/other ownership. General land use within this unit includes recreational use (*e.g.,* fishing, birding, and rare visitation by humans via boats) by locals and island residents. This island is also remotely located approximately 8 mi (13 km) off shore.

Unit MS–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species for wintering and migration. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat on the northern Gulf coast for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. Approximately 2,087 ac (845 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001), and 200 ac (81 ha) of the unit overlap with designated critical habitat for the federally threatened Gulf sturgeon (68 FR 13370, March 19, 2003).

Threats identified within Unit MS–2 include disturbance of foraging and roosting rufa red knots by humans and human activities such as regional modification of the natural sediment transport processes via navigation channel dredging and disturbance by powered boats; modification or loss of habitat due to erosion and sea level rise; and human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats may include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent

island roosting habitat during migration (through restrictions on timing, locations, and types of activities), and managing sediment sources both within the unit and the adjacent Mississippi Sound to offset erosion and sea level rise (see Special Management Considerations or Protection, above). Federal lands in this unit are currently managed under Gulf Islands National Seashore Management Plan (NPS 2014c, entire), and State lands in this unit are currently managed according to Rules and Regulations For The Use of State-Owned Coastal Preserve Areas (Mississippi Department of Marine Resources (DMR) 2009, entire) and the Coastal Preserves Bureau Management Plan (Mississippi DMR 2020, entire). These are not area-specific for lands in this unit, but the Mississippi DMR does implement these goals at this time (Davis 2020, pers. comm.).

*Unit LA–1: Chandeleur Islands*

Unit LA–1 consists of 7,632 ac (3,088 ha) in St. Bernard Parish, Louisiana. The unit includes all emergent lands to MLLW on the Chandeleur Islands and their adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). All lands in this unit are federally owned as part of the Breton NWR and Wilderness Area, which was created as a refuge and breeding ground for resident and migratory birds. General land use within this unit includes recreational activities (*e.g.,* bird watching, fishing, and hiking) and occasionally biological research activities (which require a Special Use Permit).

Unit LA–1 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site on the northern Gulf coast. Additionally, this unit contains a high concentration of rufa red knots during the winter period (*i.e.,* the vast majority of the species' wintering population in Louisiana), providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit also has an undeveloped character that provides protection from intensive human uses. Approximately 4,734 ac (1,916 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit LA–1 include human disturbance of foraging and roosting rufa red knots (*e.g.,* powered boats), natural predators, and loss of habitat, including from erosion, sea level rise, and response actions resulting from natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate threats may include habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, and facilitated shoreline migration), management of predator populations, oil spill response planning, and management of human activities that disturb foraging and roosting rufa red knots (see Special Management Considerations or Protection, above). Management within this unit occurs via the Comprehensive Conservation Plan for Breton NWR, which guides refuge management and resource conservation pertaining to managing such activities, and any restoration actions would be aimed at restoring habitat quality and quantity without permanently affecting the natural coastal processes that maintain the physical or biological features of critical habitat (Service 2008b, entire). The Refuge's management objectives are to provide sanctuary for nesting and wintering seabirds, protect and preserve the wilderness character of the islands, and provide sandy barrier beach habitat for a variety of wildlife species (Service 2008b, pp. 12, 25).

*Unit LA–2: Barataria Barrier Islands and Headlands*

Unit LA–2 consists of 7,795 ac (3,155 ha) within Plaquemines, Jefferson, and Lafourche Parishes, Louisiana, including emergent lands and/or sand shoals to MLLW (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes: (1) Emergent lands of Lanaux and Shell Islands to MLLW in Plaquemines Parish; (2) emergent sand shoals of Grand Bayou Pass in Plaquemines Parish; (3) the Gulf of Mexico shoreline to MLLW between Grand Bayou Pass and Quatre Bayou Pass (known as the Chaland Headland and Chenier Ronquille); (4) emergent sand shoals of Bastian Bay, Bay Joe Wise, Chaland Pass, and Bayou Cheniere Ronquille in Plaquemines Parish; (5) all emergent lands of the Grand Terre Islands and adjacent unnamed island to MLLW between Quatre Bayou Pass and Barataria Pass in Plaquemines and Jefferson Parishes; (6) the Gulf of Mexico shoreline of Grand Isle from the toe of the Gulf-side hurricane protection levee to MLLW in Jefferson Parish; (7) the west side of the Caminada Pass shoreline and the Gulf of Mexico shoreline to MLLW beginning just north of Louisiana Highway 1 in Caminada Pass extending approximately 15 mi (24 km) westward to the east side of Belle Pass (known as the Caminada Headland, which includes the Louisiana Department of Wildlife and Fisheries' (LDWF) Elmer's Island Wildlife Refuge) in Jefferson and Lafourche Parishes; and (8) all emergent lands of the West Belle Pass peninsula to the MLLW. Lands within this unit include approximately 126 ac (51 ha; 2 percent) in State ownership, and 7,669 ac (3,104 ha; 98 percent) in private/other ownership. General land use within this unit includes oil and gas activities (*e.g.,* pipelines, wellheads, supply boats), public beaches (*i.e.,* Grand Isle, portions of the Caminada Headland), public boat launches, residential development on Grand Isle just north of the unit boundary line, Grand Isle State Park, Elmer's Island Wildlife Refuge, and barrier island/headland habitats.

Unit LA–2 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. Additionally, this unit contains a high concentration of rufa red knots during the winter period on these barrier islands and headlands, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The State's attention to restoring the barrier islands and headlands in this unit, which adds much-needed sediment to the system, in coordination with episodic storm events, have also contributed to habitat creation (*e.g.,* sand spits), and in turn, optimal rufa red knot habitat conditions. Approximately 2,946 ac (1,192 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit LA–2 include disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* pets, ORVs/all-terrain vehicles, powered boats, and jet skis (specifically for public beaches on Grand Isle and the Caminada Headland)); natural predators; nonnative predators (specifically for public beaches on Grand Isle and the Caminada Headland); modification or loss of habitat, or both, due to

uncontrolled recreational access, beach cleaning, and/or beach stabilization (specifically for public beaches on Grand Isle and the Caminada Headland); loss of habitat due to erosion and sea level rise; and response to natural and human-caused disasters. Special management considerations or protection measures to reduce or alleviate threats may include public outreach and education, educational signage, permits for ORV use on public beaches; habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, facilitated shoreline migration); management of predator populations; oil spill response planning; and management of human activities that disturb foraging and roosting rufa red knots (see Special Management Considerations or Protection, above).

*Unit LA–3: Terrebonne Barrier Islands*

Unit LA–3 consists of 5,072 ac (2,052 ha) in Lafourche and Terrebonne Parishes, Louisiana, including emergent lands and/or sand shoals to MLLW (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes: (1) Emergent lands on East Timbalier Island in Lafourche Parish; (2) emergent sand shoals at Little Pass Timbalier in Jefferson Parish; (3) emergent lands of Timbalier Island (also known as Big or West Timbalier Island) in Terrebonne Parish; and (4) emergent lands and associated sand shoals on East, Trinity, Whiskey, and Raccoon Islands (known as the LDWF Isles Dernieres Barrier Islands Refuge) in Terrebonne Parish. Lands within this unit include approximately 2,890 ac (1,173 ha; 57 percent) in State ownership and 2,172 ac (879 ha; 43 percent) in private/other ownership. General land use in this unit includes recreational activities (*e.g.,* bird watching, fishing), biological research activities (which require a permit), and oil and gas activities (*i.e.,* East Timbalier Island).

Unit LA–3 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. Additionally, this unit contains a high concentration of rufa red knot during the winter period, providing important wintering habitat for foraging and roosting on the northern Gulf coast during a time of the year when rufa red knots are seeking to build energy sources for migration. This unit also has an undeveloped character that provides protection from intensive human uses. The State's attention to restoring the barrier islands in this unit, which adds much-needed sediment to the system, in coordination with episodic storm events have also contributed to habitat creation (*e.g.,* sand spits), and in turn, optimal rufa red knot habitat conditions. Approximately 4,077 ac (1,650 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit LA–3 include disturbance of foraging and roosting rufa red knots by humans and human activities (*e.g.,* oil and gas activities (for East Timbalier Island only), powered boats); native predators; and modification of habitat, such as due to erosion, sea level rise, and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate threats may include habitat management or restoration (*e.g.,* living shorelines, raising marsh elevations, and facilitated shoreline migration), management of predator populations, oil spill response planning, and management of human activities that disturb foraging and roosting rufa red knots (see Special Management Considerations or Protection, above). The State lands of this unit are managed by the LDWF Isles Dernieres Barrier Islands Refuge. The State's management of the majority of this unit requires special permission and/or permits to access the State-owned islands (State of Louisiana 2021, website).

*Unit LA–4: Southwest Louisiana Beaches*

Unit LA–4 consists of 6,130 ac (2,481 ha) in Cameron and Vermillion Parishes, Louisiana. The unit includes land along the Gulf of Mexico shoreline to the MLLW (*i.e.,* highly dynamic intertidal seashore that is covered at high tide and uncovered at low tide) from the eastern Vermilion Parish line starting at the eastern boundary of the Audubon Society's Paul J. Rainey Wildlife Sanctuary, extending approximately 128 mi (206 km) westward and terminating at Louisiana Point, and also including its associated sand/mud shoals on the east side of Sabine Pass in Cameron Parish. Along its entire length, the unit includes the shoreline beach from the MLLW line landward to the edge of where dense vegetation begins. Lands within this unit include approximately 1,497 ac (606 ha; 24 percent) in State ownership and 4,633 ac (1,875 ha; 76 percent) in private/other ownership. General land use within this unit includes recreational activities (*e.g.,* bird watching, fishing), public beaches (*i.e.,* Rutherford Beach, Holly Beach), biological research activities (which require a permit on State-owned lands), cattle grazing (*i.e.,* on some private lands), and oil and gas activities (*e.g.,* pipelines).

Unit LA–4 is occupied by the species and contains one or more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. Additionally, this unit contains a high concentration of rufa red knot during the winter period, providing an important wintering habitat location on the northern Gulf coast within the subspecies' northern wintering range. Approximately 2,499 ac (1,011 ha) of the unit overlap with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit LA–4 unit include disturbance of foraging and roosting rufa red knots by humans or human activities (*e.g.,* pets, vehicles on the beach, powerboats, and uncontrolled recreational access on public beaches (*e.g.,* Rutherford Beach, Holly Beach)); disturbance from cattle grazing; disturbance from oil and gas activities (*e.g.,* pipelines, pipeline repairs); native predators as well as nonnative predators (*e.g.,* associated with public beaches); and modification or loss of habitat, or both, due to installation of hard structures, jetty maintenance, erosion, sea level rise, and responses to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate threats may include public outreach/education, educational signage, restricting vehicle access on public beaches; habitat management or restoration (*e.g.,* living shorelines, facilitated shoreline migration); management of predator populations; oil spill response planning; and management of human activities that disturb foraging and roosting rufa red knots (see Special Management Considerations or Protection, above). The State portion is managed by the LDWF Rockefeller Wildlife Refuge (Coastal Nongame Resources Division) in Vermilion Parish. The LDWF allows trapping, fishing, boating, birding, wildlife viewing, education, and

research activities on the Refuge (Rockefeller Wildlife Refuge 2021, website).

*Unit TX–1: Rollover Pass to Bolivar Flats*

Unit TX–1 consists of 1,264 ac (511 ha) in Galveston County, Texas. This unit begins at the west side of Rollover Pass and extends southwest ending at the north jetty on the Bolivar Peninsula. It includes 17 mi (27 km) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulf-side boundary is the MLLW, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The west end of the unit includes lands known as wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal, seagrass flats that are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly, depending upon the location, inundated by tides; and marine sandy coastline (beach) irregularly or regularly inundated by tides, depending upon the location (Federal Geographic Data Committee (FGDC) 2013, pp. 11–13, 37). Lands within this unit include approximately 268 ac (108 ha; 21 percent) in State ownership and 996 ac (403 ha; 79 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation including both pedestrian and vehicle activity, and ongoing beach maintenance/nourishment activities. The west end of the unit is a well-known birding site (Bolivar Flats) that is protected by the Houston Audubon Society.

Unit TX–1 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing an important wintering habitat location on the northern Gulf coast U.S. portion of the rufa red knot northern wintering range, especially for an area that also experiences a low level of disturbance during this time period. The intertidal zone and relatively undisturbed beach habitat provide multiple foraging and roosting habitat areas during the time of year when rufa red knots are seeking to build energy resources for migration. The west end portion of the unit overlaps with 801 ac (324 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–1 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, domestic animals, and vehicle disturbance (*i.e.,* golf carts, cars, sport-utility vehicles (SUVs), motorcycles, etc.); (2) modification or loss of habitat due to residential and commercial development, beach maintenance and nourishment activities, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). The Texas General Land Office State lands are managed under The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63. The Audubon lands are managed under the Bolivar Flats Bird Sanctuary Management Plan (Houston Audubon 2017, entire).

*Unit TX–2: West Galveston Island*

Unit TX–2 consists of 590 ac (238 ha) in Galveston County, Texas. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northeastern boundary is the end of the Seawall Boulevard (end of the seawall), and the southwestern boundary is San Luis Pass. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location (FGDC 2013, pp. 11–12, 37). Lands within this unit include approximately 307 ac (124 ha; 52 percent) in State ownership and 283 ac (114 ha; 48 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation including both pedestrian and vehicle disturbance, and ongoing beach maintenance/nourishment activities.

Unit TX–2 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important southbound stopover site. The west end portion of the unit overlaps with 106 ac (43 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–2 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, domestic animals, and vehicle disturbance (*i.e.,* golf carts, cars, SUVs, motorcycles, etc.); (2) modification or loss of habitat due to residential and commercial development, beach maintenance and nourishment activities, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). The Texas General Land Office State lands are managed under The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63.

*Unit TX–3: Cedar Lake to Colorado River*

Unit TX–3 consists of 1,203 ac (487 ha) in Matagorda County, Texas. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northeastern boundary is the south

side of Cedar Lake Cut, and the southwestern boundary is near the Colorado River. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location (FGDC 2013, pp. 11–12, 37). Lands within this unit include 1,075 ac (432 ha; 89 percent) in State ownership and 128 ac (52 ha; 11 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation including both pedestrian and vehicle disturbance, and ongoing beach maintenance/nourishment activities.

Unit TX–3 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing an important wintering habitat location on the northern Gulf coast U.S. portion of the rufa red knot northern wintering range. During the winter period, this area provides foraging and roosting habitat during a time of the year when rufa red knots are seeking to build energy sources for migration. Portions of the unit overlap with 843 ac (341 ha) of five designated critical habitat units for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–3 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, domestic animals, and vehicle disturbance (*i.e.,* golf carts, cars, SUVs, motorcycles, etc.); (2) modification or loss of habitat due to residential and commercial development, beach maintenance and nourishment activities, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). The Texas General Land Office State lands are managed under The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63.

*Unit TX–4: Mustang Island*

Unit TX–4 consists of 648 ac (262 ha) in Nueces County, Texas. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northern boundary is the south jetty at Port Aransas and the southern boundary is the north jetty of Packery Channel. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location (FGDC 2013, pp. 11–12, 37). Lands within this unit include approximately 395 ac (160 ha; 61 percent) in State ownership and 253 ac (102 ha; 39 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation including both pedestrian and vehicle disturbance, and ongoing beach maintenance/nourishment activities.

Unit TX–4 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the fall migration period, serving as an important southbound stopover site. Portions of the unit overlap with 589 ac (238 ha) of two designated critical habitat units for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–4 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, domestic animals, and vehicle disturbance (*i.e.,* golf carts, cars, SUVs, motorcycles, etc.); (2) modification or loss of habitat due to residential and commercial development, beach maintenance and nourishment activities, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). The Texas General Land Office State lands are managed under The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63.

*Unit TX–5: Mollie Beattie Coastal Habitat*

Unit TX–5 consists of a total of 723 ac (293 ha) in Nueces County, Texas. This unit is located north of Packery Channel and extends along the bayside west of Sylvan Beach Park west of Texas State Highway 361. The northern boundary is the Corpus Christi Pass with the southern boundary approximately 2 mi (3.2 km) south of Corpus Christi Pass. The eastern boundary is where the dense vegetation begins, and the western boundary is the MLLW (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes in areas where wind tidal flats are infrequently inundated, and bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. The unit does not include densely vegetated habitat within these boundaries, but it includes all seagrass beds exposed at low tides. Specific habitat types within this unit include: Estuarine (bayside) sandy shore/beach/sandbar that is irregularly or regularly, depending upon the location, inundated by tides; and estuarine (bayside) sandy shore (beach/sandbar) and spoils irregularly inundated by tides (FGDC 2013 pp. 11–13, 37). Lands within this unit include approximately 505 ac (205 ha; 70 percent) in State ownership and 218 ac (88 ha; 30 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation (*e.g.,* fishing, boating).

Unit TX–5 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains high concentrations of rufa red knots during the fall migration period, serving as an important southbound

stopover site. This entire unit (723 ac (293 ha)) overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–5 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities (*e.g.,* fishing, boating), domestic animals, and ORV activities; (2) modification or loss of habitat due to residential and commercial development, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above).

*Unit TX–6: North Padre Island*

Unit TX–6 consists of 2,817 ac (1,140 ha) in Nueces, Kleberg, Kenedy, and Willacy Counties, Texas. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, to include emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northern boundary is the south side of Packery Channel extending along the Gulf shoreline to Port Mansfield East Cut. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location (FGDC 2013, pp. 11–12, 37). Lands within this unit include approximately 2,487 ac (1,007 ha; 88 percent) in Federal ownership, 68 ac (27 ha; 3 percent) in State ownership, and 262 ac (106 ha; 9 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation, including both pedestrian and vehicle activities. In addition, the Padre Island National Seashore protects the majority of the area.

Unit TX–6 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site. Additionally, this unit contains a high concentration of rufa red knots during the winter period, providing an important wintering habitat location on the northern Gulf coast U.S. portion of the rufa red knot northern wintering range. This location provides foraging and roosting habitat areas during a time of the year when rufa red knots are seeking to build energy sources for migration. This specific location harbors approximately 17 percent of the Texas fall migration population. A portion of the unit overlaps with 210 ac (86 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–6 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, domestic animals, and vehicle disturbance (*i.e.,* golf carts, cars, SUVs, motorcycles, etc.); (2) modification or loss of habitat due to residential and commercial development, beach maintenance, nourishment activities, and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Management of Federal lands occurs under the Padre Island National Seashore Resources Management Plan (NPS 1996, entire). Texas General Land Office State lands are managed in accordance with The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63.

*Unit TX–7: Upper Laguna Madre/ Nighthawk Bay*

Unit TX–7 consists of a total of 1,157 ac (469 ha) in Kleberg County, Texas. The unit is along the bayside of Texas Park Road 22. The northeastern boundary is the northern edge of the Kleberg County line in Nighthawk Bay, and the southwestern boundary ends bayside of Bird Island Basin Road. This unit includes a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal, seagrass flats that are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; and estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly inundated by tide, depending upon the location (FGDC 2013, pp. 11–13, 37). Lands within this unit include approximately 273 ac (111 ha; 24 percent) in Federal ownership, 816 ac (330 ha; 70 percent) in State ownership, and 68 ac (28 ha; 6 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreation activities (*e.g.,* fishing, boating). The Padre Island National Seashore protects the southwestern half of the unit.

Unit TX–7 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the winter period, providing important wintering habitat for foraging and roosting during a time of the year when rufa red knots are seeking to build energy sources for migration. The northern half of the unit overlaps with 560 ac (227 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–7 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities (*e.g.,* fishing, boating); (2) habitat modification or erosion resulting from sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot

foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Management of Federal lands occurs under the Padre Island National Seashore Resources Management Plan (NPS 1996, entire). There is no State resources management plan available for State lands in this area.

*Unit TX–8: Dagger Hill/Yarborough Pass/Nine Mile Hole*

Unit TX–8 consists of 32,773 ac (13,270 ha) in Kleberg and Kenedy Counties, Texas. The unit is located bayside along and within the Laguna Madre adjacent to the west side of the Padre Island National Seashore. The northern boundary of the unit is Dagger Hill, and the southern boundary is approximately 6 mi (9.7 km) south of the land cut at Nine Mile Hole. The eastern boundary of this unit is the dense vegetation line on the bayside of the Padre Island National Seashore. The western boundary extends toward the Gulf Intracoastal Waterway to the MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). The southern portion of this unit extends across the Gulf Intracoastal Waterway dredge spoil islands. The unit includes bayside flats and all seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly inundated by tides, depending upon the location; and estuarine (bayside) sandy shore (beach/sandbar) and spoils irregularly inundated by tides (FGDC 2013, pp. 11–13, 37). Lands within this unit include approximately 9,731 ac (3,938 ha; 30 percent) in Federal ownership and 23,042 ac (9,332 ha; 70 percent) in State ownership. General land use within this unit includes multiple human uses for recreational activities (*e.g.,* fishing, boating). The Padre Island National Seashore protects the eastern half of the unit.

Unit TX–8 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. Additionally, large sections of the area are remote and difficult to access by foot or vehicles, which has likely contributed to this area harboring a significant proportion of the Texas spring migration population. The southwest section near Nine Mile Hole overlaps with 4,827 ac (1,953 ha) of designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–8 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities (*e.g.,* fishing, waterfowl hunting, and boating); (2) wind energy development; (3) habitat modification or erosion from sea level rise; (4) predation (residential and migratory raptors); and (5) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Management of Federal lands occurs under the Padre Island National Seashore Resources Management Plan (NPS 1996, entire).

*Unit TX–9: Pintail Lake/Padre Island/La Punta Larga*

Unit TX–9 consists of 94,171 ac (38,110 ha) in Kenedy, Willacy, and Cameron Counties, Texas. The northern boundary is Pintail Cut, extending south along the bay side of North Padre and South Padre Islands, with the southern boundary being Andy Bowie County Park. The center of the unit is approximately at Port Mansfield East Cut. North of the East Cut the western boundary is the MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide), and the eastern boundary is where dense vegetation begins. South of East Cut the western boundary is the MLLW, and the eastern boundary includes the beach side Gulf of Mexico out to the MLLW. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes, and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) regularly inundated by tides; and estuarine (bayside) sandy shore (beach/sandbar); and marine sandy coastline beach (irregularly or regularly inundated by tides, depending upon the location) (FGDC 2013, pp. 11–13, 37). Lands within this unit include approximately 25,881 ac (10,482 ha; 27 percent) in Federal ownership, 34,165 ac (13,826 ha; 36 percent) in State ownership, and 34,125 ac (13,802 ha; 36 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreational activities, including both pedestrian and ORV activities along the gulf beach front and recreational fishing and boating on the bayside. Large portions of the unit are managed for wildlife habitat by the Laguna Atascosa NWR.

Unit TX–9 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring migration period, serving as an important northbound stopover site. This entire unit (94,171 ac (38,110 ha)) overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–9 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, vehicle disturbance, fishing, waterfowl hunting, and boating; (2) wind energy development; (3) habitat modification or erosion from sea level rise; (4) predation (residential and migratory raptors); and (5) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as

well as spill response plans and training (see Special Management Considerations or Protection, above). Federal lands in this unit are managed according to the Laguna Atascosa NWR Comprehensive Conservation Plan (Service 2010e, entire). Texas General Land Office State lands in this unit are managed according to The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter.

*Unit TX–10: Peyton's Bay/Arroyo Colorado/Three Islands/Gabrielson Island*

Unit TX–10 consists of 35,651 ac (14,427 ha) in Willacy and Cameron Counties, Texas. The northern boundary of this unit is approximately 11 mi (18 km) north of the Arroyo Colorado Cutoff and encompasses Peyton's Bay (north being Chubby Island), and the southern boundary is approximately 9 mi (14 km) south of the Arroyo Colorado Cutoff encompassing Rattlesnake Bay (south edge near Gabrielson Island). The eastern boundary is the western side of the Gulf Intracoastal Waterway dredge spoil islands, and the western boundary is where dense vegetation begins. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated, and does not include densely vegetated habitat within these boundaries. Specific habitat types within this unit include: estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) algal mud or sand flats regularly inundated by tides and are nearly flat areas with a layer of algae growing on a moist mud or sand substrate and are otherwise devoid of vegetation; estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly inundated by tides, depending upon the location; and estuarine (bayside) sandy shore (beach/sandbar), to include spoils irregularly inundated by tides (FGDC 2013, pp. 11–13, 37). Lands within this unit include approximately 8,145 ac (3,296 ha; 23 percent) in Federal ownership, 25,316 ac (10,245 ha; 71 percent) in State ownership, and 2,190 ac (886 ha; 6 percent) in private/other ownership. General land use within this unit includes multiple human uses for recreational activities (*e.g.,* fishing, boating). The Federal portion of the unit is managed for wildlife habitat by the Laguna Atascosa NWR.

Unit TX–10 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. This entire unit (35,651 ac (14,427 ha)) overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–10 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities (*e.g.,* fishing, waterfowl hunting, and boating); (2) disturbance and habitat modification/erosion resulting from wind energy development and sea level rise; (3) predation (residential and migratory raptors); and (4) human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Management of Federal lands occurs under the Laguna Atascosa NWR Comprehensive Conservation Plan (Service 2010e, entire).

*Unit TX–11: South Bay/Boca Chica*

Unit TX–11 consists of 15,243 ac (6,173 ha) in Cameron County, Texas. The Boca Chica gulf shoreline portion of this unit begins south of the Brownsville Ship Channel and extends approximately 6.5 mi (10 km) to the south. Within the South Bay, the northern boundary is south of Brownsville Ship Channel dredge spoil placement areas, and the southern boundary is north of the Rio Grande River. The eastern boundary is the bayside of the Boca Chica Beach (Gulf of Mexico) up to where dense vegetation begins, and the western boundary is west of the Loma islands up to where dense vegetation begins along the wind tidal flats. The unit includes wind tidal flats and all seagrass beds that are infrequently inundated and/or exposed as low tides, and the tidal flats within the area known as South Bay. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) algal mud or sand flats regularly inundated by tides and are nearly flat areas with a layer of algae growing on a moist mud or sand substrate and are otherwise devoid of vegetation; estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) irregularly or regularly inundated by tides, depending upon the location; estuarine (bayside) sandy shore (beach/sandbar), spoils irregularly inundated by tides; and marine sandy coastline (beach) irregularly or regularly inundated by tides, depending upon the location (FGDC 2013, pp. 11–13, 37). Lands within this unit include approximately 5,536 ac (2,242 ha; 36 percent) in Federal ownership, 3,923 ac (1,589 ha; 26 percent) in State ownership, and 5,784 ac (2,342 ha; 38 percent) in private/other ownership. General land use within this unit includes rocket and drone launches and associated Space X space exploration development, and multiple recreational/beachside activities by humans, to include both pedestrian and vehicle activities. This unit is also managed for migratory bird use by the Lower Rio Grande Valley NWR.

Unit TX–11 is occupied by the species and contains one of more of the physical or biological features essential to the conservation of the species. This unit contains a high concentration of rufa red knots during the spring and fall migration periods, serving as an important northbound and southbound stopover site on the northern Gulf coast. This entire unit (15,243 ac (6,169 ha)) overlaps with designated critical habitat for the federally threatened piping plover (66 FR 36038, July 10, 2001).

Threats identified within Unit TX–11 include: (1) Disturbance of foraging and roosting rufa red knots and their habitat modification as a result of humans, including recreational activities, vehicle disturbance (*i.e.,* golf carts, cars, SUVs, motorcycles, etc.), fishing, waterfowl hunting, and boating; (2) disturbance and habitat modification/erosion resulting from wind energy development and sea level rise; (3)

predation (residential and migratory raptors); (4) habitat modification resulting from space exploration development; (5) and human-caused disasters and response to natural and human-caused disasters (*e.g.,* hurricanes, oil spills). Special management considerations or protection measures to reduce or alleviate the threats include conducting public outreach and education, managing access to rufa red knot foraging habitat and adjacent roosting habitat during migration (through restrictions on timing, locations, and types of activities), managing sediment sources to offset erosion and sea level rise, and addressing the impacts of potential oil spills or gas drilling activities through facility placement, as well as spill response plans and training (see Special Management Considerations or Protection, above). Federal lands are managed in accordance with the 1999 (reprinted) Lower Rio Grande Valley NWR land protection plan (Service 1993, entire). The Texas General Land Office State lands are managed under The Open Beaches Act, Texas Natural Resource Code Chapter 61 and The Dune Protection Act, Texas Natural Resource Code Chapter 63.

**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.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed 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, authorized or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented 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 Service 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 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

*Application of the ''Adverse Modification'' Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify rufa red knot critical habitat include, but are not limited to:

(1) Actions that would significantly alter the configuration, topography, or substrate of roosting (*i.e.,* sheltering) or foraging habitats. Such activities could include, but are not limited to, construction of developments and associated infrastructure, including roadways, commercial and residential development, hard stabilization structures, electrical transmission lines from offshore wind turbines, and oil and gas well pads; removal, placement, or redistribution of sediments such as beach nourishment, backpassing (*i.e.,*

mechanical reversal of natural sediment migration usually by trucks or hydraulic pipelines), dredging of shoals or sand bars, and dredged material disposition; planting or promoting dense, woody, or nonnative vegetation; and mechanical beach raking. These activities may destroy or degrade beach and intertidal habitats.

(2) Actions that would significantly alter the availability of prey items. Such activities could include, but are not limited to, deposition of sediment in intertidal areas; substantial levels of ORV traffic or use of heavy equipment in intertidal areas; commercial or illegal harvest of prey species; harvest of other marine or intertidal species that may impact prey species; covering of foraging habitats with permanent or temporary structures (*e.g.,* aquaculture gear); introductions of nonnative marine species; and removal, crushing, or burial of Sargassum or other types of wrack (*e.g.,* mechanical beach raking) at times when rufa red knots are present. Deposition of dredged material buries invertebrate prey species, altering their abundance, distribution, or composition. Off-road vehicles have been shown to decrease densities of invertebrates on intertidal flats. Harvest activities directly remove prey, or can indirectly impact prey populations by altering community composition. Sargassum and other wrack contain mussel spat and other invertebrates consumed by rufa red knots; thus, beach raking that removes wrack eliminates an important microhabitat for foraging. Foraging flats covered by structures are inaccessible to rufa red knots.

(3) Actions that would inhibit the natural ability of beaches and intertidal flats to adapt to sea level rise. Such activities could include, but are not limited to, construction of seawalls, bulkheads, revetments, jetties, groins, and artificial dunes with rock or clay cores or stabilized with sand/snow fencing or densely planted vegetation. Such structures prevent the natural migration of barrier beach and intertidal habitats, increasing the rate and aerial extent of inundation and corresponding loss of rufa red knot habitats.

Under section 7(a)(2) of the Act, project timing often plays an important role in the Service's jeopardy analysis, but typically plays little to no role in the Service's analysis of adverse modification of critical habitat. As part of the jeopardy analysis, the Service must consider likely effects both to the habitat and to the species directly (*e.g.,* risk of accidental death or injury of individuals, or incidental disturbance or displacement of individuals, from project activities). To avoid or minimize adverse effects to individuals, the Service often makes project timing recommendations in advance of the jeopardy analysis (*e.g.,* to avoid those times of year when the species is typically present in the action area). In contrast, direct effects to individuals (*e.g.,* death, injury, displacement, disturbance) are *not* part of the adverse modification analysis, which is focused on whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As such, project timing is rarely an important consideration in the adverse modification analysis. In very general terms, we expect proposed Federal activities to fall into three broad categories with regard to considerations around project timing:

(a) Permanent or long-lived habitat modifications (such as the categories of actions listed in (1) through (3), above, and depending on type, extent, and severity) are likely to result in destruction or adverse modification of critical habitat, regardless of what time of year they are carried out (*i.e.,* regardless of whether rufa red knots are present during implementation). An example might be a series of new sea walls.

(b) Activities that may disturb, displace, or risk injuring rufa red knots, but that do not involve habitat modification, would not result in destruction or adverse modification of critical habitat, regardless of what time of year they are carried out. However, in advance of our jeopardy analysis, the Service would likely offer timing or other recommendations to reduce adverse effects to the species and the risk of incidental take of individuals. An example might be use of low-flying aircraft.

(c) A short-lived habitat modification may (depending on type, extent, and severity) be able to avoid adverse modification by being terminated and fully reversed/restored well before the expected arrival date of migrant or wintering rufa red knots. These are the only circumstances in which we expect project timing to be an important consideration in the adverse modification analysis. In such cases, any Service-recommended timing restrictions offered to protect the conservation value of the critical habitat would also be expected to reduce adverse effects and the risk of incidental take from disturbance or displacement, which are important considerations in our jeopardy analysis. An example might be large-scale deployment of moveable aquaculture gear that precludes use of rufa red knot foraging habitat, but only while the gear is present (*i.e.,* foraging habitat is fully restored upon removal of the gear).

**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)) provides that: ''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.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the rufa

red knot to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense (DoD) lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

*Approved INRMPs*

*Eglin Air Force Base (Cape San Blas), Gulf County, FL, 79 ac (32 ha)*

Eglin Air Force Base is the largest forested military reservation in the United States. It supports a multitude of military testing and training operations, as well as many diverse species and habitats. Eglin's missions include the 7th Special Forces Group (Airborne), Amphibious Ready Group/Marine Expeditionary Unit, Stand-off Precision Guided Missile, and Massive Ordnance Air Blast.

Eglin Air Force Base, also known as the Eglin Military Complex, is located in Santa Rosa, Okaloosa, Walton, and Gulf Counties in Northwest Florida and the Gulf, and occupies 464,000 ac (261,428 ha). The Eglin Military Complex includes the mainland Reservation located in Santa Rosa, Okaloosa, and Walton Counties, as well as a small parcel (962 ac (389 ha)) on Cape San Blas in Gulf County, Florida. This parcel consists of approximately 3 mi (5 km) of spit shoreline along the Gulf of Mexico. The spit is separated from the mainland by St. Joseph Bay. The boundaries of Eglin's Cape San Blas parcel are from 29.67680 N 85.36351 W to 29.67608 N 85.33394 W. Eglin's Cape San Blas parcel also contains U.S. Federal Reserve property, but the entire parcel is under Eglin's management. The Cape San Blas parcel has 79 ac (32 ha) of Gulf beach; ephemeral pools, natural brackish ponds, or lagoons; and emergent sand shoals in the near shore used by wintering red knots.

The 2017–22 Eglin Air Force Base INRMP guides the management and conservation of natural resources under the installation's control. It provides interdisciplinary strategic guidance for the management of natural resources in support of the military mission within the land and water ranges of the Eglin Military Complex. The Eglin Air Force Base INRMP integrates and prioritizes wildlife, fire, and forest management activities to protect and effectively manage the Complex's aquatic and terrestrial environments and ensure ''no net loss'' in the operational capability of these resources to support Eglin test and training missions.

The 2017–22 INRMP and the more detailed Threatened and Endangered Species Component Plan Update (DoD 2017) explains natural resources program management, including a specific section that details management for threatened and endangered species, including conservation actions for the rufa red knot and its habitat, which are similar to those for piping plover that is also present during similar time periods (Eglin Air Force Base 2017, Section 7.4). The INRMP identifies the need to develop and implement programs to protect and conserve federally listed endangered and threatened plants and wildlife and candidate species, including the red knot. The Update (DoD 2017, Section 8.1) identifies the following management and protective measures to achieve this goal:

(1) Maintain suitable habitat for the species via posting;

(2) Annually survey and maintain public access control measures on Cape San Blas to protect red knots and ensure the long-term sustainability of Eglin's barrier island ecosystem for mission use;

(3) Conduct predator control as necessary;

(4) Install daytime visual markers on guy wires associated with new towers being built at Cape San Blas to reduce collisions by birds;

(5) Minimize construction activities during the federally threatened piping plover season, which also overlaps the majority of rufa red knot seasons;

(6) In partnership with Gulf County, continue to address concerns associated with beach driving associated with recreational beach use at Cape San Blas;

(7) Conduct weekly shorebird surveys to track presence of shorebird species as well as population trends;

(8) Ensure that all beach and dune habitats impaired by mission activities are appropriately restored and maintained with concurrence from the Service;

(9) Ensure that Eglin personnel drive seaward of the wrack and debris line or just above it during high tide conditions; and

(10) Prohibit beach raking on Eglin property, so the wrack line remains intact as a foraging substrate.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Eglin Air Force Base INRMP and that conservation efforts identified in the INRMP will provide a benefit to the rufa red knot. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 79 ac (32 ha) of habitat in this proposed critical habitat designation because of this exemption.

*Tyndall Air Force Base (Shell Island, Crooked Island West, Crooked Island East), Bay County, FL, 3,258 ac (1,318 ha)*

Tyndall Air Force Base is located on 30,000 ac (12,141 ha) in southeastern Bay County, approximately 13 mi (20 km) east of Panama City, Florida. The installation includes forested areas and beaches that provide a sea-to-land transition area that is vital for military operations to include ground-training and airspace activities that are also shared with other Air Force bases and DoD branches. Tyndall's missions include the 325th Fighter Wing, 325th Operations Group, 325th Maintenance Group, 325th Mission Support Group, and other Major Associate Tenants to include the 53rd Weapons Evaluation Group, Air Force Civil Engineer Center, Airbase Technologies Division, and Detachment 1, 823rd Rapid Engineer Deployable Heavy Operational Repair Squadron Engineers.

Similar to the Eglin Air Force Base INRMP, the 2020 Tyndall Air Force Base INRMP guides the management and conservation of natural resources under the installation's control. It provides interdisciplinary strategic guidance for the management of natural resources in support of the military mission within the land and water ranges of the Installation. The Tyndall Air Force Base INRMP integrates and prioritizes wildlife, wildland fire, forest management, and coastal zone and marine resources management activities to protect and effectively manage the Air Force Base's aquatic and terrestrial environments and ensure ''no net loss'' in the operational capability of these resources to support the Air Force's training missions.

The 2020 INRMP has a chapter for natural resources program management, including a specific section (Threatened and Endangered Species Component Plan) that details management for threatened and endangered species and conservation actions for the rufa red knot and its habitat (DoD 2020, Section 15, Tab 3). The INRMP identifies the need to develop and implement programs to protect and conserve federally listed endangered and threatened plants and wildlife and candidate species, including the red knot.

Tyndall Air Force Base is a base combined of developed and natural areas located on a peninsula that is bisected by U.S. Highway 98. The base is approximately 18 mi (29 km) long and 3 mi (4.8 km) wide, and is surrounded by East Bay, St. Andrew Bay, and the Gulf of Mexico to the north, west, and

south, respectively. Crooked Island West, Crooked Island East, and a portion of Shell Island, which form St. Andrew Sound, are barrier spits on the Gulf and are occupied almost year around by rufa red knots. These barrier island spits include various stages of coastal dune formations, forests, overwash areas, ephemeral pools, natural brackish ponds, or lagoons; emergent sand shoals in the near shore are used by rufa red knots almost year round, but mostly during spring migrations.

We identified two areas on Tyndall Air Force Base that meet the criteria identified as essential to the conservation of the species:

(1) Crooked Island East is approximately 1,001 ac (405 ha) and includes approximately 6 mi (9.7 km) of shoreline beach.

(2) Crooked Island West and Shell Island include approximately 2,257 ac (913 ha) of shoreline beaches that are approximately 12 mi (19.3 km) in length on the base (from the western boundary with St. Andrews State Park east to the eastern end of the island).

The draft ''Threatened and Endangered Species Component Plan'' portion of the INRMP (a.k.a. T&E Plan) (Tyndall Air Force Base 2020, Section 15, Tab 3) identifies the following management and protective measures to achieve conservation goals for rufa red knot:

(1) Maintain suitable habitat for foraging, sheltering, and roosting;

(2) Support predator control efforts;

(3) Enforce beach driving restrictions;

(4) Construct and maintain boardwalks to guide recreation locations;

(5) Support the State of Florida designation of these three island locations as Critical Wildlife Areas. Areas within the Critical Wildlife Areas may be posted and closed to access for the protection of birds either seasonally or year around;

(6) Continue prohibiting pets on Tyndall Air Force Base beaches at all times; and

(7) Continue to support Audubon and Florida Fish and Wildlife Conservation Commission' efforts to collect regular survey data on the species.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Tyndall Air Force Base INRMP and that conservation efforts identified in the INRMP will provide a benefit to the rufa red knot. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 3,258 ac (1,318 ha) of habitat in this proposed critical habitat designation because of this exemption.

## Consideration of Impacts Under 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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she 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 the determination to exclude a particular area, 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.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

### *Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed 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, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat 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 would not be expected without 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 use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the rufa red knot (Industrial Economics, Incorporated (IEc) 2021). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and thus may

require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the rufa red knot; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the rufa red knot, first we identified, in the IEM dated December 11, 2020, probable incremental economic impacts associated with the following categories of activities (*i.e.,* Federal agencies and projects that would likely go through the section 7 consultation process whether or not critical habitat is designated):

- *Animal and Plant Health Inspection Service:* Control and management of invasive, harmful, or overabundant species; predator control to benefit target ecosystems or species.
- *Department of Defense:* Operation, maintenance, and upgrades of military property and infrastructure, including training and testing.
- *Federal Emergency Management Agency:* Alternations to both habitats and developments to increase coastal resiliency and/or to facilitate recovery of human communities following disasters or emergencies (such as coastal storms). Emergency consultation may also be conducted during or shortly after a disaster, for example to stage emergency response equipment in rufa red knot habitat, to transit through habitat as part of the emergency response, or retrieve orphaned vessels, containers, or other items from habitat.
- *Federal Energy Regulatory Commission:* Non-Federal activities that require Federal authorization, such as liquefied natural gas facilities and associated pipeline infrastructure.
- *Federal Highway Administration:* Transportation infrastructure maintenance and upgrades.
- *Federal Aviation Administration:* Operation, management, and upgrades of airports and air traffic control systems.
- *National Aeronautics and Space Administration:* Rocket and drone launches, drone and aircraft flights, recreational beach uses (*e.g.,* swimming, sunbathing, ORVs), beach renourishment and seawall repair, protected species management, facility maintenance and construction, and educational use.
- *National Park Service:* Infrastructure maintenance or upgrades, habitat or species management, research, and changes to visitor use policies or regulations.
- *U.S. Army Corps of Engineers:* Federally funded coastal engineering, such as beach nourishment, dredging, shoreline stabilization, and habitat restoration; non-Federal activities that require Federal permits, such as coastal engineering, coastal development (*e.g.,* residential, commercial, recreational infrastructure), transportation infrastructure (*e.g.,* docks, piers, ports, roads, rail lines), utility and energy infrastructure, habitat restoration, habitat and species management (*e.g.,* mosquito control), and aquaculture.
- *U.S. Coast Guard:* Response actions associated with cleanup of hazardous substances in the coastal and marine environments, and authorization of fireworks displays.
- *U.S. Fish and Wildlife Service, National Wildlife Refuges:* Land acquisition, infrastructure maintenance or upgrades, habitat or species management, research, and changes to visitor use policies or regulations.

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the rufa red knot is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the rufa red knot's critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the rufa red knot would also likely adversely affect the essential physical or biological features of critical habitat. The IEM 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 probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the rufa red knot includes 120 proposed critical habitat units (18 of which are further subdivided into 46 subunits), totaling approximately 649,066 ac (262,667 ha), all of which were occupied by the rufa red knot at the time of listing, and are currently occupied. The incremental costs of designating critical habitat for the rufa red knot are likely to be limited to additional administrative effort to consider adverse modification in consultations for the species, which is based on factors such as the same types of project modifications for avoiding adverse modification compared to avoiding jeopardy in occupied habitat, or the presence of additional listed species with similar habitat needs or designated critical habitat. The incremental administrative burden resulting from the designation of critical habitat for the rufa red knot is not anticipated to reach $100 million in any given year based on the anticipated annual number of consultations and associated consultation costs, which are not expected to exceed $480,000 per year (2021 dollars). Because the designation is not expected to result in additional project modifications recommendations for the species, ancillary economic benefits are not expected.

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of this

proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

*Consideration of National Security Impacts or Homeland Security Impacts*

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we have determined that some lands within the proposed designation of critical habitat for the rufa red knot are owned or managed by the DoD. We already discussed two areas (Eglin Air Force Base and Tyndall Air Force Base) with approved INRMPs under Application of Section 4(a)(3) of the Act, above. In addition, NASA has expressed concern that the designation of critical habitat on the Wallops Flight Facility would have implications for national security, as summarized below.

Goddard Space Flight Center's Wallops Flight Facility (Wallops Island), Accomack County, Virginia (571 ac (231 ha))

NASA owns and operates the Goddard Space Flight Center's Wallops Flight Facility, located on Wallops Island in Accomack County, Virginia. This area on Wallops Island includes both Subunits VA–2A and VA–2B (*i.e.,* 540 ac (218 ha) within Subunit VA–2A and 31 ac (13 ha) within Subunit VA–2B), totaling 571 ac (231 ha).

The Wallops Flight Facility is the oldest active launch range in the continental United States, and its mission currently includes support of scientific research and emerging technologies, and employing measures (consistent with the inherent right of self-defense) to deter others from interference and attack, defend our space systems, and contribute to the defense of allied space systems . . .'' (NASA 2020a, p. 2). Additionally the facility shares its government-owned infrastructure with other Federal agencies, mostly from DoD, to facilitate critical activities including target, missile, test article, and spacecraft launches; manned and unmanned aircraft development and pilot training; launch systems testing (*e.g.,* communications, telemetry, guidance); rocket launches ranging from small sounding and suborbital rockets to small- and medium-classed expendable launch vehicles; launching resupply missions to the International Space Station; and science payloads that could support disaster readiness or surveillance (NASA 2020a, pp. 2–3). A significant partner with facilities in Wallops Island is the U.S. Navy Surface Combat Systems Center, whose core mission is developing and certifying the Ship Self Defense System and Aegis Combat System. Additionally, the facility supports national security interests by providing essential launch services to the Virginia Commercial Space Flight Authority's launch facility, enabling NASA to achieve the national security requirements and the findings of Congress specified in Public Law 111–314 (NASA 2020a, pp. 2–4).

Wallops Island provides varied habitat types that support multiple protected species, including the federally threatened rufa red knot. Monitoring and management of protected areas during sensitive seasonal periods (*e.g.,* implementing predator control, ensuring sensitives species are not disturbed by pedestrians and vehicles) is an ongoing action by staff/employees (NASA 2020a, pp. 21–22). NASA also intends to abide by all Terms and Conditions, as well as Monitoring and Reporting Requirements, stipulated in the Service's June 7, 2019, Wallops Flight Facility Update and Consolidation of Existing Biological Opinions (Project # 2015–F–3317; Service 2019, entire).

NASA has requested exclusion from the rufa red knot final critical habitat designation based on national security impacts that would hamper the nation's ability to foster ongoing partnerships with other nations through International Space Station resupply, reduce the success of ensuring orbital launch successes, and potentially adversely impact Fleet deployment. Therefore, we are considering to exclude 571 ac (231 ha) of NASA-owned lands at Wallops Flight Facility from this critical habitat designation under section 4(b)(2) of the Act.

During the development of the final designation, we will consider any information currently available or received during the public comment period regarding the national security impacts of the proposed designation, and will determine whether any specific areas, including the Wallops Flight Facility, should be excluded from the final critical habitat designation under

authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

*Consideration of 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 discussed above. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships 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 specifically for the rufa red knot or its habitat that would be encouraged by the exclusion from a critical habitat designation, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation.

During the development of a final designation, we will consider any information currently available or received during the public comment period regarding the economic, national security, or other relevant impacts of the proposed designation and will determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

**Required Determinations**

*Clarity of the Rule*

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA 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 proposed rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* 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 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 whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated 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 out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical

habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*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. In our draft economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Oil/gas development and renewable energy/power generation activities have been known to occur within the range of the rufa red knot and its proposed critical habitat units/subunits (IEc 2021, Exhibit 5; Service 2020b, pp. 42–45); oil/gas development activities have primarily occurred in Georgia and Louisiana and to a lesser extent South Carolina and Texas, and renewable energy/power generation activities have occurred primarily in South Carolina, and to a lesser extent New Jersey, Louisiana, and Texas. These are activities that the Service consults on with Federal agencies or the U.S. Army Corps of Engineers under section 7 of the Act. As discussed in the DEA, the costs associated with consultations related to occupied critical habitat would be largely administrative in nature and are not anticipated to reach $100 million in any given year based on the anticipated annual number of consultations and associated consultation costs, which are not expected to exceed $480,000 per year (2021 dollars) (IEc, pp. 10, 18–19). Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed 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 Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it is not anticipated to reach a Federal mandate of $100 million in any given 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. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the proposed critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the rufa red knot in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat 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. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the rufa red knot, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this 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. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for 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 State and local governments in long-range planning because they no longer have to 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) of the Act 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 would 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. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the rufa red knot (although we note that the Shinnecock Indian Nation likely has Tribal interests in natural and cultural resources within the Mississippi proposed units; we have and will continue to coordinate with them), so no Tribal lands would be affected by the proposed designation.

**References Cited**

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* and upon request from the New Jersey Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the New Jersey Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

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

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; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Knot, rufa red'' in the List of Endangered and Threatened Wildlife under BIRDS to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| BIRDS | | | | |
| * | * | * | * | * |
| Knot, rufa red | *Calidris canutus rufa* | Wherever found | T | 79 FR 73705, 12/11/2014; 50 CFR 17.95(b) CH. |
| * | * | * | * | * |

■ 3. Amend § 17.95(b) by adding an entry for ''Rufa Red Knot (*Calidris canutus rufa*)'' in the same alphabetical order as the species appears in the table in § 17.11(h), to read as set forth below:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(b) *Birds.*

* * * * *

Rufa Red Knot (*Calidris Canutus Rufa*)

(1) Critical habitat units are depicted for Barnstable County, Massachusetts; Suffolk, Nassau, and Queens Counties, New York; Ocean, Atlantic, Cape May, and Cumberland Counties, New Jersey; Kent and Sussex Counties, Delaware; Accomack and Northampton Counties, Virginia; Dare, Hyde, Carteret, Onslow, Pender, New Hanover, and Brunswick Counties, North Carolina; Georgetown, Horry, Charleston, Colleton, Beaufort, and Jasper Counties, South Carolina; Chatham, Liberty, McIntosh, Glynn, and Camden Counties, Georgia; Nassau, Duval, Volusia, Brevard, Collier, Lee, Charlotte, Sarasota, Manatee, Pinellas, Pasco, Levy, Wakulla, Franklin, and Gulf Counties, Florida; Mobile County, Alabama; Harrison County, Mississippi; St. Bernard, Plaquemines, Jefferson, Lafourche, Terrebonne, Cameron, and Vermillion Parishes, Louisiana; and Galveston, Matagorda, Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of rufa red knot consist of the following components:

(i) *Beaches and tidal flats used for foraging.* This feature includes high-energy ocean- or bay-front barrier island or mainland beaches, as well as shorelines and tidal flats in more sheltered estuaries (*e.g.,* bays, sounds, lagoons). Foraging substrates can include sand, mud, peat, and sand embedded with shell, gravel, or cobble. Foraging areas are between mean lower low water (MLLW) and mean higher high water. Suitable foraging habitats provide abundant quantities of accessible and appropriately sized prey items (*e.g.,* mussels and mussel spat, clams, other mollusks, horseshoe crab eggs, crustaceans, polychaete worms), timed to occur in high densities during those seasons when rufa red knots are present. ''Superabundant'' prey densities, typically bivalves or horseshoe crab eggs, are needed in migration staging areas to support rapid weight gain following long-distance flights. Large areas capable of supporting concentrations of shorebirds are especially important.

(ii) *Upper beach areas used for roosting, preening, resting, or sheltering.* This feature includes unvegetated or sparsely vegetated sand between the high water line and the primary dune line. Generally these sites are open, with a large viewscape for predator avoidance. Many sites have micro-topographic relief offering refuge from high winds. Large areas capable of supporting concentrations of shorebirds—close to foraging areas, with limited predation pressure and protected from human disturbance—are especially important.

(iii) *Ephemeral and/or dynamic coastal features used for foraging or roosting.* This includes dynamic and ephemeral features such as sand spits, islets, shoals, and sandbars, features often associated with inlets. Other ephemeral features used by rufa red knots include tidal pools; wind-exposed bay bottoms or oyster reefs; and unvegetated overwash areas (*e.g.,* among or behind dunes, as formed by storms or extreme wave action).

(iv) *Ocean vegetation deposits or surf-cast wrack used for foraging and roosting.* This feature includes Sargassum (a species of macroalgae in oceans that inhabits shallow water and coral reefs), seagrass, or seaweed deposits with mussel spat attached, or surf-cast wrack that accumulates along beaches and supports or captures food items, such as horseshoe crab eggs. In some areas, rufa red knots may also roost atop wrack mounds.

(v) *Intertidal peat banks used for foraging and roosting.* In some areas, exposed intertidal peat banks (*e.g.,* along bay-front beaches and fronting tidal marshes) provide important foraging and roosting habitat.

(vi) *Features landward of the beach that support foraging or roosting.* In some areas, rufa red knots use sparsely vegetated habitats landward of the beach berm, such as unstabilized dunes, mangrove edges, brackish ponds, and patches of mostly bare ground (*e.g.,* blowouts, depressions, pannes) within salt marshes.

(vii) *Artificial habitat mimicking natural conditions or maintaining the physical or biological features set forth in paragraphs (2)(i) through (vi) of this entry.* Coastal engineering that interferes with natural coastal processes is generally considered a threat to the rufa red knot. However, in some cases, artificial habitats mimic the natural conditions described in the other physical or biological features described above. Such artificial habitats can include nourished beaches, dredged spoil deposition sites, elevated road causeways, jetties, or impoundments. Additionally, some anthropogenic structures may promote or maintain the natural physical or biological features. For example, in parts of Delaware Bay, rufa red knot habitat features are enhanced by living shorelines (*e.g.,* shell bag reefs), and in one case by a rock breakwater.

(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 [EFFECTIVE DATE OF RULE].

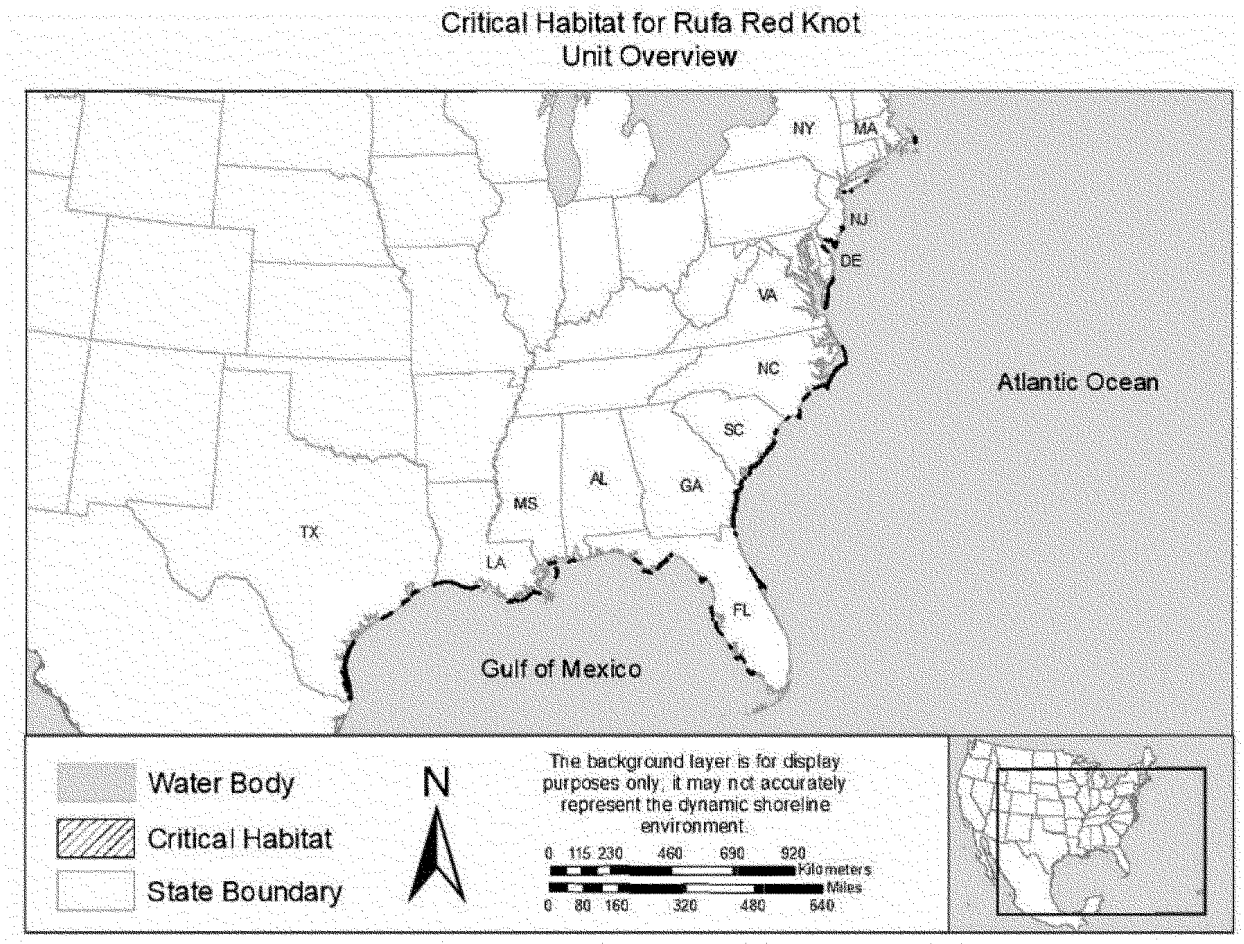
(4) Data layers defining map units were created using rufa red knot distribution data provided by eBird data and multiple local and regional sources as available (*e.g.,* reports, databases, and geolocator/resighting data maintained by State Fish and Wildlife Departments, universities, local governments, and nonprofit organizations across the range of the species). Landforms were primarily delineated based on the most current available aerial maps, but in some cases older maps dating as far back as 2010 were consulted to gauge patterns of coastal change over time.

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 at *https://fws.gov/northeast/red-knot/*, at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2021–0032, 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) *Note:* Index map follows:

BILLING CODE 4333–15–P

Figure 1 to Rufa Red Knot paragraph (5)

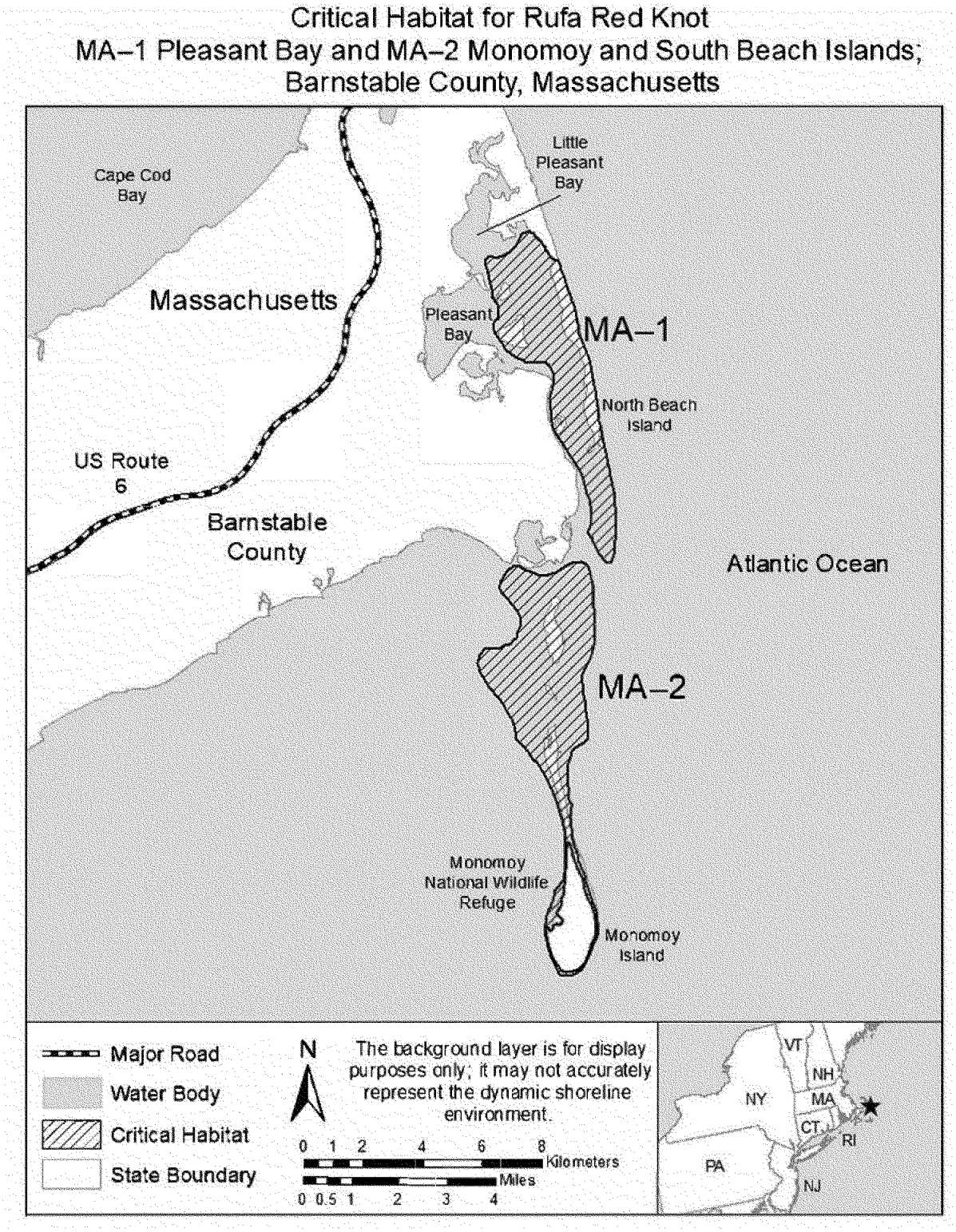



(6) Unit MA–1: Pleasant Bay, Massachusetts.

(i) Unit MA–1 consists of approximately 4,357 ac (1,763 ha) of occupied habitat in Barnstable County consisting of exposed intertidal flats, shoals, mud flats, and intertidal salt marsh pannes in Little Pleasant Bay and Pleasant Bay, and ephemeral tidal pools, primary sand dunes, and beaches associated with Nauset Beach South (Orleans), North Beach (Chatham), and North Beach Island (Chatham). Lands within this unit include approximately 126 ac (51 ha) in Federal ownership (including Cape Code National Seashore), 1,596 ac (646 ha) in private/other ownership, and 2,634 ac (1,066 ha) that are uncategorized.

(ii) Map of Unit MA–1 follows:

Figure 2 to Rufa Red Knot paragraph (6)(ii)




(7) Unit MA–2: Monomoy and South Beach Islands, Massachusetts.

(i) Unit MA–2 consists of approximately 5,093 ac (2,061 ha) of occupied habitat in Barnstable County consisting of exposed intertidal sand

and mud flats and shoals, ephemeral tidal pools, salt marsh, primary sand dunes, and beaches associated with North and South Monomoy Islands, Minomoy Island, and the South Beach Island complex. Lands within this unit include approximately 4,047 ac (1,638 ha) in Federal ownership (including Monomoy National Wildlife Refuge (NWR)) and 1,045 ac (423) in private/other ownership.

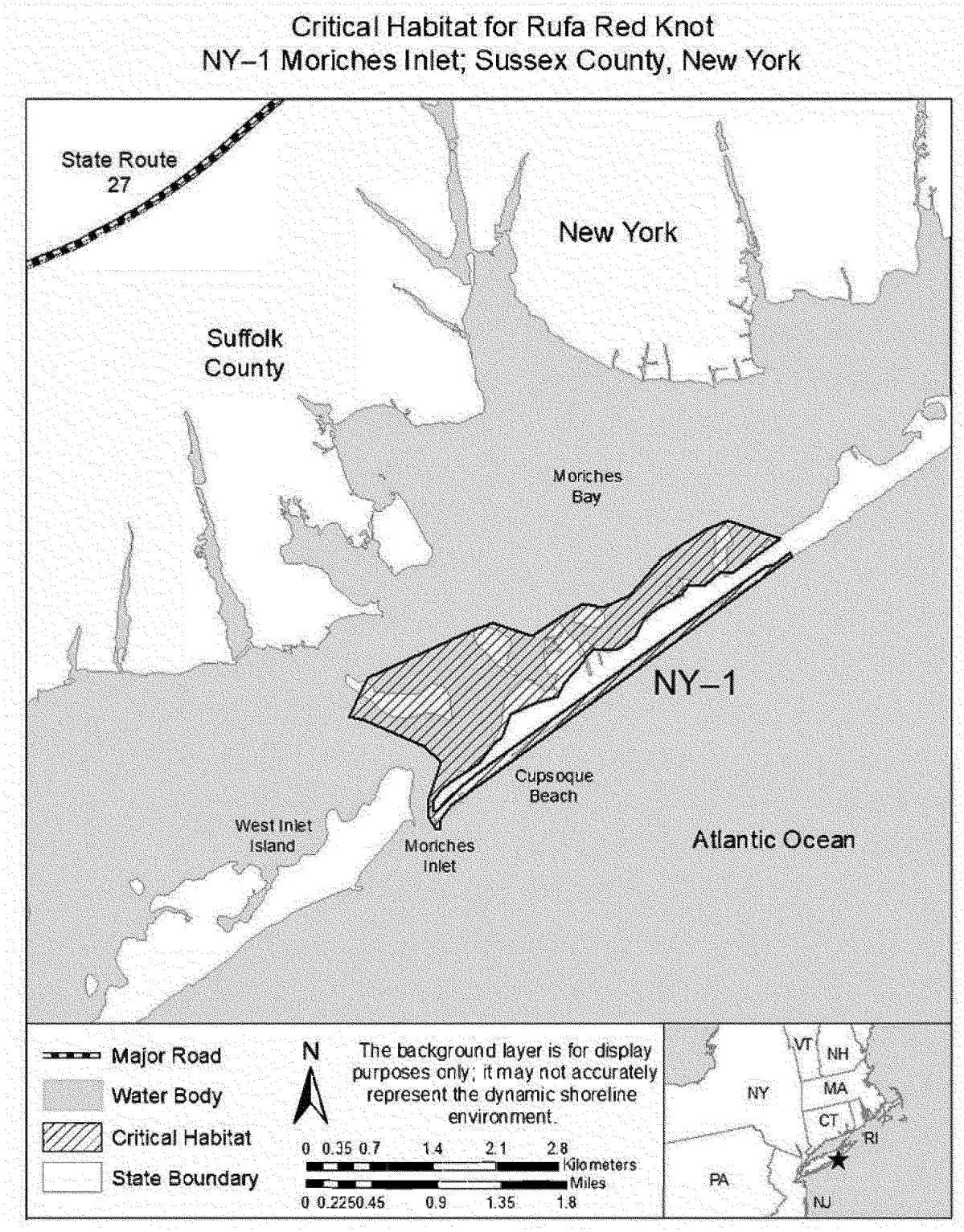
(ii) Map of Unit MA–2 is presented at paragraph (6)(ii) of this entry.

(8) Unit NY–1: Moriches Inlet, New York.

(i) Unit NY–1 consists of approximately 1,001 ac (405 ha) of occupied habitat in Suffolk County consisting of highly dynamic beach, sand flats, bay islands, back bay shoreline, intertidal areas, and surface water within the towns of Brookhaven and Southampton. Lands within this unit include approximately 78 ac (32 ha) in Federal ownership, 63 ac (25 ha) in State ownership, 163 ac (66 ha) in private/other (including the towns of Brookhaven and Southampton) ownership, and 697 ac (282 ha) that are uncategorized. This area includes the South Shore Estuary Reserve.

(ii) Map of Unit NY–1 follows:

Figure 3 to Rufa Red Knot paragraph (8)(ii)



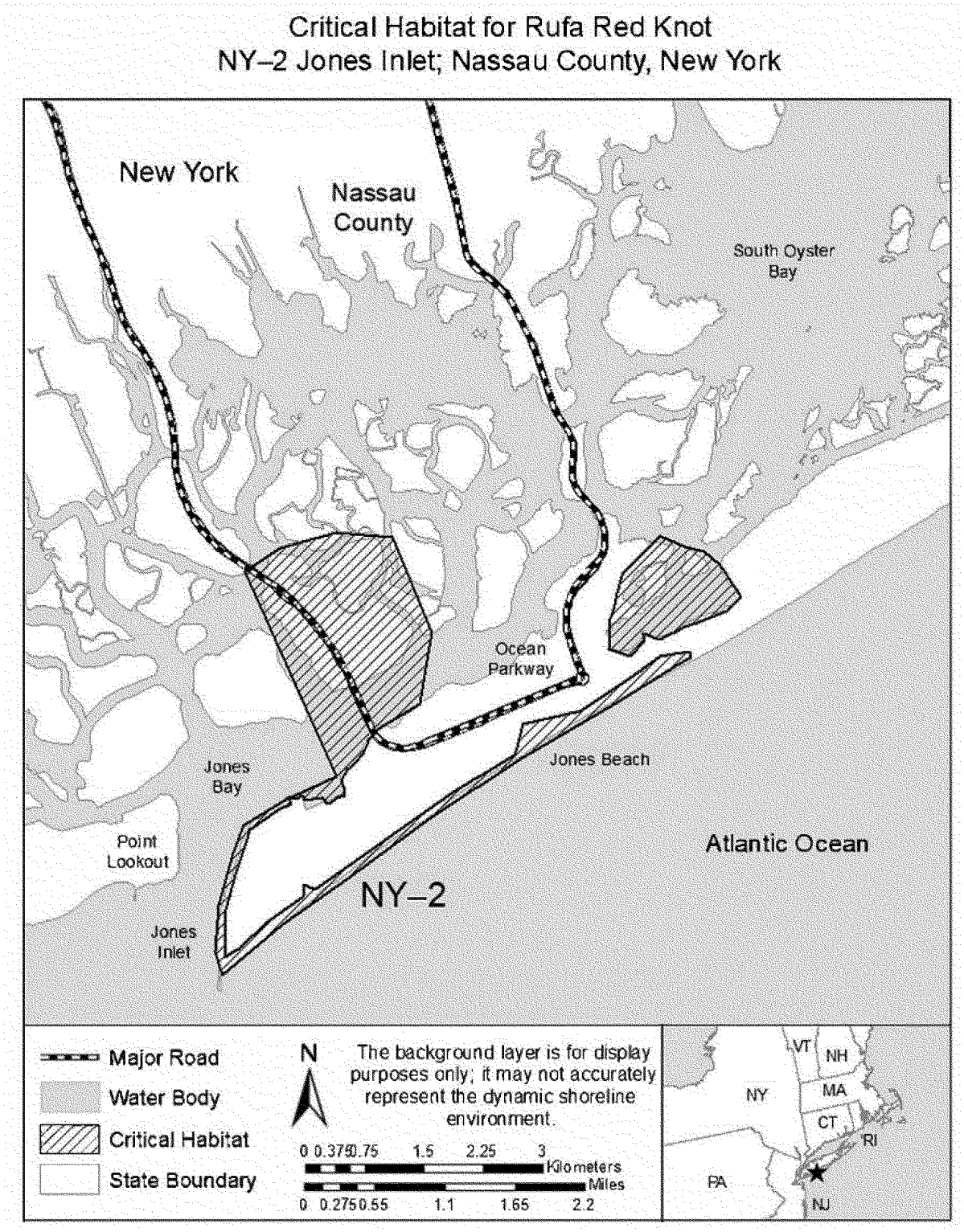

(9) Unit NY–2: Jones Inlet, New York.

(i) Unit NY–2 consists of approximately 1,821 ac (737 ha) of occupied habitat in Nassau County consisting of ocean beach habitat, sand

flats, bay islands, and small embayments. It is irregularly shaped and is bounded to the south by the Atlantic Ocean, to the west by Point Lookout, to the north by a line running in Hempstead Bay, and to the east at the eastern extent of Zachs Bay. Lands within this unit include approximately 710 ac (287 ha) in State ownership and 1,111 ac (450 ha) that are under private/other ownership. This area includes the South Shore Estuary Reserve.

(ii) Map of Unit NY–2 follows:

Figure 4 to Rufa Red Knot paragraph (9)(ii)



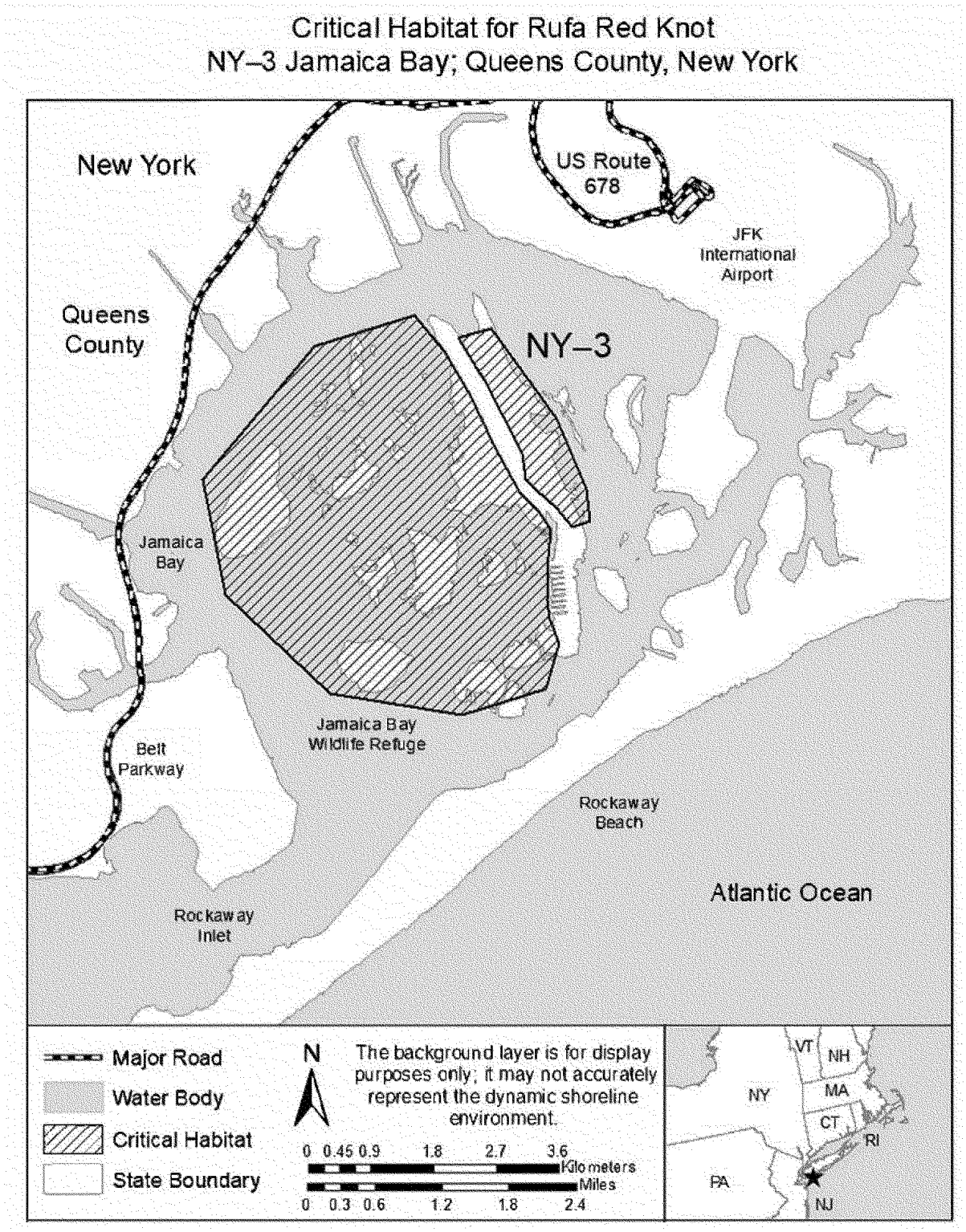

(10) Unit NY–3: Jamaica Bay, New York.

(i) Unit NY–3 consists of approximately 5,458 ac (2,209 ha) of occupied habitat in Queens County consisting of ocean beach habitat that is

primarily within the National Park Service's Jamaica Bay Wildlife Refuge, Gateway National Recreation Area, and all under Federal ownership.

(ii) Map of Unit NY–3 follows:

Figure 5 to Rufa Red Knot paragraph (10)(i)

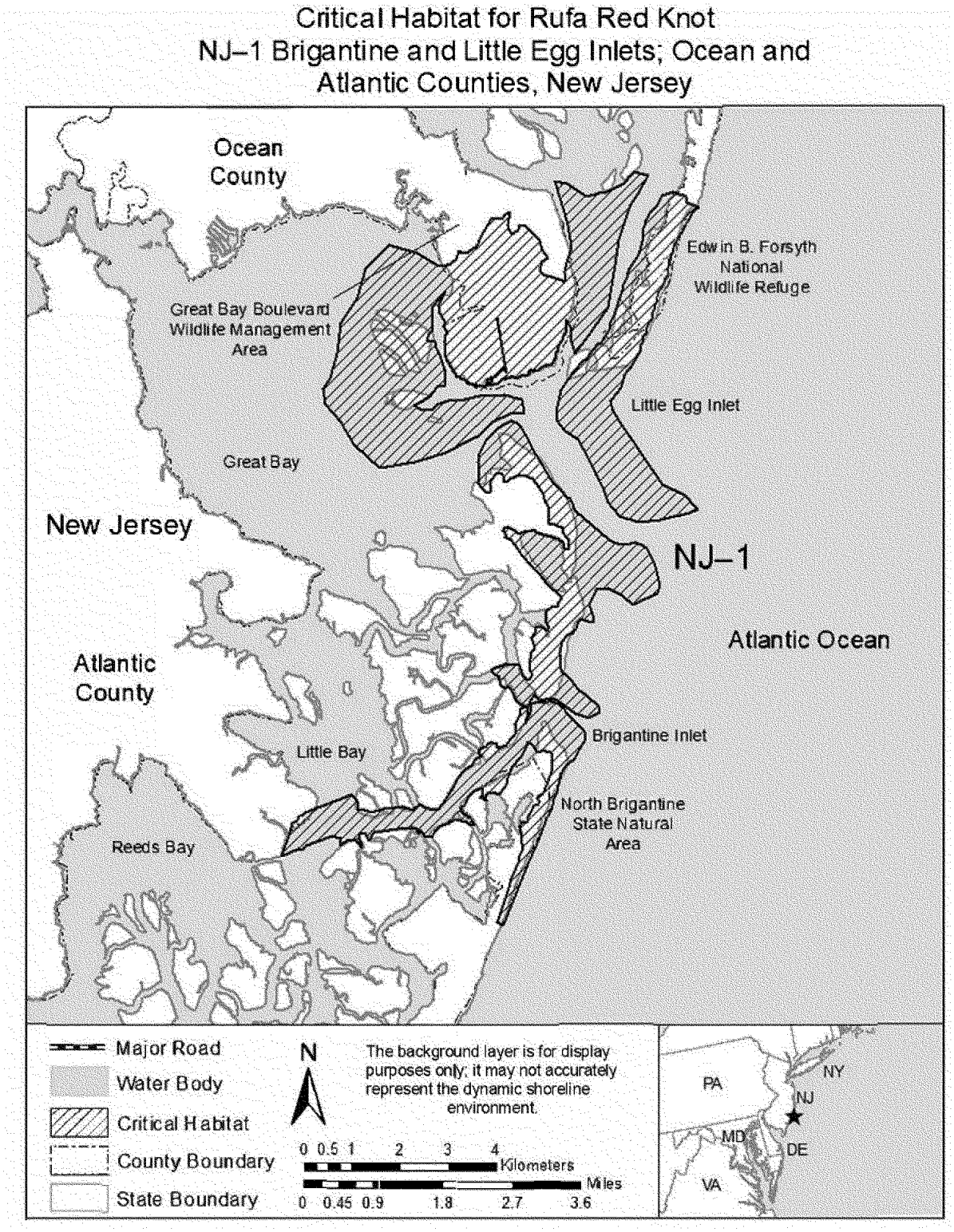


(11) Unit NJ–1: Brigantine and Little Egg Inlets, New Jersey.

(i) Unit NJ–1 consists of approximately 9,719 ac (3,933 ha) of occupied habitat in Ocean and Atlantic Counties consisting of beach, dune, shoals, open water, and tidal marsh associated with two inlets extending from the northern boundary of the Holgate Unit of Edwin B. Forsythe NWR, west to the ''Seven Islands'' portion of Great Bay Boulevard Wildlife Management Area, and south nearly to 15th Street North in Brigantine City. Lands within this unit include approximately 1,560 ac (632 ha) in Federal ownership (Forsythe NWR), 3,187 ac (1,291 ha) in State ownership (including the North Brigantine Natural Area), 10 ac (4 ha) in private/other ownership, and 4,961 ac (2,006 ha) that are uncategorized.

(ii) Map of Unit NJ–1 follows:

Figure 6 to Rufa Red Knot paragraph (11)(ii)



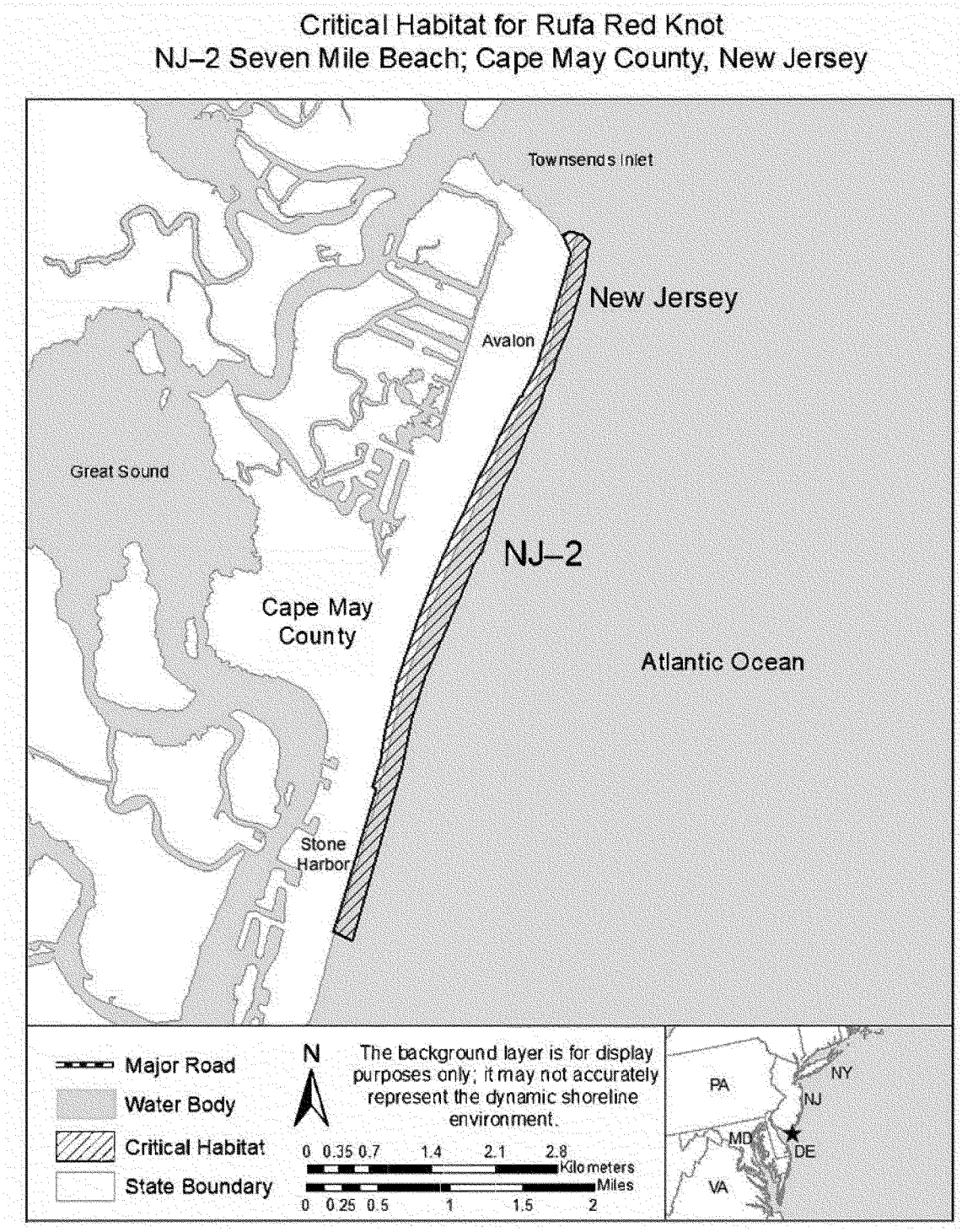

(12) Unit NJ–2: Seven Mile Beach, New Jersey.

(i) Unit NJ–2 consists of approximately 536 ac (217 ha) of occupied habitat in Cape May County consisting of sandy ocean-front beach in

Avalon and Stone Harbor Boroughs, from the jetty at 8th Street in Avalon near Townsends Inlet and extending south to 102nd Street in Stone Harbor. All lands within this unit are in private/other ownership.

(ii) Map of Unit NJ–2 follows:

Figure 7 to Rufa Red Knot paragraph (12)(ii)



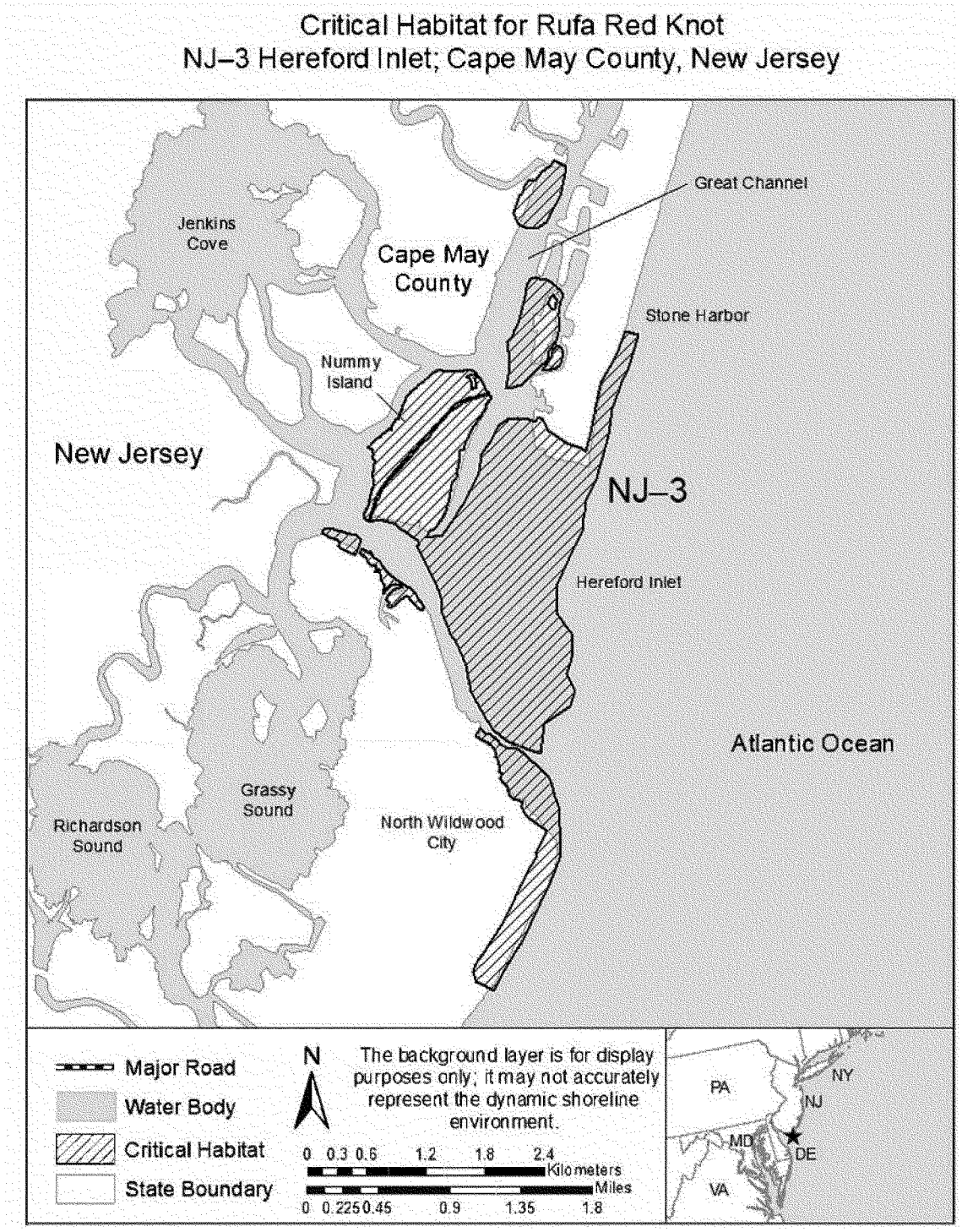

(13) Unit NJ–3: Hereford Inlet, New Jersey.

(i) Unit NJ–3 consists of approximately 1,631 ac (660 ha) of occupied habitat in Cape May County consisting of sandy oceanfront beaches, unstabilized barrier peninsula, undeveloped marsh islands, and several

areas of tidal flats and shoals extending along the ocean from 111th Street in Stone Harbor Borough south to 22nd Avenue in North Wildwood City. The unit also includes areas behind the barrier island in Middle Township, Stone Harbor, and North Wildwood extending from Stone Harbor Boulevard south along Great Channel to Nummy Island and the southern shoreline of Grassy Sound Channel. Lands within this unit include approximately 175 ac (71 ha) in State ownership (including the Cape May Coastal Wetlands Wildlife Management Area), 735 ac (297 ha) in private/other ownership, and 721 ac (292 ha) that are uncategorized.

(ii) Map of Unit NJ–3 follows:

Figure 8 to Rufa Red Knot paragraph (13)(ii)

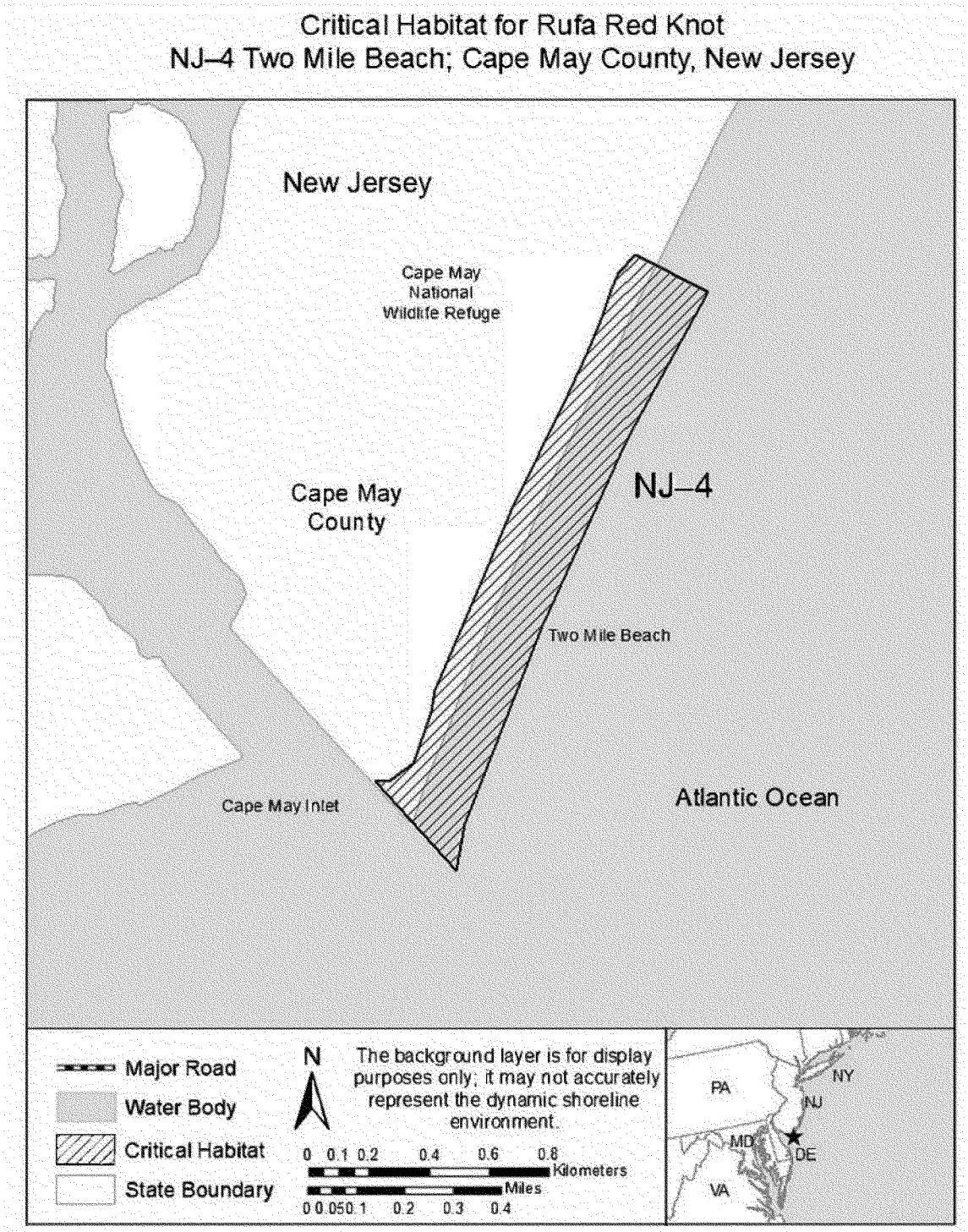


(14) Unit NJ–4: Two Mile Beach, New Jersey.

(i) Unit NJ–4 consists of approximately 128 ac (52 ha) of occupied habitat in Cape May County consisting of sandy oceanfront beach from the northeastern boundary of the Two Mile Beach Unit of Cape May NWR extending southwest to include all beach portions of the U.S. Coast Guard Loran Support Unit, ending at the eastern jetty of the Cape May Inlet. Lands within this unit are all under Federal ownership (Cape May NWR and U.S. Coast Guard).

(ii) Map of Unit NJ–4 follows:

Figure 9 to Rufa Red Knot paragraph (14)(ii)

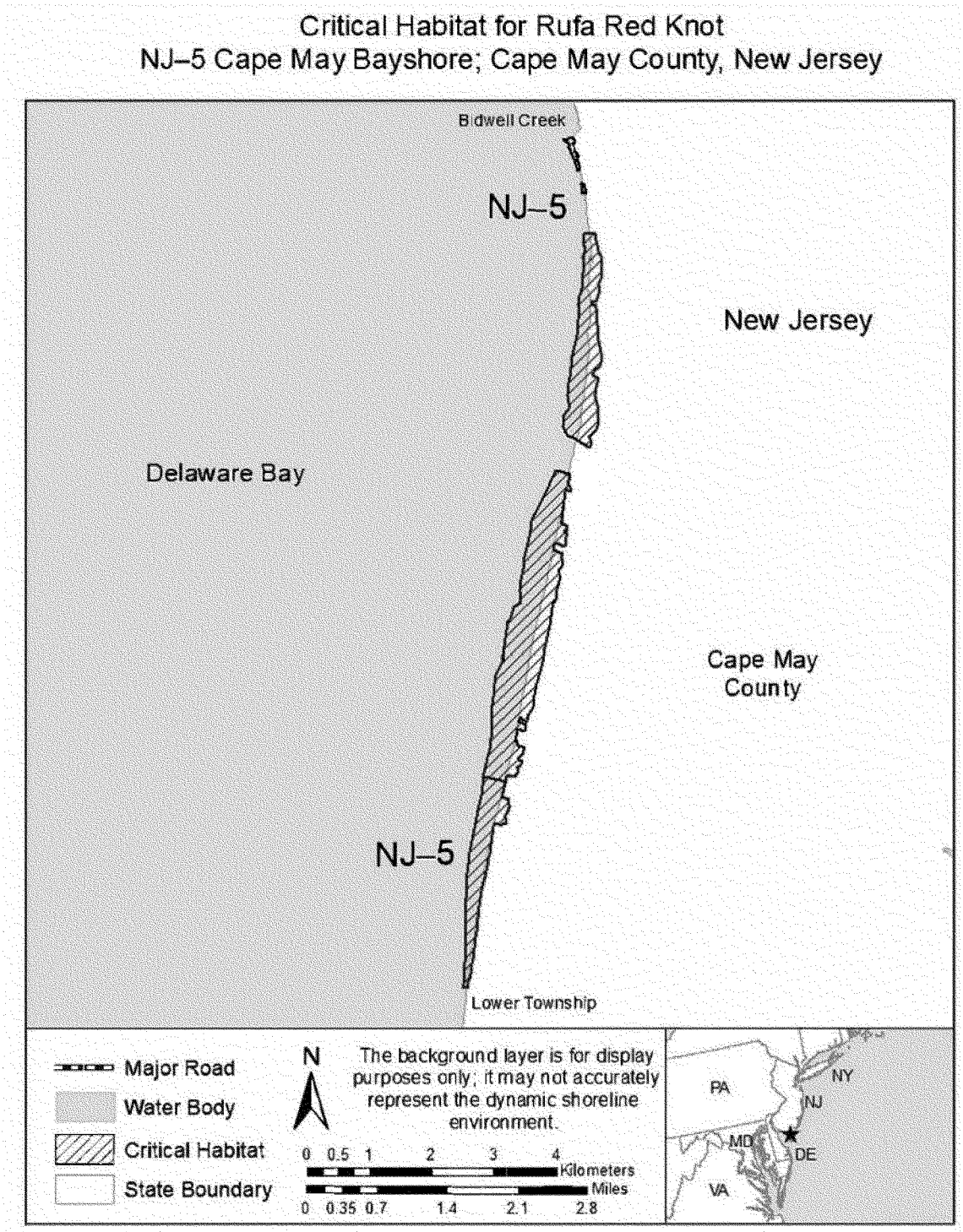


(15) Unit NJ–5: Cape May Bayshore, New Jersey.

(i) Unit NJ–5 consists of approximately 1,202 ac (487 ha) of occupied habitat in Cape May County consisting of Delaware Bay beaches, flats, and shoals from approximately Cloverdale Avenue in Lower Township to the jetty on the south shore of the mouth of Bidwell Creek in Middle Township. Lands within this unit include approximately 133 ac (54 ha) in Federal ownership (Cape May NWR), 44 ac (18 ha) in State ownership, 167 ac (67 ha) in private/other ownership, and 858 ac (347 ha) that are uncategorized.

(ii) Map of Unit NJ–5 follows:

Figure 10 to Rufa Red Knot paragraph (15)(ii)

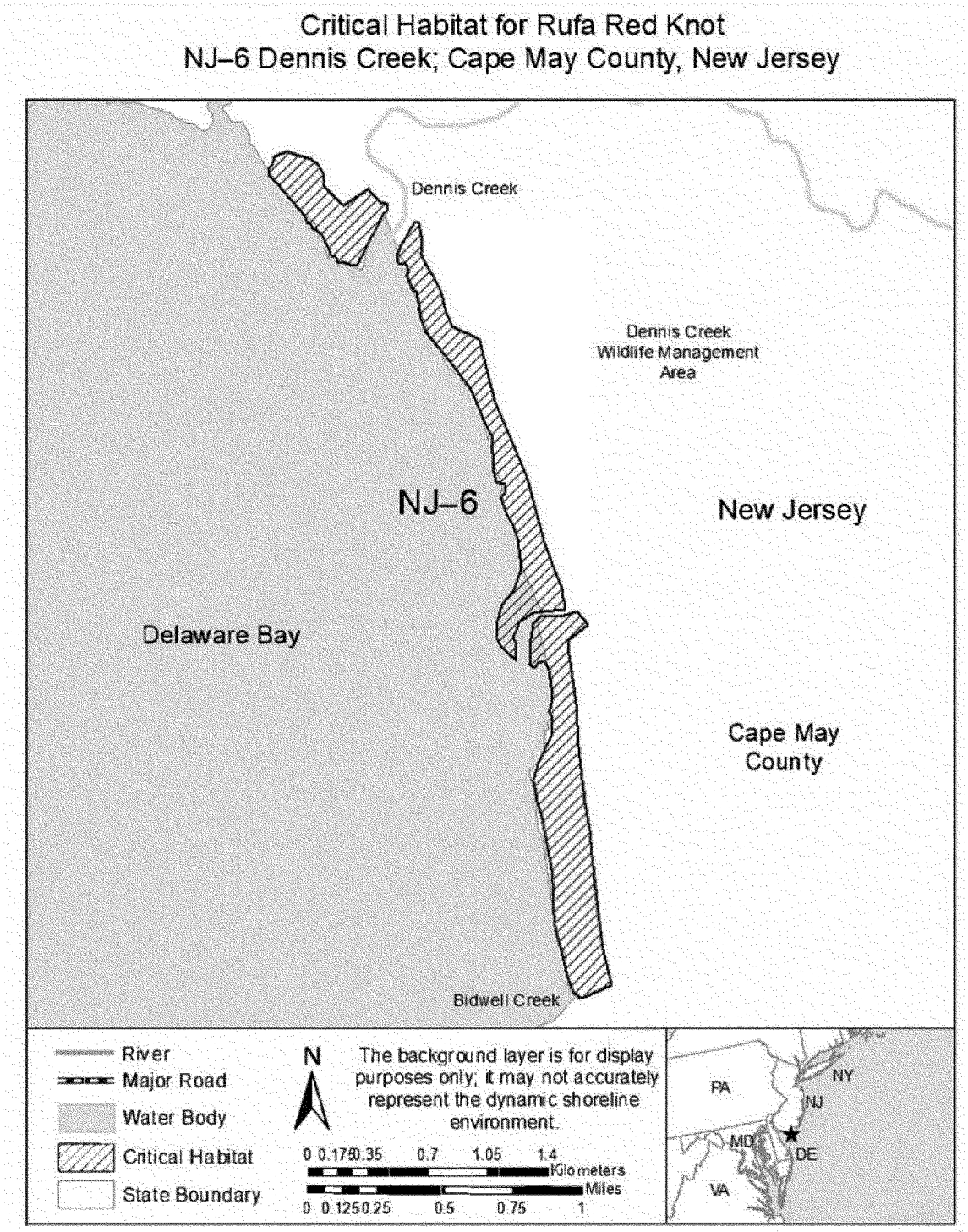


(16) Unit NJ–6: Dennis Creek, New Jersey.

(i) Unit NJ–6 consists of approximately 279 ac (113 ha) of occupied habitat in Cape May County consisting of Delaware Bay beaches, flats, and shoals from the northern shore of Bidwell Creek north to about 0.5 mi (0.8 km) north of Dennis Creek. Lands within this unit are all in State ownership (Dennis Creek Wildlife Management Area).

(ii) Map of Unit NJ–6 follows:

Figure 11 to Rufa Red Knot paragraph (16)(ii)

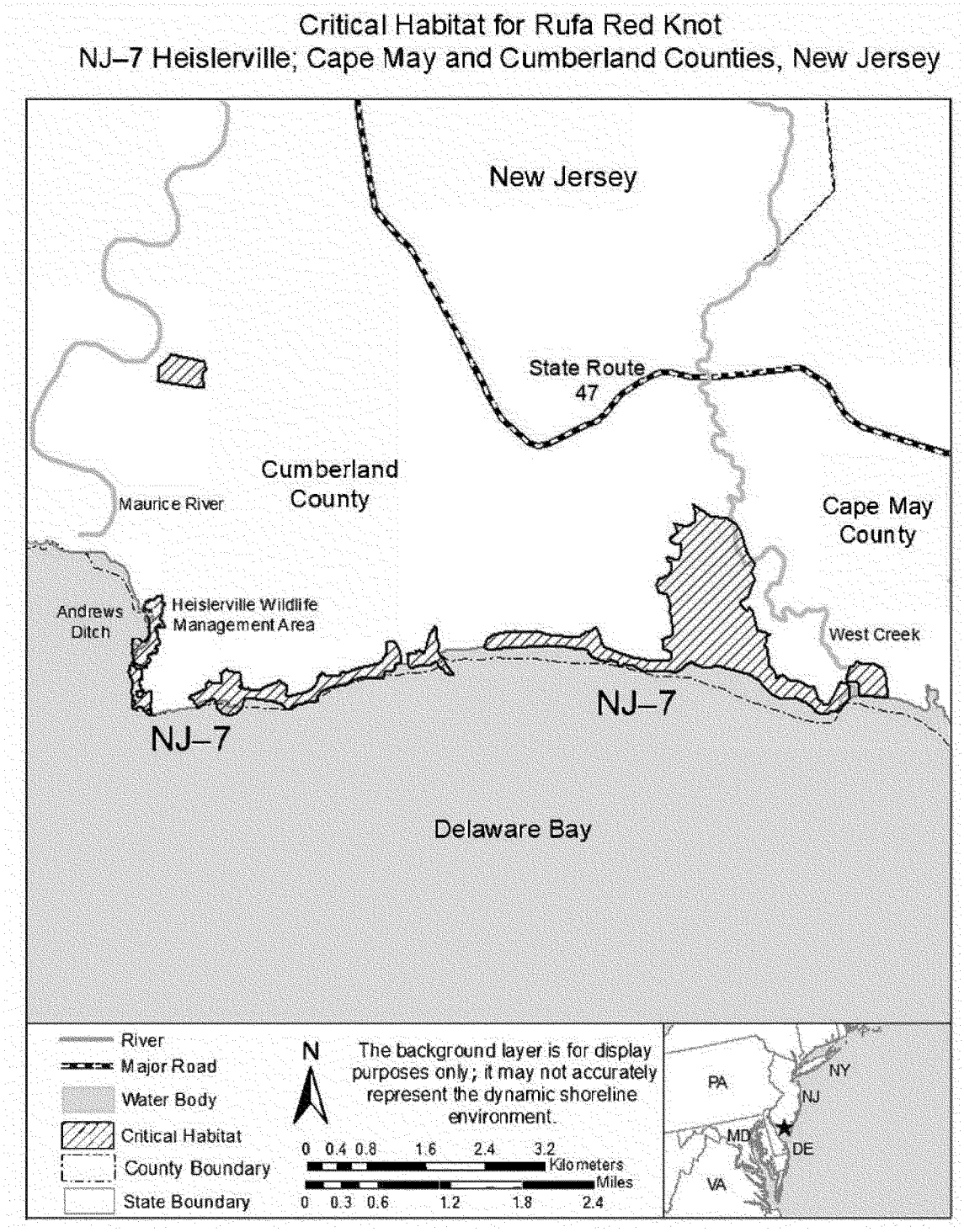


(17) Unit NJ–7: Heislerville, New Jersey.

(i) Unit NJ–7 consists of approximately 1,110 ac (449 ha) of occupied habitat in Cape May and Cumberland Counties consisting of Delaware Bay beaches, flats, shoals, tidal marsh, and open waters from approximately 2,000 ft (0.6 km) east of West Creek in Dennis Township, Cape May County, and extending west to the eastern end of Bay Avenue in Maurice River Township, Cumberland County. The developed area along Bay Avenue is excluded from the unit. West of Bay Avenue, Unit NJ–7 continues north to the mouth of Andrews Ditch in Maurice River Township. Lands within this unit include approximately 524 ac (211 ha) in State ownership (including the Heislerville Wildlife Management Area), 459 ac (186 ha) in private/other ownership, and 127 ac (52 ha) that are uncategorized.

(ii) Map of Unit NJ–7 follows:

Figure 12 to Rufa Red Knot paragraph (14)(ii)

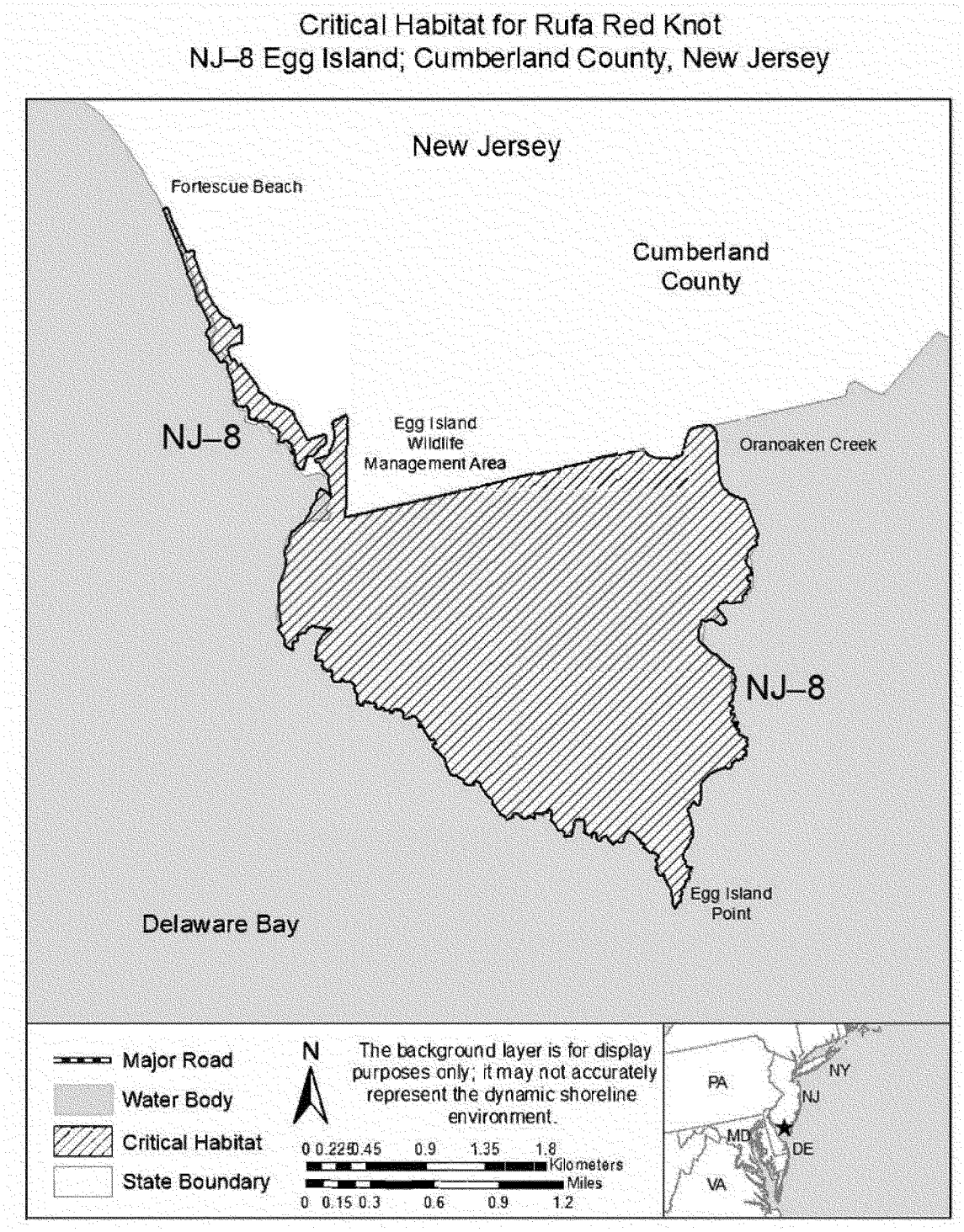



(18) Unit NJ–8: Egg Island, New Jersey.

(i) Unit NJ–8 consists of approximately 1,955 ac (791 ha) of occupied habitat in Cumberland County consisting of Delaware Bay beaches, flats, shoals, tidal marsh, and open waters from the mouth of Oranoaken Creek extending south to Egg Island point, and then northwest to about 850 ft (259 m) past Budney Avenue in the community of Fortescue. Lands within this unit include approximately 1,908 ac (773 ha) in State ownership, 32 ac (13 ha) in private/other ownership, and 14 ac (5 ha) that are uncategorized.

(ii) Map of Unit NJ–8 follows:

Figure 13 to Rufa Red Knot paragraph (18)(ii)

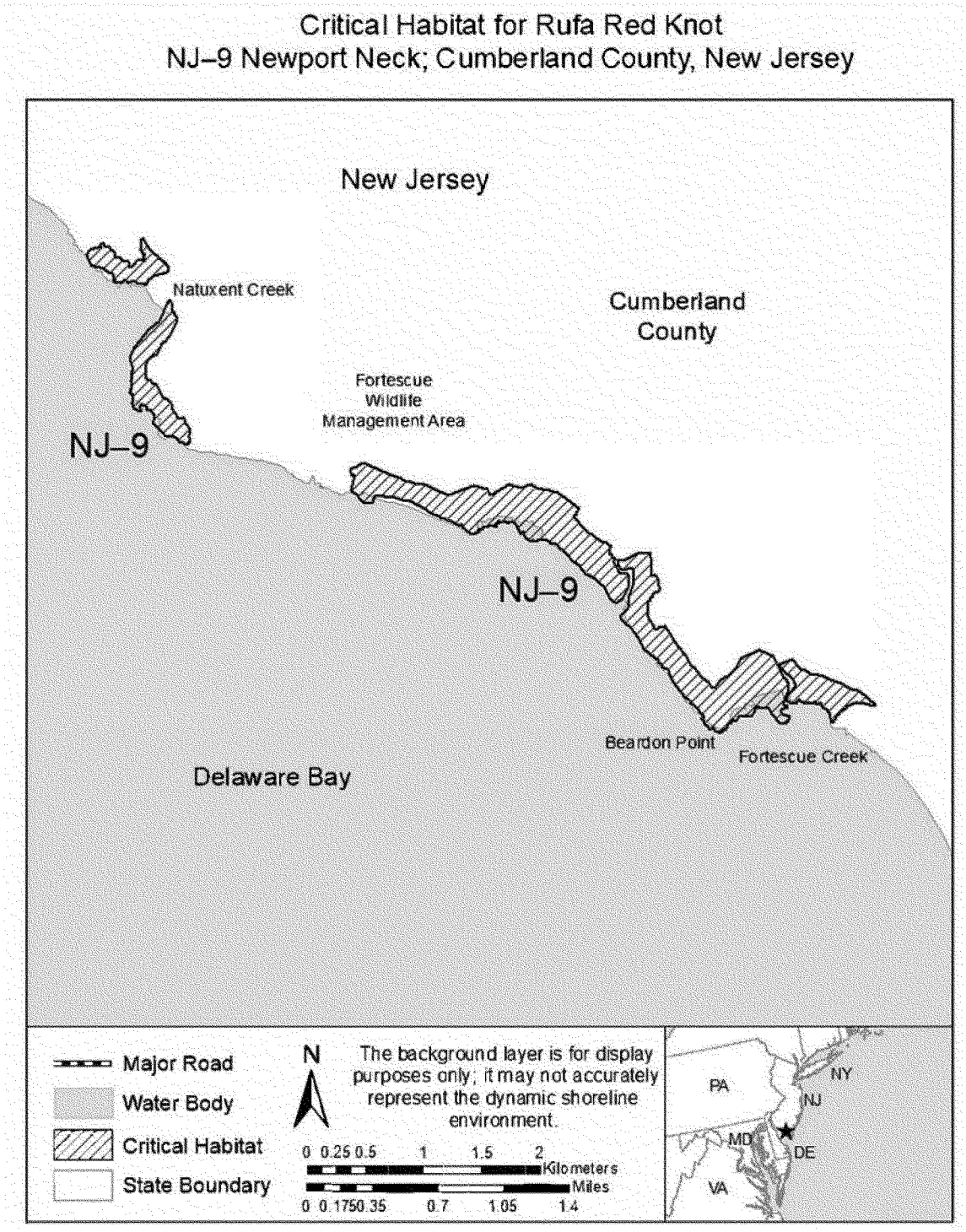



(19) Unit NJ–9: Newport Neck, New Jersey.

(i) Unit NJ–9 consists of approximately 472 ac (191 ha) of occupied habitat in Cumberland County consisting of Delaware Bay beaches, flats, shoals, and tidal marsh from the north bank of the mouth of Fortescue Creek extending northwest to include both sides of the mouth of Nantuxent Creek. Beaches adjacent to the developed community of Gandys Beach are not included in this unit. Lands within this unit include approximately 202 ac (82 ha) in State ownership (including the Fortescue Wildlife Management Area), 176 ac (71 ha) in private/other ownership, and 93 ac (38 ha) that are uncategorized.

(ii) Map of Unit NJ–9 follows:

Figure 14 to Rufa Red Knot paragraph (19)(ii)

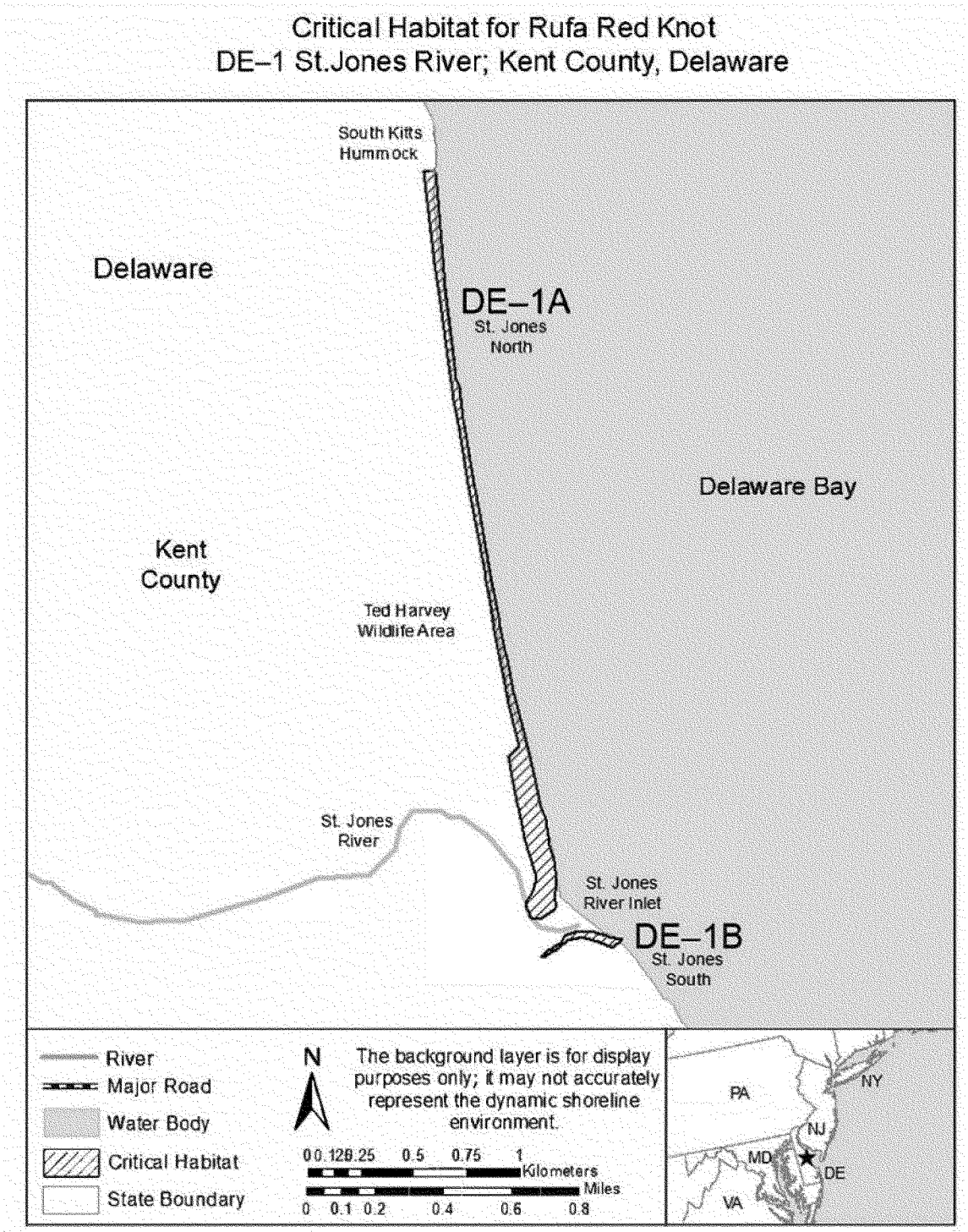



(20) Unit DE–1: St. Jones River, Delaware.

(i) Unit DE–1 consists of two subunits comprising 46 ac (19 ha) of occupied habitat in the St. Jones River area in Kent County. This unit consists of lands owned by the State of Delaware and private landowners.

(ii) Map of Unit DE–1 follows:

Figure 15 to Rufa Red Knot paragraph (20)(ii)




(iii) Subunit DE–1A (St. Jones North) consists of approximately 43 ac (18 ha) of occupied habitat in Kent County consisting of beach shoreline at the north end from South Bay Drive in South Kitts Hummock where there is a jetty into Delaware Bay, and continues to the south where it meets the St. Jones River inlet. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes or marsh. Lands within this subunit are

approximately 37 ac (15 ha) in State ownership (including the Ted Harvey Wildlife Area), 3 ac (1 ha) of undeveloped beach privately owned by Delaware Wildlands, a conservation organization, and 3 ac (1 ha) that are uncategorized.

(iv) Map of Subunit DE–1A is presented at paragraph (20)(ii) of this entry.

(iv) Subunit DE–1B (St. Jones South) consists of approximately 3 ac (1 ha) of occupied habitat in Kent County consisting of beach shoreline at the south side of the inlet to the St. Jones River. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit include approximately 1 ac (0.5 ha) in State ownership and approximately 2 ac (0.6 ha) in private/other ownership.

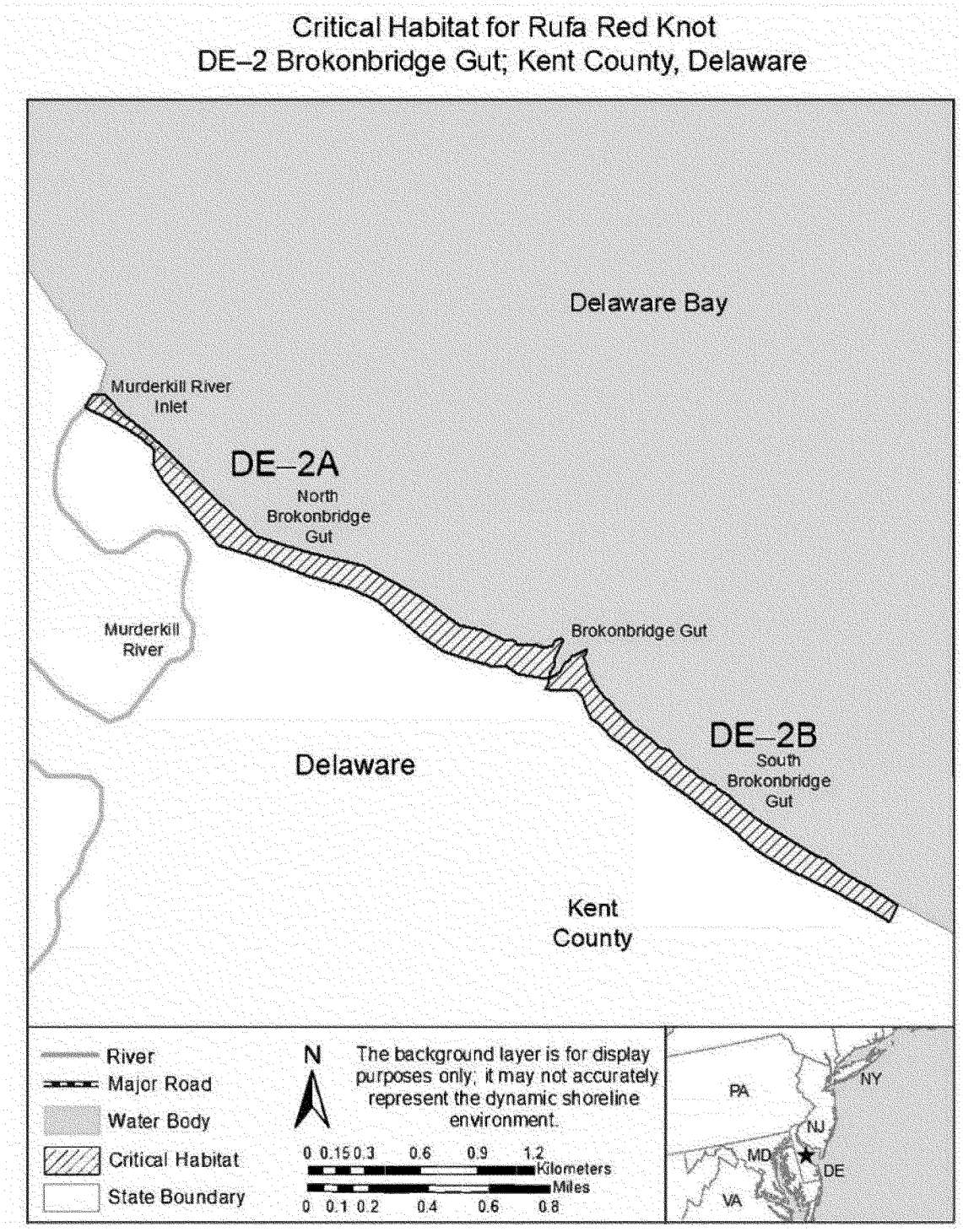
(v) Map of Subunit DE–1B is presented at paragraph (20)(ii) of this entry.

(21) Unit DE–2: Brokonbridge Gut, Delaware.

(i) Unit DE–2 consists of two subunits comprising 163 ac (66 ha) of occupied habitat in the area where Brokonbridge Gut enters the Delaware Bay in Kent County. This unit consists of lands owned by the State of Delaware and private landowners.

(ii) Map of Unit DE–2 follows:

Figure 16 to Rufa Red Knot paragraph (21)(ii)




(iii) Subunit DE–2A (North Brokonbridge Gut) consists of approximately 93 ac (37 ha) of occupied habitat in Kent County consisting of beach shoreline between the north side of the Brokonbridge Gut inlet to the south side of the Murderkill River inlet. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit are primarily in private/other ownership (91 ac (37 ha) with a small portion (2 ac; 1 ha) owned by the State.

(iv) Map of Subunit DE–2A is presented at paragraph (21)(ii) of this entry.

(v) Subunit DE–2B (South Brokonbridge Gut) consists of approximately 70 ac (29 ha) of occupied habitat in Kent County consisting of beach shoreline at the south side of the

inlet to Brokonbridge Gut. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit are all in private/other ownership, primarily owned and protected by a private conservation organization (Delaware Wildlands; 52 ac (21 ha)), with the remaining approximately 18 ac (7 ha) as private, undeveloped land.

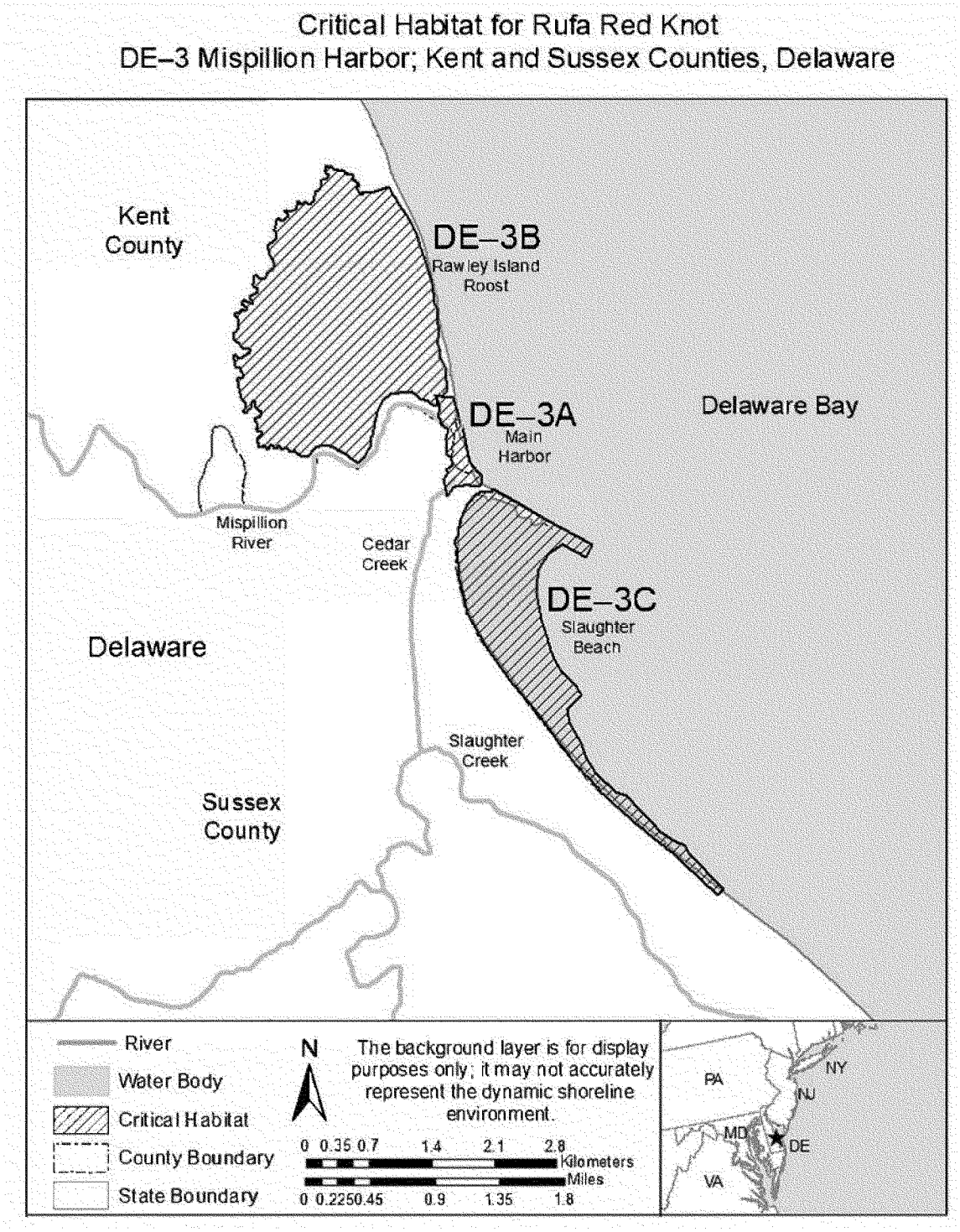
(vi) Map of Subunit DE–2B is presented at paragraph (21)(ii) of this entry.

(22) Unit DE–3: Mispillion Harbor, Delaware.

(i) Unit DE–3 consists of three subunits comprising 1,949 ac (789 ha) of occupied habitat in the Mispillion Harbor area where the Mispillion River and Cedar Creek enter the Delaware Bay in Kent and Sussex Counties. This unit consists of lands owned primarily by the State of Delaware, with minor ownership by Federal and private/other.

(ii) Map of Unit DE–3 follows:

Figure 17 to Rufa Red Knot paragraph (22)(i)




(iii) Subunit DE–3A (Main Harbor) consists of approximately 61 ac (25 ha) of occupied habitat in Kent and Sussex Counties consisting of beach shoreline at the south side of the inlet to Brokonbridge Gut. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary is where the sandy beach turns to marshy habitat. Lands within this subunit include approximately 32 ac (13 ha; 53 percent) in State ownership and 29 ac (12 ha; 47 percent) that are uncategorized.

(iv) Map of Subunit DE–3A is presented at paragraph (22)(ii) of this entry.

(v) Subunit DE–3B (Rawley Island Roost) consists of approximately 1,298 ac (525 ha) of occupied habitat in Kent County consisting of beach shoreline

and marsh on the north side of the Mispillion River, extending north to Graco's Canal. The western boundary is Crooked Gut, and the eastern boundary is the MLLW of the Delaware Bay. Lands within this subunit include approximately 1,139 ac (461 ha) in State ownership (Milford Neck Wildlife Area), 153 ac (62 ha) in private/other ownership, and 6 ac (2 ha) that are uncategorized. Private lands are owned by a combination of a private conservation organization—The Nature Conservancy (TNC; 148 ac (60 ha))—with a small area of private, undeveloped land that has a conservation easement.

(vi) Map of Subunit DE–3B is presented at paragraph (22)(ii) of this entry.

(vii) Subunit DE–3C (Slaughter Beach) consists of approximately 590 ac (239 ha) of occupied habitat in Sussex County consisting of beach shoreline, marsh, and harbor structures extending from the eastern tip of the dike that outlines the outer tip of the Mispillion Harbor, south along the sandy beach of Slaughter Beach to the southern end of Isaacs Shore Drive. The western boundary is where the lightly vegetated beach becomes marsh in the northern portions of this subunit, or where property parcels end in the southern portion of this subunit. The eastern boundary is the MLLW of the Delaware Bay. Lands within this subunit include approximately 1 ac (0.25 ha) in Federal ownership, 59 ac (24 ha) in State ownership, 2 ac (1 ha) in private/other ownership, and 528 ac (213 ha) that are uncategorized.

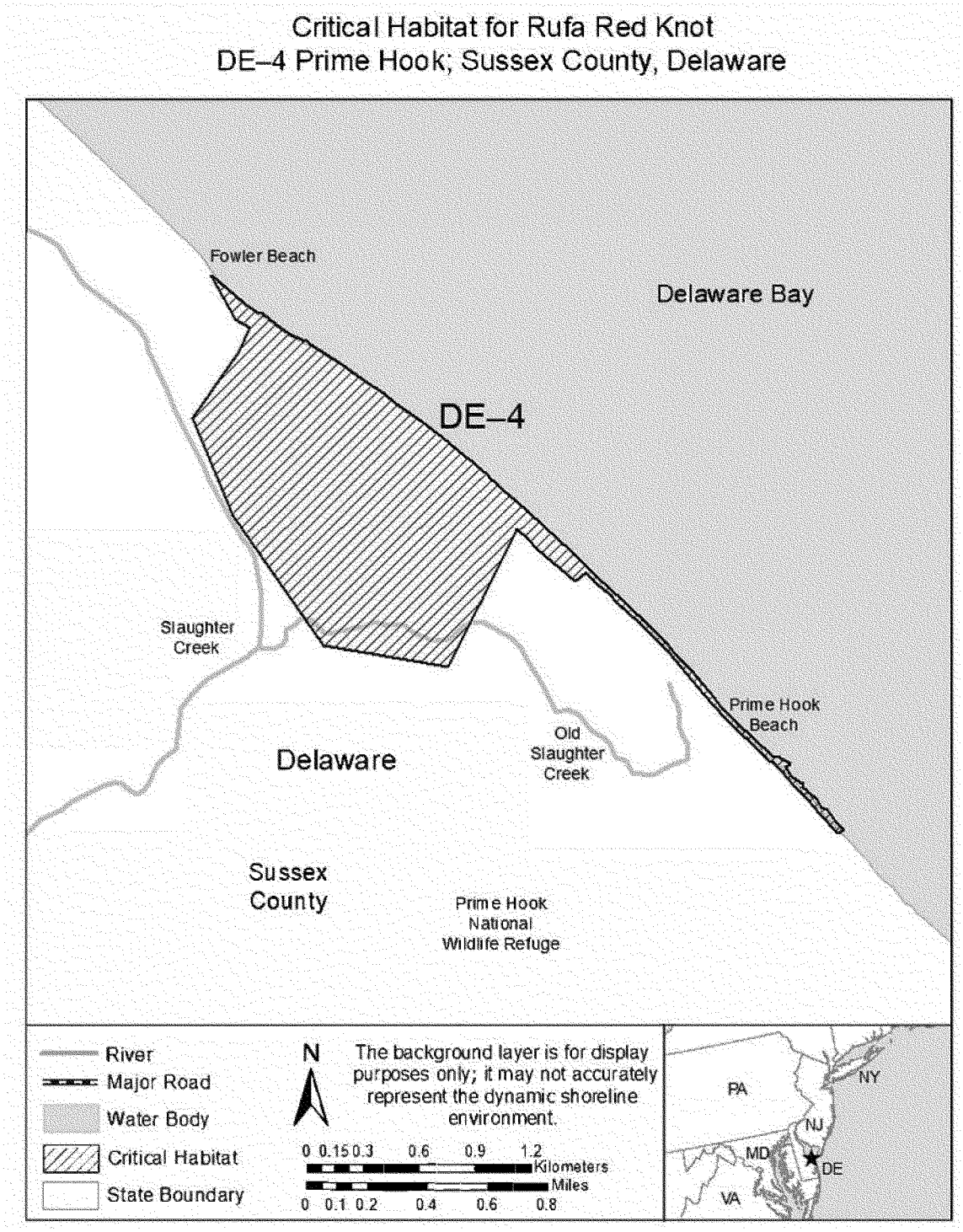
(viii) Map of Subunit DE–3C is presented at paragraph (22)(ii) of this entry.

(23) Unit DE–4: Prime Hook, Delaware.

(i) Unit DE–4 consists of approximately 549 ac (222 ha) of occupied habitat in Sussex County consisting of beach shoreline and marsh from about 1 mi (1.6 km) north of Fowler Beach Road south to the end of South Bayshore Drive. The eastern boundary is the MLLW of the Delaware Bay, and the western boundary in the northern portion of the unit runs along the dune line where the habitat changes from lightly vegetated sandy beach to densely vegetated dunes or marsh. The western boundary of the central portion of this unit includes marsh and shallow open water areas where birds can roost overnight and forage. The western edge of the southern portion of the unit is where property parcels end at the beach. Lands within this unit include approximately 480 ac (195 ha) in Federal ownership (Prime Hook NWR), 6 ac (2 ha) in private/other ownership, and 63 ac (25 ha) that are uncategorized.

(ii) Map of Unit DE–4 follows:

Figure 18 to Rufa Red Knot paragraph (23)(ii)



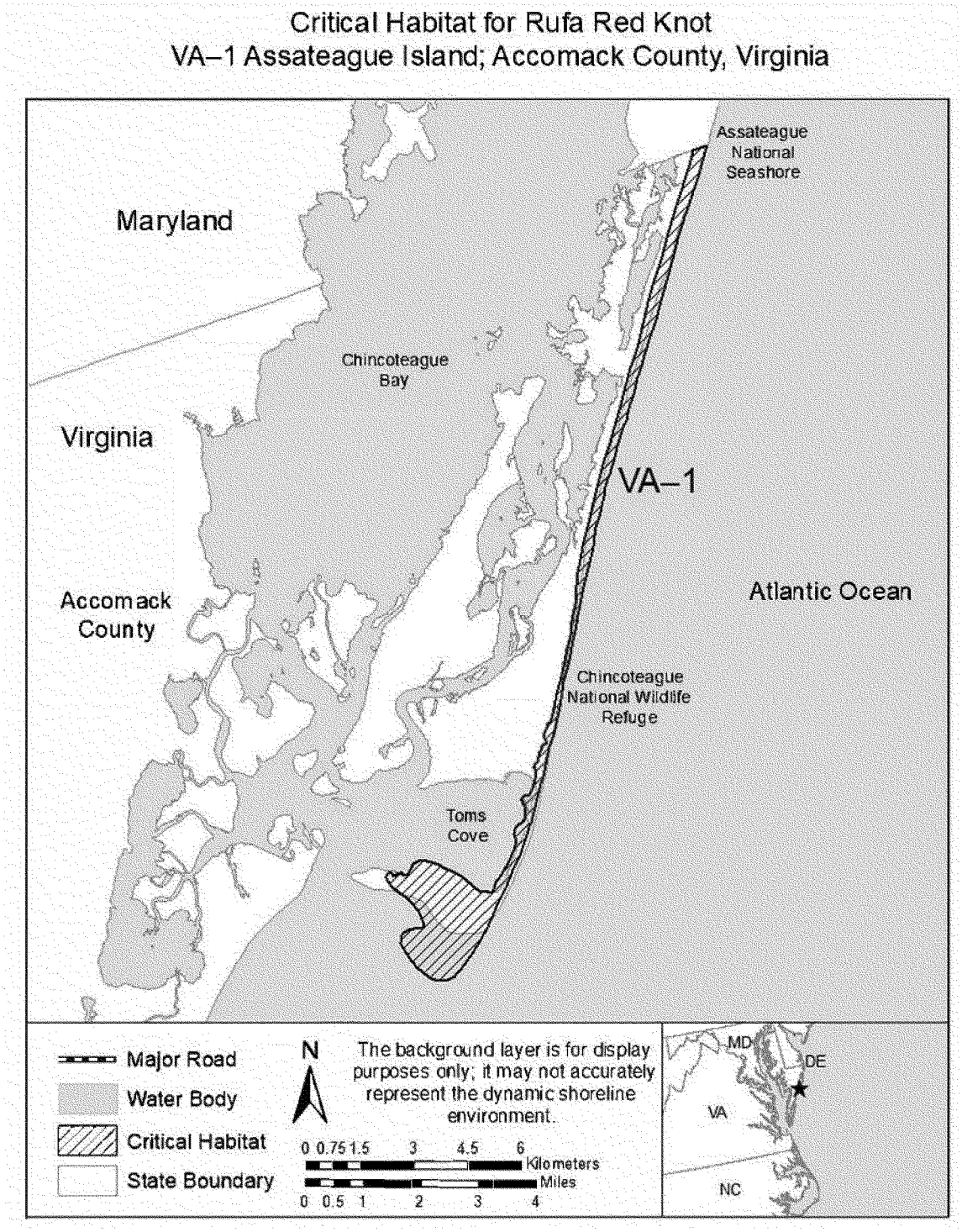

(24) Unit VA–1: Assateague Island, Virginia.

(i) Unit VA–1 consists of approximately 2,817 ac (1,140 ha) of occupied habitat in Accomack County consisting of beach shoreline from the Virginia–Maryland State line south to the area known as ''The Hook,'' a wide peninsula that curves northwest. The western boundary is along the dune line where the habitat changes from sandy beach with little vegetation to densely vegetated dunes or marshland, as well as densely vegetated forested or herbaceous vegetation landward of the beach and primary dune. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are federally

owned (Assateague Island National Seashore and Chincoteague NWR).

(ii) Map of Unit VA–1 follows:

Figure 19 to Rufa Red Knot paragraph (24)(ii)

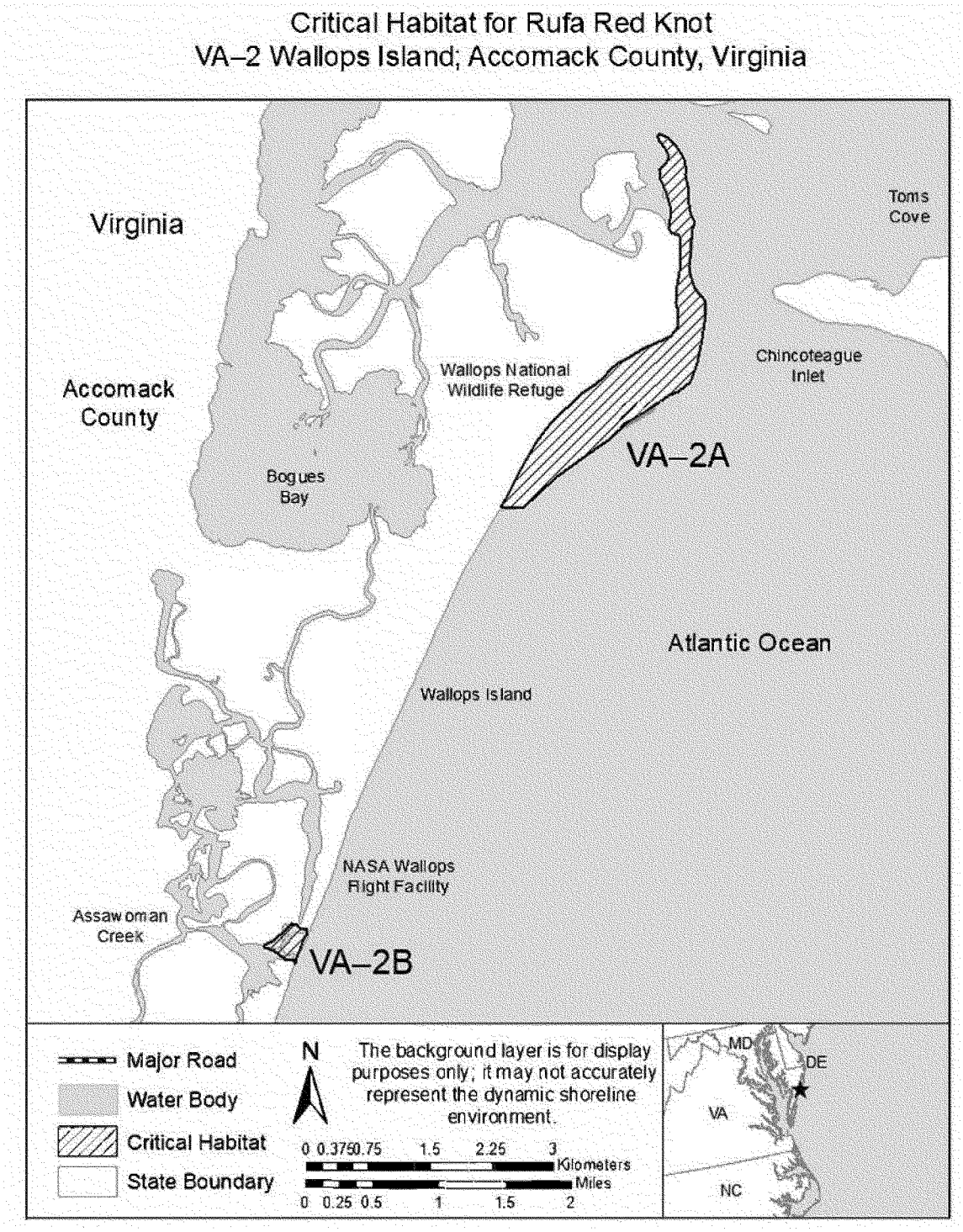



(25) Unit VA–2: Wallops Island, Virginia.

(i) Unit VA–2 comprises two subunits (totaling 571 ac (231 ha)) of occupied habitat owned and managed by the National Aeronautics and Space Administration (NASA) as part of the Wallops Flight Facility located in Accomack County.

(ii) Map of Unit VA–2 follows:

Figure 20 to Rufa Red Knot paragraph (25)(ii)




(iii) Subunit VA–2A (Wallops Island North) consists of approximately 540 ac (218 ha) of occupied habitat in Accomack County consisting of beach shoreline and dynamic intertidal areas. The north and east boundaries of the subunit are Chincoteague Inlet and seaward past the MLLW line and shoaling areas that are inundated with less than 3 in (7.6 cm) of water). The western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat

banks, or densely vegetated forested or herbaceous vegetation landward of the beach and primary dune. The southern boundary tapers to a point ending at the northern end of the facility's sea wall structure; it extends past the MLLW line and includes the areas that are slightly inundated with less than 3 in (7.5 cm) of water. All lands within this subunit are federally owned by NASA.

(iv) Map of Subunit VA–2A is presented at paragraph (25)(ii) of this entry.

(v) Subunit VA–2B (Wallops Island South) consists of approximately 31 ac (13 ha) of occupied habitat in Accomack County consisting of beach shoreline and dynamic intertidal areas. The northern boundary is the end of the road south of the old runway, the southern boundary is Assawoman Creek, the western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely forested or herbaceous vegetation landward of the beach and primary dune, and the eastern boundary extends seaward past the MLLW line including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this subunit are federally owned by NASA.

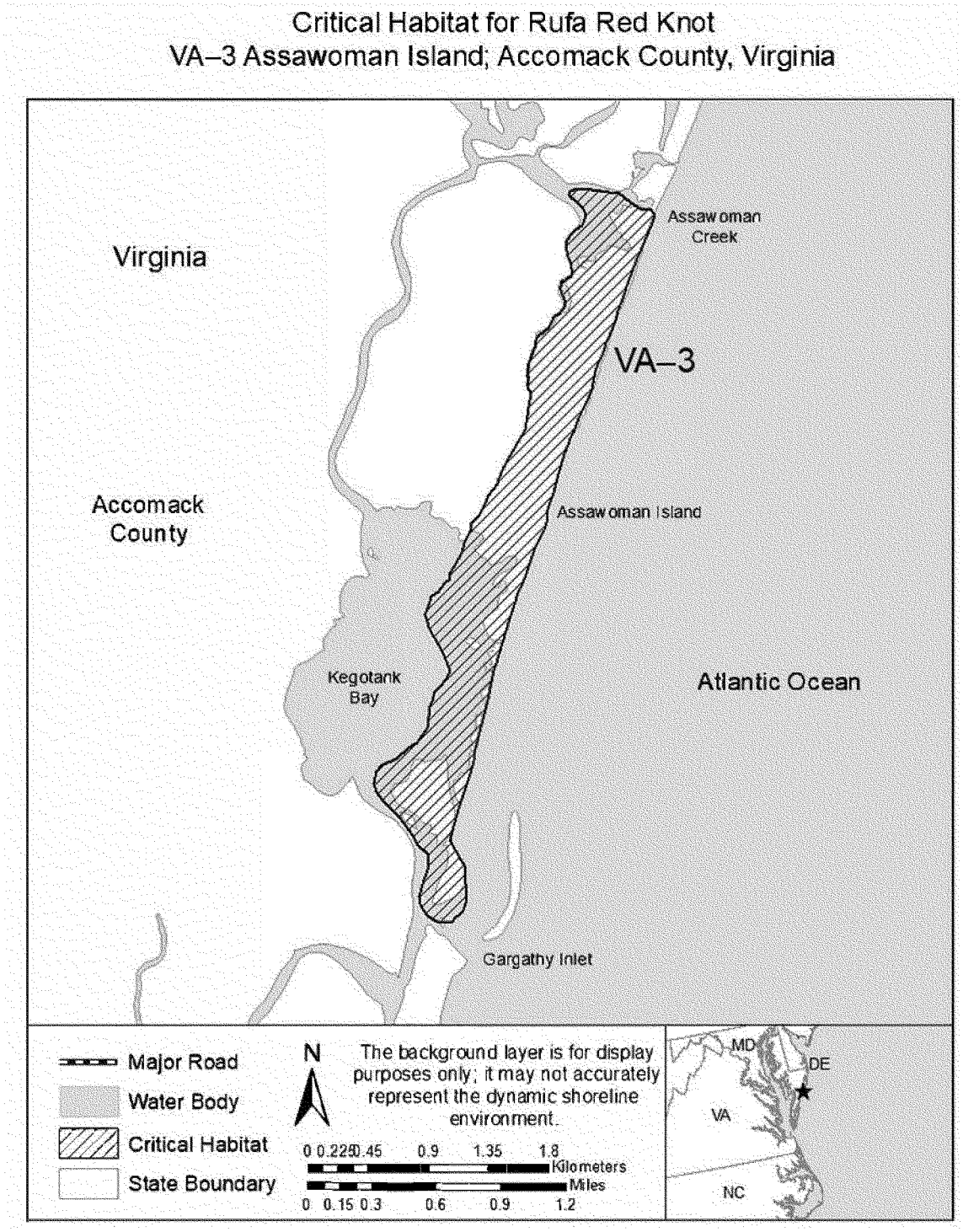
(vi) Map of Subunit VA–2B is presented at paragraph (25)(ii) of this entry.

(26) Unit VA–3: Assawoman Island, Virginia.

(i) Unit VA–3 consists of approximately 633 ac (256 ha) of occupied habitat in Accomack County consisting of beach shoreline and dynamic intertidal areas. The unit is from Assawoman Creek in the north to Kegotank Creek and Gargathy Inlet in the south, extending east past the MLLW line including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water). The western boundary is formed by Houseboat Creek, a section of Egg Marsh, and Kegotank Bay. All lands within this unit are federally owned by Chincoteague NWR.

(ii) Map of Unit VA–3 follows:

Figure 21 to Rufa Red Knot paragraph (26)(ii)



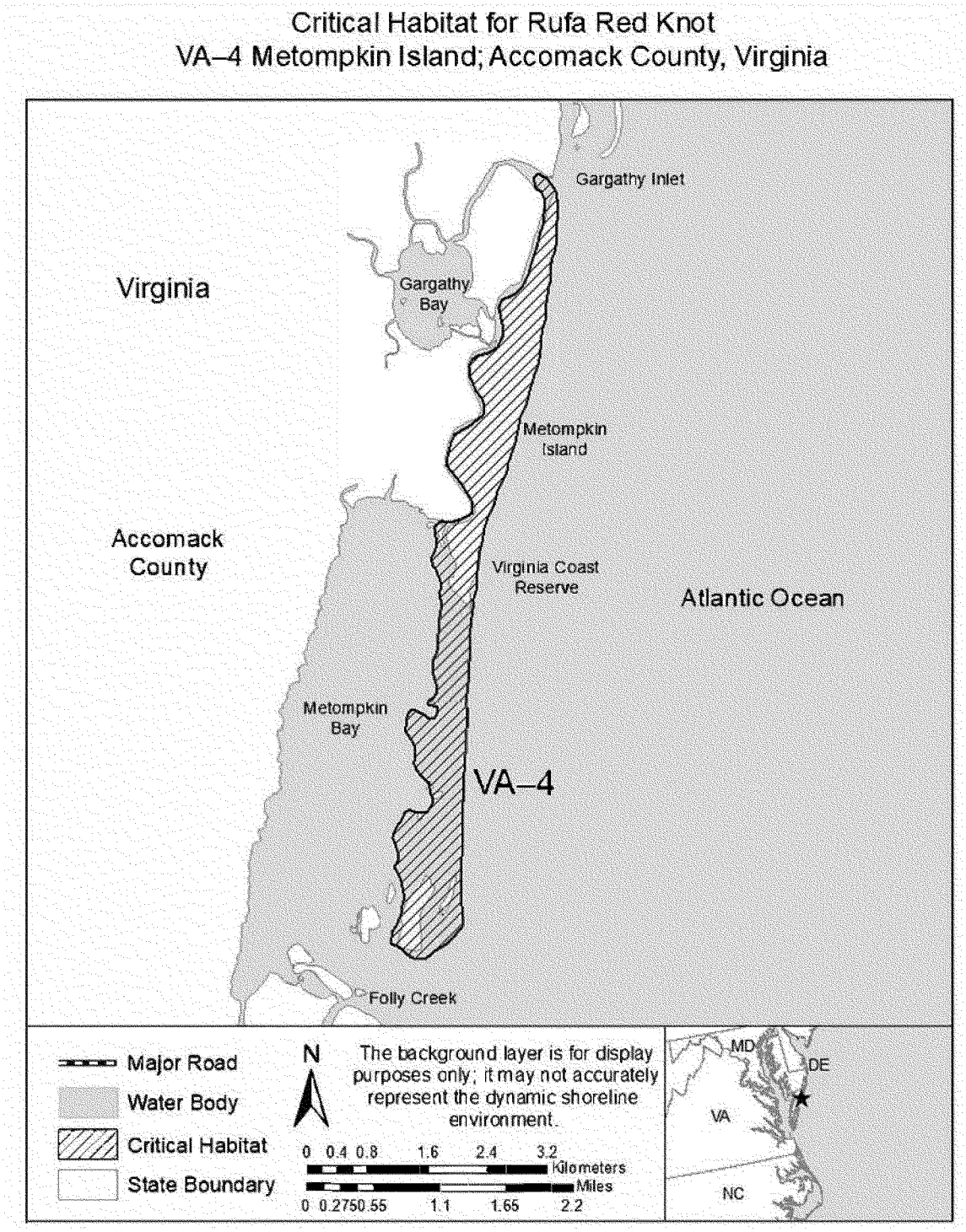

(27) Unit VA–4: Metompkin Island, Virginia.

(i) Unit VA–4 consists of approximately 1,467 ac (594 ha) of occupied habitat in Accomack County consisting of beach shoreline and dynamic intertidal areas. The unit extends from Kegotank Creek and Gargathy Inlet south to the mouth of Folly Creek. The western boundary is formed by the Virginia Inside Passage of the Intercoastal Waterway and Metompkin Bay and includes extensive areas of overwash and low marsh areas along the western boundary. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 64 ac (26 ha) in Federal ownership (Chincoteague NWR), 56 ac

(22 ha) in State ownership, and 1,239 ac (502 ha) in private/other ownership (TNC), and 110 ac (44 ha) that are uncategorized. This coastal area is part of the Virginia Coast Reserve.

(ii) Map of Unit VA–4 follows:

Figure 22 to Rufa Red Knot paragraph (27)(ii)



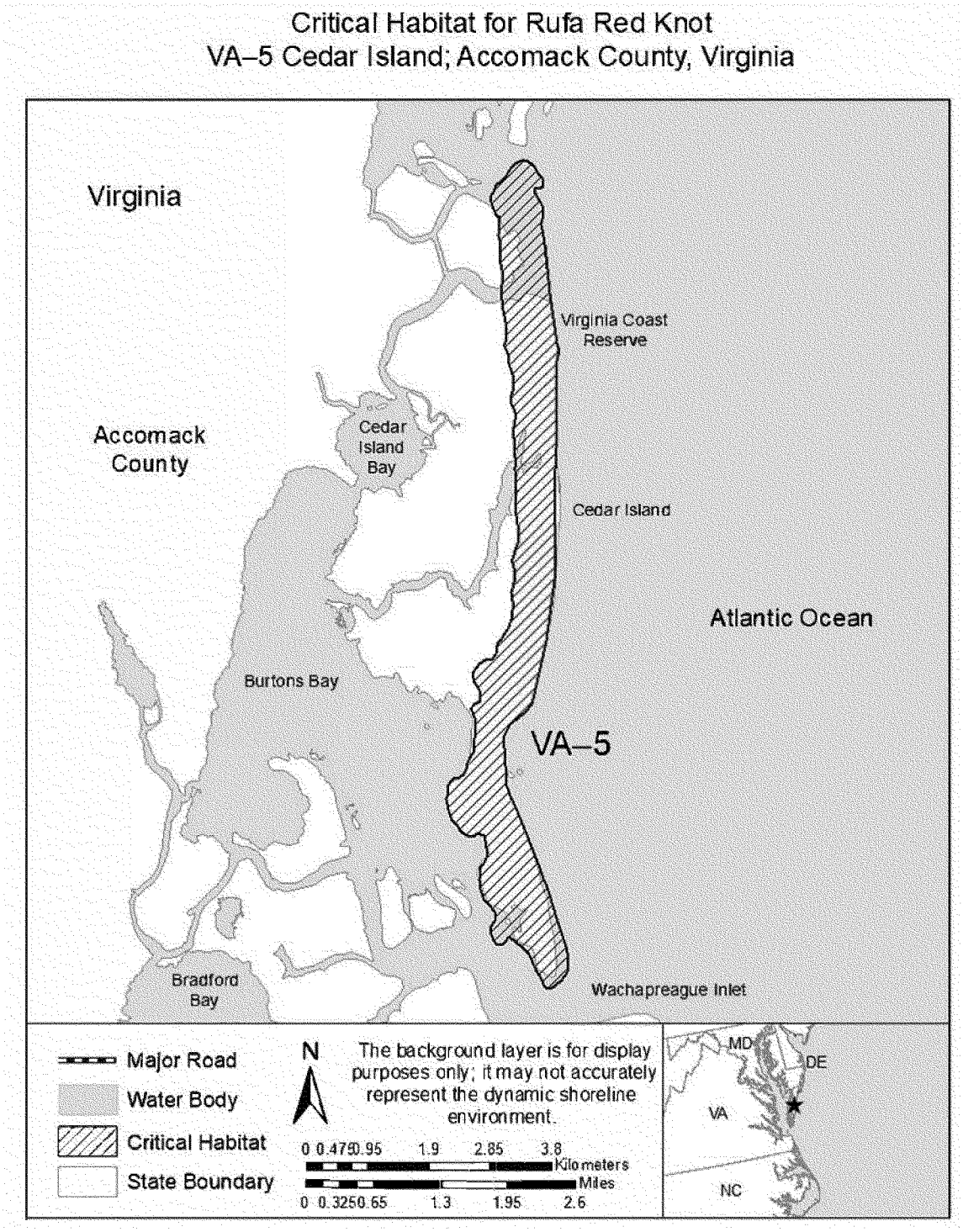

(28) Unit VA–5: Cedar Island, Virginia.

(i) Unit VA–5 consists of approximately 2,274 ac (920 ha) of occupied habitat in Accomack County consisting of beach shoreline and

dynamic intertidal areas. The unit extends from an inlet between Cedar Island and the southern end of Metompkin Island south to Wachapreague Inlet. The western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely vegetated forested or herbaceous vegetation landward of the beach and primary dune, or open water including Burtons Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 203 ac (82 ha) in Federal ownership, 77 ac (31 ha) in State ownership, 920 ac (372 ha) in private/other ownership, and 1,074 ac (434 ha) that are uncategorized. This coastal area is part of the Virginia Coast Reserve.

(ii) Map of Unit VA–5 follows:

Figure 23 to Rufa Red Knot paragraph (28)(ii)



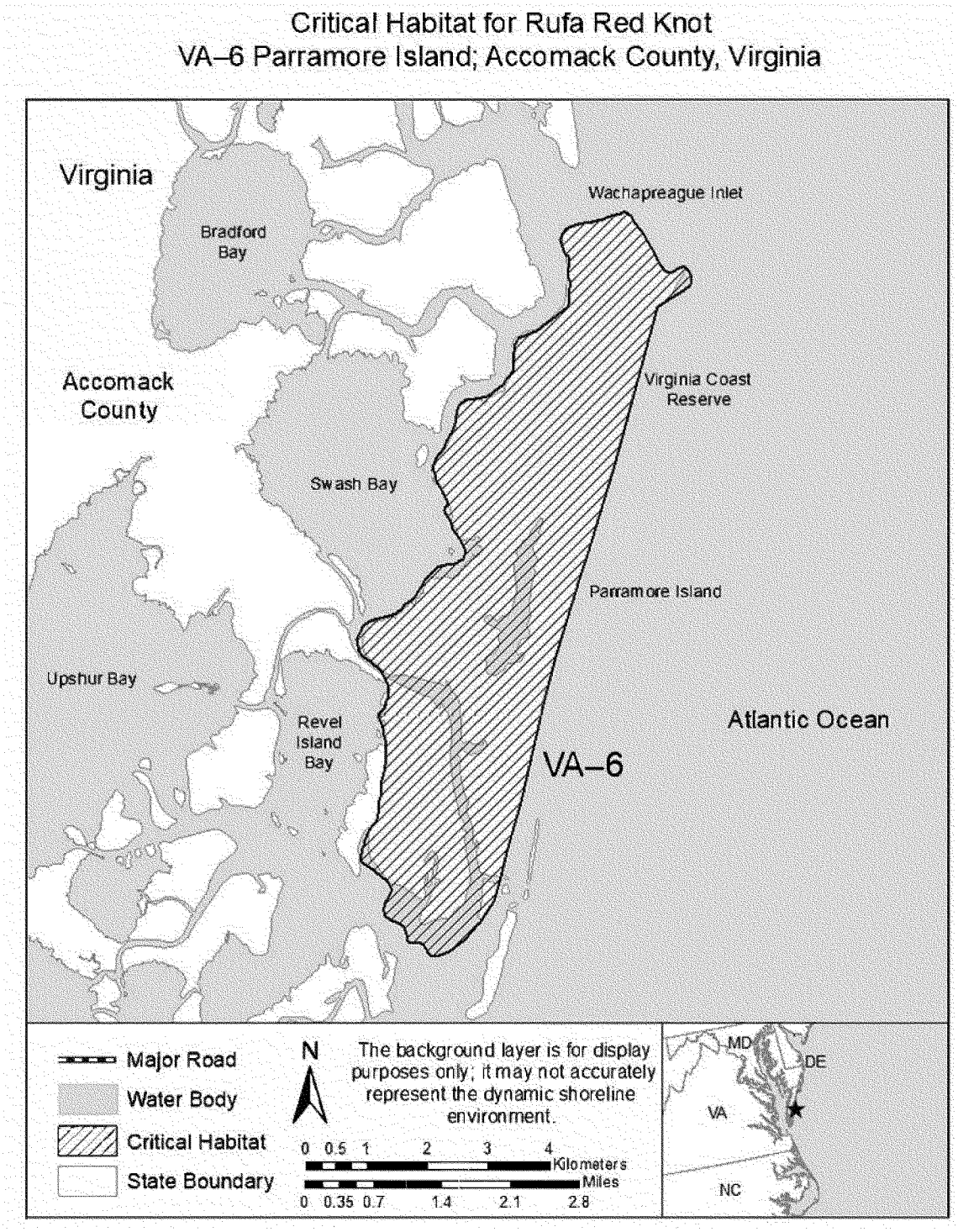

(29) Unit VA–6: Parramore Island, Virginia.

(i) Unit VA–6 consists of approximately 6,802 ac (2,753 ha) of occupied habitat in Accomack County consisting of beach shoreline and dynamic intertidal areas. The unit extends from Wachapreague Inlet south to Quinby Inlet. The western boundary is Horseshoe Lead, Drawing Channel, Swash Bay, and Revel Island Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well

as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 5,631 ac (2,280 ha) in private/other ownership (TNC) and 1,171 ac (473 ha) that are uncategorized. This coastal area is part of the Virginia Coast Reserve.

(ii) Map of Unit VA–6 follows:

Figure 24 to Rufa Red Knot paragraph (29)(ii)

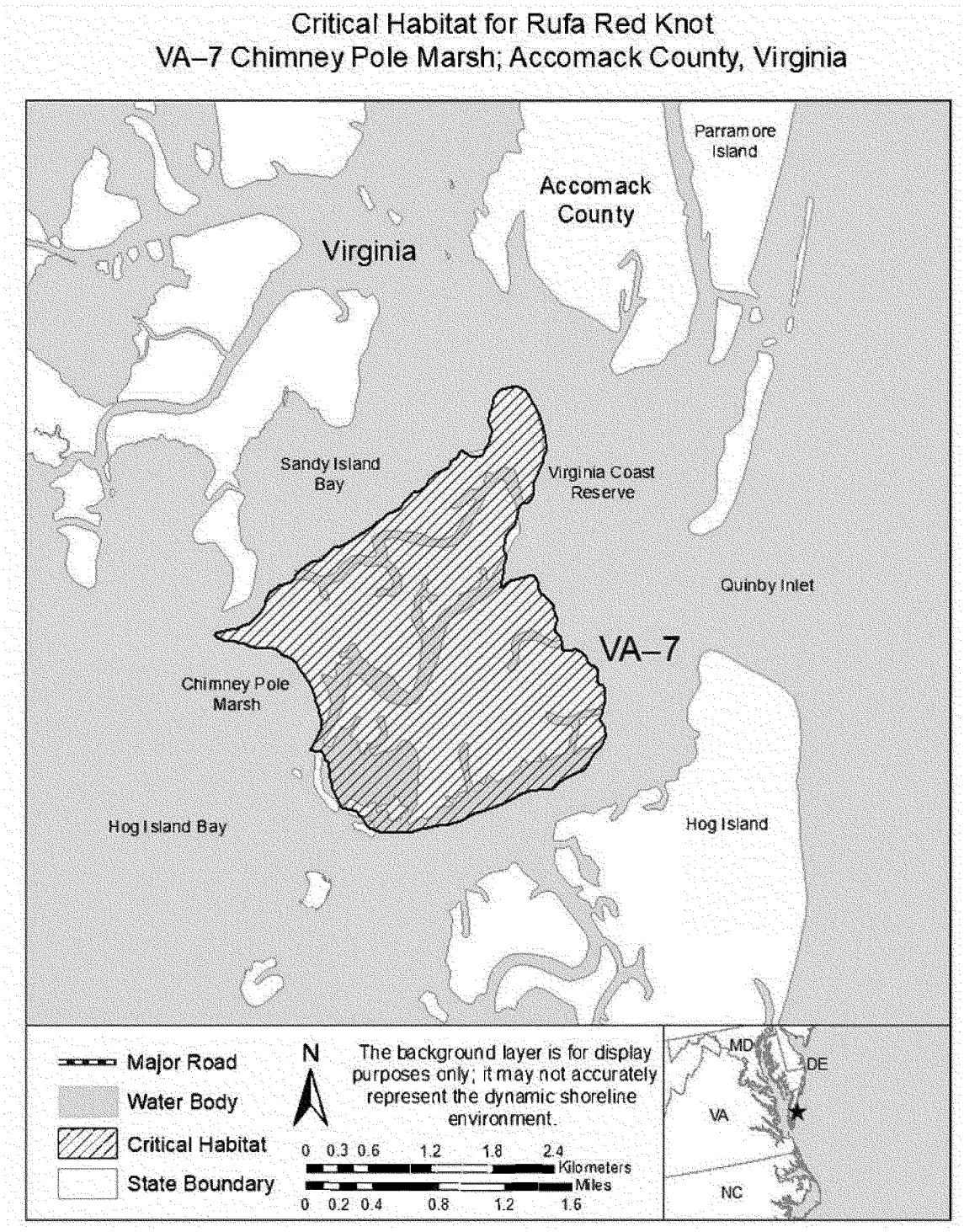


(30) Unit VA–7: Chimney Pole Marsh, Virginia.

(i) Unit VA–7 consists of approximately 2,004 ac (811 ha) of occupied habitat in Chimney Pole Marsh and the southern portion of Sandy Island in Accomack County consisting of mud flats, low marsh, sandy beaches, overwash areas, and tidal channels. The boundary of the marsh on all sides extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 1,224 ac (496 ha) in State ownership, 285 ac (116 ha) in private/other ownership (TNC), and 495 ac (200 ha) that are uncategorized.

(ii) Map of Unit VA–7 follows:

Figure 25 to Rufa Red Knot paragraph (30)(ii)



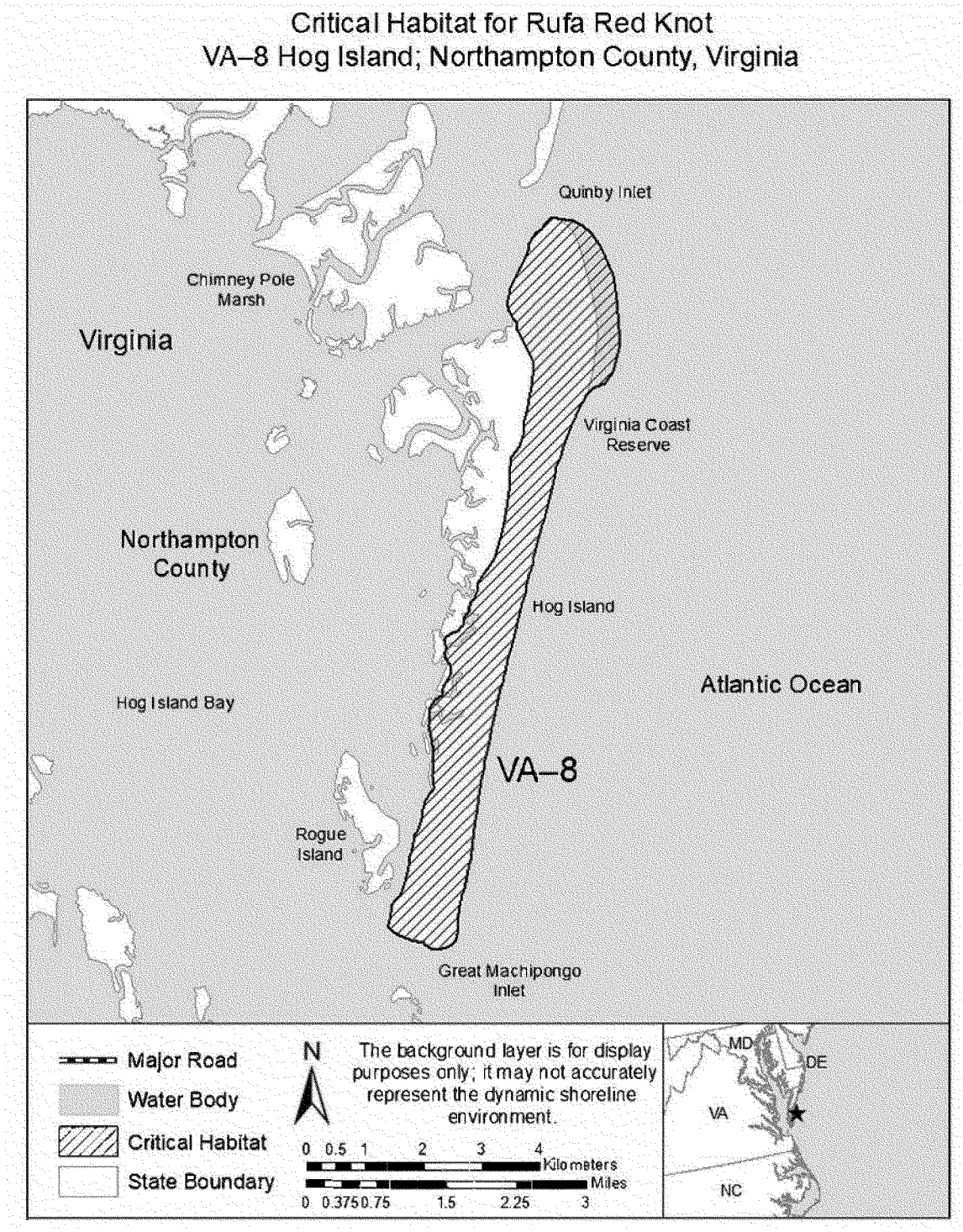

(31) Unit VA–8: Hog Island, Virginia.

(i) Unit VA–8 consists of approximately 3,235 ac (1,309 ha) of occupied habitat in Northampton County consisting of shoreline habitat. The unit is bounded by the Quinby Inlet to the north and Great Machipongo Inlet to the south. The western boundary is along the marsh line where the habitat changes from lightly vegetated sandy beach and exposed peat with little vegetation to densely vegetated marshland, peat banks, or densely vegetated forested or herbaceous vegetation landward of the beach and

primary dune, or open water including Hog Island Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 16 ac (7 ha) in State ownership, 2,966 ac (1,201 ha) in private/other ownership, and 253 ac (101 ha) that is uncategorized. This coastal area is part of the Virginia Coast Reserve.

(ii) Map of Unit VA–8 follows:

Figure 26 to Rufa Red Knot paragraph (31)(ii)

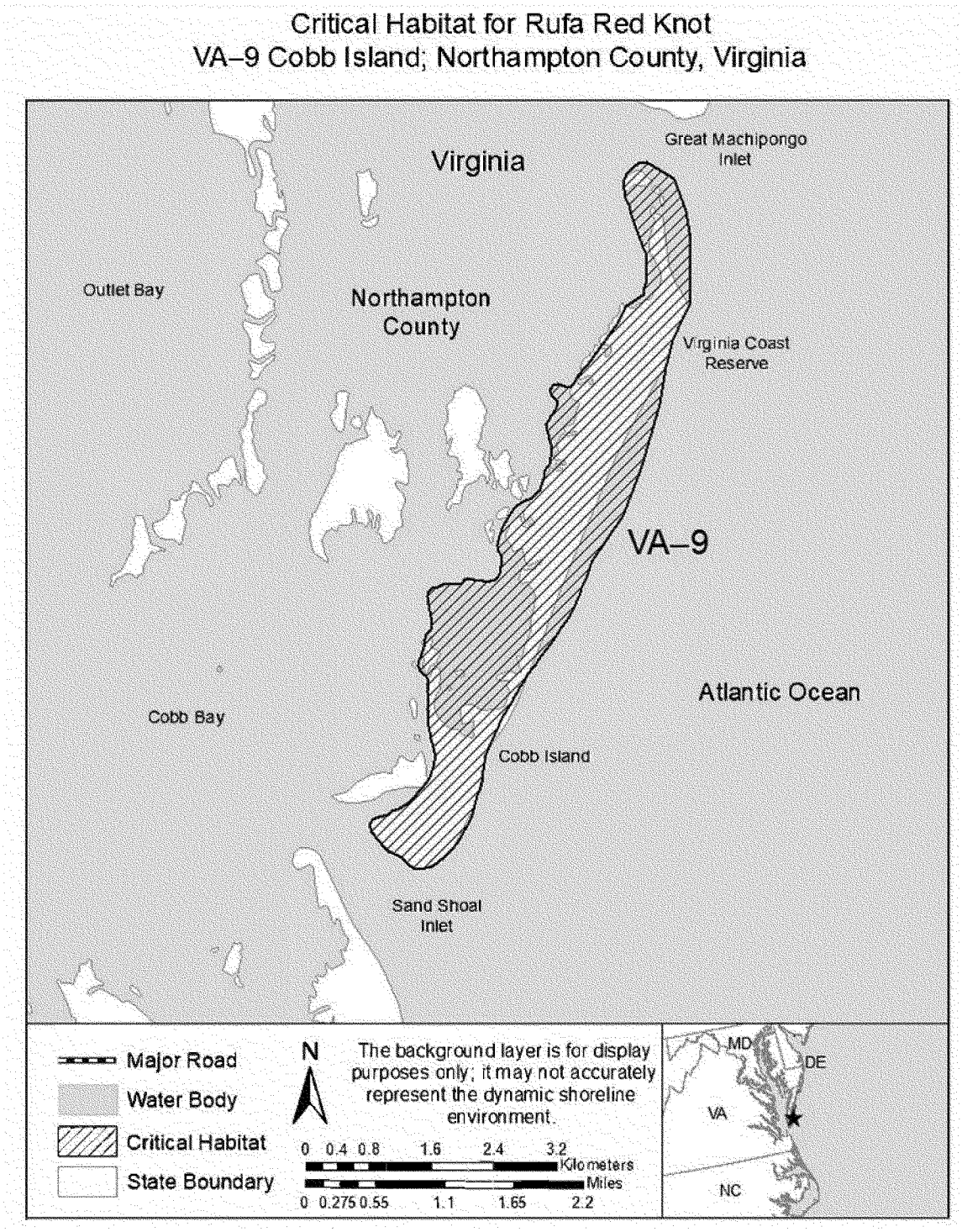


(32) Unit VA–9: Cobb Island, Virginia.

(i) Unit VA–9 consists of approximately 2,342 ac (948 ha) of occupied habitat in Northampton County consisting of shoreline habitat. The unit is bounded by Great Machipongo Inlet to the north and Sandy Shoal Inlet to the south. The western boundary is formed by Hog Island Bay, Spidercrab Bay, and Cobb Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include approximately 16 ac (7 ha) in State ownership, 1,778 ac (720 ha) in private/other ownership, and 547 ac (221 ha) that are uncategorized. This coastal area is part of the Virginia Coast Reserve.

(ii) Map of Unit VA–9 follows:

Figure 27 to Rufa Red Knot paragraph (32)(ii)



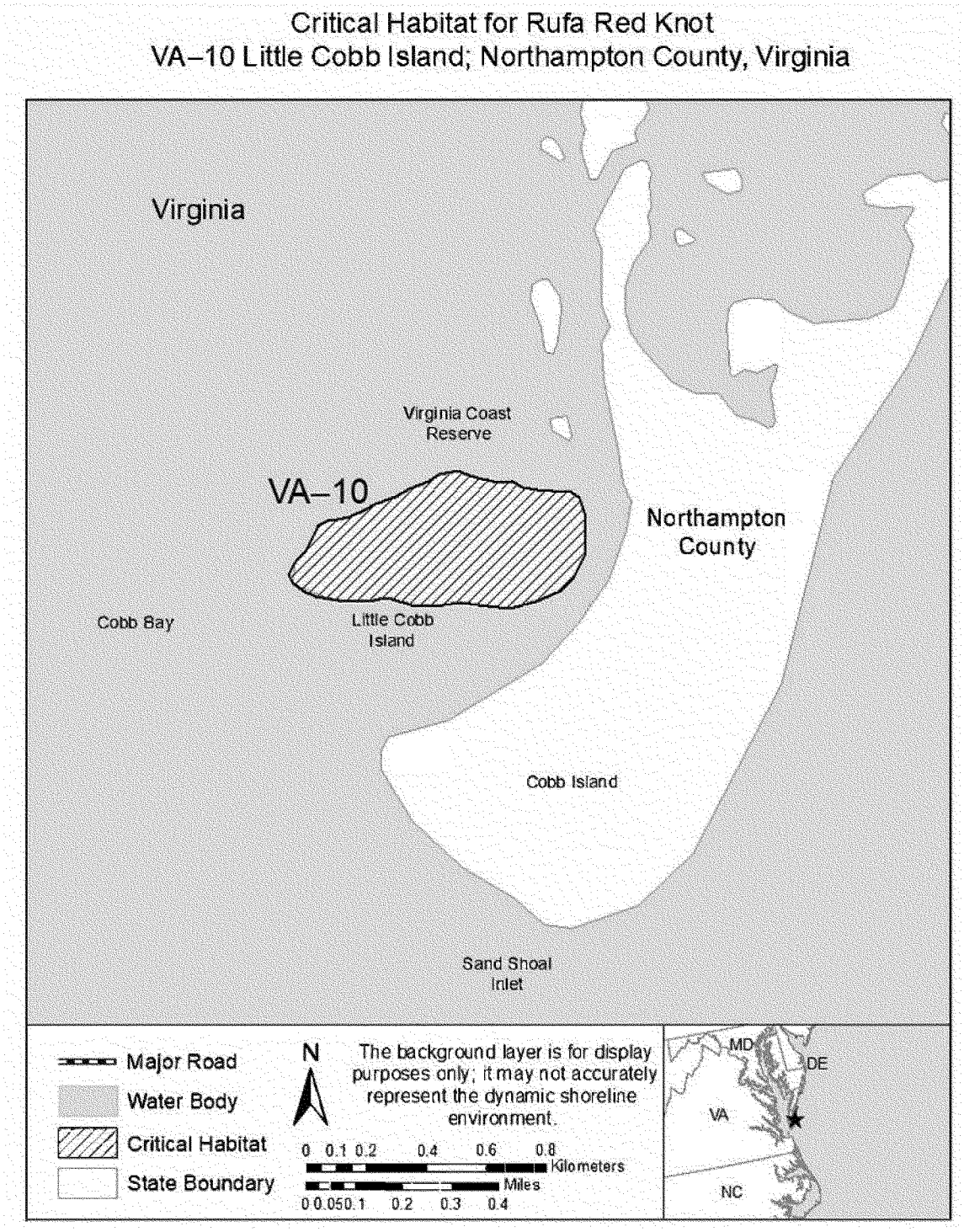

(33) Unit VA–10: Little Cobb Island, Virginia.

(i) Unit VA–10 consists of approximately 82 ac (33 ha) of occupied habitat in Northampton County consisting of shoreline habitat lying just west of the southern end of Cobb Island and within the waters of Cobb Bay. The boundary of this small island in all directions is the waters of Cobb Bay and the extent of the boundary seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated

with less than 3 in (7.6 cm) of water. All lands within this unit are in private/other ownership (TNC) and are part of the Virginia Coast Reserve.

(ii) Map of Unit VA–10 follows:

Figure 28 to Rufa Red Knot paragraph (3)(ii)

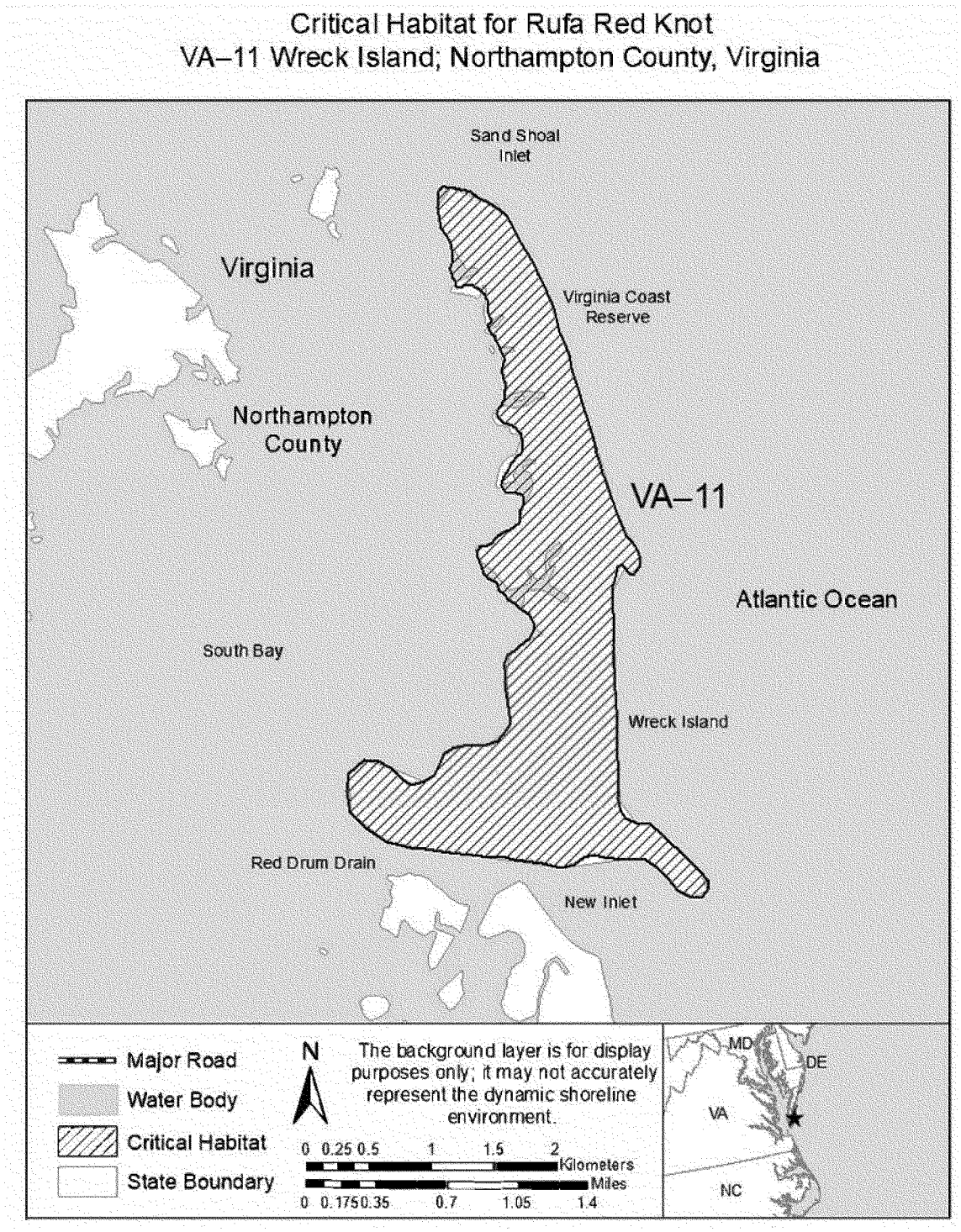


(34) Unit VA–11: Wreck Island, Virginia.

(i) Unit VA–11 consists of approximately 1,270 ac (514 ha) of occupied habitat in Northampton County consisting of shoreline habitat bounded to the north by Sandy Shoal Inlet and Red Drum Drain and New Inlet to the south. The western boundary is South Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are State owned and managed as Wreck Island Natural Area Preserve.

(ii) Map of Unit VA–11 follows:

Figure 29 to Rufa Red Knot paragraph (34)(ii)



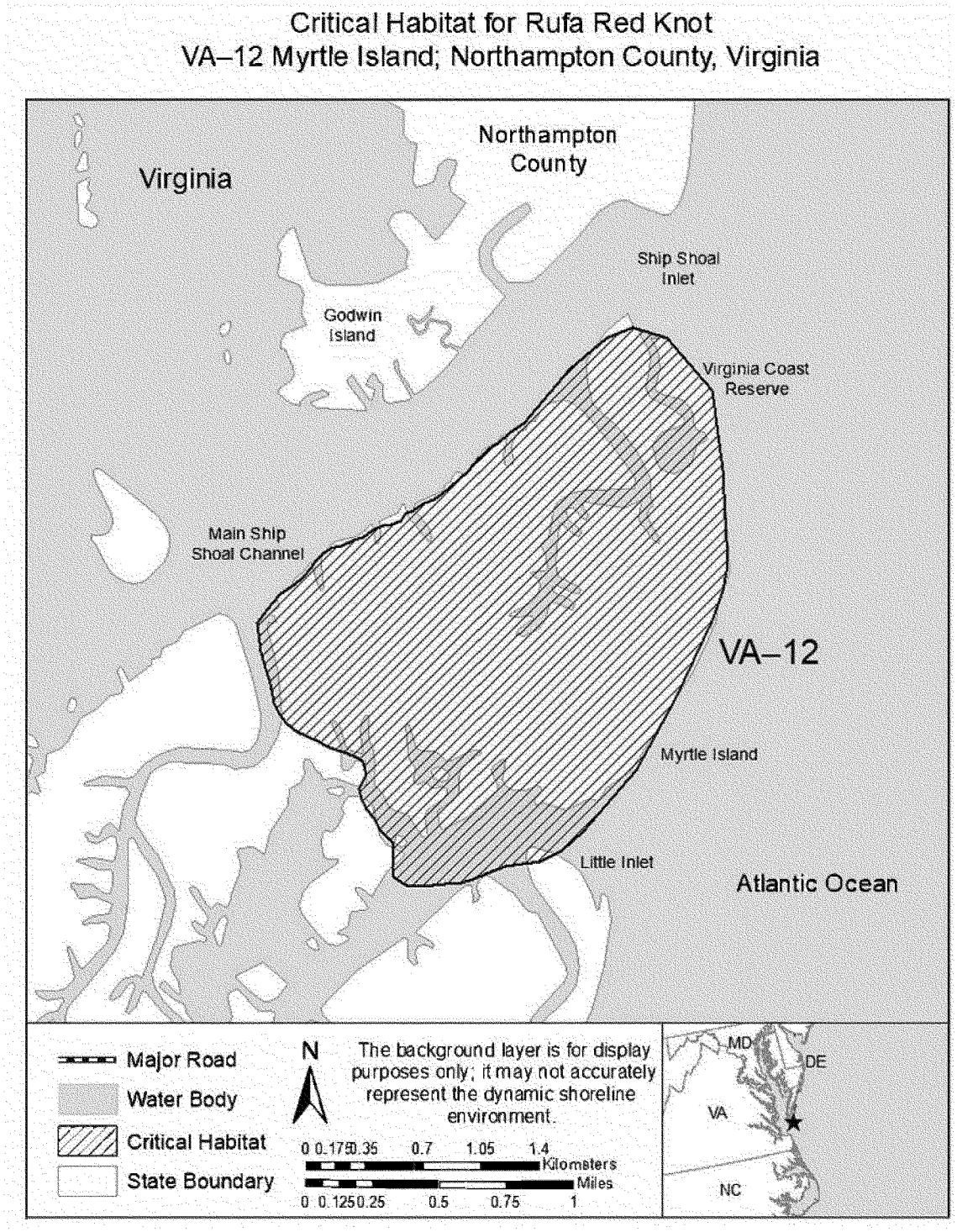

(35) Unit VA–12: Myrtle Island, Virginia.

(i) Unit VA–12 consists of approximately 1,416 ac (573 ha) of occupied habitat in Northampton County consisting of extensive mud flats, low marsh, sandy beaches, overwash areas, and tidal channels. The north boundary is Ship Shoal Inlet, the south boundary is Little Inlet, the west boundary is Main Ship Shoal Channel and Big Creek Marsh, and the east boundary is the Atlantic Ocean. The boundary for the island and marsh complex extends seaward past the

MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. Lands within this unit include 1,028 ac (417 ha) that are in private/other ownership and 388 ac (156 ha) that are uncategorized. The island is owned and managed by TNC as part of the Virginia Coast Reserve.

(ii) Map of Unit VA–12 follows:

Figure 30 to Rufa Red Knot paragraph (35)(ii)

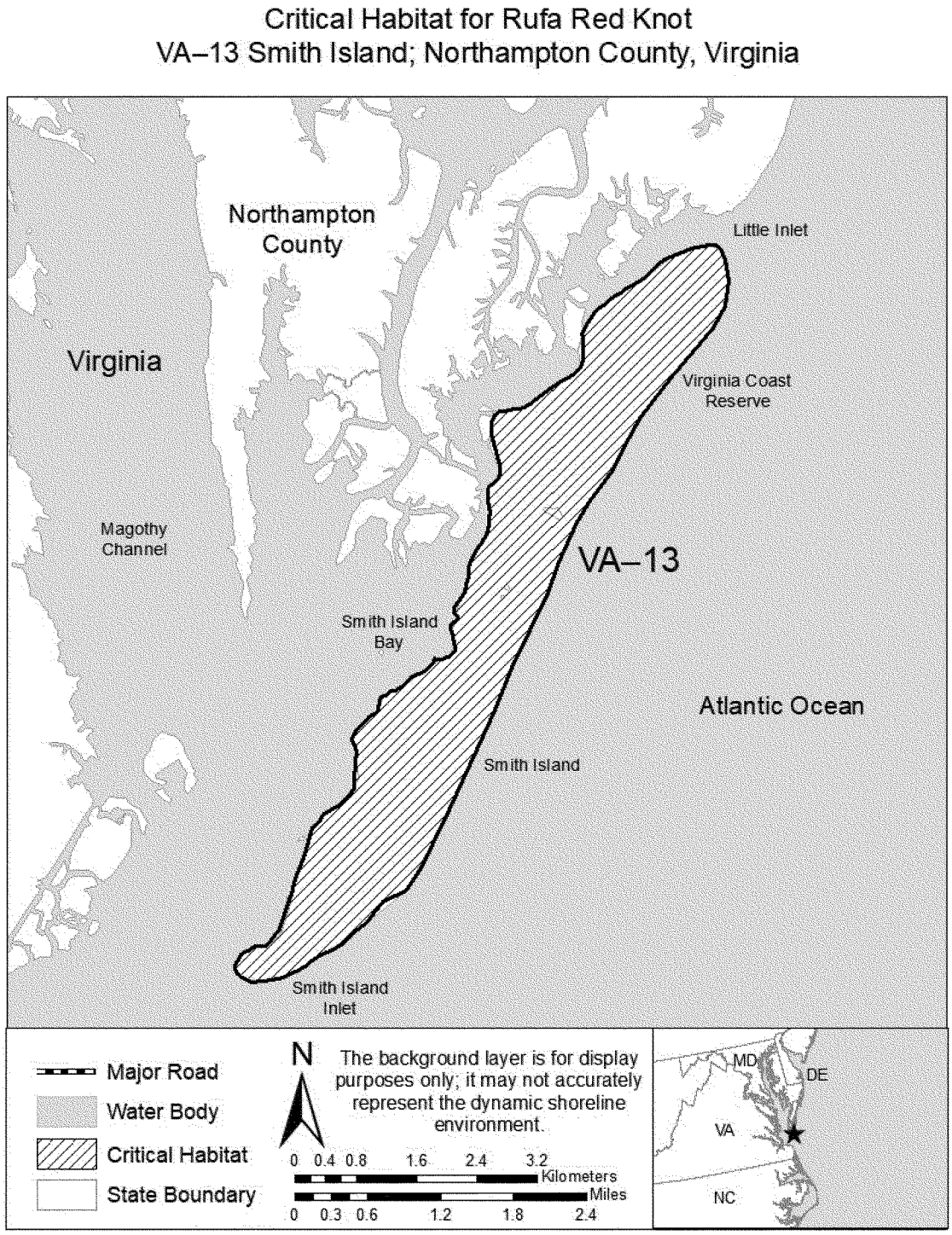


(36) Unit VA–13: Smith Island, Virginia.

(i) Unit VA–13 consists of approximately 2,529 ac (1,024 ha) of occupied habitat in Northampton County consisting of shoreline habitat bounded to the north by Little Inlet, to the south by Smith Island Inlet, and to the west along the dune line where the habitat changes from sandy beach with little vegetation to densely vegetated dunes or marshland, as well as densely vegetated forested or herbaceous vegetation landward of the beach and primary dune, or open water including Magothy Bay. The eastern boundary extends seaward past the MLLW line, including dynamic intertidal areas that are covered at high tide and uncovered at low tide, as well as shoaling areas that are inundated with less than 3 in (7.6 cm) of water. All lands within this unit are in private/other ownership (TNC). The island is owned and managed by TNC as part of the Virginia Coast Reserve.

(ii) Map of Unit VA–13 follows:

Figure 31 to Rufa Red Knot paragraph (36)(ii)




(37) Unit NC–1: Outer Banks, North Carolina.

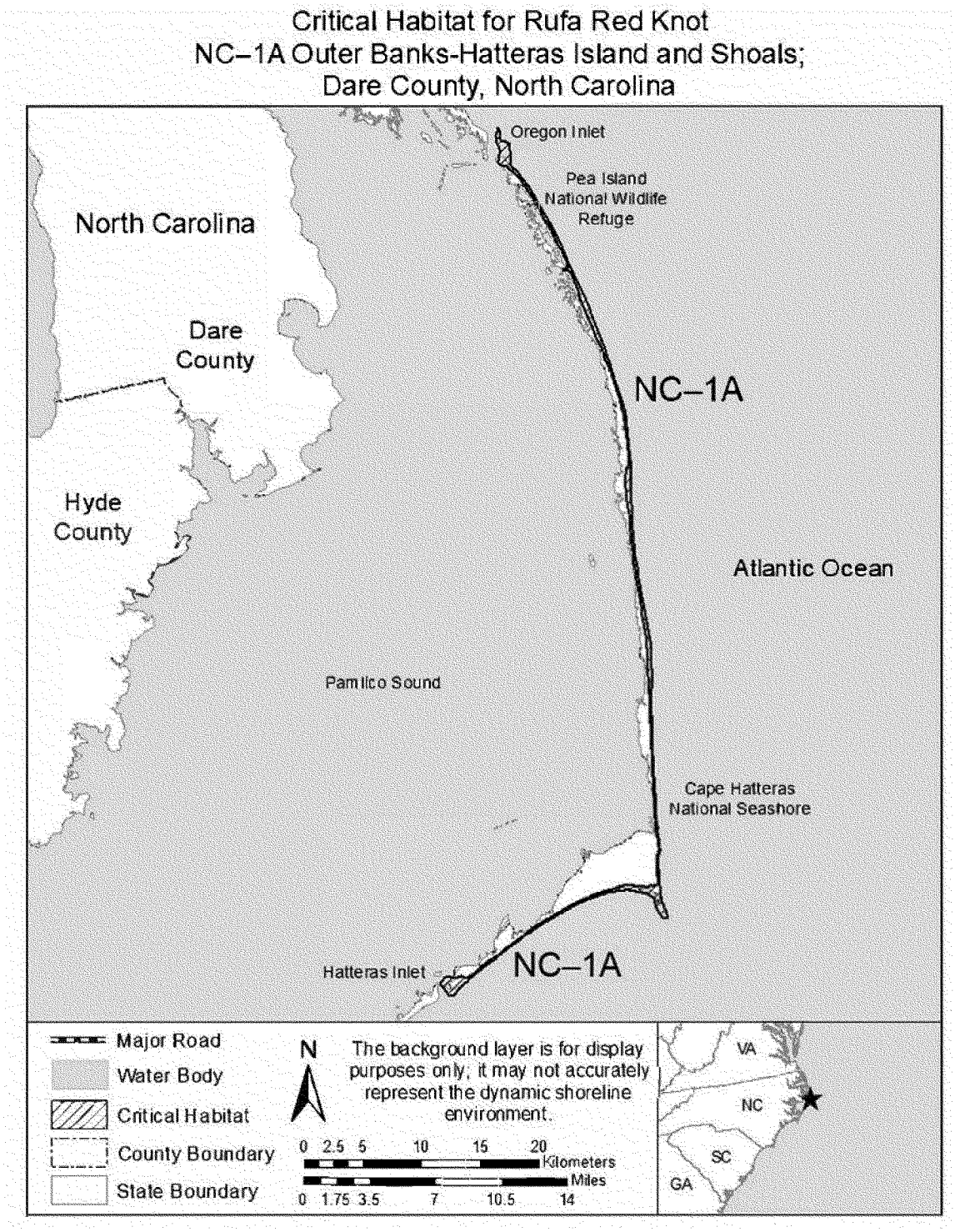
(i) Unit NC–1 consists of two subunits comprising 11,367 ac (4,600 ha) of occupied habitat in Dare and Hyde Counties. This unit consists of Federal lands owned by the NPS and Service, and lands owned by the State of North Carolina.

(ii) Subunit NC–1A (Hatteras Island and Shoals) consists of approximately 5,754 ac (2,329 ha) of occupied habitat in Dare County consisting of beach shoreline from the southeast side of

Oregon Inlet, south along the ocean-facing side of the island (including Pea Island NWR) to Cape Point in Cape Hatteras National Seashore. From Cape Point, the subunit stretches along the ocean side of the island about 13.25 mi (21 km) west to the east side of Hatteras Inlet. This subunit includes from MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide, that are associated with the northeast side of Hatteras Inlet's navigable channel) to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins. Lands within this subunit include approximately 4,940 ac (1,999 ha) in Federal ownership (Cape Hatteras National Seashore) and 814 ac (329 ha) that are uncategorized.

(iii) Map of Subunit NC–1A follows:

Figure 32 to Rufa Red Knot paragraph (37)(iii)

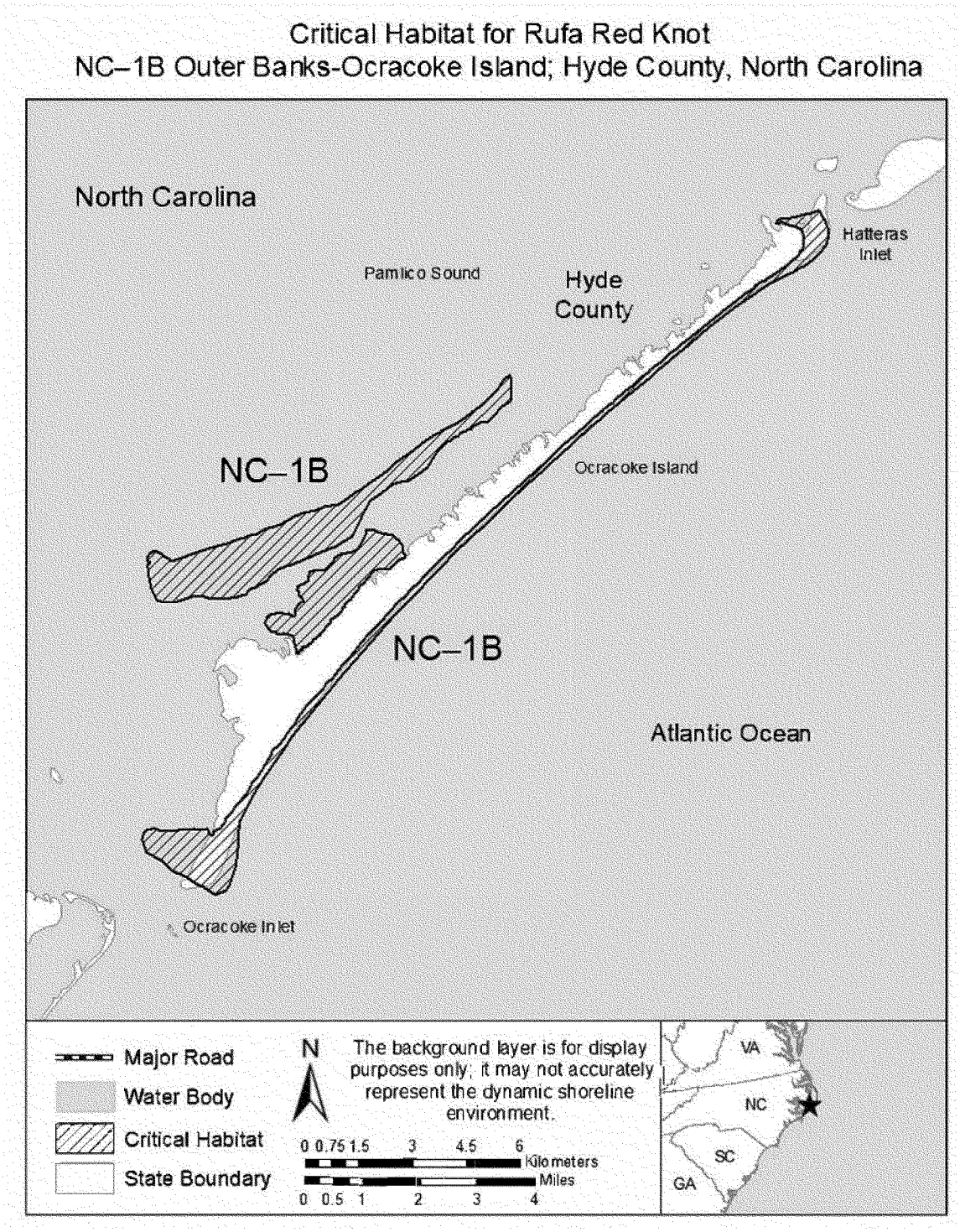



(iv) Subunit NC–1B (Ocracoke Island) consists of approximately 5,613 ac (2,271 ha) of occupied habitat in Hyde County consisting of beach shoreline from the southwest side of Hatteras Inlet along the ocean-facing side of the island to the northeast side of Ocracoke Inlet. This subunit also encompasses shallow areas and mudflats within Pamlico Sound on the west side of Ocracoke Island near Ocracoke Village. This subunit includes from MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide) to the toe of

the dunes or where densely vegetated habitat, not used by the rufa red knot, begins, including the flood-tidal and ebb-tidal deltas associated with the southwest side of Hatteras Inlet and the northeast side of Ocracoke Inlet, and the sand and mud islands identified in Pamlico Sound northeast of Ocracoke Village. Lands within this subunit include approximately 1,427 ac (577 ha) in Federal ownership (*i.e.,* the entire ocean-facing side of the Ocracoke Island, which is part of Cape Hatteras National Seashore), 3,612 ac (1,462 ha) in State ownership, and 575 ac (233 ha) that are uncategorized.

(v) Map of Subunit NC–1B follows:

Figure 33 to Rufa Red Knot paragraph (37)(v)




(38) Unit NC–2: Core Banks, North Carolina.

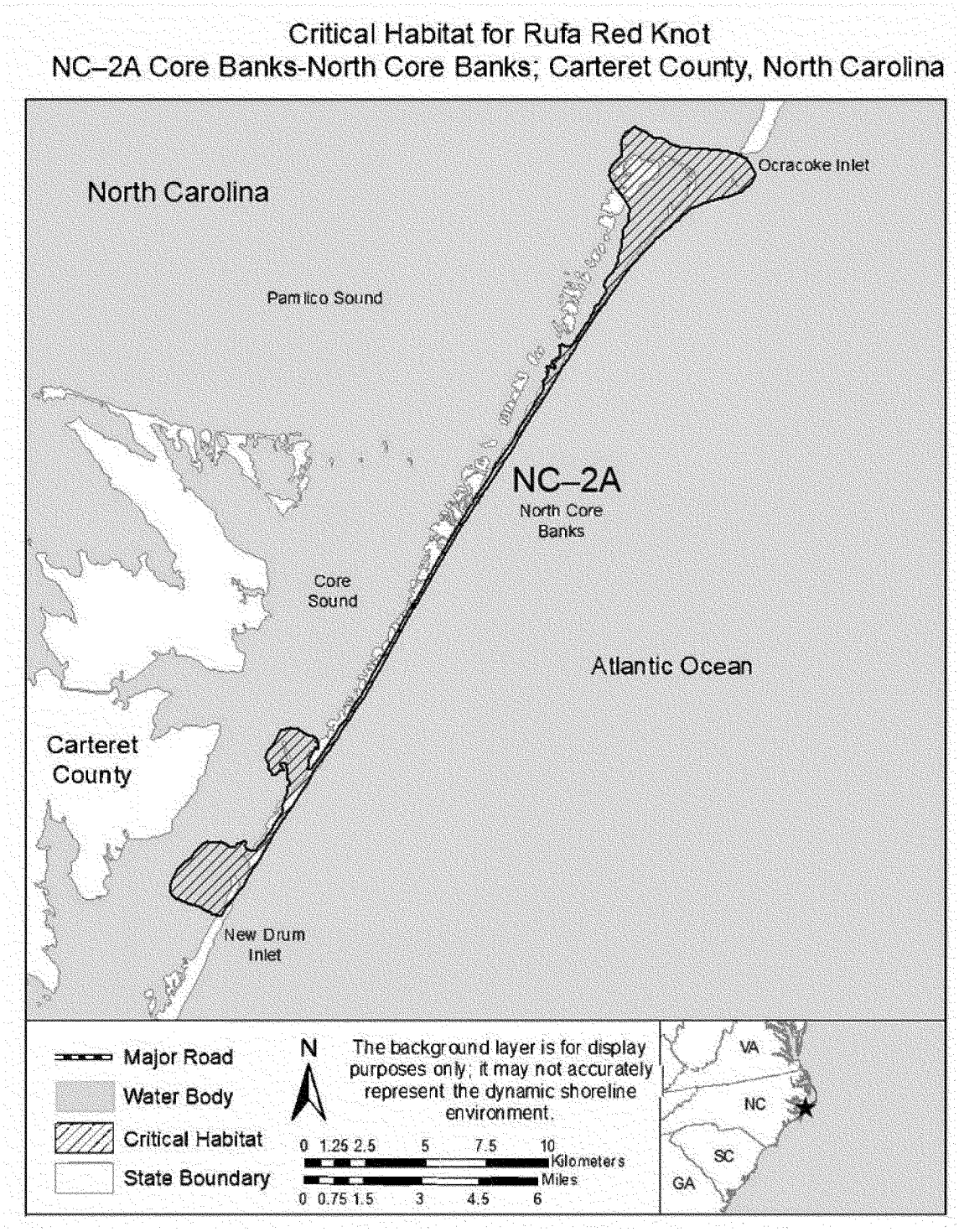
(i) Unit NC–2 consists of two subunits comprising 11,281 ac (4,565 ha) of occupied habitat in Carteret County. This unit consists of Federal lands owned by the NPS (Cape Lookout National Seashore).

(ii) Subunit NC–2A (North Core Banks) consists of approximately 8,187 ac (3,313 ha) of occupied habitat in Carteret County consisting of beach shoreline from the North Core Banks side of the Ocracoke Inlet channel south to the North Core Banks side of the New

Drum Inlet channel. The west boundary is the toe of the primary dune or dense vegetation line (where the physical or biological features do not occur), and the east boundary is MLLW on the Atlantic Ocean (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). This subunit also includes MLLW on Core Sound to the MLLW on the Atlantic Ocean in washover areas associated with Old Drum Inlet, all emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the North Core Banks side of the Ocracoke Inlet channel, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the North Core Banks side of the New Drum Inlet channel. Lands within this subunit include 6,534 ac (2,644 ha) that are Federal ownership (Cape Lookout National Seashore) and 1,654 ac (669 ha) that are uncategorized.

(iii) Map of Subunit NC–2A follows:

Figure 34 to Rufa Red Knot paragraph (38)(iii)

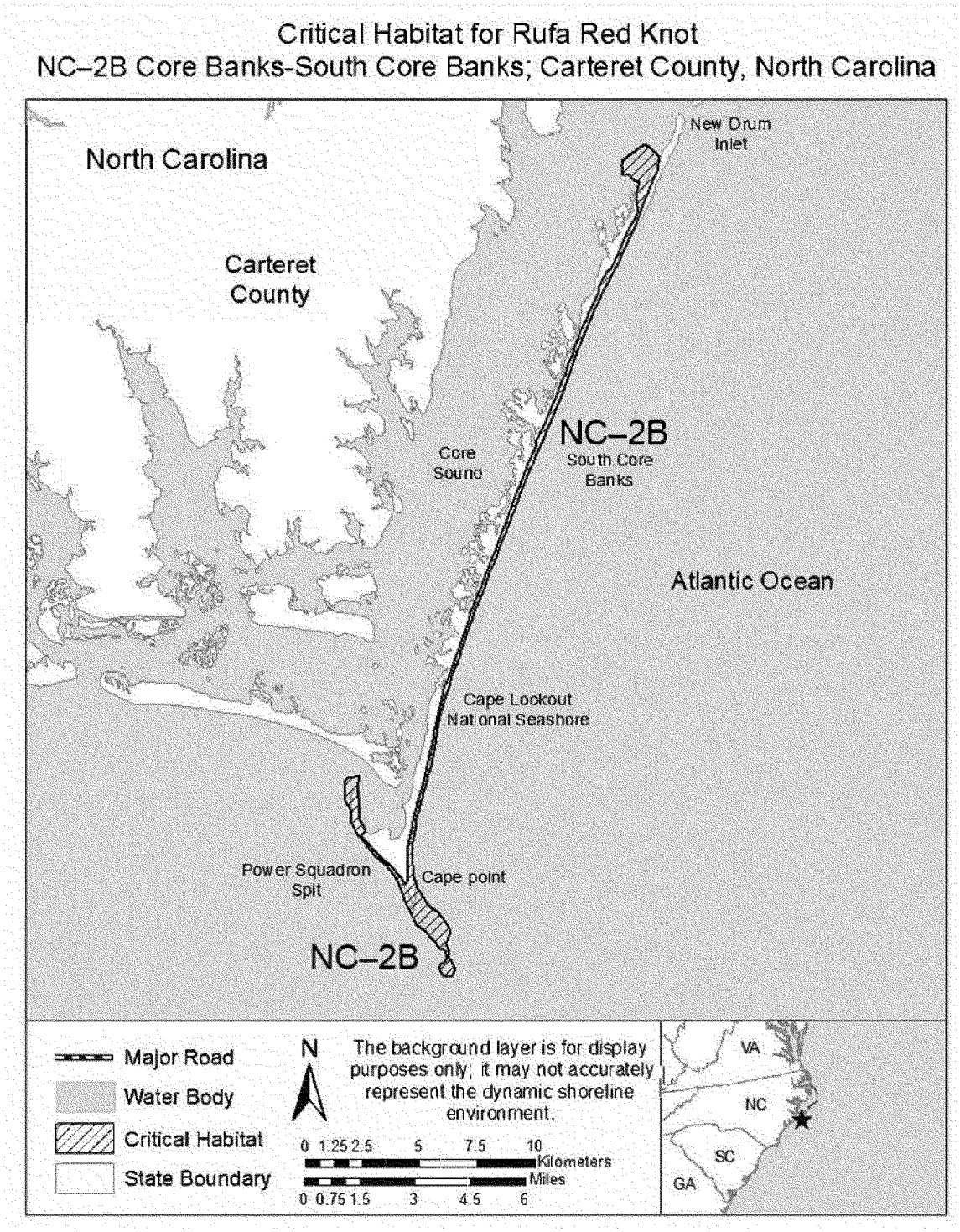



(iv) Subunit NC–2B (South Core Banks) consists of approximately 3,094 ac (1,252 ha) of occupied habitat in Carteret County consisting of beach shoreline from the South Core Banks side of the New Drum Inlet Channel south to the Power Squadron Spit excluding the jetty. The west boundary is at the toe of the primary dune or dense vegetation line where the physical or biological features do not occur, and the east boundary is MLLW on the Atlantic Ocean (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and

uncovered at low tide). This subunit also includes MLLW on Core Sound to the MLLW on the Atlantic Ocean in emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the South Core Banks side of the New Drum Inlet channel, and all emergent sand shoals associated with Cape Point. All of the lands within this subunit are under Federal ownership (Cape Lookout National Seashore).

(v) Map of Subunit NC–2B follows:

Figure 35 to Rufa Red Knot paragraph (38)(v)

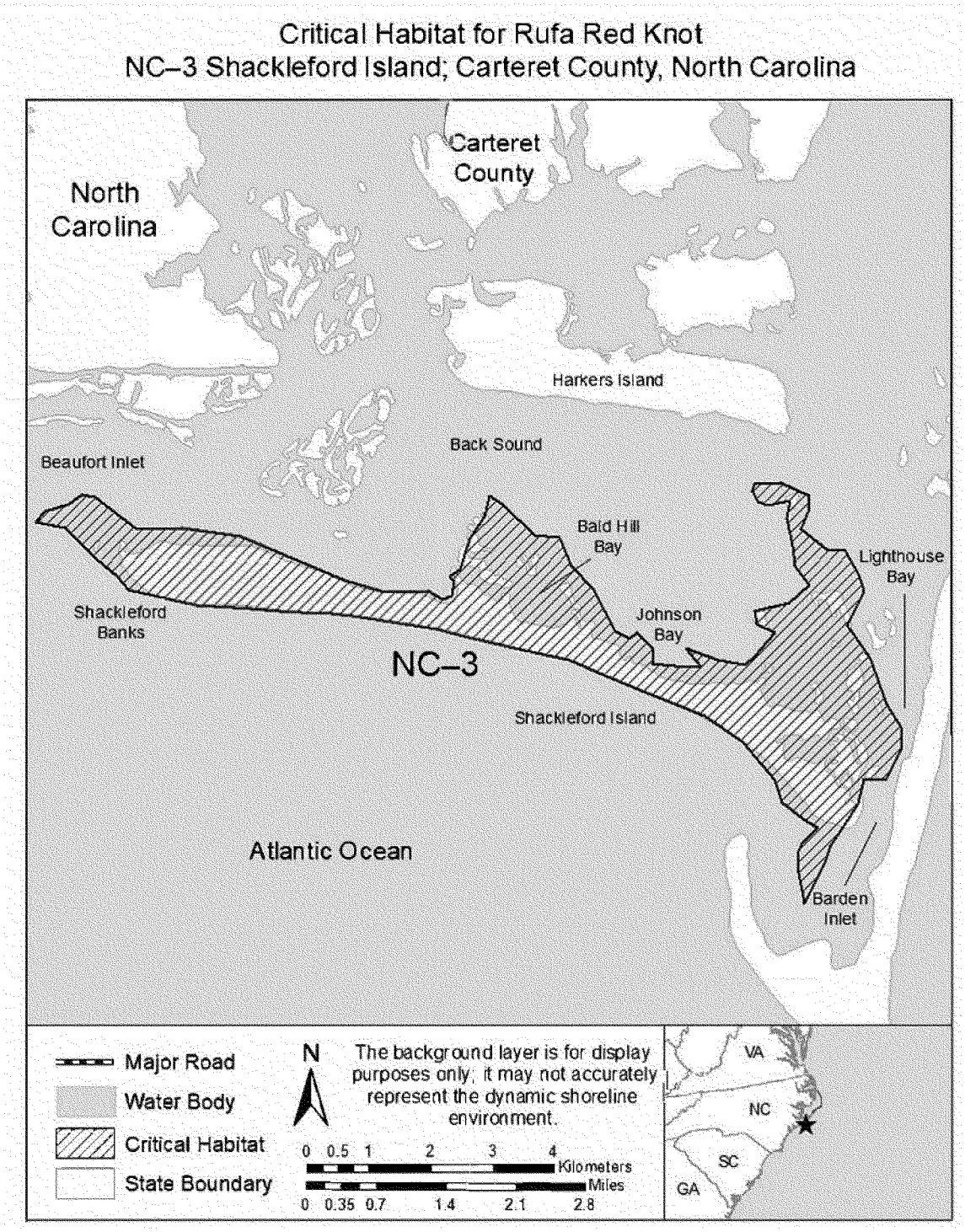


(39) Unit NC–3: Shackleford Island, North Carolina.

(i) Unit NC–3 consists of approximately 4,972 ac (2,012 ha) of occupied habitat in Carteret County consisting of shoreline habitat bounded to the north by the MLLW along Back Sound, Bald Hill, Johnson and Lighthouse Bays south to dense vegetation where the physical or biological features do not occur. The east boundary is the Shackleford Island side of Barden Inlet channel, the south boundary is MLLW on the Atlantic Ocean, and the west boundary is the Shackleford Island side of Beaufort Inlet Channel. This unit includes emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the Shackleford Island side of the Barden Inlet channel, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Beaufort Inlet channel (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide). All lands within this unit are in Federal ownership (Cape Lookout National Seashore).

(ii) Map of Unit NC–3 follows:

Figure 36 to Rufa Red Knot paragraph (39)(ii)



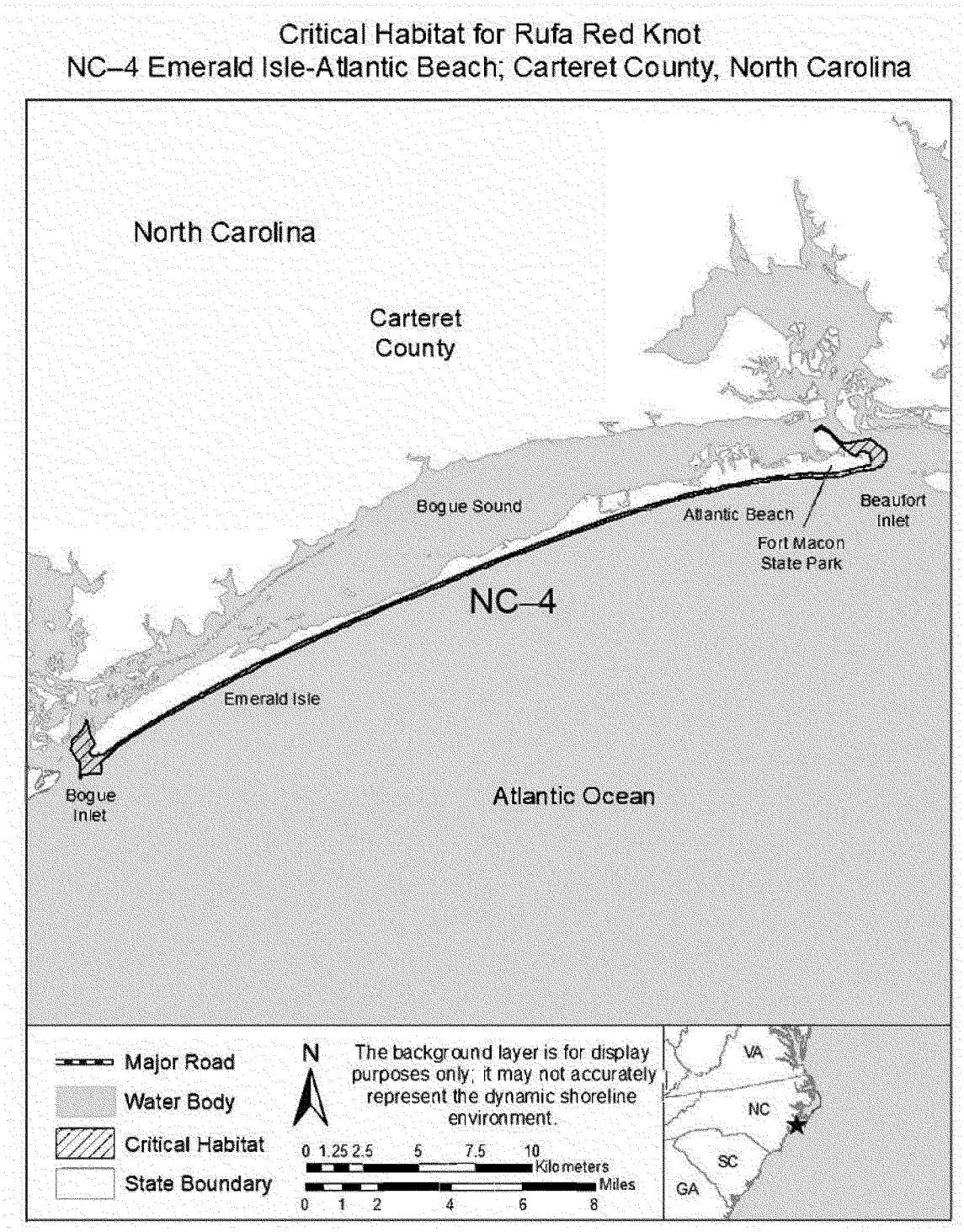

(40) Unit NC–4: Emerald Isle-Atlantic Beach, North Carolina.

(i) Unit NC–4 consists of approximately 2,030 ac (822 ha) of occupied habitat in Carteret County consisting of shoreline habitat that stretches about 23 mi (37 km) from the Beaufort Inlet channel and Fort Macon State Park west to the eastern side of the Bogue Inlet channel. Unit NC–4 includes from MLLW to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This

unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Beaufort Inlet channel, not including the jetty, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Bogue Inlet channel. Lands within this unit include approximately 1,908 ac (772 ha) in State ownership and 122 ac (50 ha) in private/other ownership (which includes 1 ac (0.5 ha) in local government ownership and 121 ac (49 ha) in private ownership).

(ii) Map of Unit NC–4 follows:

Figure 37 to Rufa Red Knot paragraph (40)(ii)

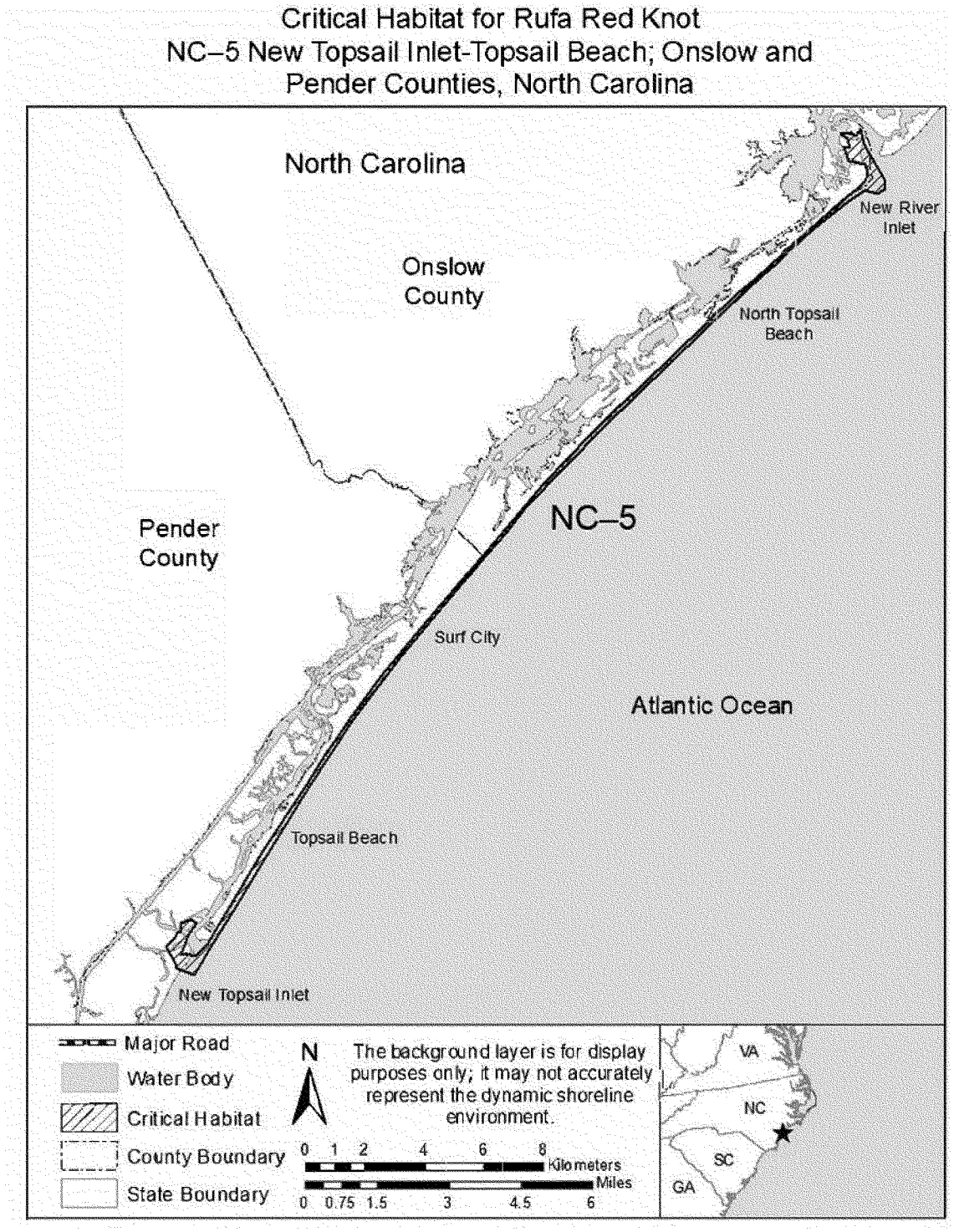


(41) Unit NC–5: New Topsail Inlet-Topsail Beach, North Carolina.

(i) Unit NC–5 consists of approximately 1,612 ac (652 ha) of occupied habitat in Onslow and Pender Counties consisting of shoreline habitat that stretches about 23 mi (37 km) from the west side of the New River Inlet channel west to the east side of the New Topsail Inlet channel. This unit includes from MLLW to the toe of the dunes or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the New River Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the New Topsail Inlet channel. All lands within this unit are in private/other ownership.

(ii) Map of Unit NC–5 follows:

Figure 38 to Rufa Red Knot paragraph (41)(ii)



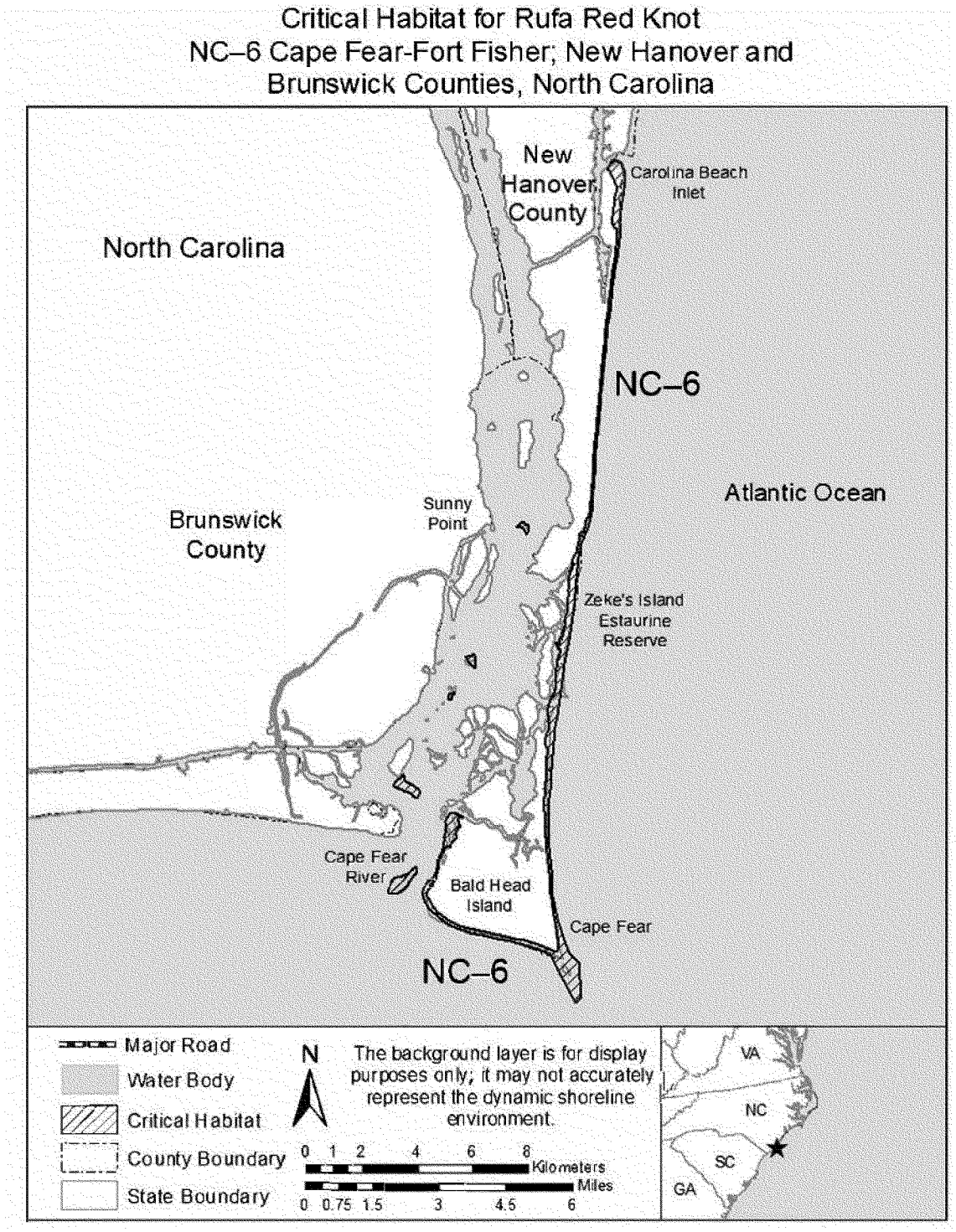

(42) Unit NC–6: Cape Fear-Fort Fisher, North Carolina.

(i) Unit NC–6 consists of approximately 1,986 ac (804 ha) of occupied coastal barrier island Carolina Beach Inlet in New Hanover County, North Carolina, to the mouth of the Cape Fear River in Brunswick County, North Carolina. The north boundary of this unit is the northeast tip of Pleasure Island south of Carolina Beach Inlet and the south boundary extends from the tip of Cape Fear west approximately 3.4 mi (5 km) to the mouth of the Cape Fear River. The west boundary is the toe of

the primary dune or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. The east boundary is MLLW on the Atlantic Ocean excluding groins and jetties. This unit also includes all emergent sand shoals associated with the tip of Cape Fear, the Cape Fear River south of Military Ocean Terminal Sunny Point, and the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the southwest side of Carolina Beach Inlet channel and the southwest tip of Bald Head Island. Lands within this unit include approximately 1,713 ac (693 ha) in State ownership and 274 ac (111 ha) in private/other ownership. State lands in this unit contain parts of Fort Fisher State Recreation Area and Zeke's Island Estuarine Reserve.

(ii) Map of Unit NC–6 follows:

Figure 39 to Rufa Red Knot paragraph (42)(ii)



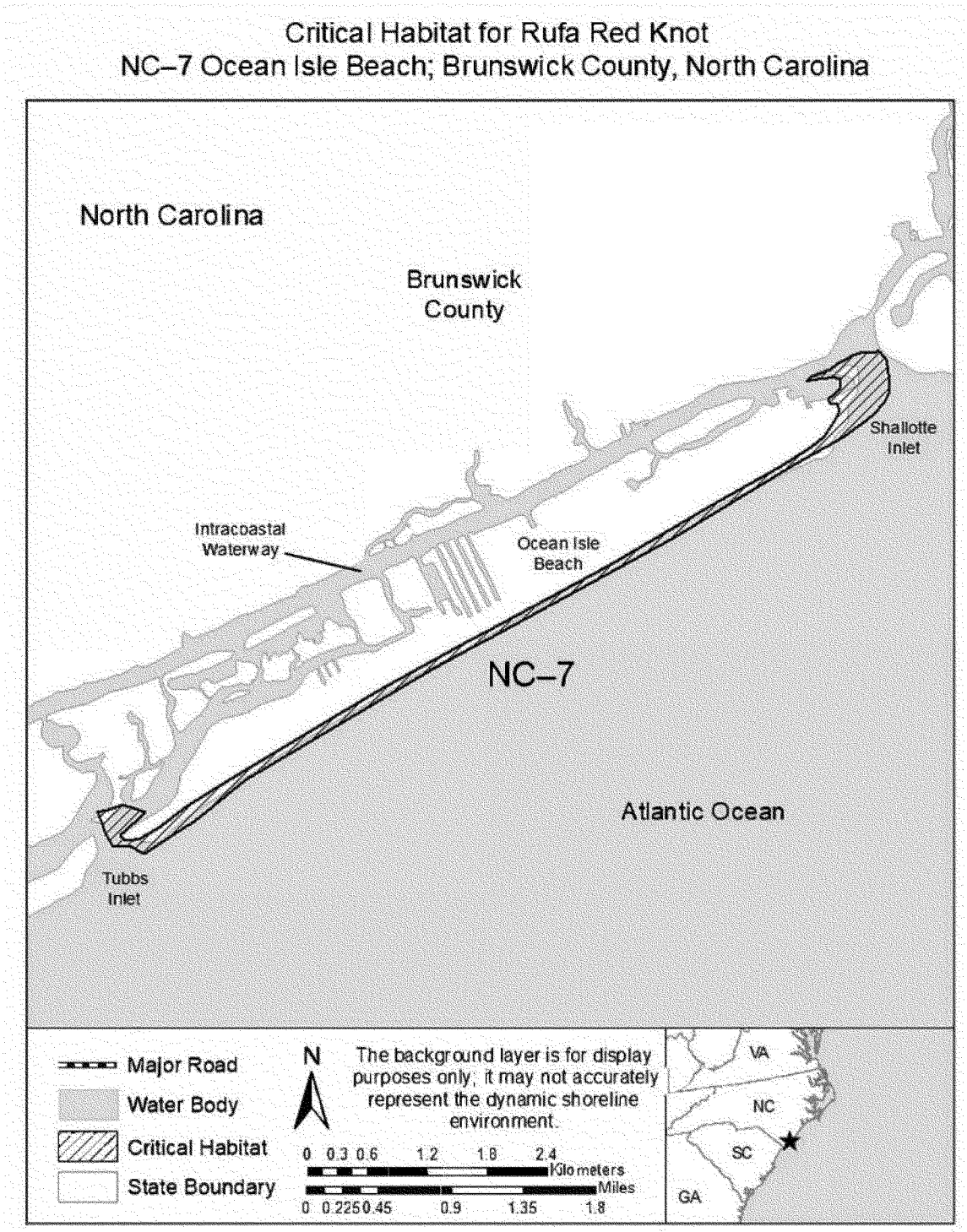

(43) Unit NC–7: Ocean Isle Beach, North Carolina.

(i) Unit NC–7 consists of approximately 298 ac (120 ha) of occupied coastal barrier island Carolina Beach Inlet in Brunswick County, stretching about 6 mi (10 km) from the west side of Shallotte Inlet to the east side of Tubbs Inlet. The east boundary of this unit is the west side of Shallotte Inlet. The south boundary is the MLLW on the Atlantic Ocean, the west boundary is the east side of Tubbs Inlet, and the north boundary is the toe of the primary dune or where densely

vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Shallotte Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Tubbs Inlet channel. Lands within this unit include approximately 182 ac (73 ha) in State ownership and 116 ac (47 ha) in private/other (municipal) ownership.

(ii) Map of Unit NC–7 follows:

Figure 40 to Rufa Red Knot paragraph (43)(ii)

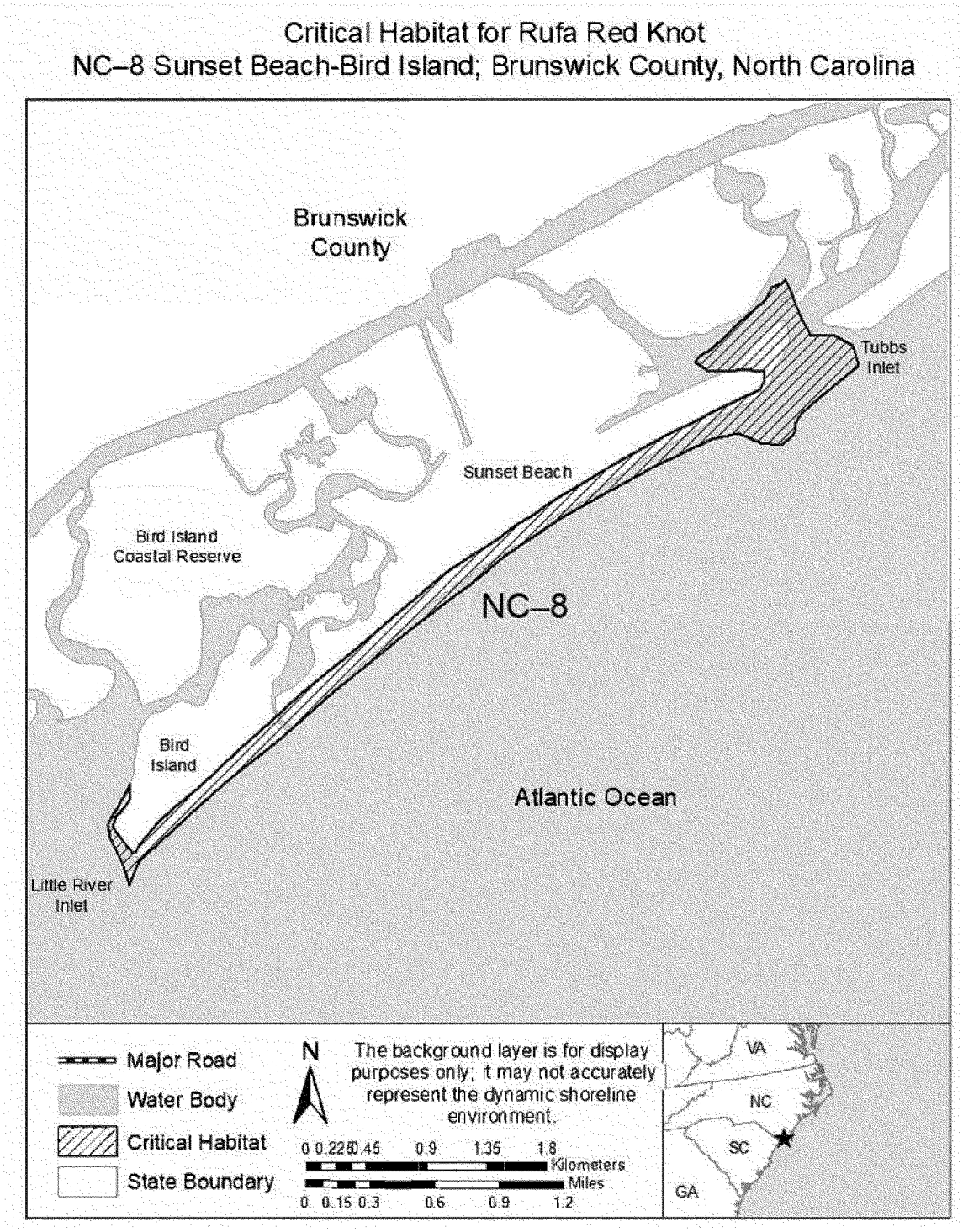


(44) Unit NC–8: Sunset Beach-Bird Island, North Carolina.

(i) Unit NC–8 consists of approximately 384 ac (155 ha) of occupied coastal barrier island in Brunswick County, stretching about 4.1 mi (6.6 km) from the west side of Tubbs Inlet to the east side of Little River Inlet. The east boundary of this unit is the west side of Tubbs Inlet. The south boundary is the MLLW on the Atlantic Ocean, the west boundary is the east side of Little River Inlet, and the north boundary is the toe of the primary dune or where densely vegetated habitat, not used by the rufa red knot, begins and where the physical or biological features no longer occur. This unit also includes the emergent sand shoals within the flood-tidal and ebb-tidal deltas associated with the west side of the Tubbs Inlet channel, as well as the emergent sand shoals within the flood-tidal and ebb-tidal deltas on the east side of the Little River Inlet channel, excluding the jetty. Lands within this unit include approximately 345 ac (139 ha) in State ownership (part of the North Carolina Coastal Reserve) and 39 ac (16 ha) in private/other ownership.

(ii) Map of Unit NC–8 follows:

Figure 41 to Rufa Red Knot paragraph (44)(ii)



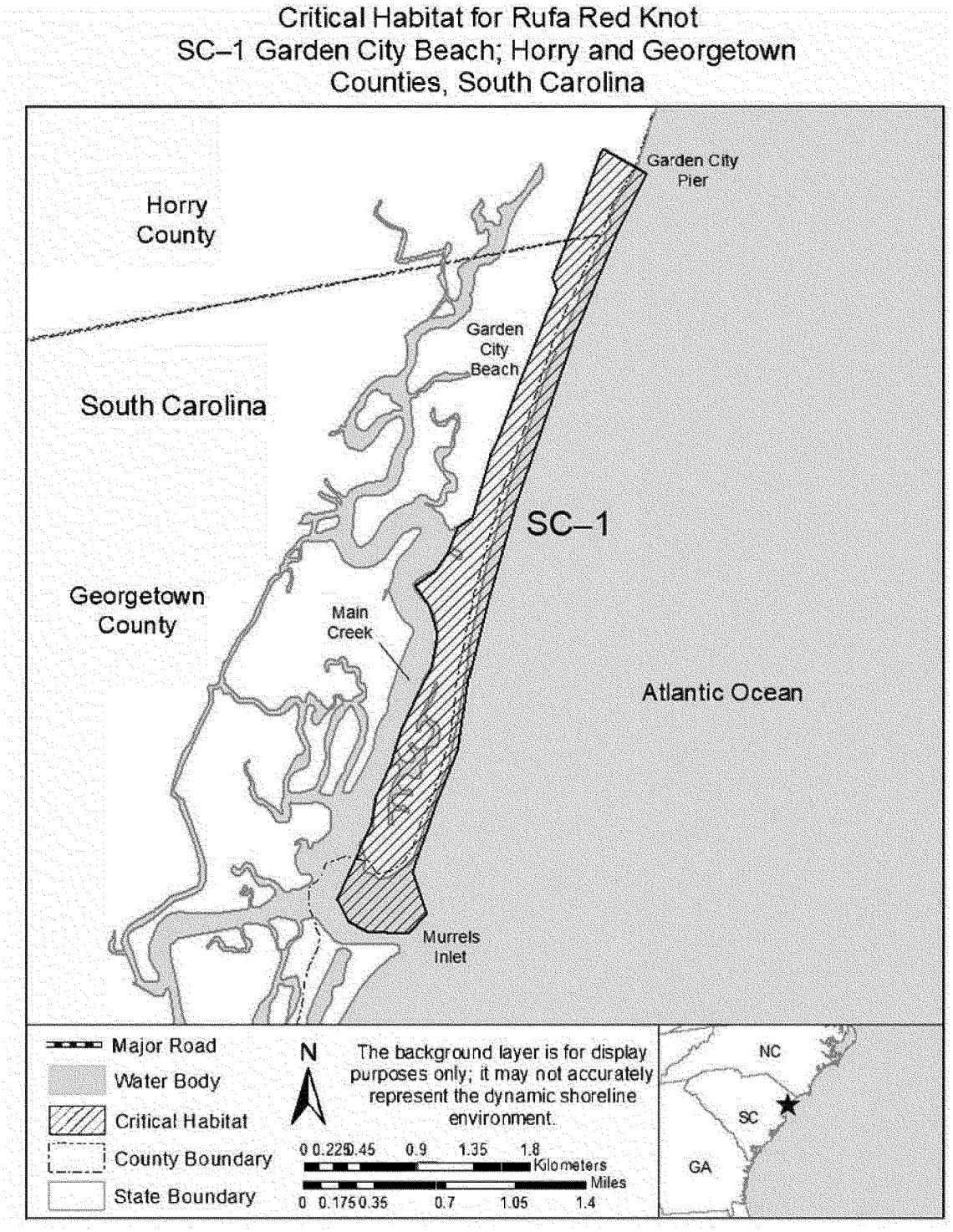

(45) Unit SC–1: Garden City Beach, South Carolina.

(i) Unit SC–1 consists of approximately 616 ac (249 ha) of occupied coastal shoreline habitat in Georgetown and Horry Counties. The northern boundary of the unit begins at the Garden City pier in Horry County and extends southwest to the northern side of Murrells Inlet in Georgetown County. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the

toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northeastern side of Murrells Inlet's navigable channel. Lands within this unit include approximately 267 ac (108 ha) in State ownership and 349 ac (141 ha) in private/other ownership.

(ii) Map of Unit SC–1 follows:

Figure 42 to Rufa Red Knot paragraph (45)(ii)

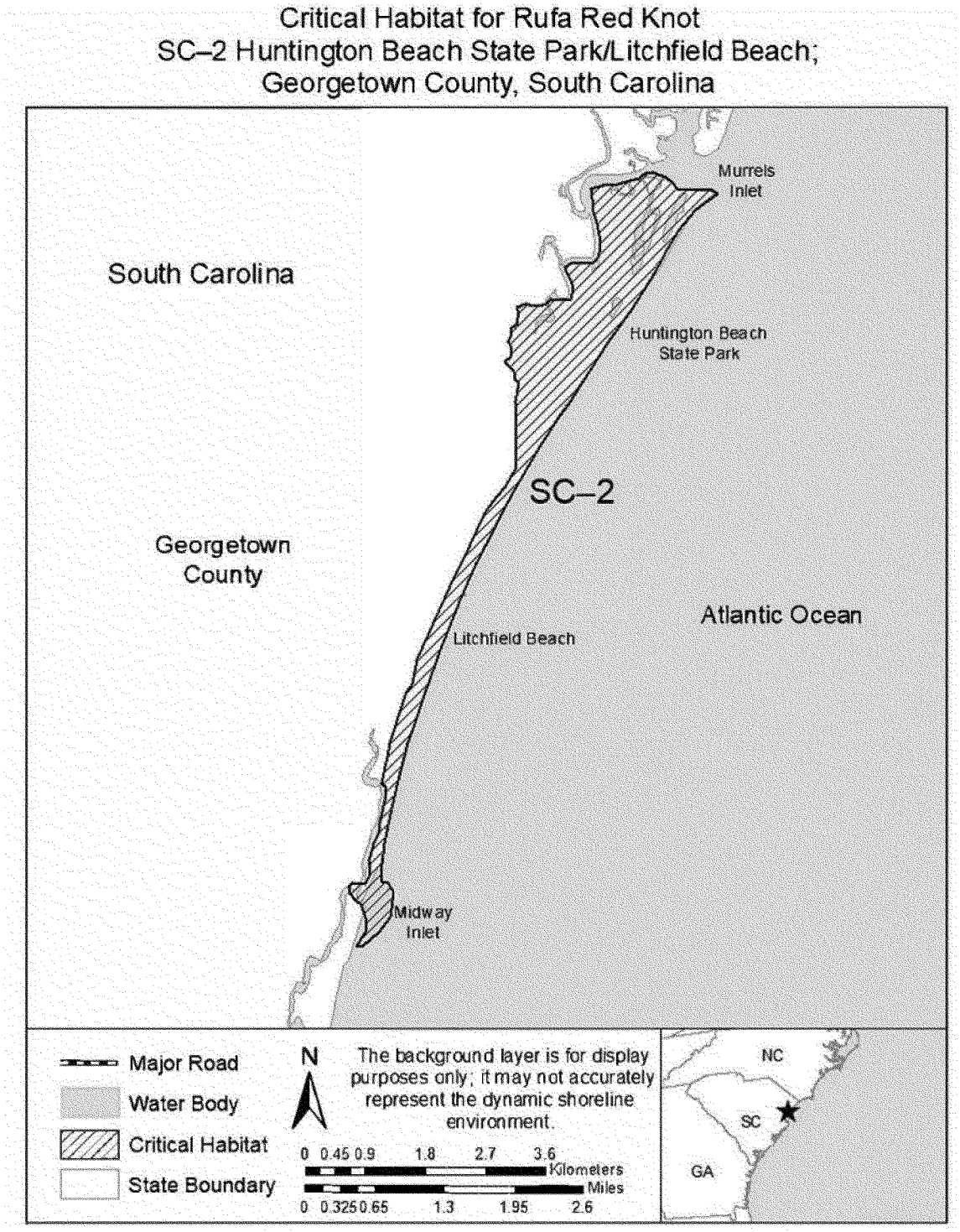


(46) Unit SC–2: Huntington Beach State Park/Litchfield Beach, South Carolina.

(i) Unit SC–2 consists of approximately 1,634 ac (661 ha) of occupied coastal shoreline habitat in Georgetown County. The unit boundary begins on the southern side of Murrells Inlet southwest and extends southwest to the northern side of Midway Inlet. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Murrells Inlet's navigable channel and the northeastern side of Midway Inlet's navigable channel. Lands within this unit include approximately 80 ac (32 ha) in State ownership, which includes Huntington Beach State Park, and 1,554 ac (629 ha) in private/other ownership.

(ii) Map of Unit SC–2 follows:

Figure 43 to Rufa Red Knot paragraph (46)(ii)



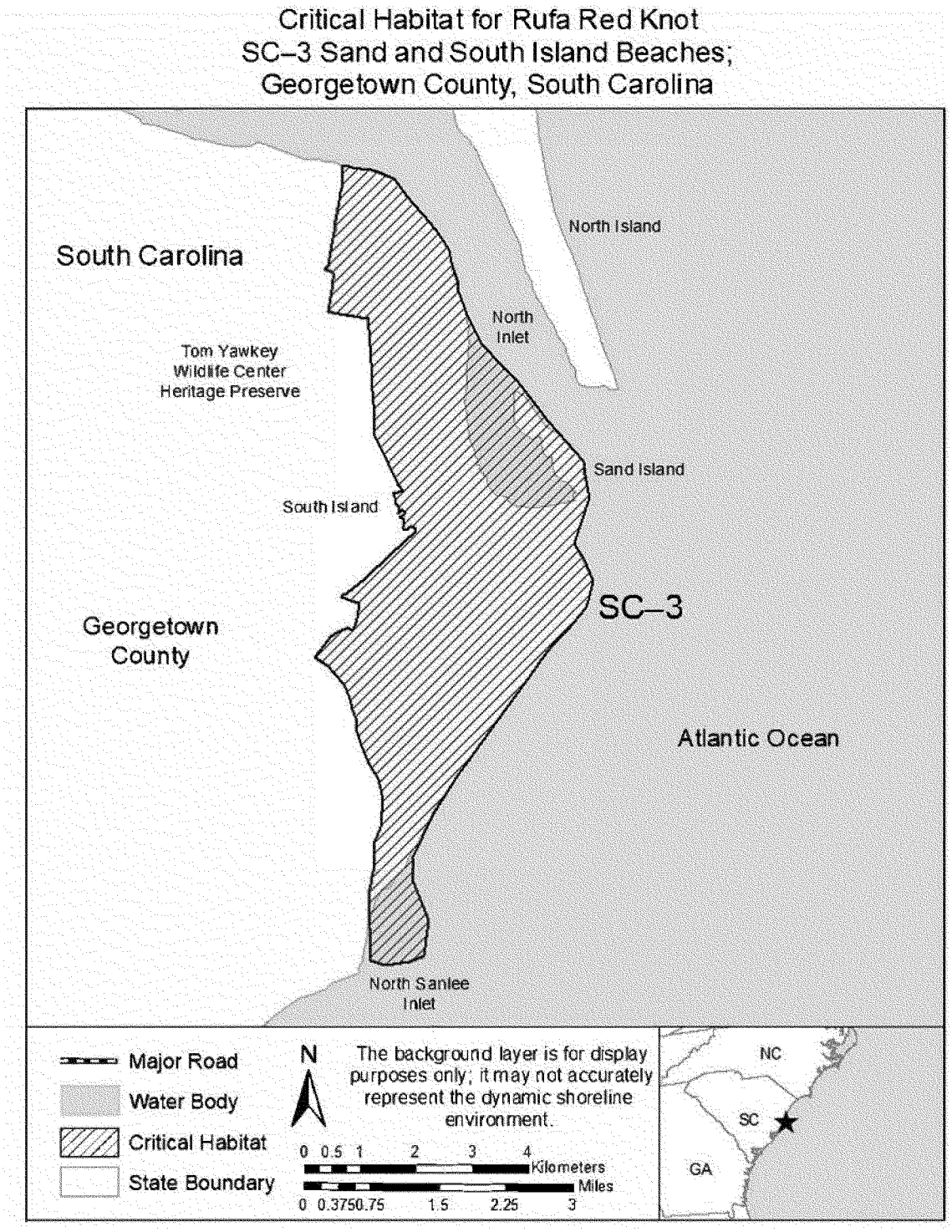

(47) Unit SC–3: Sand and South Island Beaches, South Carolina.

(i) Unit SC–3 consists of approximately 8,256 ac (3,341 ha) of occupied coastal shoreline habitat on Sand and South Islands, barrier islands off the coast of Georgetown County. The unit boundary begins on the northeastern edge of South Island in North Inlet behind North Island following the shoreline to include Sand Island and continuing southwest to the southern tip of South Island. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlet between Sand and South

Islands and the northeastern side of North Santee River Inlet's navigable channel. Lands within this unit include approximately 7,843 ac (3,174 ha) in State ownership (including the Tom Yawkey Wildlife Center Heritage Preserve), 129 ac (52 ha) in private/other ownership, and 283 ac (115 ha) that are uncategorized.

(ii) Map of Unit SC–3 follows:

Figure 44 to Rufa Red Knot paragraph (47)(ii)



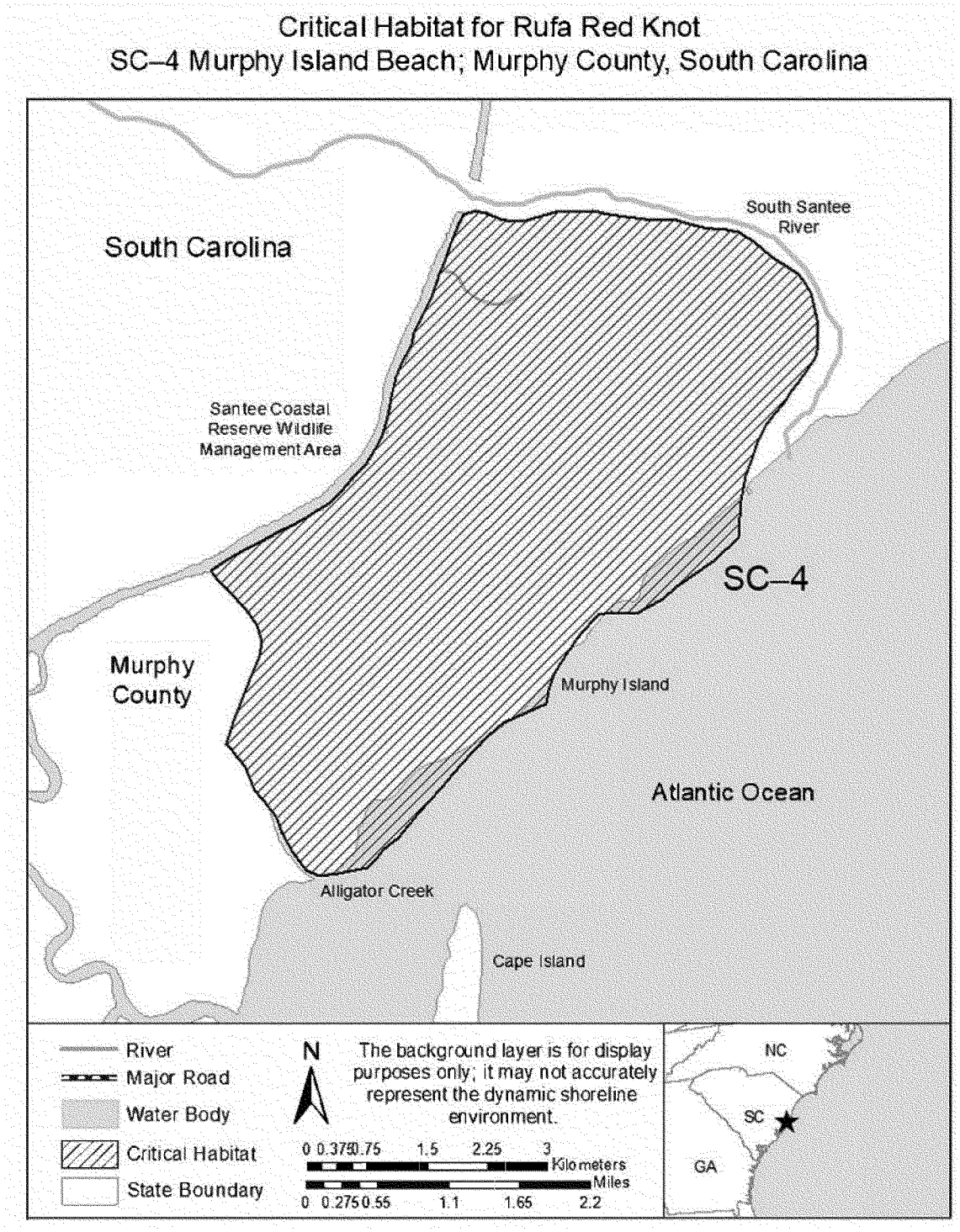

(48) Unit SC–4: Sand and South Island Beaches, South Carolina.

(i) Unit SC–4 consists of approximately 8,312 ac (3,364 ha) of occupied coastal shoreline habitat on all of Murphy Island, a barrier island off

the coast of Charleston County. The unit boundary begins on the South Santee River shoreline of Murphy's Island and extends to the Alligator Creek shoreline. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlets along the shoreline of Murphy Island. Lands within this unit are entirely in State ownership and the South Carolina Department of Natural Resources manages Murphy Island as part of the Santee Coastal Reserve Wildlife Management Area.

(ii) Map of Unit SC–4 follows:

Figure 45 to Rufa Red Knot paragraph (48)(ii)

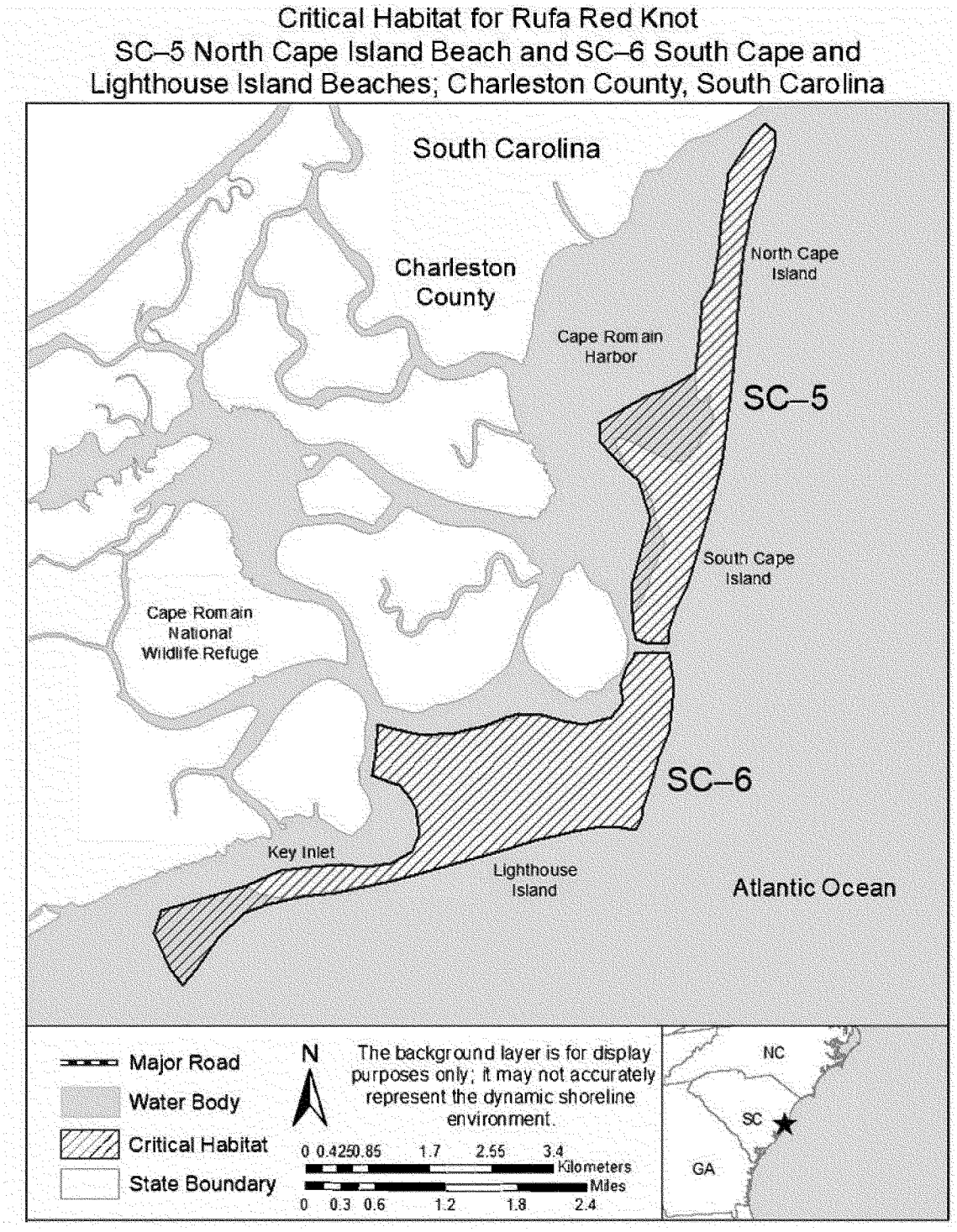


(49) Unit SC–5: North Cape Island Beach, South Carolina.

(i) Unit SC–5 consists of approximately 1,270 ac (514 ha) of occupied coastal shoreline habitat on the northern portion of Cape Island, a barrier island off the coast of Charleston County. The unit boundary begins on the Cape Romain Harbor shoreline of Cape Island and extends south to the shoreline along the unnamed inlet between North Cape and South Cape Islands. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northern side of the navigable channel of the unnamed inlet between North Cape Island and South Cape Island. Lands within this unit include approximately 775 ac (313 ha) in Federal ownership (Cape Romain NWR) and 495 ac (200 ha) in State ownership.

(ii) Map of Unit SC–5 follows:

Figure 46 to Rufa Red Knot paragraph (49)(ii)




(50) Unit SC–6: South Cape and Lighthouse Island Beaches, South Carolina.

(i) Unit SC–6 consists of approximately 2,037 ac (824 ha) of occupied coastal shoreline habitat along the entire southern portion of Cape Island and all of Lighthouse Island, barrier islands off the coast, in Charleston County. The unit boundary begins at the northern tip of South Cape Island in the unnamed inlet between North Cape and South Cape Islands and extends to the western tip of Lighthouse Island in Key Inlet. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and

ebb-tidal deltas associated with the southern side of the navigable channel of the unnamed inlet between North Cape Island and South Cape Island and the emergent sand shoals associated with Key Inlet. Lands within this unit include approximately 1,552 ac (628 ha) in Federal ownership (Cape Romain NWR) and 485 ac (196 ha) in State ownership.

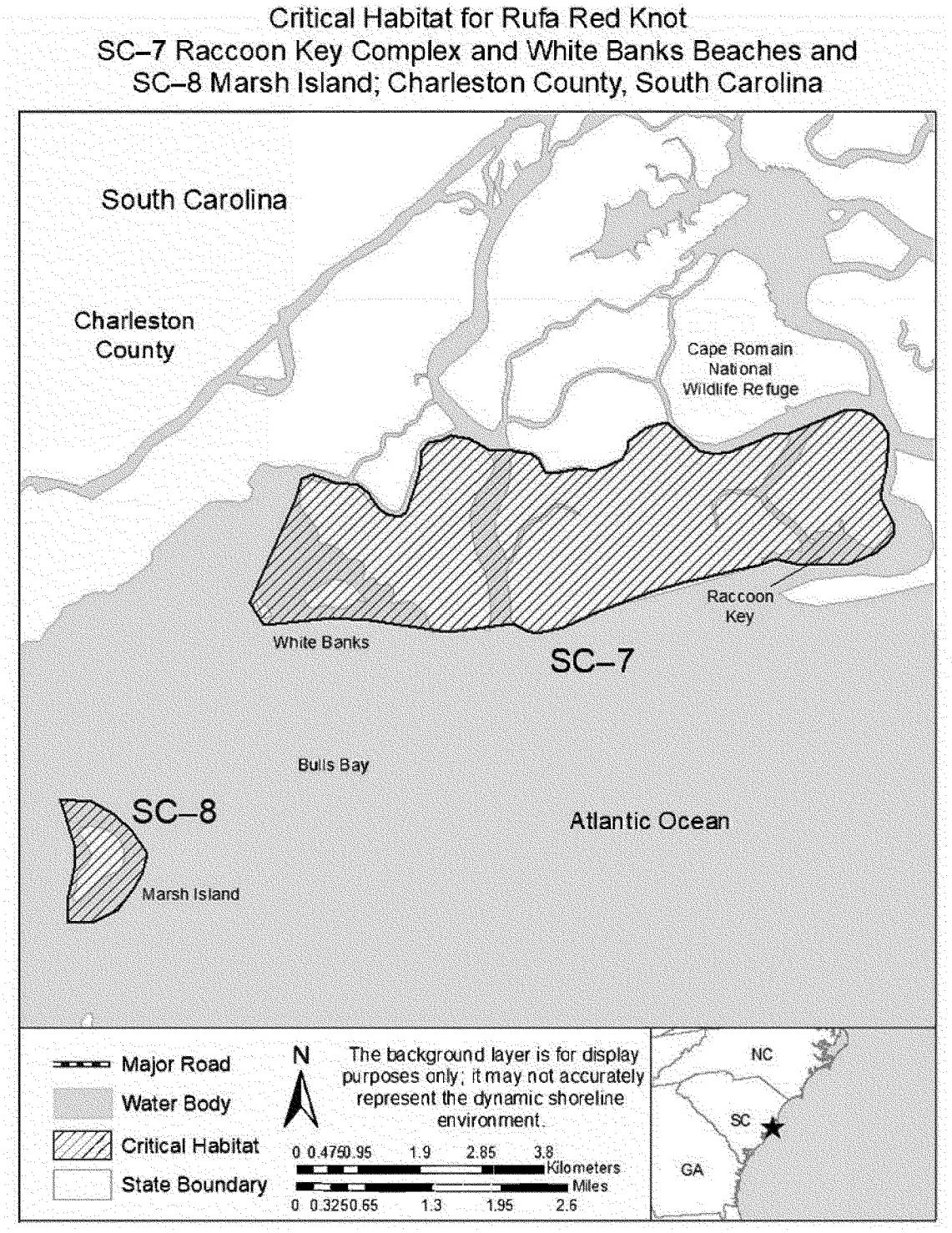
(ii) Map of Unit SC–6 is presented at paragraph (49)(ii) of this entry.

(51) Unit SC–7: Raccoon Key Complex and White Banks Beaches, South Carolina.

(i) Unit SC–7 consists of approximately 5,324 ac (2,154 ha) of occupied coastal shoreline habitat along the entire Raccoon Key complex and White Banks, islands off the coast, in Charleston County. The unit boundary begins at the intersection of the Romain River and Key Inlet side of Raccoon Key and extends to the western edge of White Banks in Bulls Bay. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlets in the Raccoon Key complex. Lands within this unit are all in Federal ownership (Cape Romain NWR).

(ii) Map of Unit SC–7 follows:

Figure 47 to Rufa Red Knot paragraph (51)(ii)




(52) Unit SC–8: Marsh Island, South Carolina.

(i) Unit SC–8 consists of approximately 415 ac (168 ha) of occupied habitat across the entirety of Marsh Island, which is an island in Bulls Bay, Charleston County. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Marsh Island. Lands within this unit include are all in Federal ownership (Cape Romain NWR).

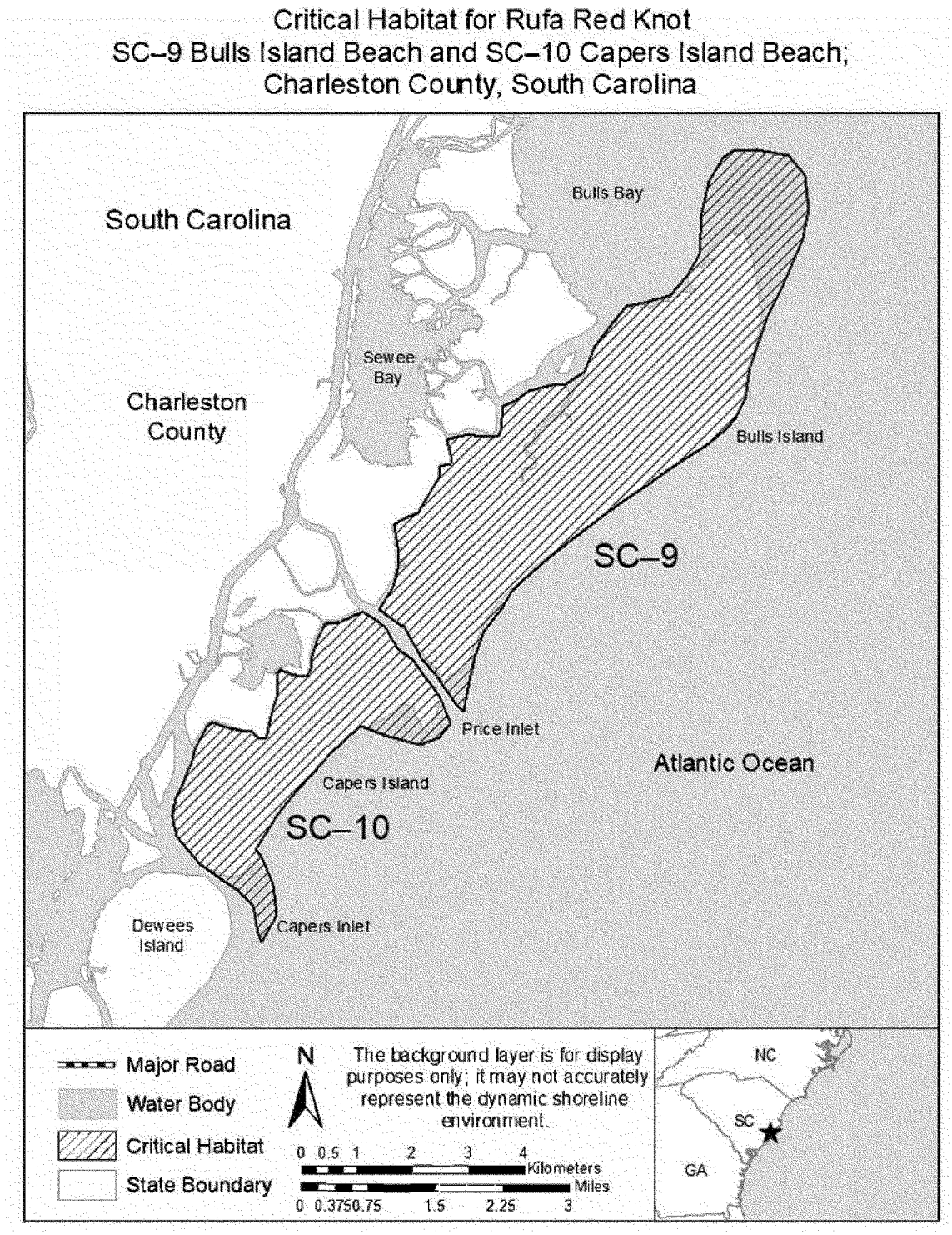
(ii) Map of Unit SC–8 is presented at paragraph (51)(ii) of this entry.

(53) Unit SC–9: Bulls Island Beach, South Carolina.

(i) Unit SC–9 consists of approximately 6,141 ac (2,485 ha) of occupied habitat across the entirety of Bulls Island, which is a barrier island along the coast of Charleston County. The unit boundary begins on the Bulls Bay shoreline of Bulls Island and extends southwest to the Price Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the northeastern side of Price Inlet's navigable channel. Lands within this unit include approximately 5,200 ac (2,104 ha) in Federal ownership (Cape Romain NWR) and 941 ac (381 ha) in State ownership.

(ii) Map of Unit SC–9 follows:

Figure 48 to Rufa Red Knot paragraph (53)(ii)




(54) Unit SC–10: Capers Island Beach, South Carolina.

(i) Unit SC–10 consists of approximately 2,534 ac (1,026 ha) of occupied habitat across the entirety of Capers Island, which is a barrier island off the coast of Charleston County. The unit boundary begins on the Price Inlet shoreline of Capers Island and extends southwest to the Capers Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Price's Inlet's navigable channel and the northeastern side of Capers Inlet's navigable channel. Lands within

this unit are entirely in State ownership (Capers Island Natural Heritage Preserve).

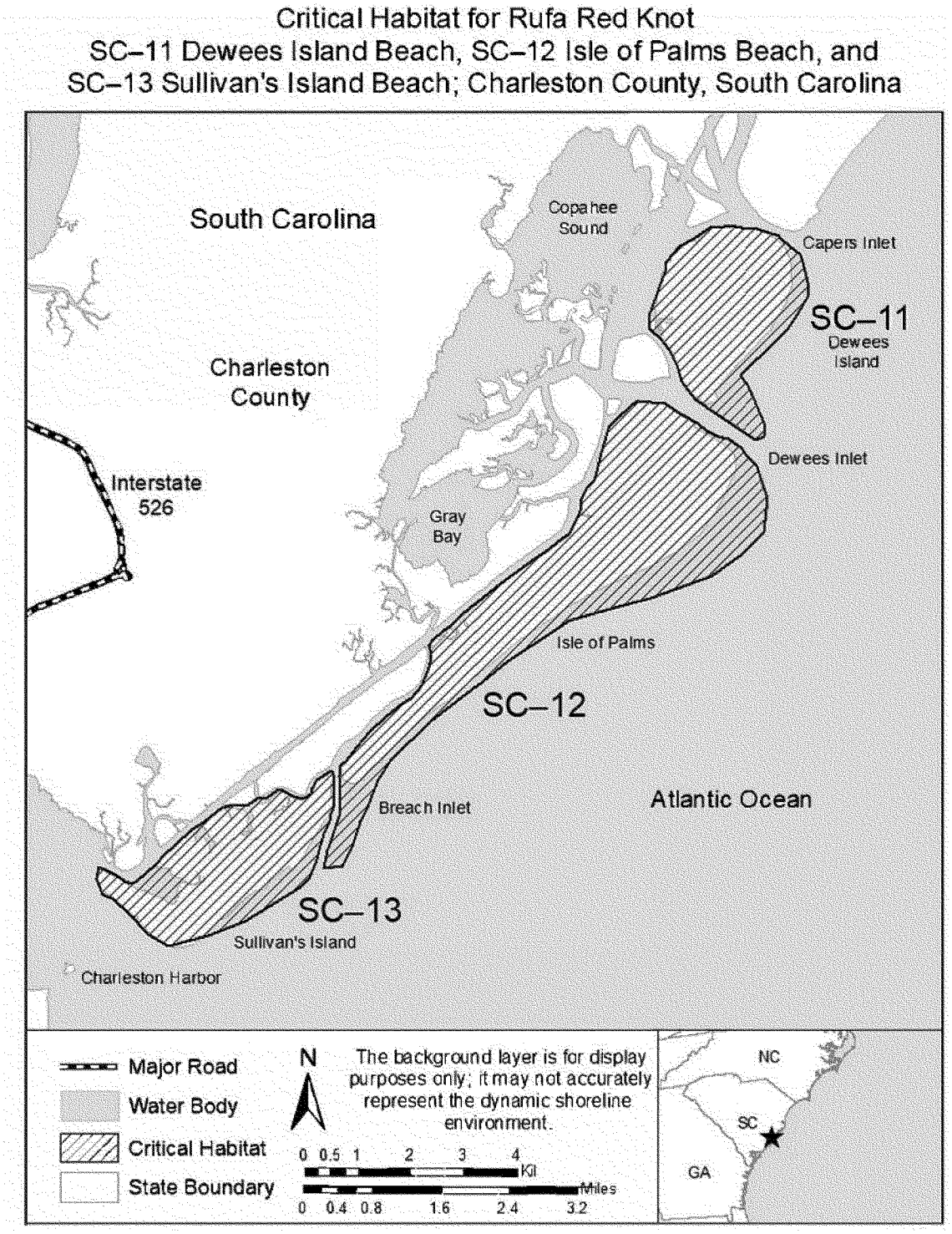
(ii) Map of Unit SC–10 is presented at paragraph (53)(ii) of this entry.

(55) Unit SC–11: Dewees Island Beach, South Carolina.

(i) Unit SC–11 consists of approximately 1,812 ac (733 ha) of occupied habitat across the entirety of Dewees Island, which is a barrier island off the coast of Charleston County. The unit boundary begins on the Capers Inlet shoreline of Dewees Island and extends to the Dewees Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Capers Inlet's navigable channel and the northeastern side of Dewees Inlet's navigable channel. Lands within this unit include approximately 265 ac (107 ha) in State ownership and 1,547 ac (626 ha) in private/other ownership.

(ii) Map of Unit SC–11 follows:

Figure 49 to Rufa Red Knot paragraph (55)(ii)




(56) Unit SC–12: Isle of Palms Beach, South Carolina.

(i) Unit SC–12 consists of approximately 4,117 ac (1,666 ha) of occupied habitat across the entirety of Isle of Palms, which is a barrier island off the coast of Charleston County. The unit boundary begins at the Dewees Inlet shoreline of the Isle of Palms and extends southwest to the Breach Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Dewees Inlet's navigable channel and the northeastern side of Breach Inlet's navigable channel.

Lands within this unit include approximately 754 ac (305 ha) in State ownership and 3,363 ac (1,361 ha) in private/other ownership.

(ii) Map of Unit SC–12 is presented at paragraph (55)(ii) of this entry.

(57) Unit SC–13: Sullivan's Island Beach, South Carolina.

(i) Unit SC–13 consists of approximately 1,782 ac (721 ha) of occupied habitat across the entirety of Sullivan's Island, which is a barrier island off the coast of Charleston County. The unit boundary begins on the Breach Inlet shoreline of Sullivan's Island and extends southwest to the Charleston Harbor shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Breach Inlet's navigable channel. Lands within this unit include approximately 83 ac (34 ha) in Federal ownership (Ft. Moultrie, which is part of Ft. Sumter National Monument), 694 ac (281 ha) in State ownership, and 1,005 ac (407 ha) in private/other ownership.

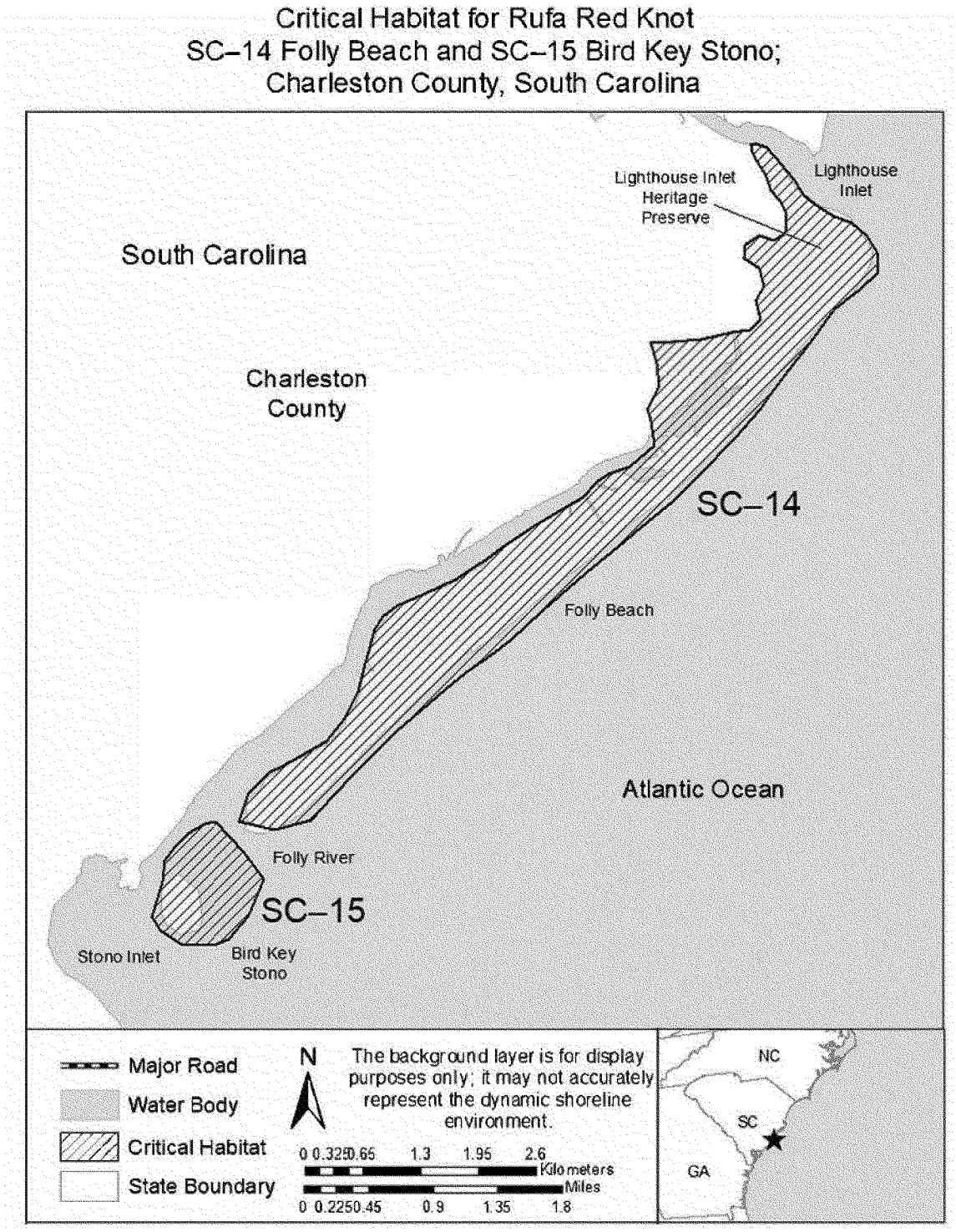
(ii) Map of Unit SC–13 is presented at paragraph (55)(ii) of this entry.

(58) Unit SC–14: Folly Beach, South Carolina.

(i) Unit SC–14 consists of approximately 1,989 ac (805 ha) of occupied habitat across the entirety of Folly Beach, which is a barrier island off the coast of Charleston County. The unit boundary begins on the Lighthouse Inlet shoreline of Folly Beach and extends southwest to the Folly River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Lighthouse Inlet's navigable channel and the Folly Beach side of the Folly River Inlet's navigable channel between Folly Beach and Bird Key. Lands within this unit are entirely in private/other land ownership within the city limits of the municipality of the City of Folly Beach.

(ii) Map of Unit SC–14 follows:

Figure 50 to Rufa Red Knot paragraph (58)(ii)




(59) Unit SC–15: Bird Key-Stono, South Carolina.

(i) Unit SC–15 consists of approximately 294 ac (119 ha) of occupied habitat across the entirety of Bird Key-Stono, an island in the mouth of the Stono Inlet in Charleston County. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of the Folly River Inlet. Lands within this unit are entirely in State ownership (managed as a State Seabird Sanctuary).

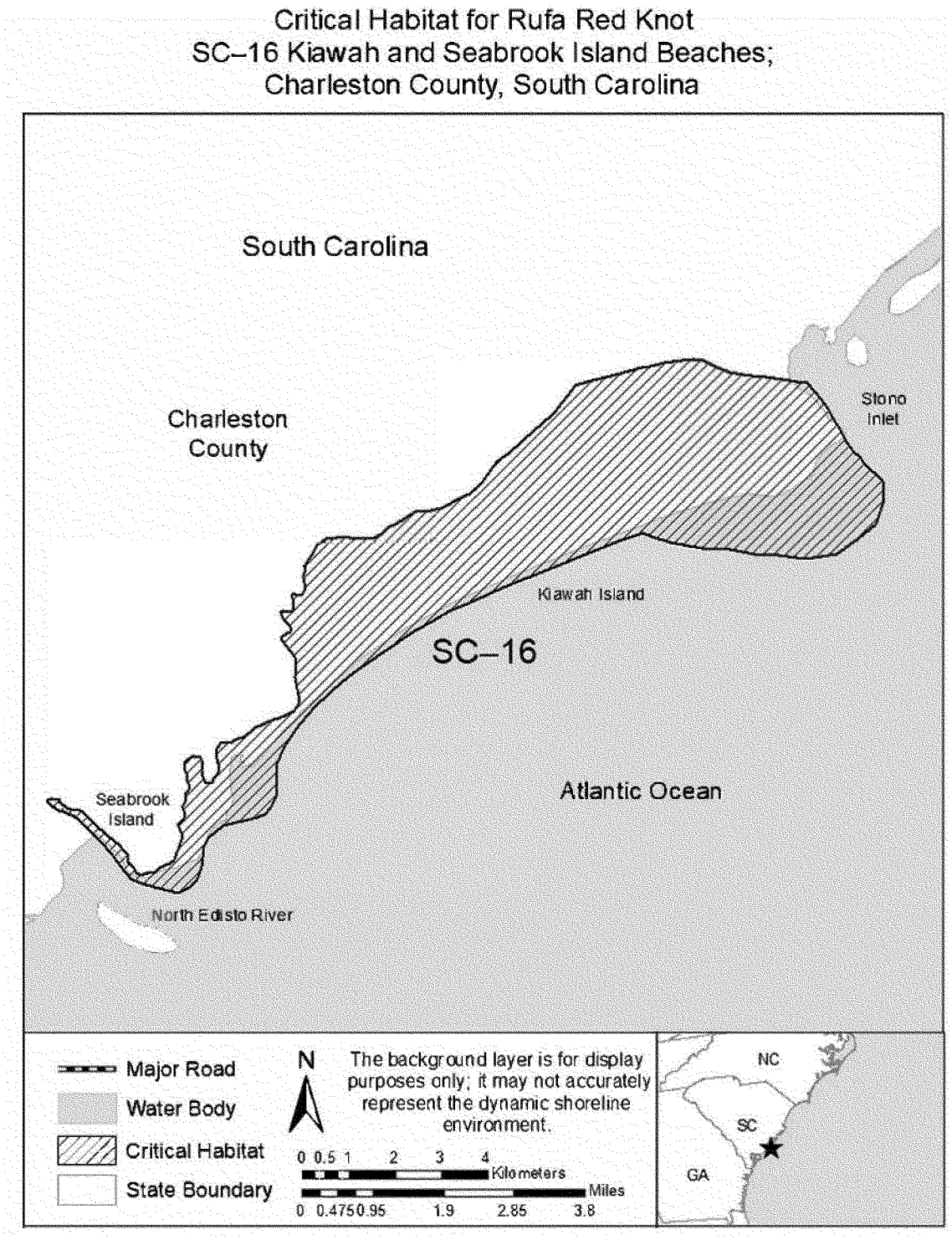
(ii) Map of Unit SC–15 is presented at paragraph (58)(ii) of this entry.

(60) Unit SC–16: Kiawah and Seabrook Island Beaches, South Carolina.

(i) Unit SC–16 consists of approximately 11,250 ac (4,553 ha) of occupied habitat across the entirety of Kiawah Island and a portion of Seabrook Island, which are barrier islands off the coast of Charleston County. The unit boundary begins on the Stono Inlet shoreline of Kiawah Island and extends southwest to the tip of the Seabrook Island shoreline in the North Edisto River. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the western side of the Stono Inlet and all of Captain Sam's Inlet. Lands within this unit include approximately 1,399 ac (566 ha) in State ownership and 9,850 ac (3,986 ha) in private/other ownership within the Town limits of the Town of Kiawah Island and the Town of Seabrook Island.

(ii) Map of Unit SC–16 follows:

Figure 51 to Rufa Red Knot paragraph (60)(ii)

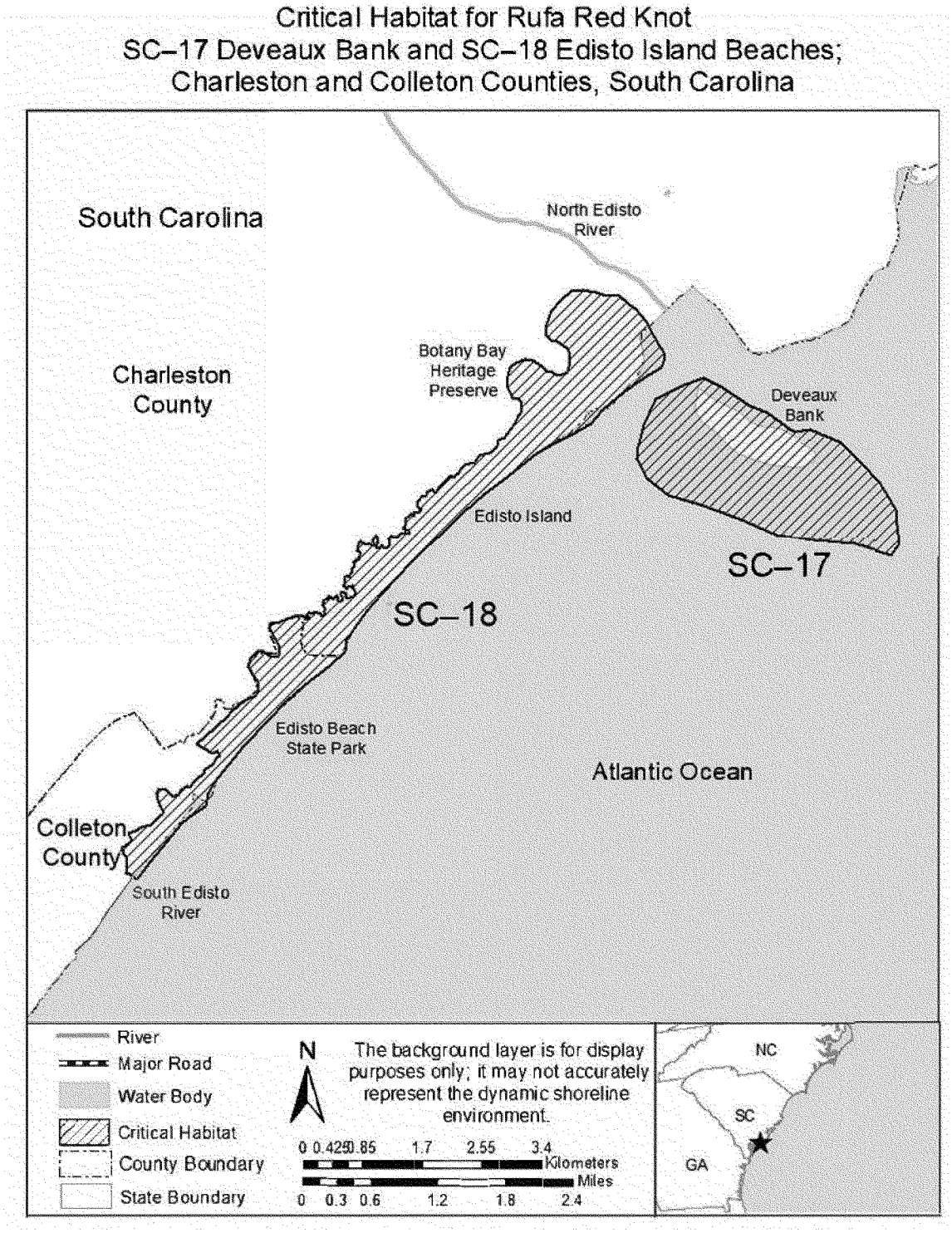



(61) Unit SC–17: Deveaux Bank, South Carolina.

(i) Unit SC–17 consists of approximately 1,328 ac (538 ha) of occupied habitat across the entirety of Deveaux Bank, an island in the mouth of the North Edisto River in Charleston County. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the mouth of the North Edisto River. Lands within this unit are entirely in State ownership (managed as a Seabird Sanctuary).

(ii) Map of Unit SC–17 follows:

Figure 52 to Rufa Red Knot paragraph (61)(ii)




(62) Unit SC–18: Edisto Island Beaches, South Carolina.

(i) Unit SC–18 consists of approximately 1,743 ac (705 ha) of occupied beach habitat on Edisto Island, a barrier island off the coast of Charleston and Colleton Counties. The unit includes all of Botany Bay Island, Botany Bay Plantation, Interlude Beach, and Edingsville Beach, and a portion of Edisto Beach State Park. The unit boundary begins on the North Edisto River shoreline of Botany Bay Island and extends southwest to the undeveloped eastern half of the beachfront portion of Edisto Beach State Park southwest of Jeremy Inlet. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic

shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Frampton and Jeremy Inlets and the unnamed inlet separating Interlude Beach and Botany Bay Plantation. Lands within this unit include approximately 650 ac (263 ha) in State ownership (including Edisto Beach State Park and Botany Bay Heritage Preserve/Wildlife Management Area) and 1,093 ac (442 ha) in private/other ownership.

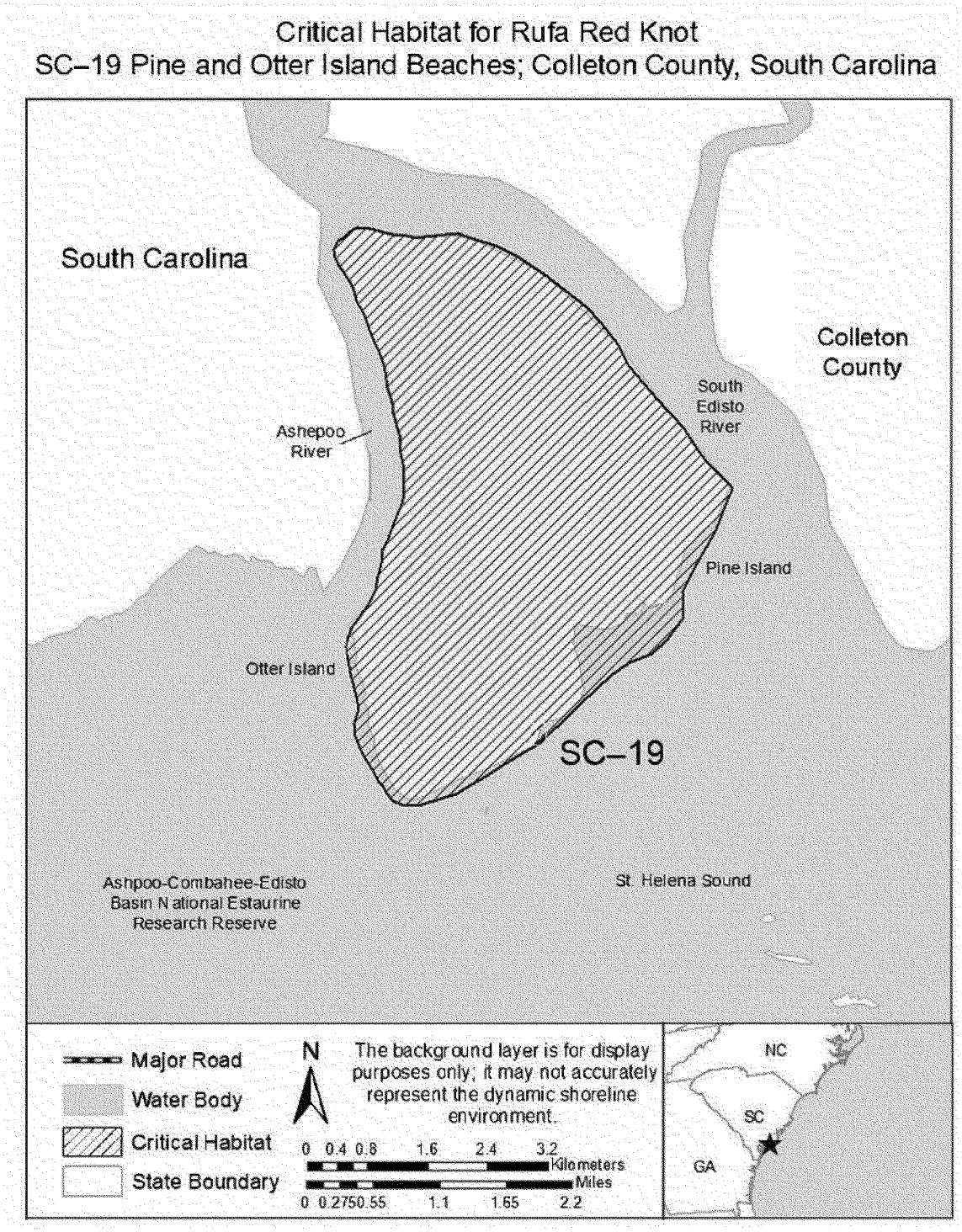
(ii) Map of Unit SC–18 is presented at paragraph (61)(ii) of this entry.

(63) Unit SC–19: Pine and Otter Island Beaches, South Carolina.

(i) Unit SC–19 consists of approximately 6,302 ac (2,550 ha) of occupied habitat across the entirety of Pine and Otter Islands, both of which are sea islands in St. Helena Sound in Colleton County. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fish Creek Inlet. Lands within this unit include approximately 6,296 ac (2,548 ha) in State ownership (including the Ashepoo-Combahee-Edisto Basin Preserve/Wildlife Management Area and the St. Helena Sound Heritage Preserve/Wildlife Management Area) and 6 ac (2 ha) in private/other ownership.

(ii) Map of Unit SC–19 follows:

Figure 53 to Rufa Red Knot paragraph (63)(ii)



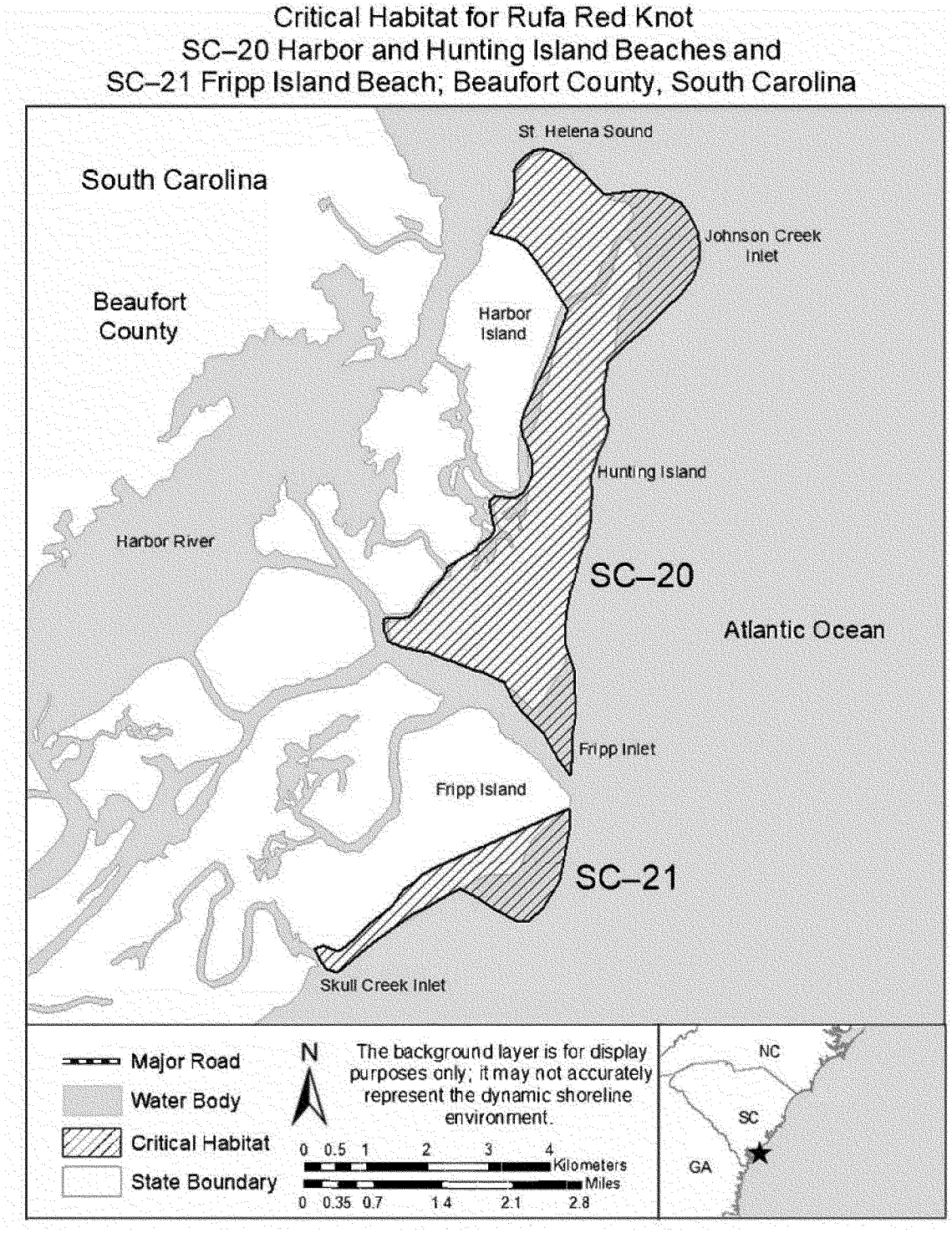

(64) Unit SC–20: Harbor and Hunting Island Beaches, South Carolina.

(i) Unit SC–20 consists of approximately 4,066 ac (1,645 ha) of occupied habitat on Harbor and Hunting Islands, both of which are barrier islands off the coast of Beaufort County. The unit boundary begins on the Harbor River shoreline of Harbor Island and extends southwest to the Fripp Inlet shoreline of Hunting Island. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Johnson Creek Inlet. Lands within this unit include approximately 3,246 ac (1,313 ha) in

State ownership (including Hunting Island State Park) and 820 ac (331 ha) in private/other ownership.

(ii) Map of Unit SC–20 follows:

Figure 54 to Rufa Red Knot paragraph (64)(ii)




(65) Unit SC–21: Fripp Island Beach, South Carolina.

(i) Unit SC–21 consists of approximately 734 ac (297 ha) of occupied habitat on Fripp Island, a barrier island off the coast of Beaufort County. The unit boundary begins on the Fripp Inlet shoreline of Fripp Inlet and extends southwest to the Skull Creek Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated

habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fripp Inlet. Lands within this unit include approximately 305 ac (124 ha) in State ownership and 429 ac (174 ha) in private/other ownership.

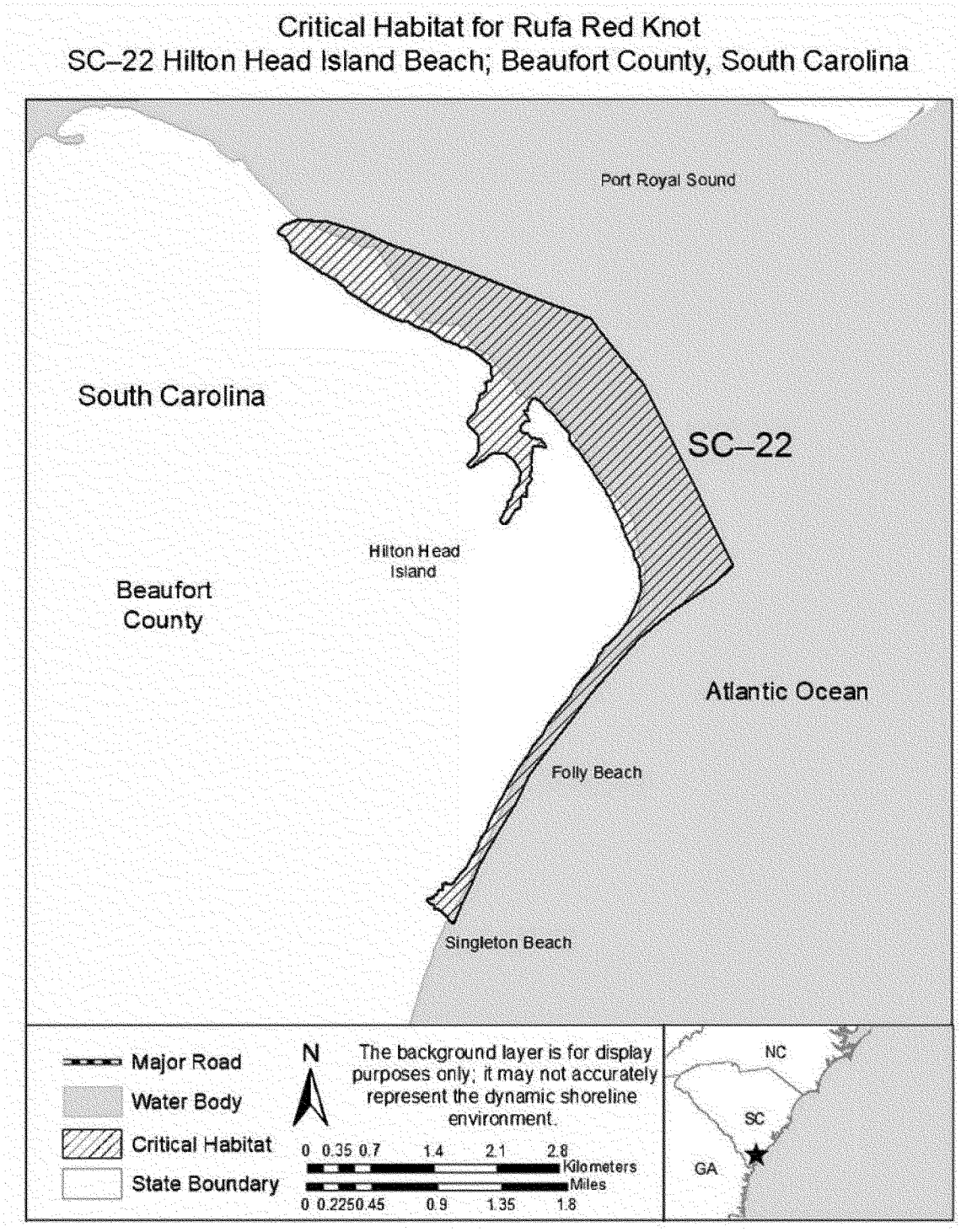
(ii) Map of Unit SC–21 is presented at paragraph (64)(ii) of this entry.

(66) Unit SC–22: Hilton Head Island Beach, South Carolina.

(i) Unit SC–22 consists of approximately 1,682 ac (681 ha) of occupied habitat on the heel of Hilton Head Island, a barrier island off the coast, in Beaufort County. The unit boundary begins on the Port Royal Sound shoreline beginning at Oyster Shell Lane, continues southeast then turns southwest along the Atlantic Ocean shoreline, and continues to the undeveloped portion of Singleton Beach southwest of the Folly Beach. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the rufa red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Fish Haul Creek and unnamed inlets within the unit boundary. Lands within this unit include approximately 1,015 ac (411 ha) in State ownership and 667 ac (270 ha) in private/other ownership.

(ii) Map of Unit SC–22 follows:

Figure 55 to Rufa Red Knot paragraph (66)(ii)

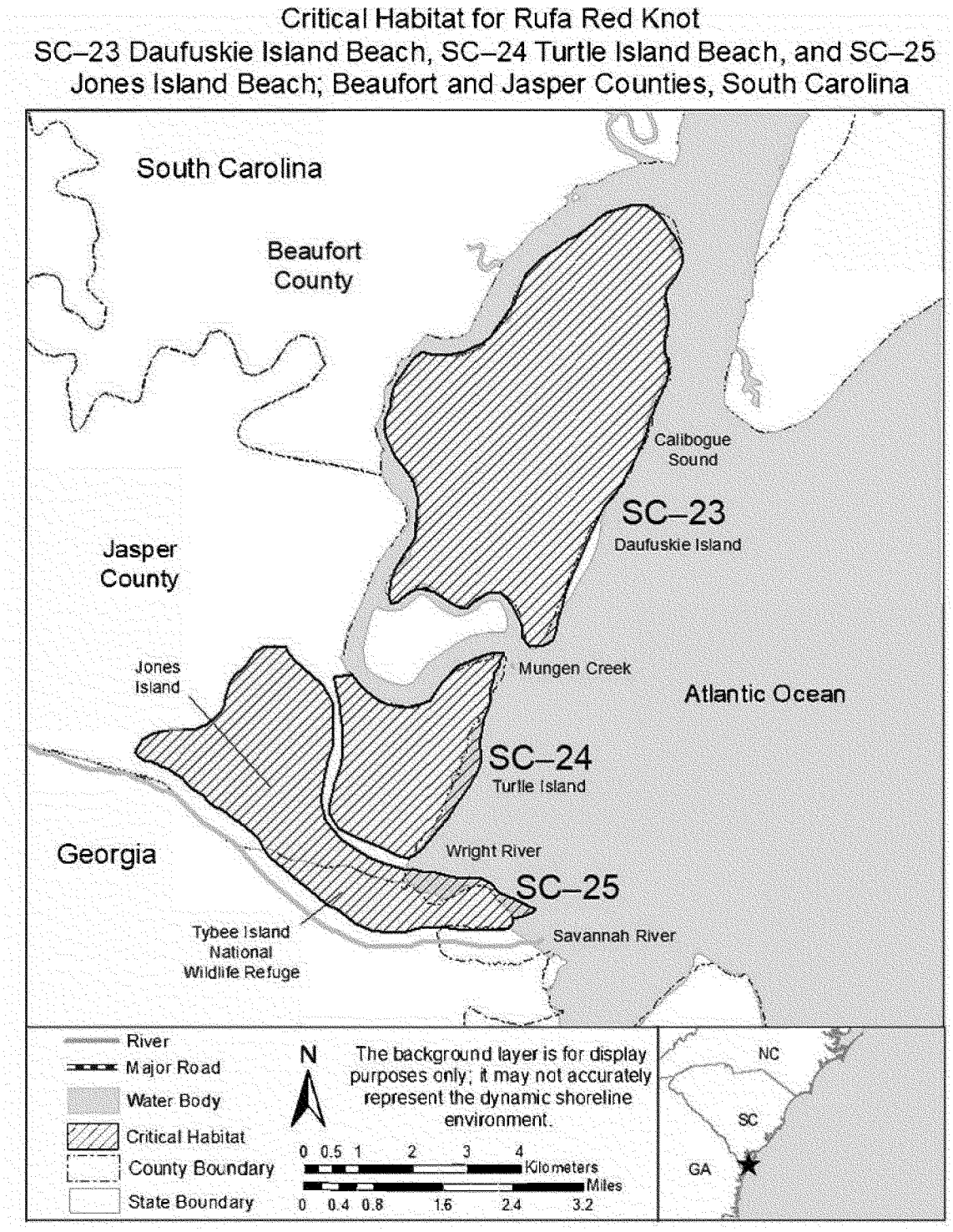



(67) Unit SC–23: Daufuskie Island Beach, South Carolina.

(i) Unit SC–23 consists of approximately 6,370 ac (2,578 ha) of occupied habitat across the entirety of Daufuskie Island, a sea island in Calibogue Sound, in Beaufort County. The unit boundary begins on the Calibogue Sound shoreline of Daufuskie Island and extends southwest to the Mungen Creek shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the unit boundary. All lands within this unit are in private/other ownership.

(ii) Map of Unit SC–23 follows:

Figure 56 to Rufa Red Knot paragraph (67)(ii)




(68) Unit SC–24: Turtle Island Beach, South Carolina.

(i) Unit SC–24 consists of approximately 1,798 ac (728 ha) of occupied habitat across the entirety of Turtle Island, a sea island in Calibogue Sound, in Jasper County. The unit boundary begins on the New River shoreline of Turtle Island and extends southwest to the Wright River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the unnamed inlet in the center of the island shoreline. Lands within this unit are

entirely in State ownership (Turtle Island Wildlife Management Area).

(ii) Map of Unit SC–24 is presented at paragraph (67)(ii) of this entry.

(69) Unit SC–25: Jones Island Beach, South Carolina.

(i) Unit SC–25 consists of approximately 3,025 ac (1,224 ha) of occupied habitat across the entirety of Jones Island, a sea island along the Savannah River and Calibogue Sound, in Jasper County. The unit boundary begins on the Wright River shoreline of Jones Island to the Savannah River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Wright River Inlet. Lands within this unit include approximately 785 ac (318 ha) in Federal ownership (Tybee Island NWR) and 2,240 ac (907 ha; 74 percent) in State ownership.

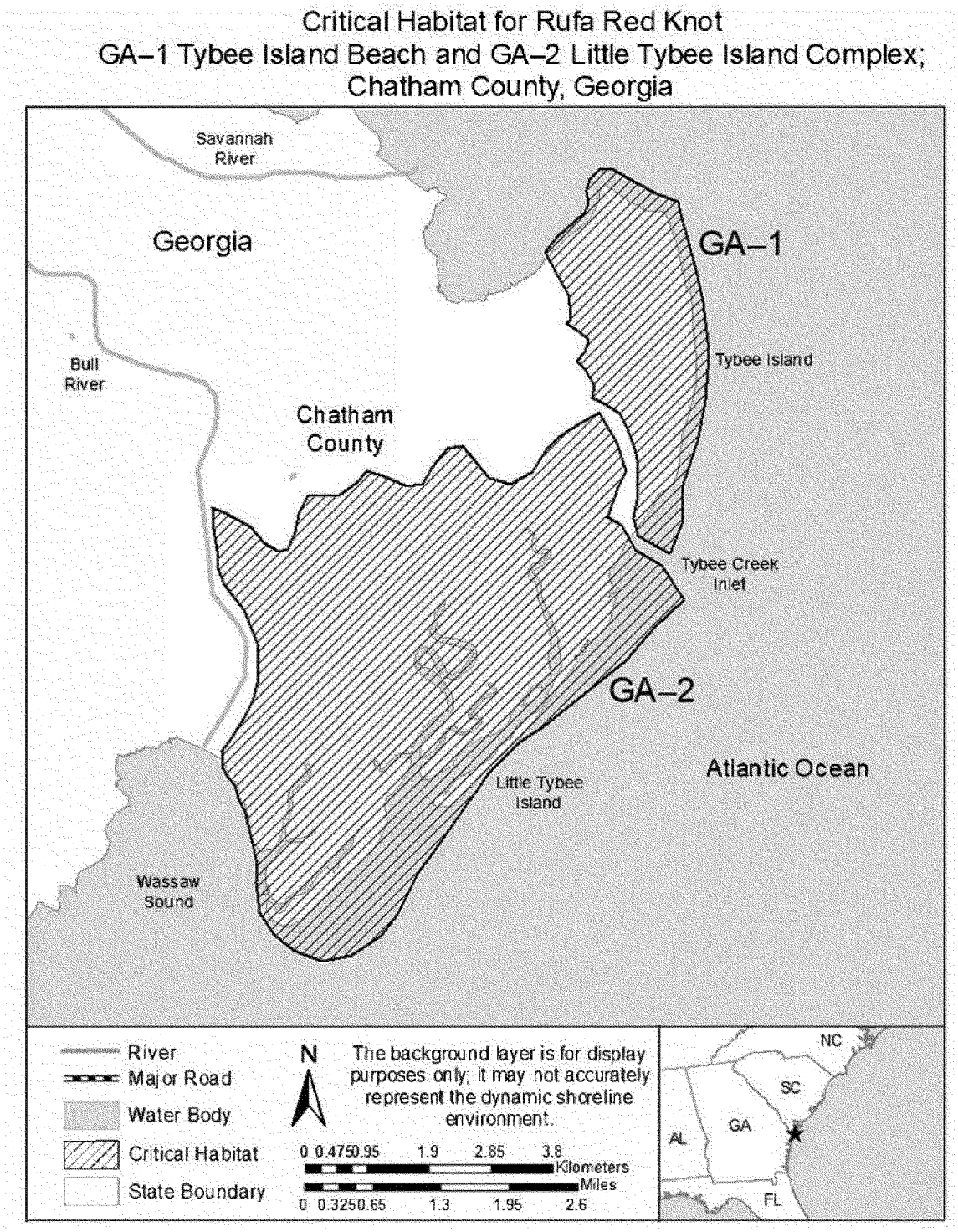
(ii) Map of Unit SC–24 is presented at paragraph (67)(ii) of this entry.

(70) Unit GA–1: Tybee Island Beach, Georgia.

(i) Unit GA–1 consists of approximately 2,046 ac (828 ha) of occupied habitat on Tybee Island (north, mid and south beaches), a barrier island off the coast in Chatham County. The northern boundary of the unit begins at the Savannah River shoreline of Tybee Island and extends south to Tybee Creek Inlet, which separates Tybee Island from Little Tybee Island, and includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the eastern side of Tybee Inlet's navigable channel. Lands within this unit include approximately 6 ac (2 ha) in State ownership, 1,721 ac (697 ha) in private/other ownership, and 319 ac (129 ha) that are uncategorized.

(ii) Map of Unit GA–1 follows:

Figure 57 to Rufa Red Knot paragraph (70)(ii)




(71) Unit GA–2: Little Tybee Island Complex, Georgia.

(i) Unit GA–2 consists of approximately 8,265 ac (3,345 ha) of occupied habitat across the entirety of Little Tybee Island complex, a series of barrier islands off the coast of Chatham County. The unit boundary begins on the western side of Tybee Creek Inlet and extends southwest to Wassaw Sound and includes Little Tybee Island, Williamson Island, and all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the western side of Tybee Inlet's navigable channel, Little Tybee Slough, and Little Tybee Creek.

All lands within this unit are in State ownership (Little Tybee Island State Heritage Preserve).

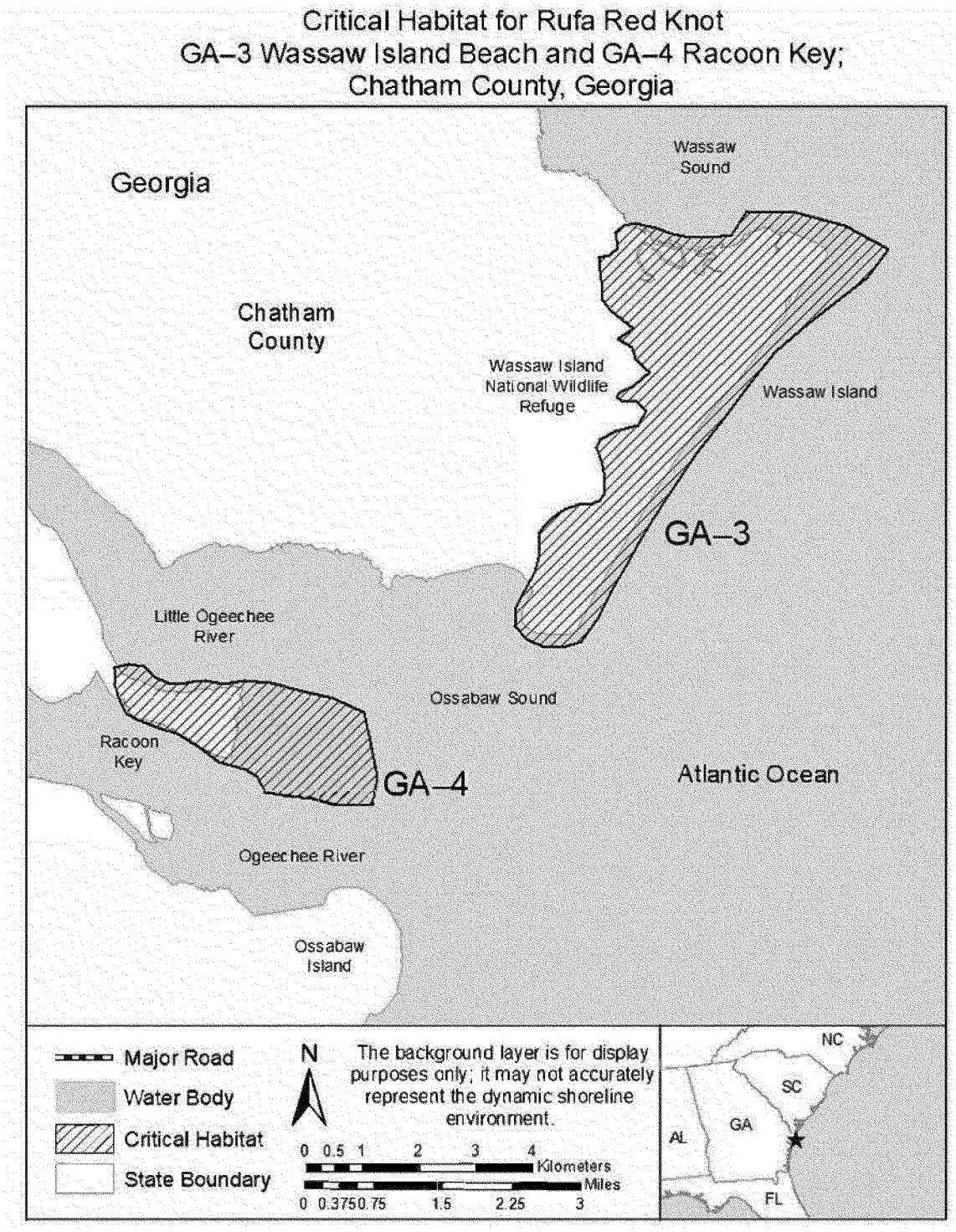
(ii) Map of Unit GA–2 is presented at paragraph (70)(ii) of this entry.

(72) Unit GA–3: Wassaw Island Beach, Georgia.

(i) Unit GA–3 consists of approximately 4,296 ac (1,738 ha) of occupied habitat on Wassaw Island, a barrier island off the coast in Chatham County. The unit boundary begins on the southwestern side of Wassaw Sound off the northern tip of Wassaw Island and extends southwest to Ossabaw Sound shoreline. The unit includes all emergent land from MLLW (which includes the highly dynamic shoreline and sandy intertidal zone that is covered at high tide and uncovered at low tide) to the toe of the dunes or where densely vegetated habitat, not used by the red knot, begins. This unit also includes the ephemeral, emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Wassaw Sound off the northern tip of Wassaw Island. Lands within this unit include approximately 3,001 ac (1,215 ha) in Federal ownership (Wassaw Island NWR), 274 ac (111 ha) in private/other ownership, and 1,020 ac (412 ha) that are uncategorized.

(ii) Map of Unit GA–3 follows:

Figure 58 to Rufa Red Knot paragraph (72)(ii)




(73) Unit GA–4: Raccoon Key, Georgia.

(i) Unit GA–4 consists of approximately 1,599 ac (647 ha) of occupied habitat across the entirety of Raccoon Key, an island in Ossabaw Sound in Chatham County. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within Ossabaw Sound associated with Raccoon Key. All lands within this unit are in State ownership.

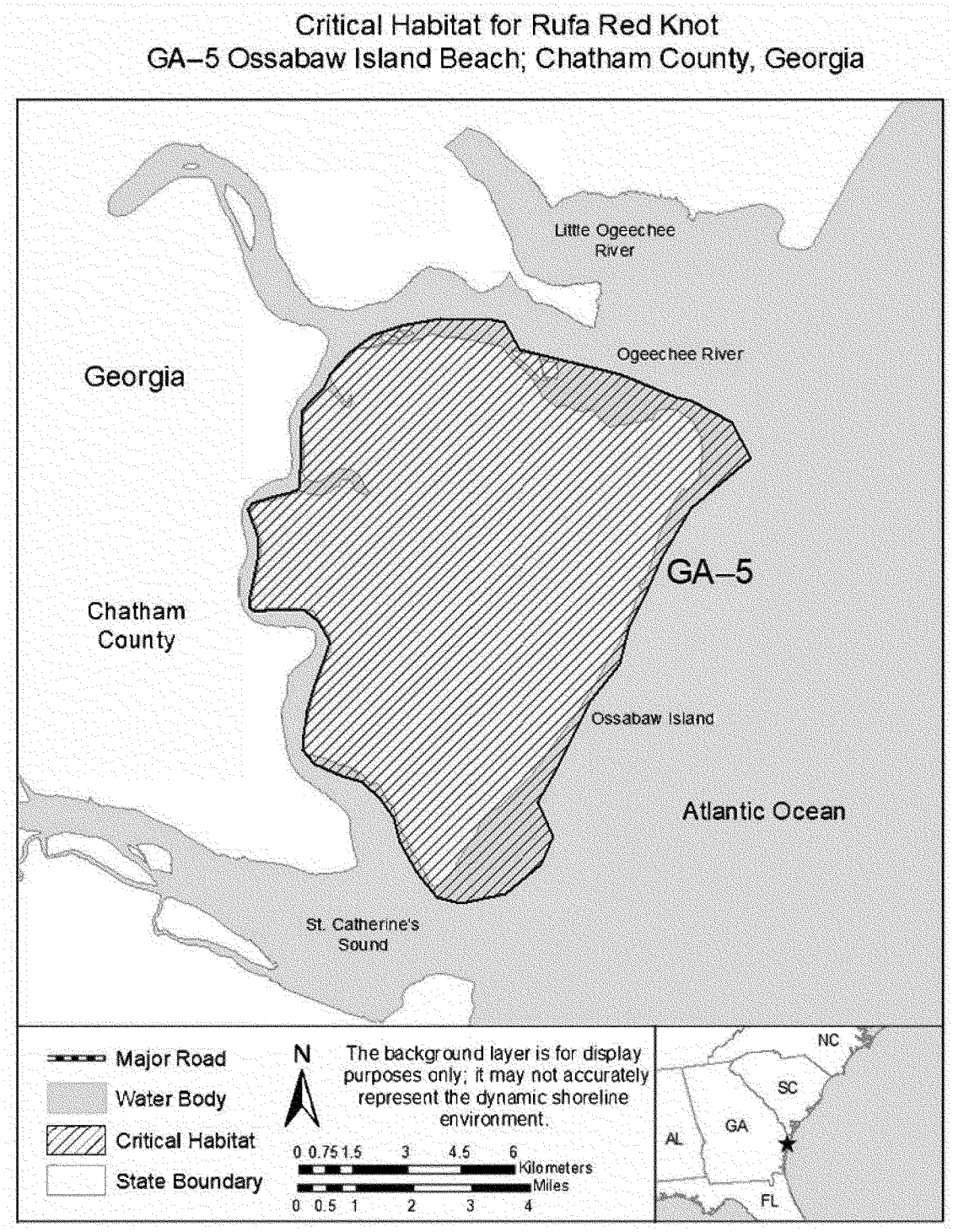
(ii) Map of Unit GA–4 is presented at paragraph (72)(ii) of this entry.

(74) Unit GA–5: Ossabaw Island Beach, Georgia.

(i) Unit GA–5 consists of approximately 32,357 ac (13,095 ha) of occupied habitat on Ossabaw Island, a barrier island off the coast in Chatham County. The unit boundary begins at the Ogeechee River shoreline of Ossabaw Island and extends southwest to the St. Catherine's Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Ossabaw Sound off the northeastern tip of the island and St. Catherine's Sound off the southwestern tip of the island. Lands within this unit include approximately 28,621 ac (11,591 ha) in State ownership and 3,736 ac (1,503 ha) that are uncategorized.

(ii) Map of Unit GA–5 follows:

Figure 59 to Rufa Red Knot paragraph (74)(ii)



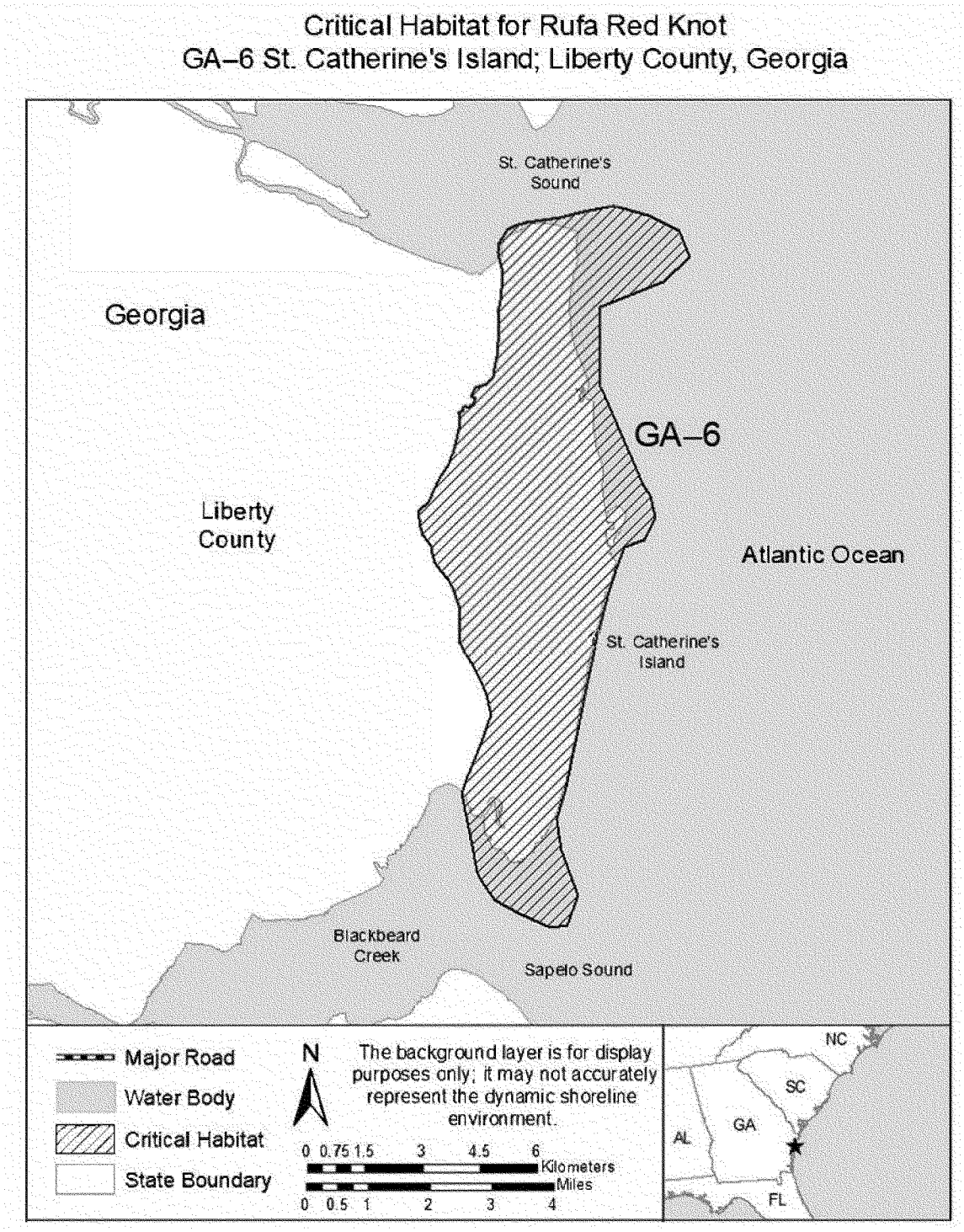

(75) Unit GA–6: St. Catherine's Island Beach, Georgia.

(i) Unit GA–6 consists of approximately 15,962 ac (6,460 ha) of occupied habitat on St. Catherine's Island, a barrier island off the coast in Liberty County. The unit boundary begins at the St. Catherine's Sound shoreline of St. Catherine's Island and extends southwest to the Sapelo Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with St. Catherine's Sound entrance off the northern tip of the island, McQueen Inlet, and Sapelo Sound entrance off the

southern tip of the island. Lands within this unit include approximately 2,106 ac (853 ha) in State ownership, 11,810 ac (4,783 ha) in private/other ownership, and 2,046 ac (824 ha) that are uncategorized.

(ii) Map of Unit GA–6 follows:

Figure 60 to Rufa Red Knot paragraph (75)(ii)

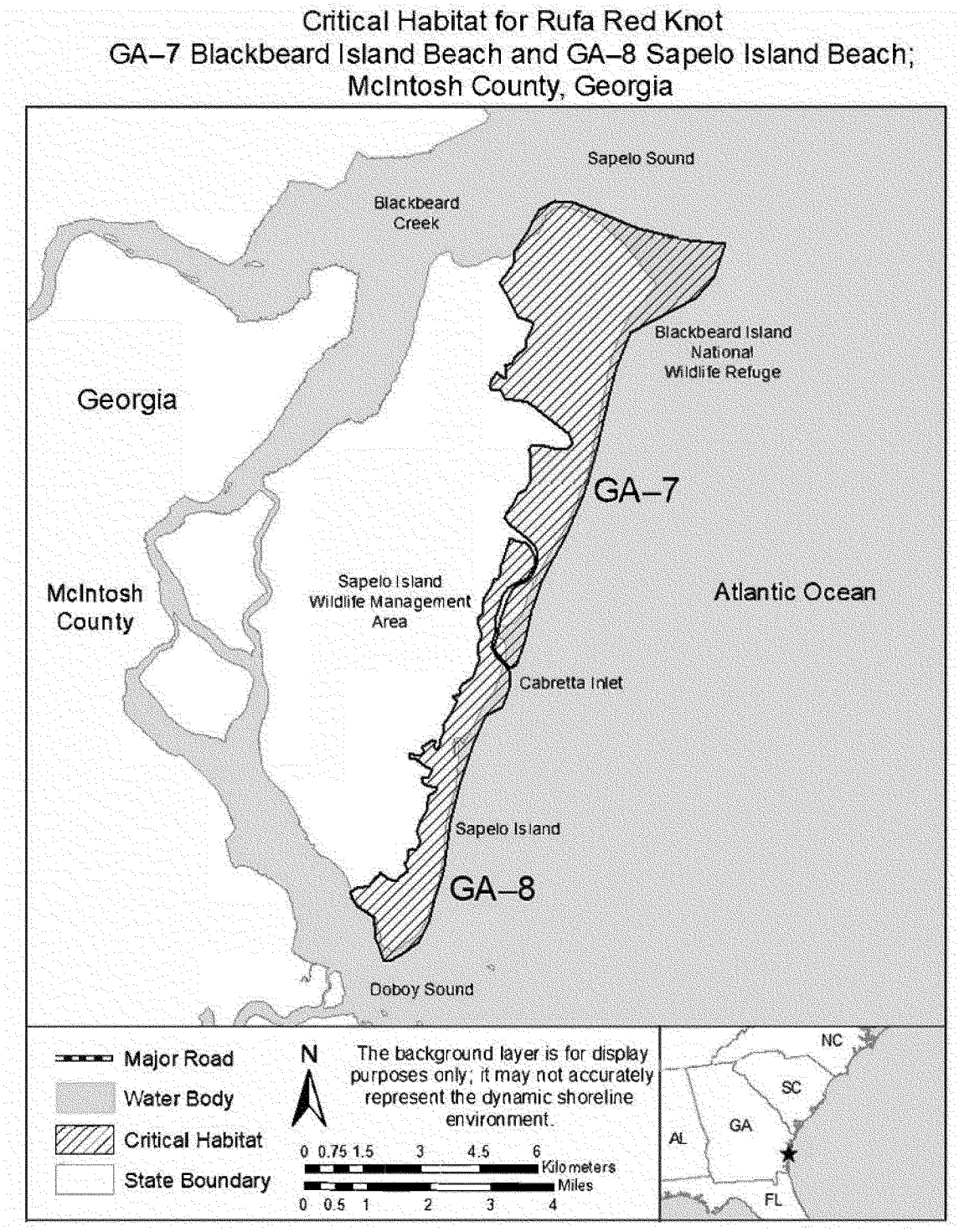


(76) Unit GA–7: Blackbeard Island Beach, Georgia.

(i) Unit GA–7 consists of approximately 6,321 ac (2,558 ha) of occupied habitat on Blackbeard Island, a barrier island off the coast in McIntosh County. The unit boundary begins at the Sapelo Sound shoreline of Blackbeard Island and extends southwest to the Cabretta Inlet shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the Sapelo Sound entrance off the northern tip of the island and the northeastern side of Cabretta Inlet's navigable channel. Lands within this unit include approximately 4,954 ac (2,006 ha) in Federal ownership (Blackbeard Island NWR), 80 ac (32 ha) in State ownership, and 1,287 ac (519 ha) that are uncategorized.

(ii) Map of Unit GA–7 follows:

Figure 61 to Rufa Red Knot paragraph (76)(ii)




(77) Unit GA–8: Sapelo Island Beach, Georgia.

(i) Unit GA–8 consists of approximately 2,482 ac (845 ha) of occupied habitat on Sapelo Island, a barrier island off the coast in McIntosh County. The unit boundary begins at the Cabretta Inlet shoreline of Sapelo Island and extends southwest to the Doboy Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are

covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southwestern side of Cabretta Inlet's navigable channel. The lands within this unit are State-owned and comprise the Sapelo Island Wildlife Management Area and Sapelo Island National Estuarine Research Reserve (NERR).

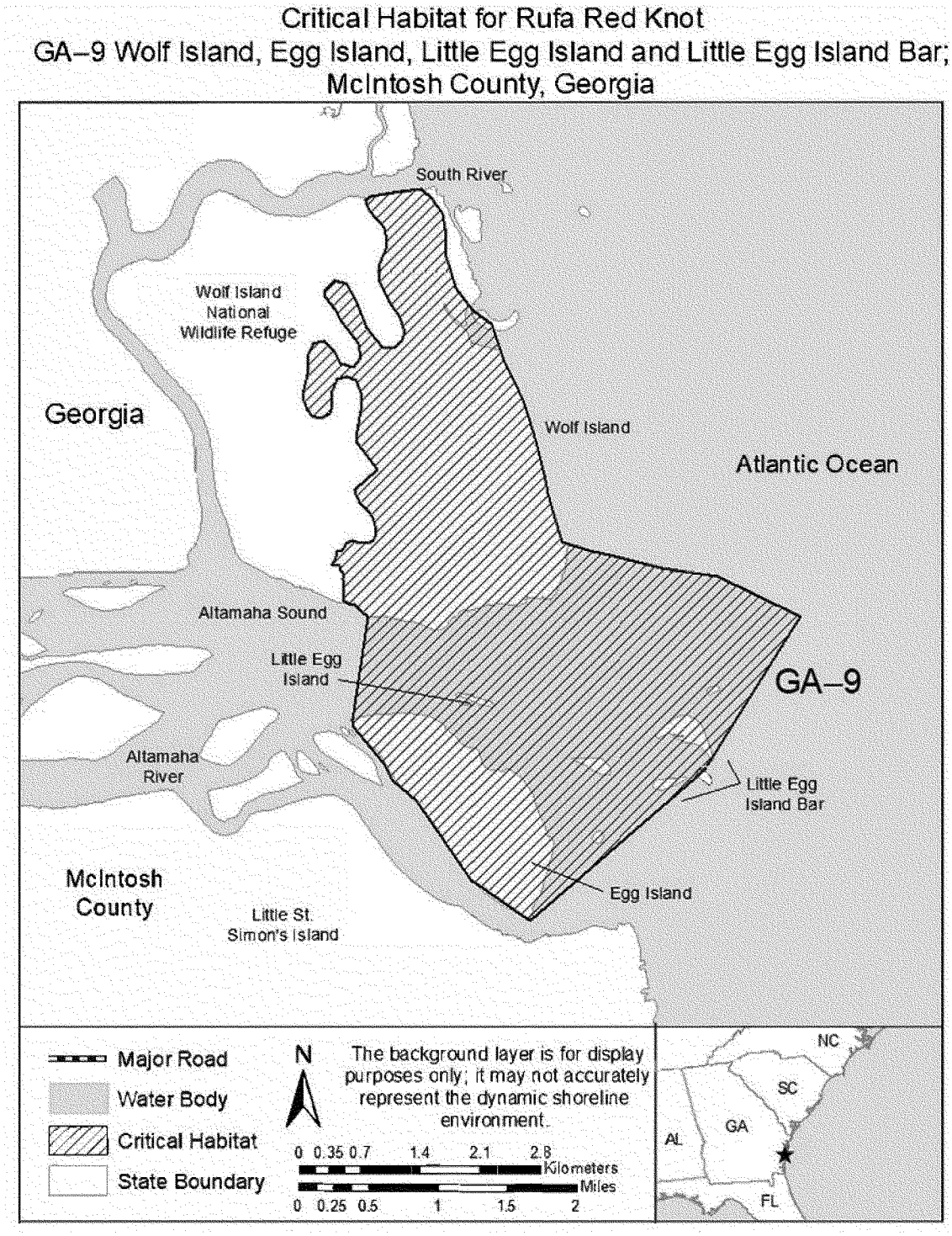
(ii) Map of Unit GA–8 is presented at paragraph (76)(ii) of this entry.

(78) Unit GA–9: Wolf Island, Egg Island, Little Egg Island, and Little Egg Island Bar, Georgia.

(i) Unit GA–9 consists of approximately 5,308 ac (2,148 ha) of occupied habitat on Wolf, Egg, and Little Egg Islands, and Little Egg Island Bar, which are islands at the mouth of the Altamaha River in McIntosh County. The unit boundary begins at the South River shoreline of Wolf Island and extends south to the southern side of Altamaha Sound. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the entrance to Altamaha Sound and Beacon Creek. Lands within this unit include approximately 2,975 ac (1,204 ha) in Federal ownership (Wolf Island NWR, which is also a designated wilderness area), 240 ac (97 ha) in State ownership, and 2,093 ac (847 ha) that are uncategorized.

(ii) Map of Unit GA–9 follows:

Figure 62 to Rufa Red Knot paragraph (78)(ii)



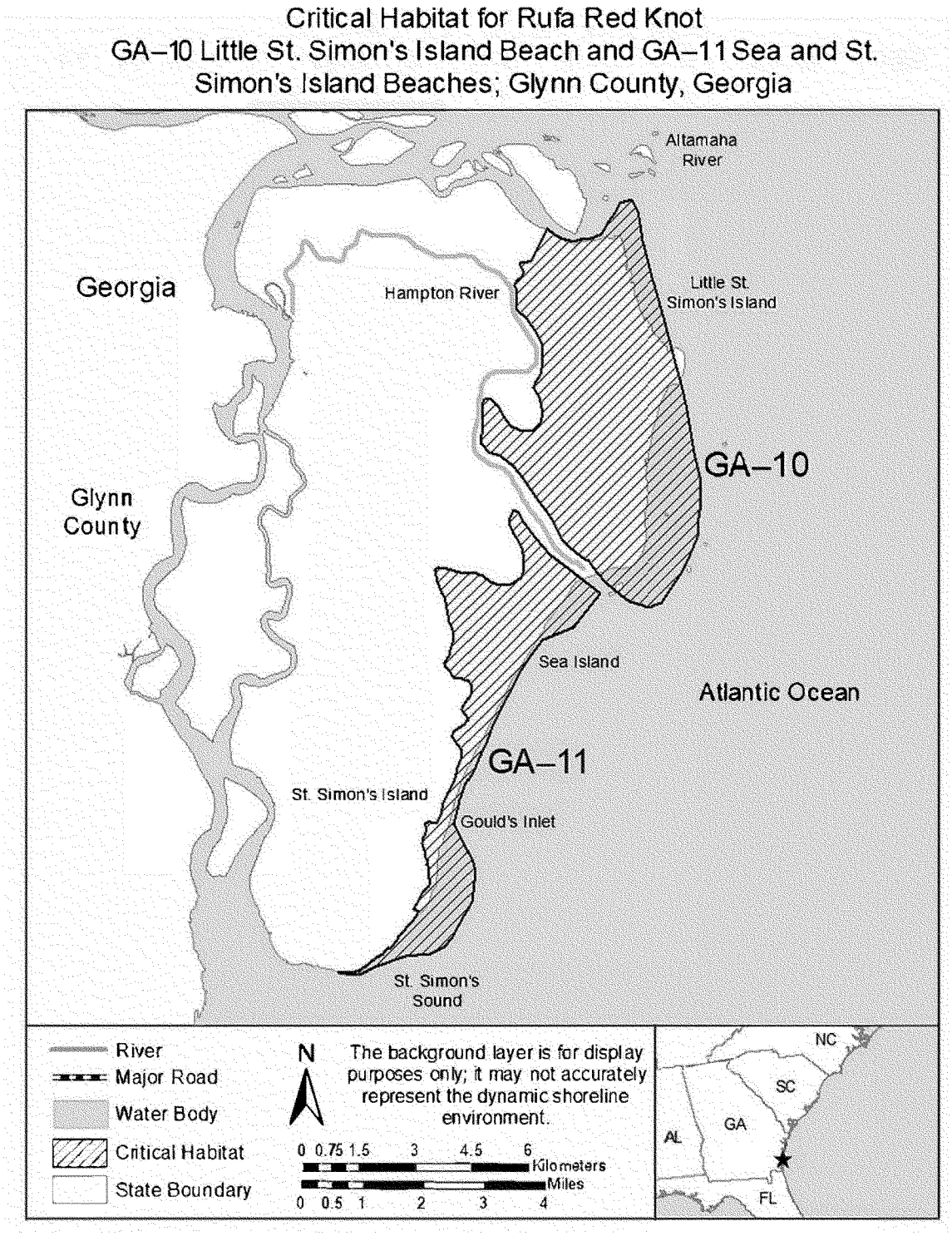

(79) Unit GA–10: Little St. Simon's Island Beach, Georgia.

(i) Unit GA–10 consists of approximately 9,053 ac (3,664 ha) of occupied habitat on Little St. Simon's Island off the coast of Glynn County. The unit boundary begins at the Altamaha Sound shoreline of Little St. Simon's Island and extends south to the Hampton River shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone

that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the Altamaha Sound off the northeastern tip of the island, Mosquito Creek, and the northern side of Hampton River Inlet's navigable channel. Lands within this unit include approximately 113 ac (46 ha) in State ownership, 7,462 ac (3,022 ha) in private/other ownership (TNC-owned preserve lands), and 1,479 ac (596 ha) that are uncategorized.

(ii) Map of Unit GA–10 follows:

Figure 63 to Rufa Red Knot paragraph (79)(ii)




(80) Unit GA–11: Sea and St. Simon's Island Beaches, Georgia.

(i) Unit GA–11 consists of approximately 4,033 ac (1,632 ha) of occupied habitat across the entirety of Sea Island and a portion of St. Simon's Island, both of which are barrier islands off the coast of Glynn County. The unit boundary begins at the Hampton River shoreline of Sea Island and extends southwest to the St. Simon's Sound shoreline of St. Simon's Island. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red

knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with Gould's Inlet. Lands within this unit include approximately 4 ac (2 ha) in State ownership, 3,448 ac (1,395 ha) in private/other ownership, and 581 ac (235 ha) that are uncategorized.

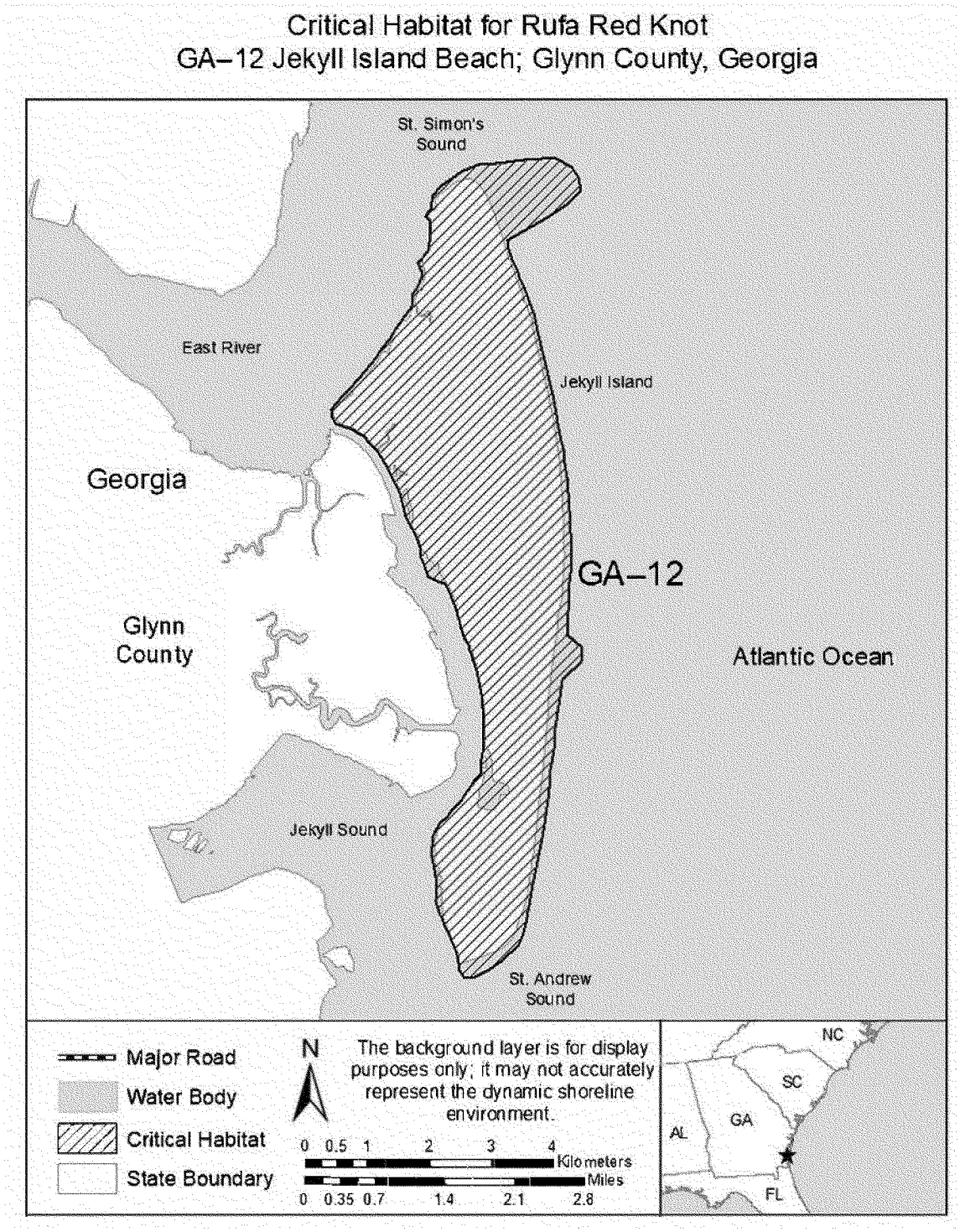
(ii) Map of Unit GA–11 is presented at paragraph (79)(ii) of this entry.

(81) Unit GA–12: Jekyll Island Beach, Georgia.

(i) Unit GA–12 consists of approximately 6,287 ac (2,544 ha) of occupied habitat on Jekyll Island, a barrier island off the coast of Glynn County. The unit boundary begins at the St. Simon's Sound shoreline of Jekyll Island and extends south to St. Andrew Sound shoreline. The unit includes all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with the southern side of St. Simon's Sound off the northern tip of the island. Lands within this unit include approximately 5,944 ac (2,406 ha) in State ownership (including Jekyll Island State Park) and 343 ac (139 ha) that are uncategorized.

(ii) Map of Unit GA–12 follows:

Figure 64 to Rufa Red Knot paragraph (81)(ii)



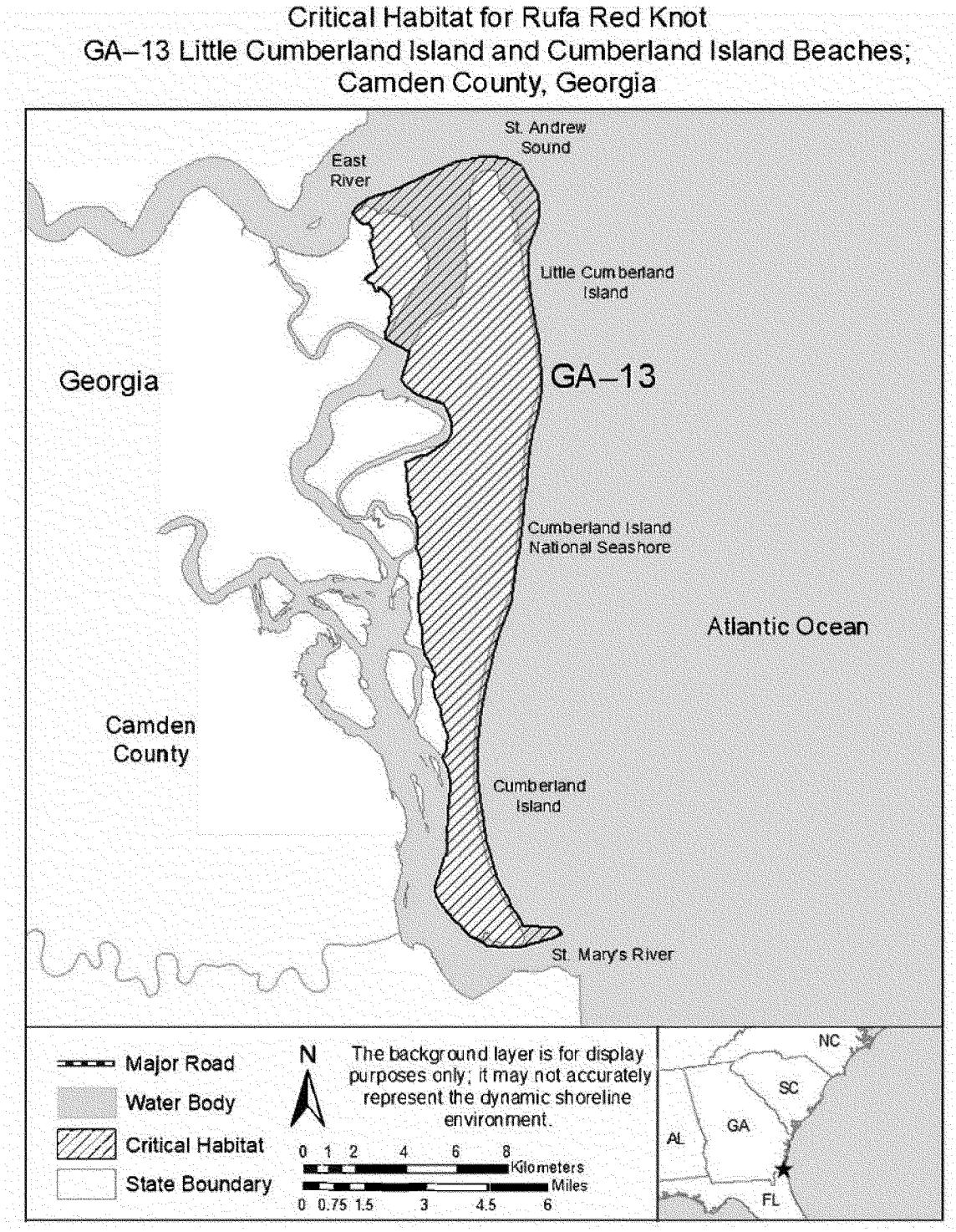

(82) Unit GA–13: Little Cumberland and Cumberland Island Beaches, Georgia.

(i) Unit GA–13 consists of approximately 28,136 ac (11,386 ha) of occupied habitat on Little Cumberland Island and Cumberland Island, a barrier island complex off the coast in Camden County. The unit boundary begins at the St. Andrew Sound shoreline of Little Cumberland Island and extends west across the Cumberland River and marsh to the East River and continues south to the St. Mary's River shoreline of Cumberland Island. The unit includes

all emergent land from MLLW to the toe of the dunes or where densely vegetated habitat (not used by the red knot) begins (*i.e.,* the highly dynamic shoreline and the sandy intertidal zone that are covered at high tide and uncovered at low tide). This dynamic habitat also includes the ephemeral emergent shoals (sand bars) within the flood-tidal and ebb-tidal deltas associated with St. Andrew Sound off the northern tip of Little Cumberland Island and Christmas Creek Inlet between Little Cumberland and Cumberland Islands. Lands within this unit include approximately 23,367 ac (9,464 ha) in Federal ownership (Cumberland Island National Seashore, which is also a designated wilderness area), 1,685 ac (682 ha) in State ownership, and 3,085 ac (1,241 ha) that are uncategorized.

(ii) Map of Unit GA–13 follows:

Figure 65 to Rufa Red Knot paragraph (82)(ii)



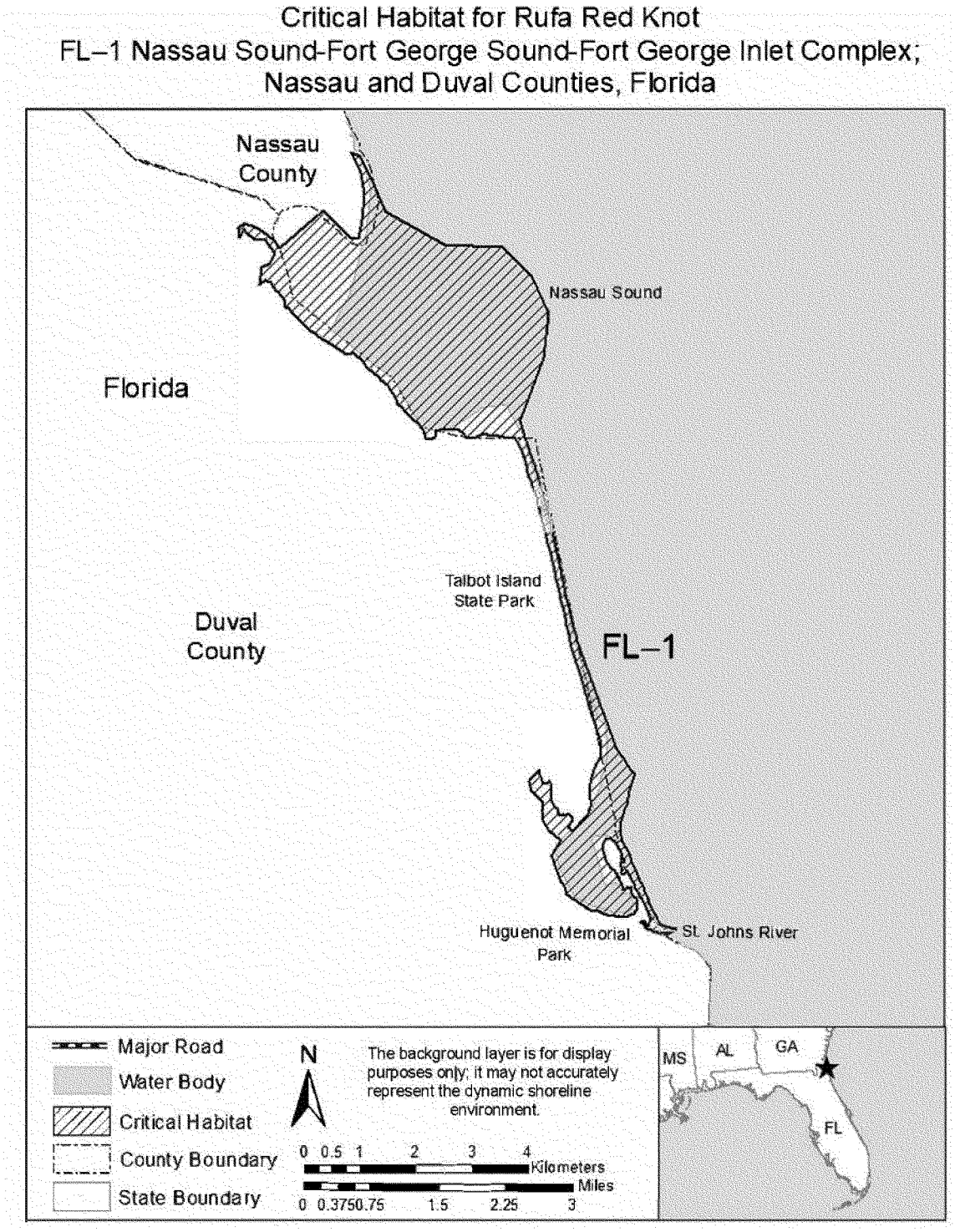

(83) Unit FL–1: Nassau Sound-Fort George Sound-Fort George Inlet Complex, Florida.

(i) Unit FL–1 consists of approximately 4,324 ac (6,742 ha) of occupied habitat consisting of beach, inlet, and intertidal sandflats in Nassau and Duval Counties. The unit extends from the north shore of Nassau Sound in Nassau County south to the north shore of the St. Johns River at Huguenot Memorial Park in Duval County. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures,

including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. The majority of this unit is within the Talbot Islands State Parks Complex and Huguenot Memorial Park, which is a Federal and State-owned parcel leased to the City of Jacksonville. Lands within this unit include approximately 996 ac (404 ha) in Federal ownership, 522 ac (211 ha) in State ownership, 27 ac (11 ha) in private/other ownership, and 2,779 ac (6,116 ha) that are uncategorized.

(ii) Map of Unit FL–1 follows:

Figure 66 to Rufa Red Knot paragraph (83)(ii)

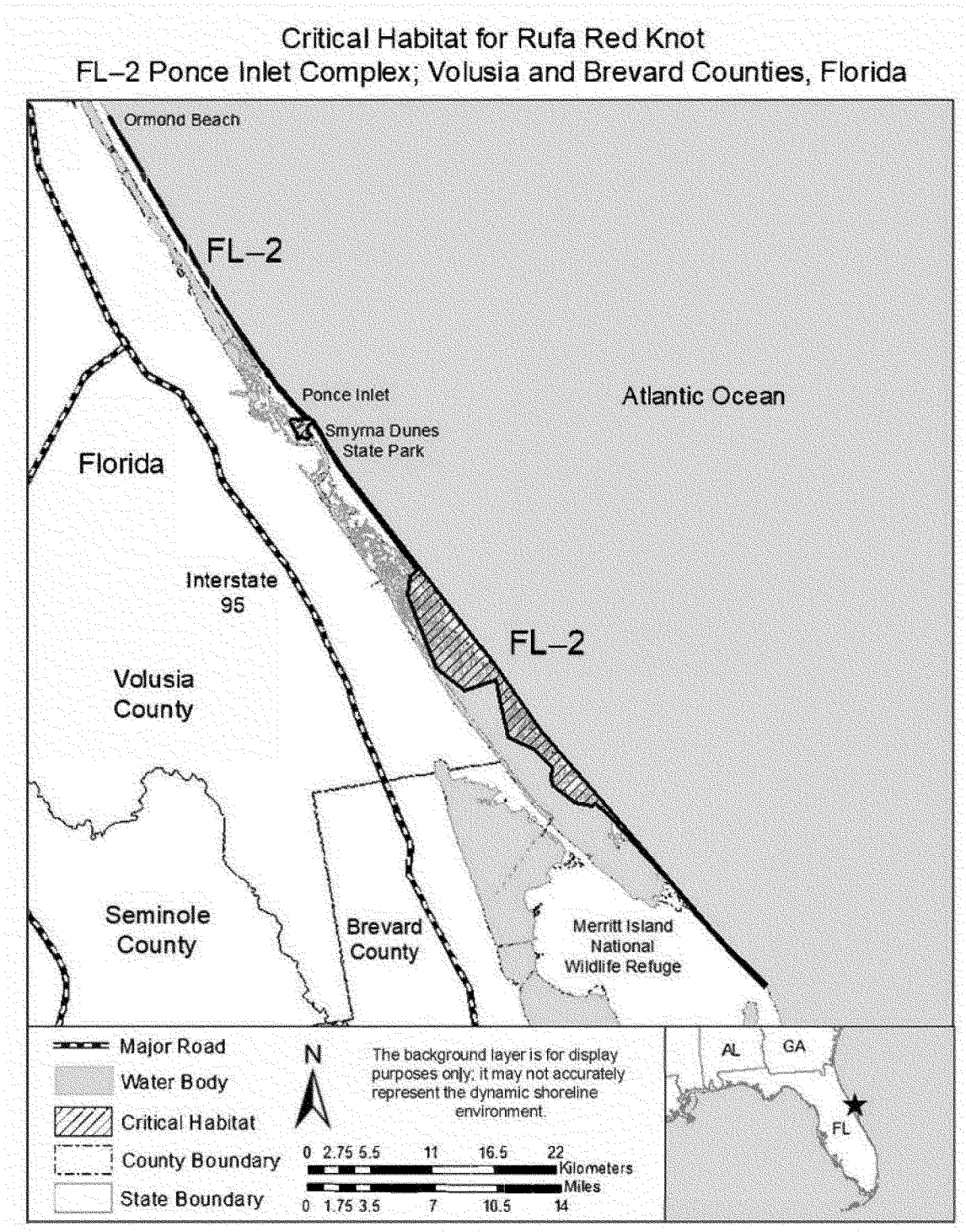


(84) Unit FL–2: Ponce Inlet Complex, Florida.

(i) Unit FL–2 consists of approximately 19,683 ac (7,965 ha) of occupied habitat consisting of beach, inlet, and intertidal sandflats in Volusia and Brevard Counties. The unit extends from approximately Ocean Edge Drive in Ormond Beach south to the south end of Merritt Island NWR along the Atlantic Ocean. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 16,660 ac (6,742 ha) in Federal ownership (Merritt Island NWR), 3,005 ac (1,216 ha) in State ownership (Smyrna Dunes State Park), and 18 ac (7 ha) that are uncategorized.

(ii) Map of Unit FL–2 follows:

Figure 67 to Rufa Red Knot paragraph (84)(ii)

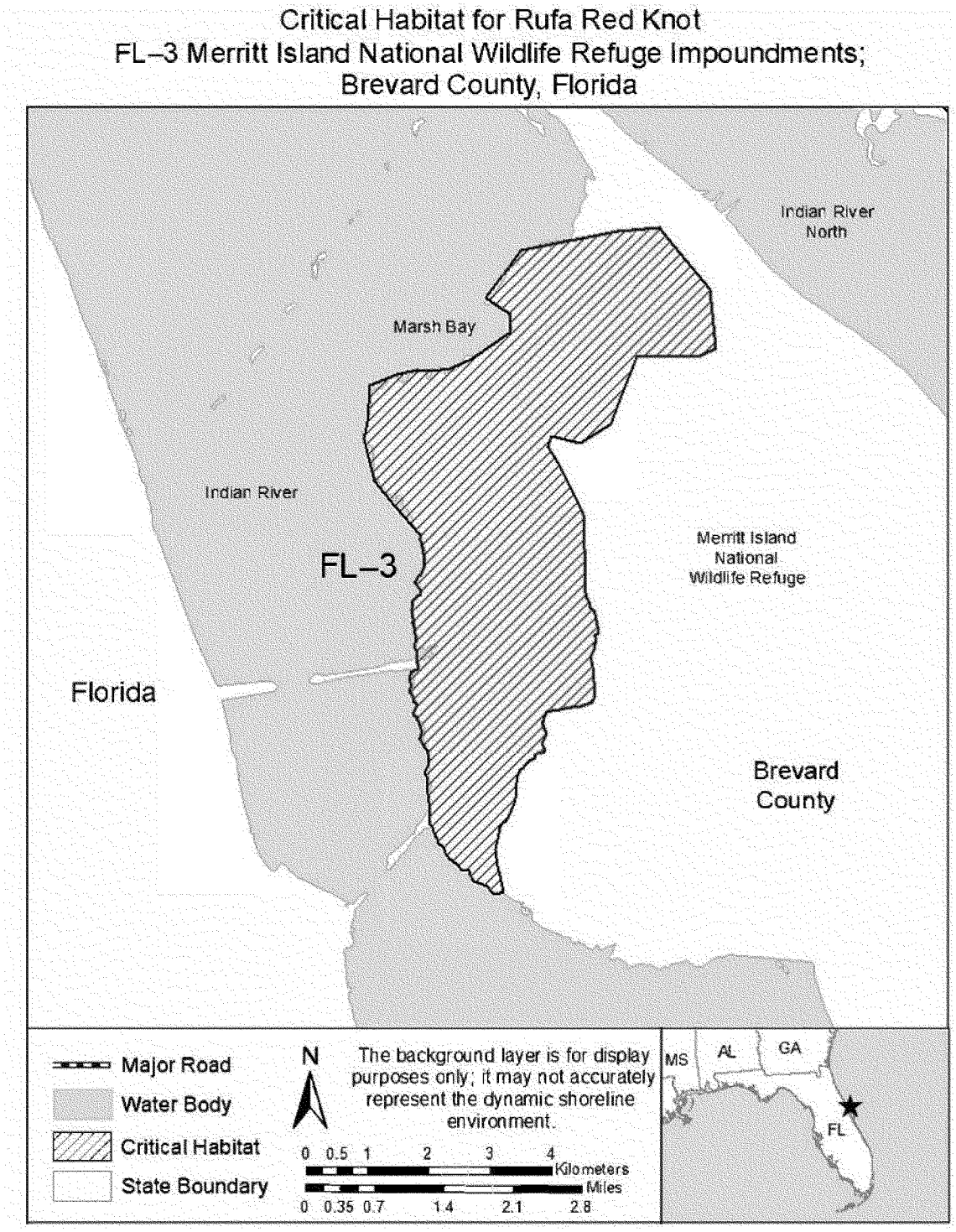



(85) Unit FL–3: Merritt Island National Wildlife Refuge Impoundments, Florida.

(i) Unit FL–3 consists of approximately 6,947 ac (2,811 ha) of occupied and managed impoundment and intertidal mudflats in Brevard County. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. This unit consists of Federal lands (Merritt Island NWR).

(ii) Map of Unit FL–3 follows:

Figure 68 to Rufa Red Knot paragraph (85)(ii)



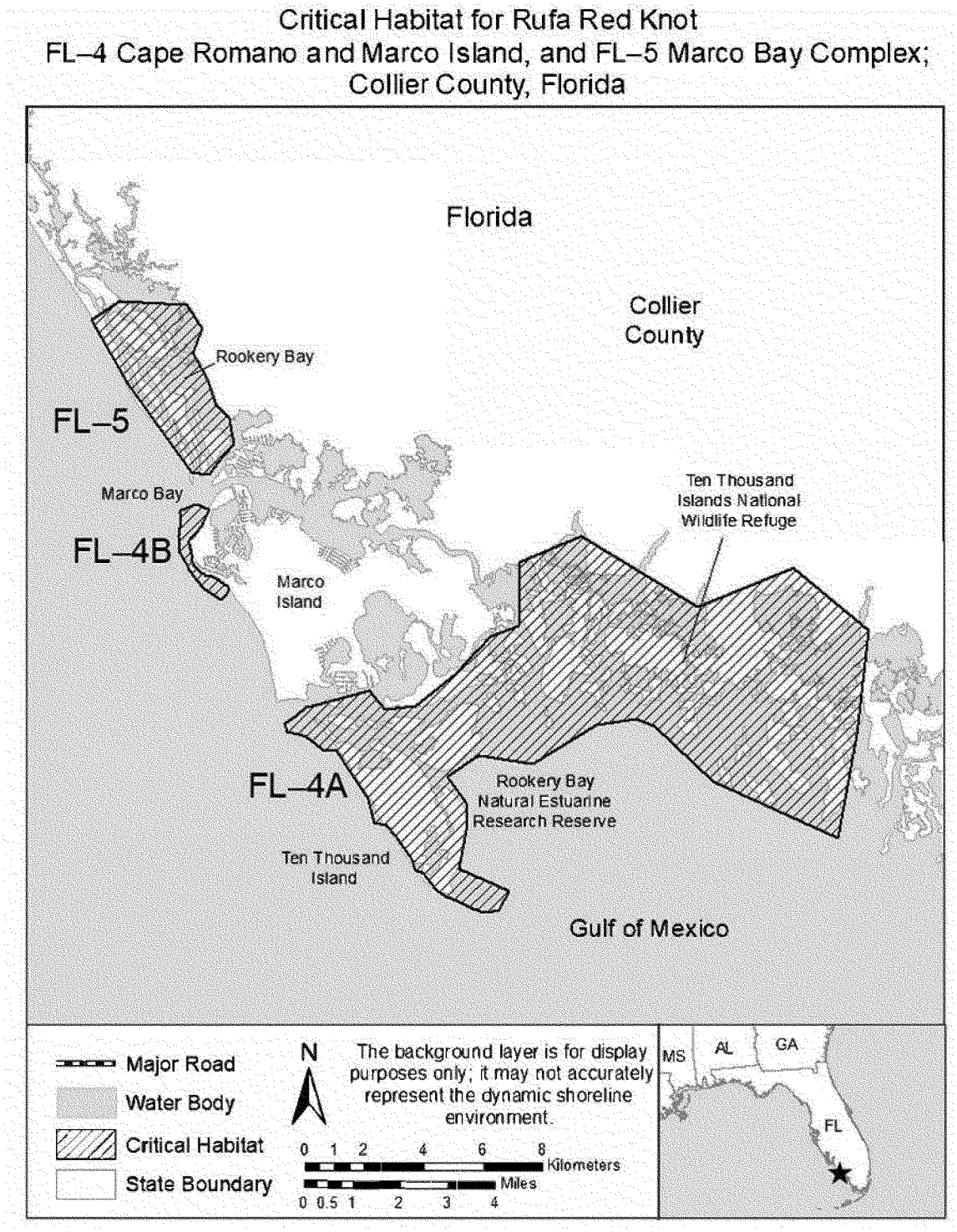

(86) Unit FL–4: Cape Romano and Marco Island, Florida.

(i) Unit FL–4 consists of two subunits comprising 26,629 ac (10,776 ha) of occupied habitat in Collier County. This unit consists of Federal (Ten Thousand

Islands NWR), State, and private landowners.

(ii) Map of Unit FL–4 follows:

Figure 69 to Rufa Red Knot paragraph (86)(ii)



(iii) Subunit FL–4A (Cape Romano Complex) consists of approximately 26,213 ac (10,608 ha) of occupied beach and intertidal sandflats habitat in Collier County, in the wetland complex south of Marco Island and the community of Goodland. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 13,138 ac (5,321 ha) in Federal ownership (Ten Thousand Islands NWR), 12,605 ac (5,105 ha) in State ownership (Rookery Bay NERR), and 470 ac (182 ha) that are uncategorized.

(iv) Map of Subunit FL–4A is presented at paragraph (86)(ii) of this entry.

(v) Subunit FL–4B (Marco Island) consists of approximately 416 ac (168 ha) of occupied habitat beach, inlet, and intertidal sandflats in Collier County. The subunit extends from the south side of the inlet north of Marco Island south along the Gulf of Mexico approximately 4 mi (6.5 km). The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 408 ac (165 ha) in State ownership (Rookery Bay NERR) and 8 ac (3 ha) in private/other ownership.

(vi) Map of Subunit FL–4B is presented at paragraph (86)(ii) of this entry.

(87) Unit FL–5: Marco Bay Complex, Florida.

(i) Unit FL–5 consists of approximately 3,589 ac (1,453 ha) of occupied beach, inlet, and intertidal sandflats habitat in Collier County, from the north side of the inlet north of Marco Island north along the Gulf of Mexico approximately 3.7 mi (6 km) and inclusive of the wetland complex inland to the east side of Rookery Bay. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 3,531 ac (1,429 ha) in State ownership (Rookery Bay NERR) and 58 ac (24 ha) in private/other ownership.

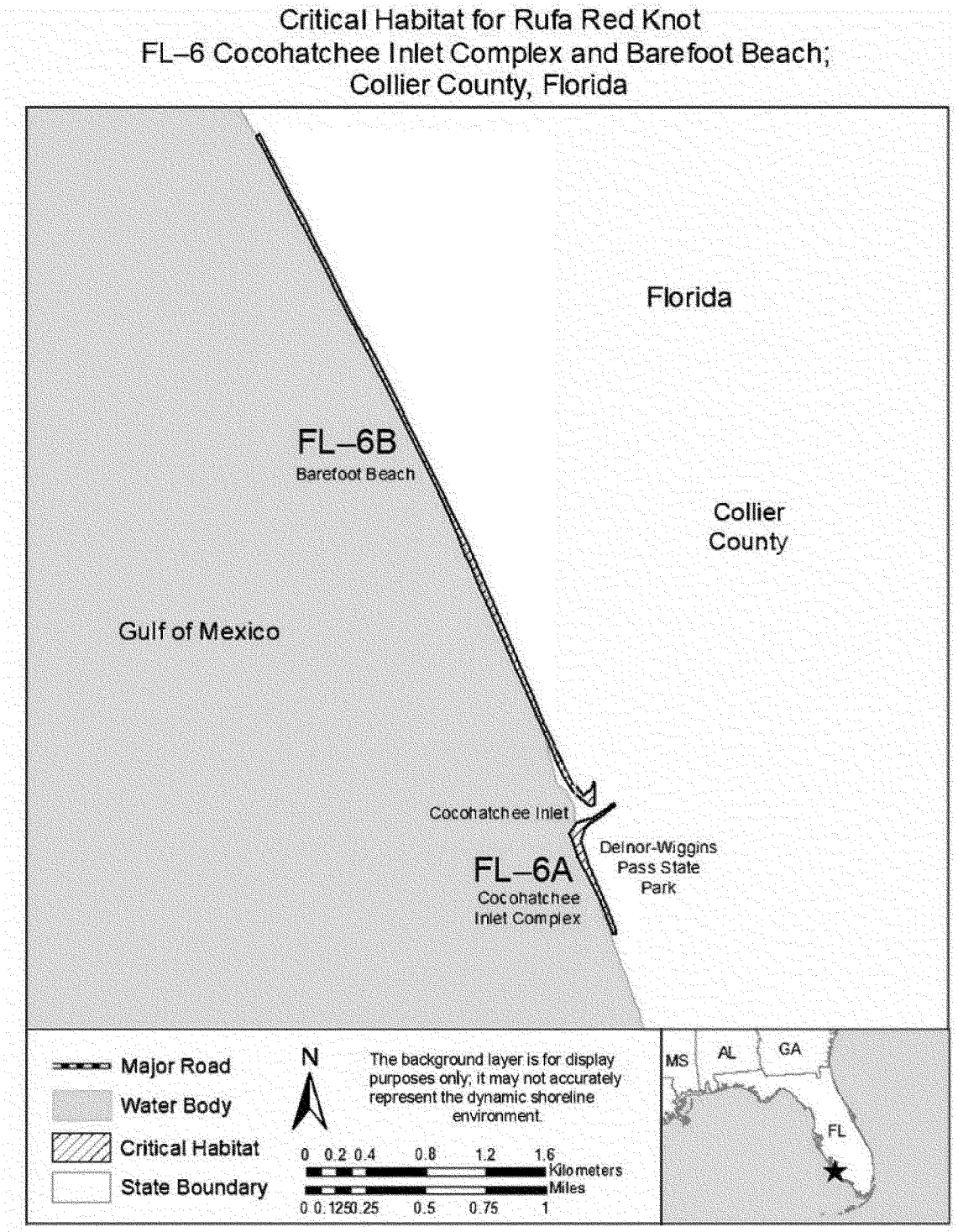
(ii) Map of Unit FL–5 is presented at paragraph (86)(ii) of this entry.

(88) Unit FL–6: Cocohatchee Inlet Complex and Barefoot Beach, Florida.

(i) Unit FL–6 consists of two subunits comprising 48 ac (20 ha) of occupied habitat in Collier County. This unit consists of Delnor-Wiggins Pass State Park and private landowners.

(ii) Map of Unit FL–6 follows:

Figure 70 to Rufa Red Knot paragraph (88)(ii)




(iii) Subunit FL–6A (Cocohatchee Inlet Complex) consists of approximately 9 ac (4 ha) of occupied beach, inlet, and intertidal sandflats habitat in Collier County, from the south side of the Cocohatchee Inlet south along the Gulf of Mexico approximately 3,281 ft (1 km). The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely under State ownership (Delnor-Wiggins Pass State Park).

(iv) Map of Subunit FL–6A is presented at paragraph (88)(ii) of this entry.

(v) Subunit FL–6B (Barefoot Beach) consists of approximately 39 ac (16 ha) of occupied beach, inlet, and intertidal sandflats habitat in Collier County, from the north side of the Cocohatchee Inlet north along the Gulf of Mexico approximately 3.1 mi (5 km). The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit include approximately 18 ac (7 ha) in State ownership and 21 ac (9 ha) in private/other ownership.

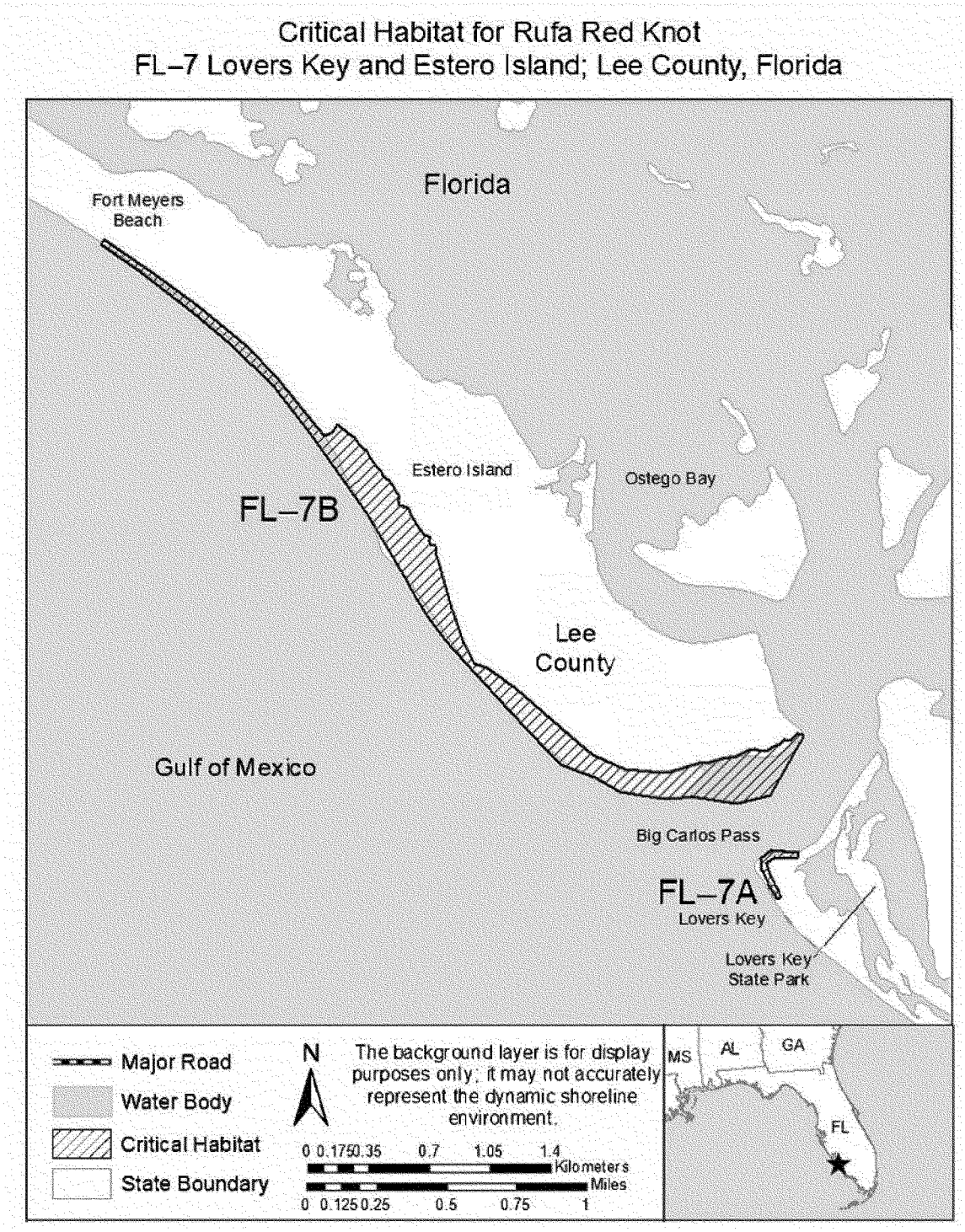
(vi) Map of Subunit FL–6B is presented at paragraph (88)(ii) of this entry.

(89) Unit FL–7: Lovers Key and Estero Island, Florida.

(i) Unit FL–7 consists of two subunits comprising 175 ac (70 ha) of occupied habitat in Lee County. This unit consists of portions of Lovers Key State Park and Estero Island.

(ii) Map of Unit FL–7 follows:

Figure 71 to Rufa Red Knot paragraph (89)(ii)




(iii) Subunit FL–7A (Lovers Key) consists of approximately 4 ac (1 ha) of occupied beach, inlet, and intertidal sandflats habitat in Lee County, at the north point of Lovers Key. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely State owned (Lovers Key State Park).

(iv) Map of Subunit FL–7A is presented at paragraph (89)(ii) of this entry.

(v) Subunit FL–7B (Estero Island) consists of approximately 171 ac (69 ha) of occupied beach, inlet, and intertidal sandflats habitat in Lee County, from Key West Court on Fort Myers Beach south along the Gulf of Mexico to the southern point of the island. The landward boundary is the line

indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership.

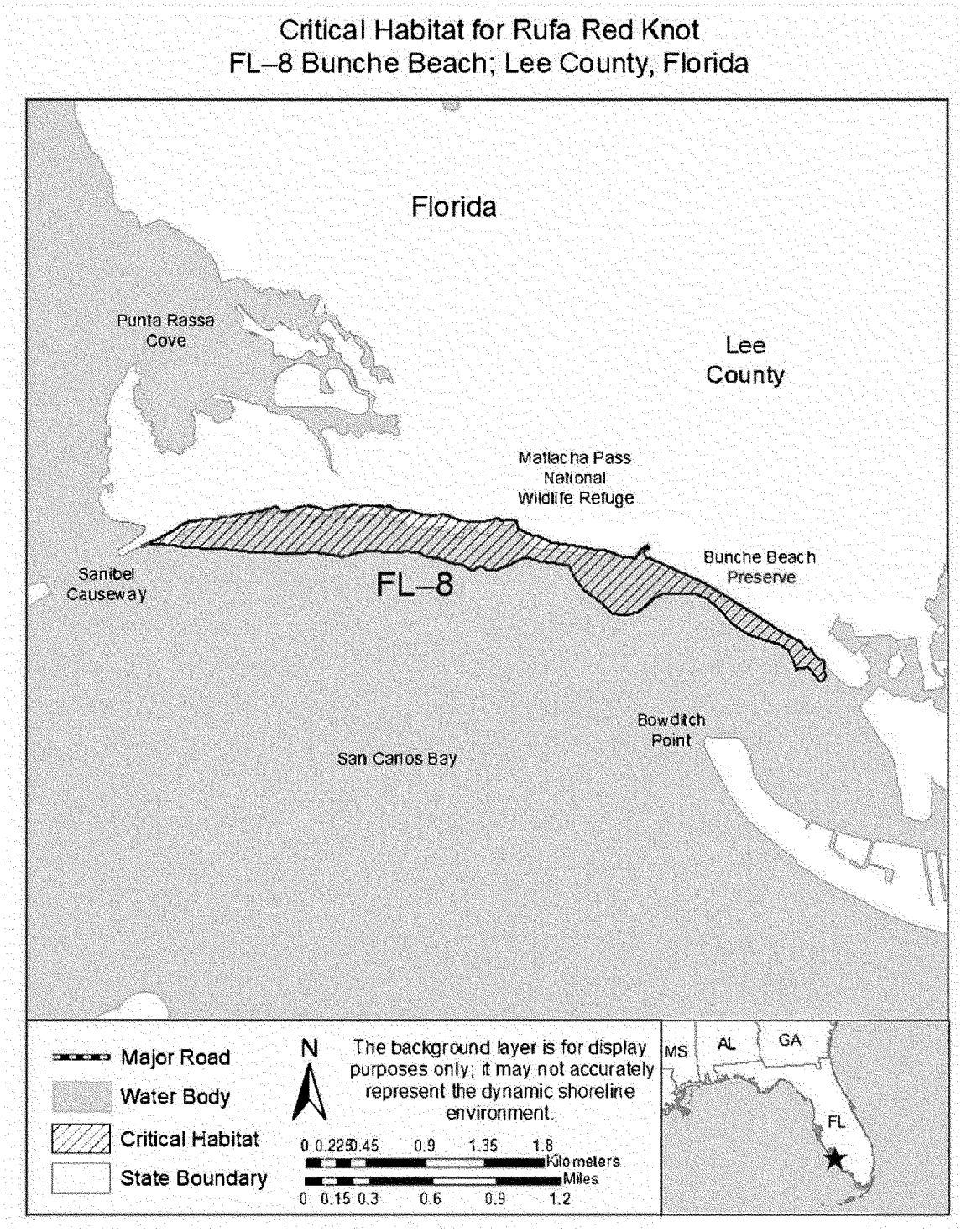
(vi) Map of Subunit FL–7B is presented at paragraph (89)(ii) of this entry.

(90) Unit FL–8: Bunche Beach, Florida.

(i) Unit FL–8 consists of approximately 334 ac (135 ha) of occupied beach, inlet, and intertidal sandflats habitat in Lee County, in San Carlos Bay south of the Sanibel Causeway in Fort Myers. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 23 ac (9 ha) in Federal ownership (Matlacha Pass NWR), 264 ac (107 ha) in State ownership (Bunche Beach Preserve), and 47 ac (19 ha) in private/other ownership.

(ii) Map of Unit FL–8 follows:

Figure 72 to Rufa Red Knot paragraph (90)(ii)

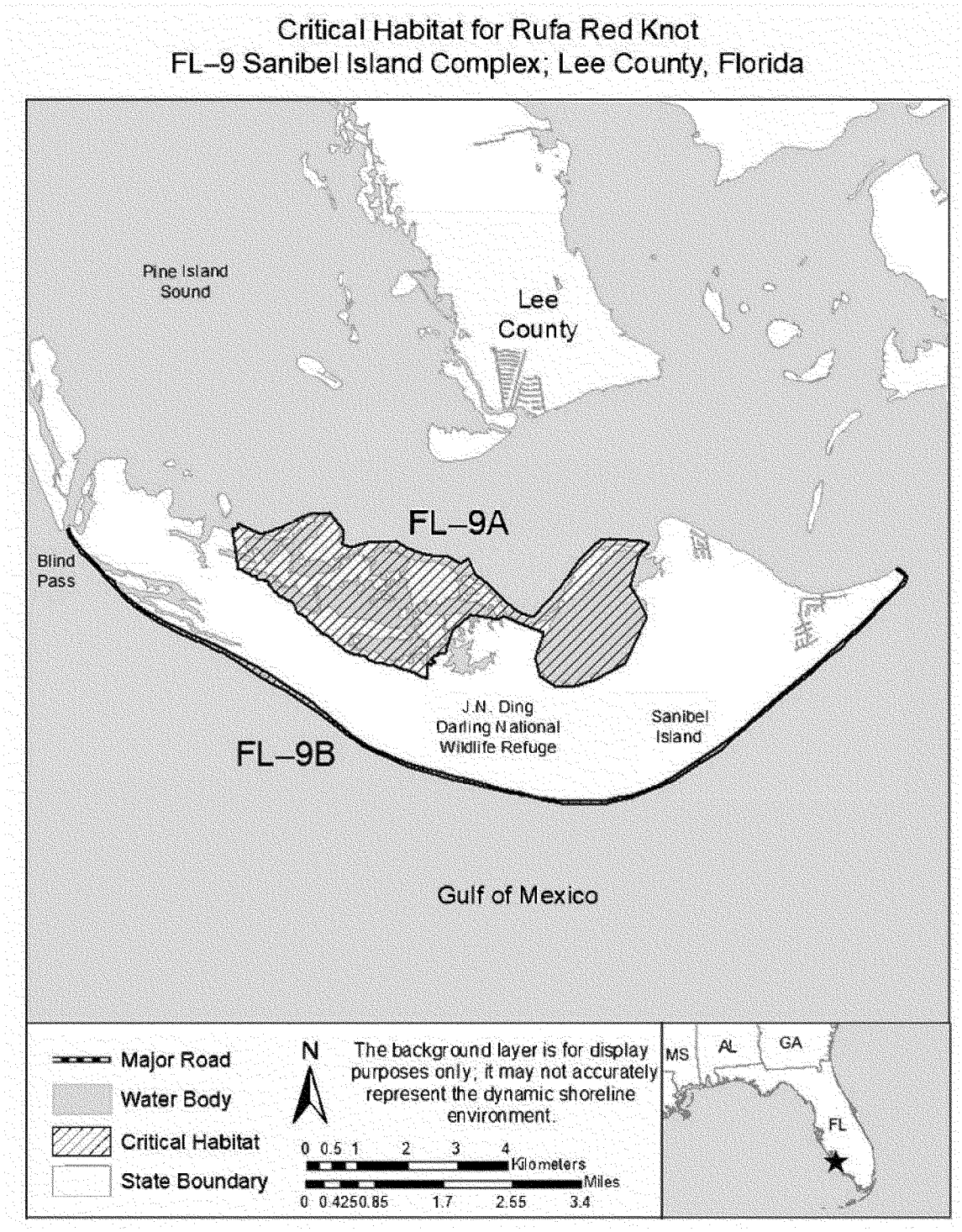



(91) Unit FL–9: Sanibel Island Complex, Florida.

(i) Unit FL–9 consists of two subunits comprising 3,759 ac (1,521 ha) of occupied habitat in Lee County. This unit consists of Federal lands that are part of the J.N. ''Ding'' Darling NWR and Sanibel Island.

(ii) Map of Unit FL–9 follows:

Figure 73 to Rufa Red Knot paragraph (91)(ii)




(iii) Subunit FL–9A (J.N. ''Ding'' Darling National Wildlife Refuge) consists of approximately 3,451 ac (1,397 ha) of occupied beach, inlet, and intertidal sandflats habitat, as well as managed impoundments in Lee County on Sanibel Island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in Federal ownership (J.N. ''Ding'' Darling NWR).

(iv) Map of Subunit FL–9A is presented at paragraph (91)(ii) of this entry.

(v) Subunit FL–9B (Sanibel Island) consists of approximately 307 ac (124 ha) of occupied beach, inlet, and intertidal sandflats habitat in Lee County on Sanibel Island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership.

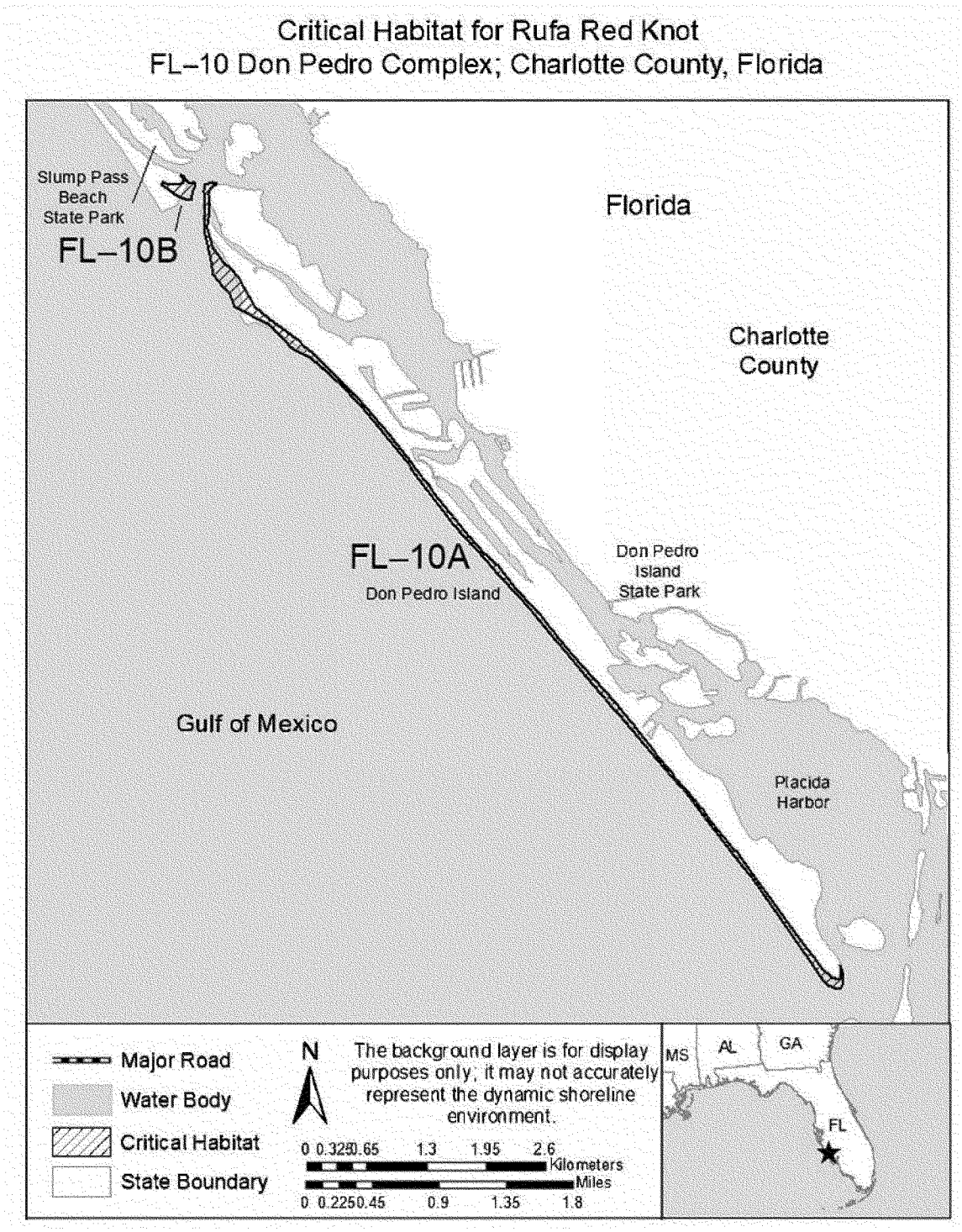
(vi) Map of Subunit FL–9B is presented at paragraph (91)(ii) of this entry.

(92) Unit FL–10: Don Pedro Complex, Florida.

(i) Unit FL–10 consists of two subunits comprising 158 ac (64 ha) of occupied habitat in Charlotte County. This unit consists of State lands, a portion of which are part of the Don Pedro Island State Park and Stump Pass Beach State Park.

(ii) Map of Unit FL–10 follows:

Figure 74 to Rufa Red Knot paragraph (92)(ii)




(iii) Subunit FL–10A (Don Pedro) consists of approximately 147 ac (60 ha) of occupied beach, inlet, and intertidal sandflats habitat in Charlotte County on Don Pedro Island. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership, a portion of which includes Don Pedro Island State Park.

(iv) Map of Subunit FL–10A is presented at paragraph (92)(ii) of this entry.

(v) Subunit FL–10B (Stump Pass Beach State Park) consists of approximately 11 ac (4 ha) of occupied beach, inlet, and intertidal sandflats habitat in Charlotte County at the southern point of Manasota Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership (Stump Pass Beach State Park).

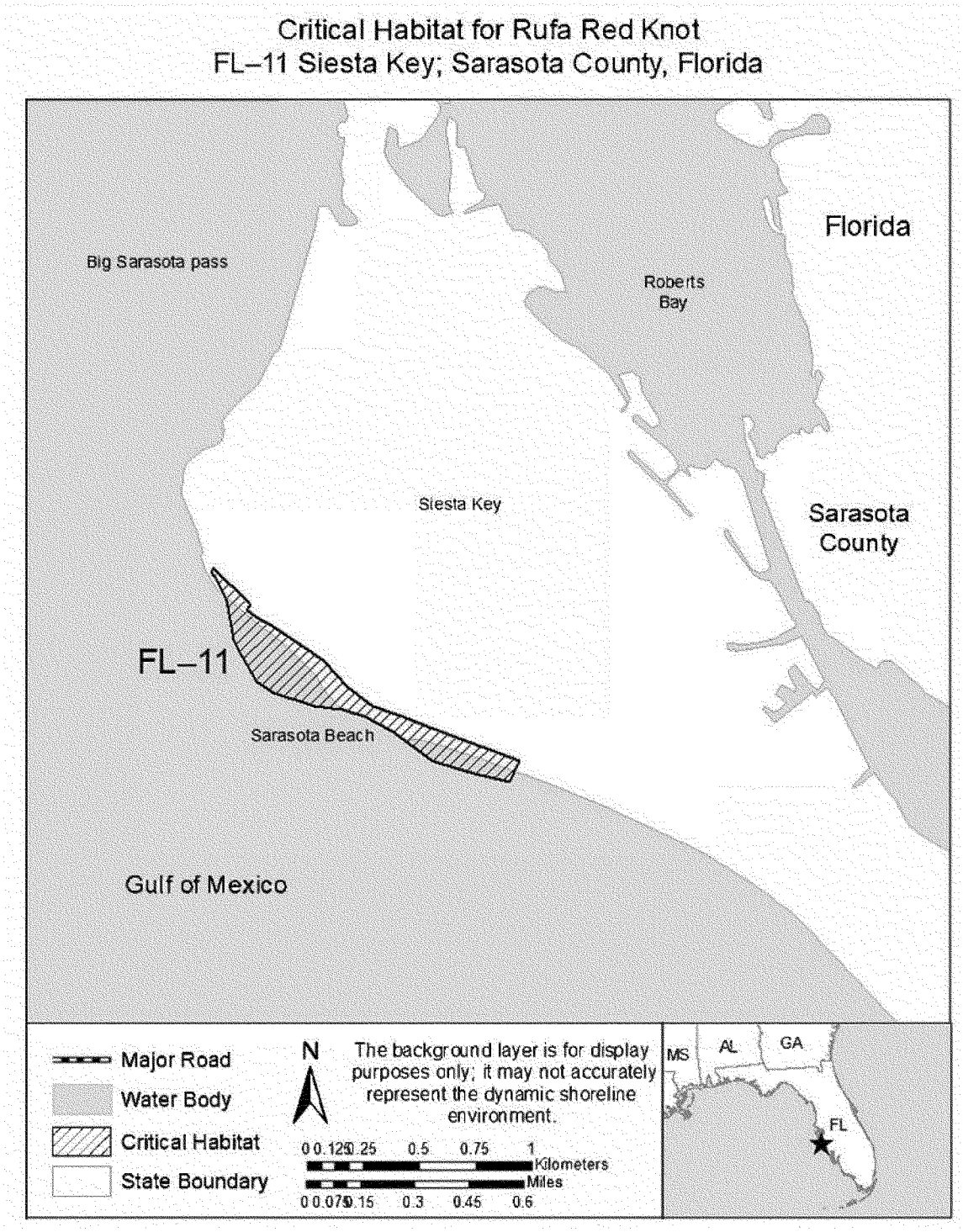
(vi) Map of Subunit FL–10B is presented at paragraph (92)(ii) of this entry.

(93) Unit FL–11: Siesta Key, Florida.

(i) Unit FL–11 consists of approximately 53 ac (21 ha) of occupied beach, inlet, and intertidal sandflats habitat in Sarasota County on Siesta Key, from Avenida Messina (road) south to Avenida del Mare. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership.

(ii) Map of Unit FL–11 follows:

Figure 75 to Rufa Red Knot paragraph (93)(ii)

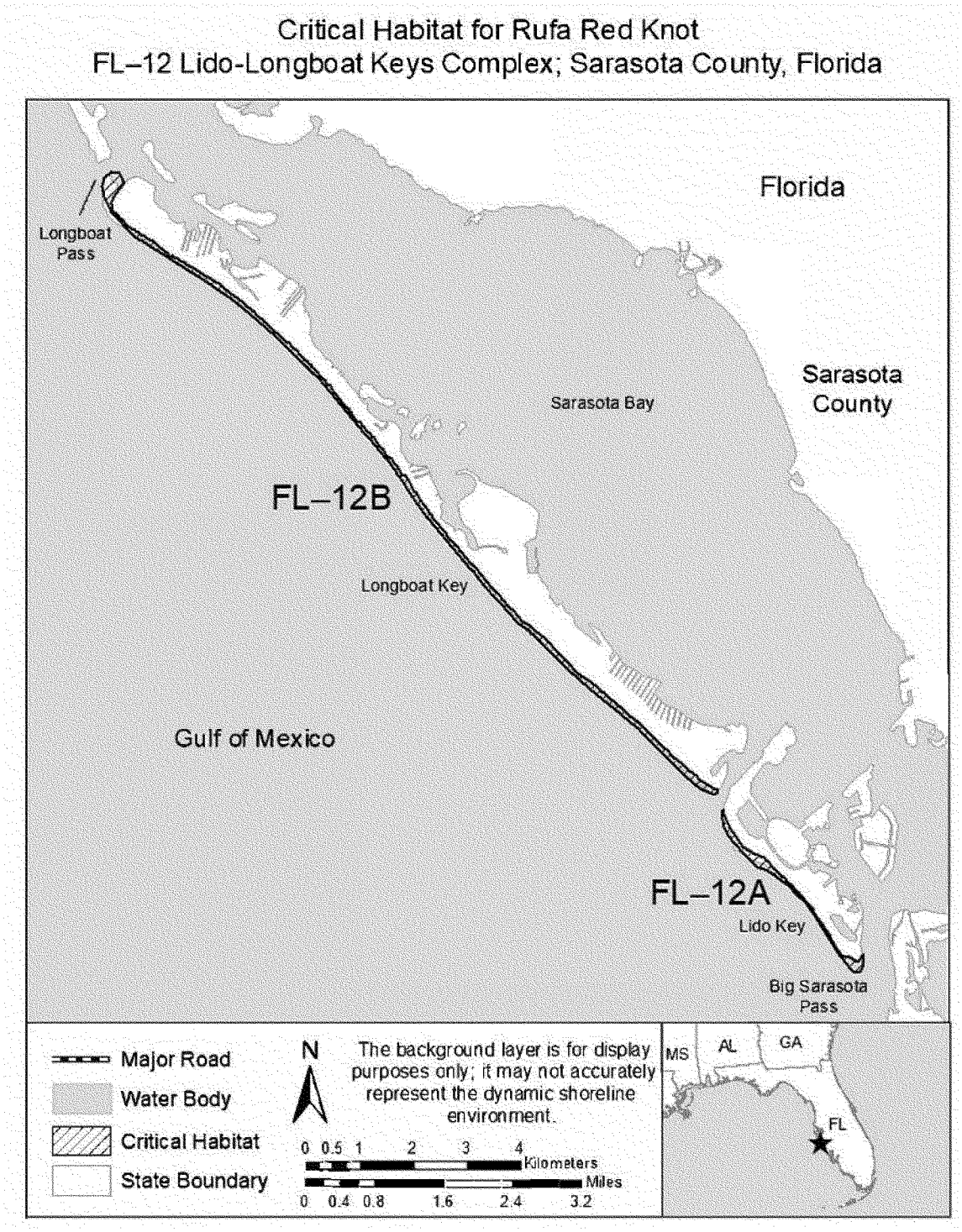



(94) Unit FL–12: Lido-Longboat Keys Complex, Florida.

(i) Unit FL–12 consists of two subunits comprising 450 ac (182 ha) of occupied habitat in Sarasota County. This unit consists of State lands.

(ii) Map of Unit FL–12 follows:

Figure 76 to Rufa Red Knot paragraph (94)(ii)




(iii) Subunit FL–12A (Lido Key) consists of approximately 81 ac (33 ha) of occupied beach, inlet, and intertidal sandflats habitat in Sarasota County on Lido Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership.

(iv) Map of Subunit FL–12A is presented at paragraph (94)(ii) of this entry.

(v) Subunit FL–12B (Longboat Key) consists of approximately 369 ac (149 ha) of occupied beach, inlet, and intertidal sandflats habitat in Sarasota County on Longboat Key. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership.

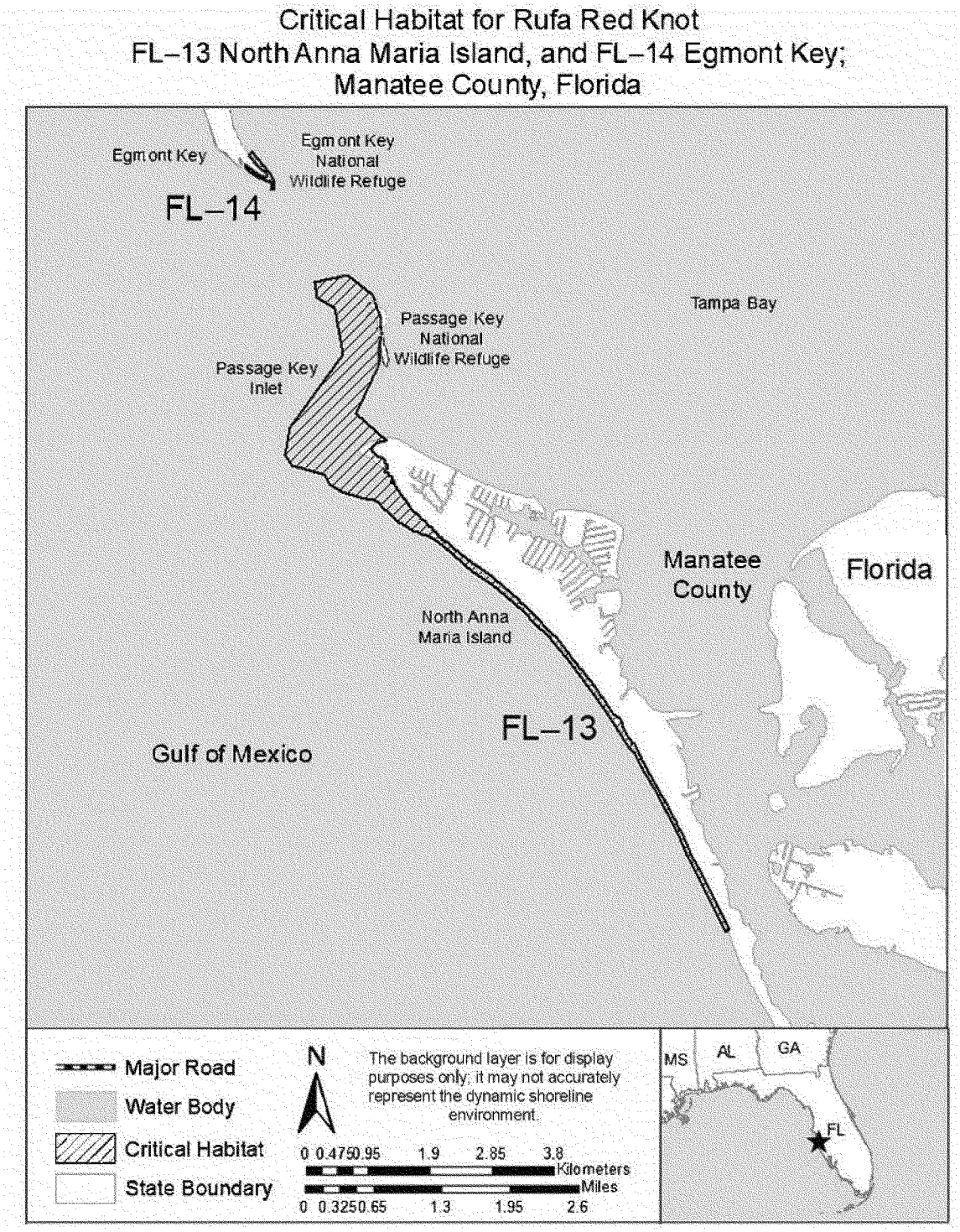
(vi) Map of Subunit FL–12B is presented at paragraph (94)(ii) of this entry.

(95) Unit FL–13: North Anna Maria Island, Florida.

(i) Unit FL–13 consists of approximately 945 ac (383 ha) of occupied beach, inlet, and intertidal sandflats habitat in Manatee County, from the north point of Anna Maria Island south to Cortez Road West. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 56 ac (23 ha) in Federal ownership (Passage Key NWR) and 889 ac (360 ha) in State ownership.

(ii) Map of Unit FL–13 follows:

Figure 77 to Rufa Red Knot paragraph (95)(ii)




(96) Unit FL–14: Egmont Key, Florida.

(i) Unit FL–14 consists of approximately 15 ac (6 ha) of occupied beach and intertidal sandflats habitat in Manatee County, on the south end of Egmont Key at the mouth of Tampa Bay. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely under Federal ownership (Egmont Key NWR).

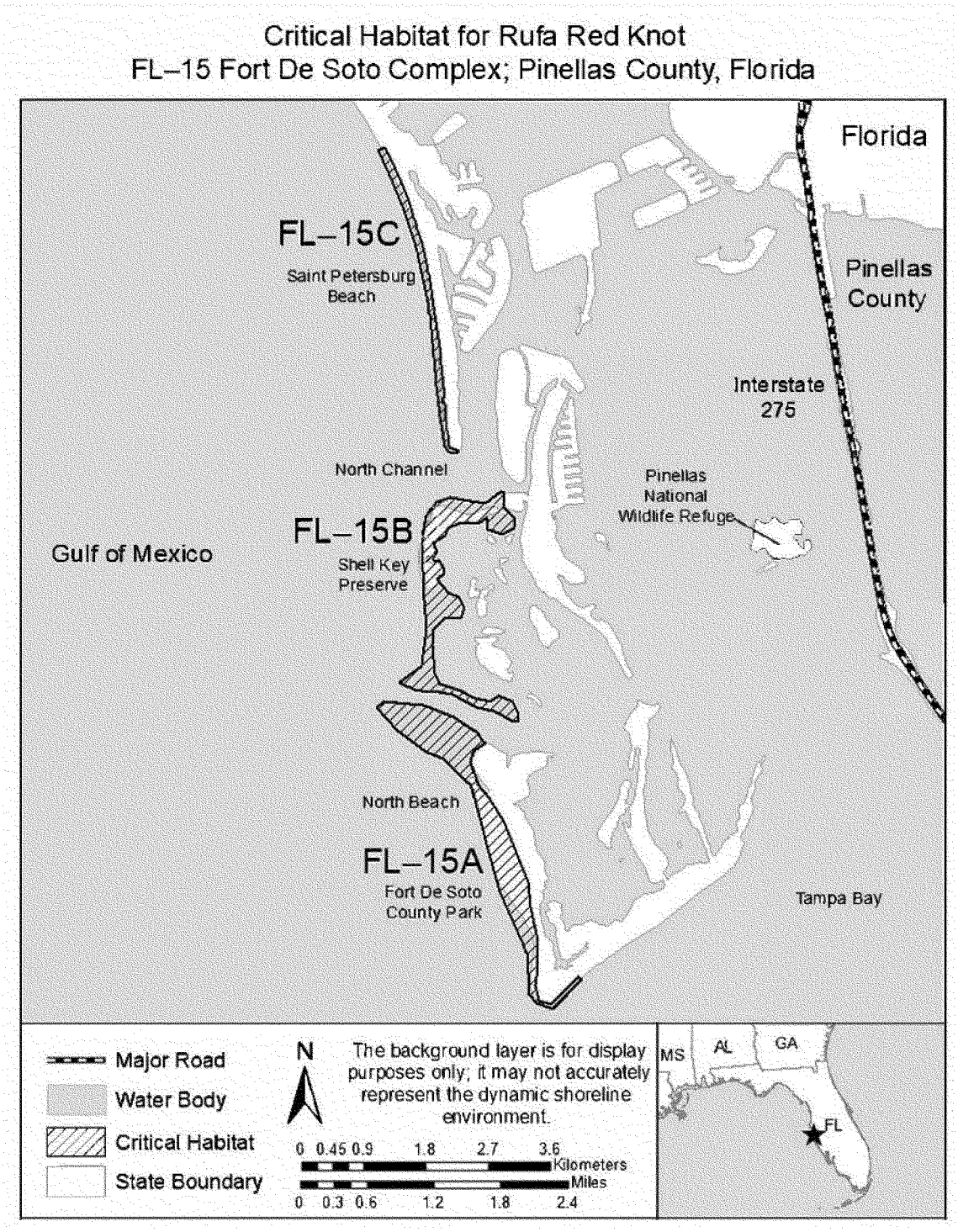
(ii) Map of Unit FL–14 is presented at paragraph (95)(ii) of this entry.

(97) Unit FL–15: Fort De Soto Complex, Florida.

(i) Unit FL–15 consists of three subunits comprising 856 ac (346 ha) of occupied habitat in Pinellas County. This unit consists of State lands and private/other ownership.

(ii) Map of Unit FL–15 follows:

Figure 78 to Rufa Red Knot paragraph (97)(ii)



(iii) Subunit FL–15A (Fort De Soto County Park) consists of approximately 427 ac (173 ha) of occupied beach, inlet, and intertidal sandflats habitat in Pinellas County, from North Beach south along the Gulf of Mexico to the Fort De Soto Fishing Pier at the mouth of Tampa Bay. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in county ownership (which is captured under the private/other category) within Fort De Soto County Park.

(iv) Map of Subunit FL–15A is presented at paragraph (97)(ii) of this entry.

(v) Subunit FL–15B (Shell Key Preserve) consists of approximately 322 ac (130 ha) of occupied beach, inlet, and intertidal sandflats habitat in Pinellas County on Shell Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State/county ownership (Shell Key Preserve).

(vi) Map of Subunit FL–15B is presented at paragraph (97)(ii) of this entry.

(vii) Subunit FL–15C (Saint Petersburg Beach) consists of approximately 107 ac (43 ha) of occupied beach, inlet, and intertidal sandflats habitat in Pinellas County on Saint Petersburg Beach from 46th Avenue south to 1st Avenue inclusive of the inlet. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this subunit are entirely in State ownership.

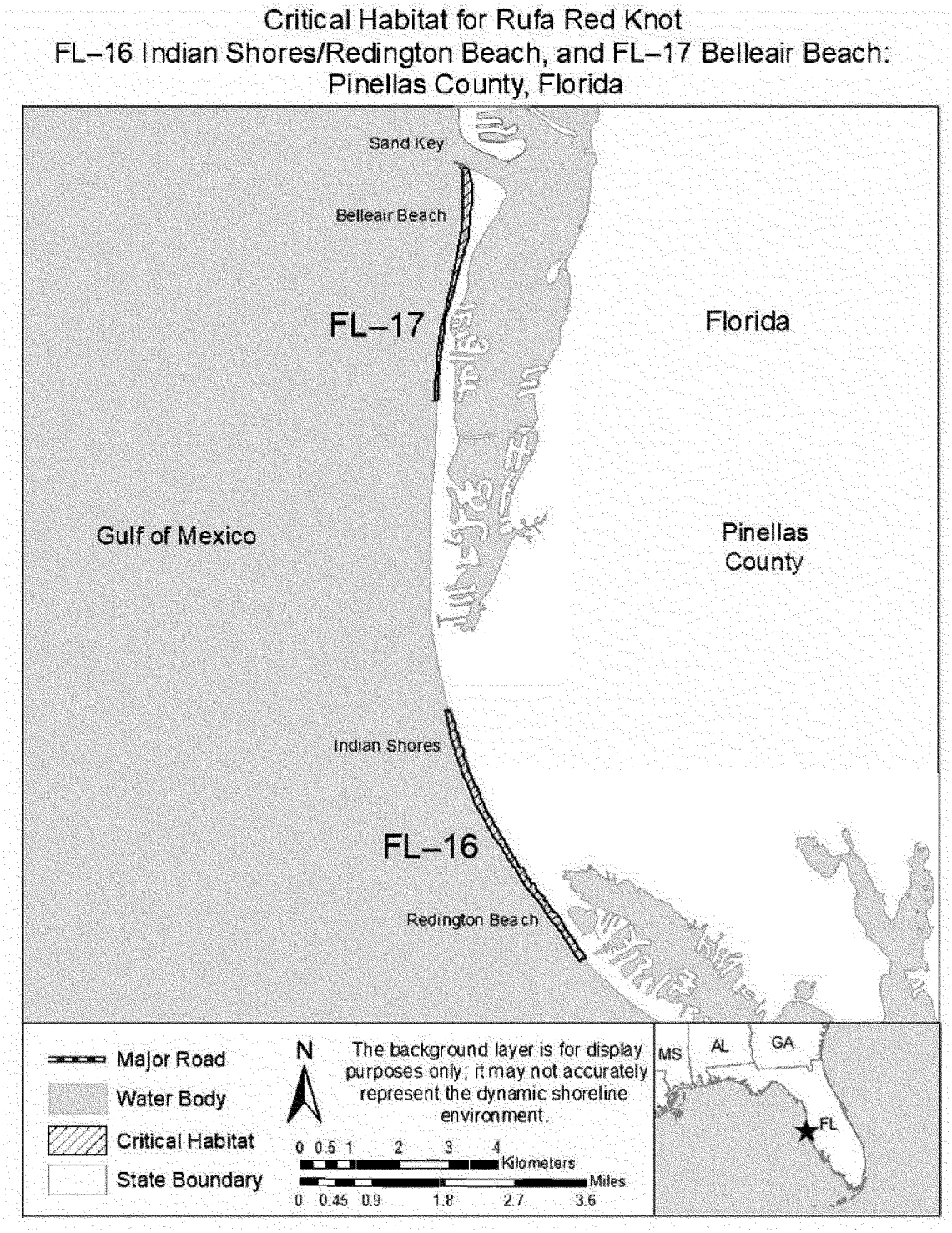
(viii) Map of Subunit FL–15C is presented at paragraph (97)(ii) of this entry.

(98) Unit FL–16: Indian Shores/Redington Beach, Florida.

(i) Unit FL–16 consists of approximately 196 ac (79 ha) of occupied beach, inlet, and intertidal sandflats habitat in Pinellas County, from the Indian Shores Florida Coastal Range Monument R–086 at the north end of the unit to the Redington Beach Long Pier at the south end of the unit. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership.

(ii) Map of Unit FL–16 follows:

Figure 79 to Rufa Red Knot paragraph (98)(ii)




(99) Unit FL–17: Belleair Beach, Florida.

(i) Unit FL–17 consists of approximately 123 ac (50 ha) of occupied beach, inlet, and intertidal sandflats habitat in Pinellas County, on Belleair Beach from the north point (Sand Key) south to 19th Street. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership.

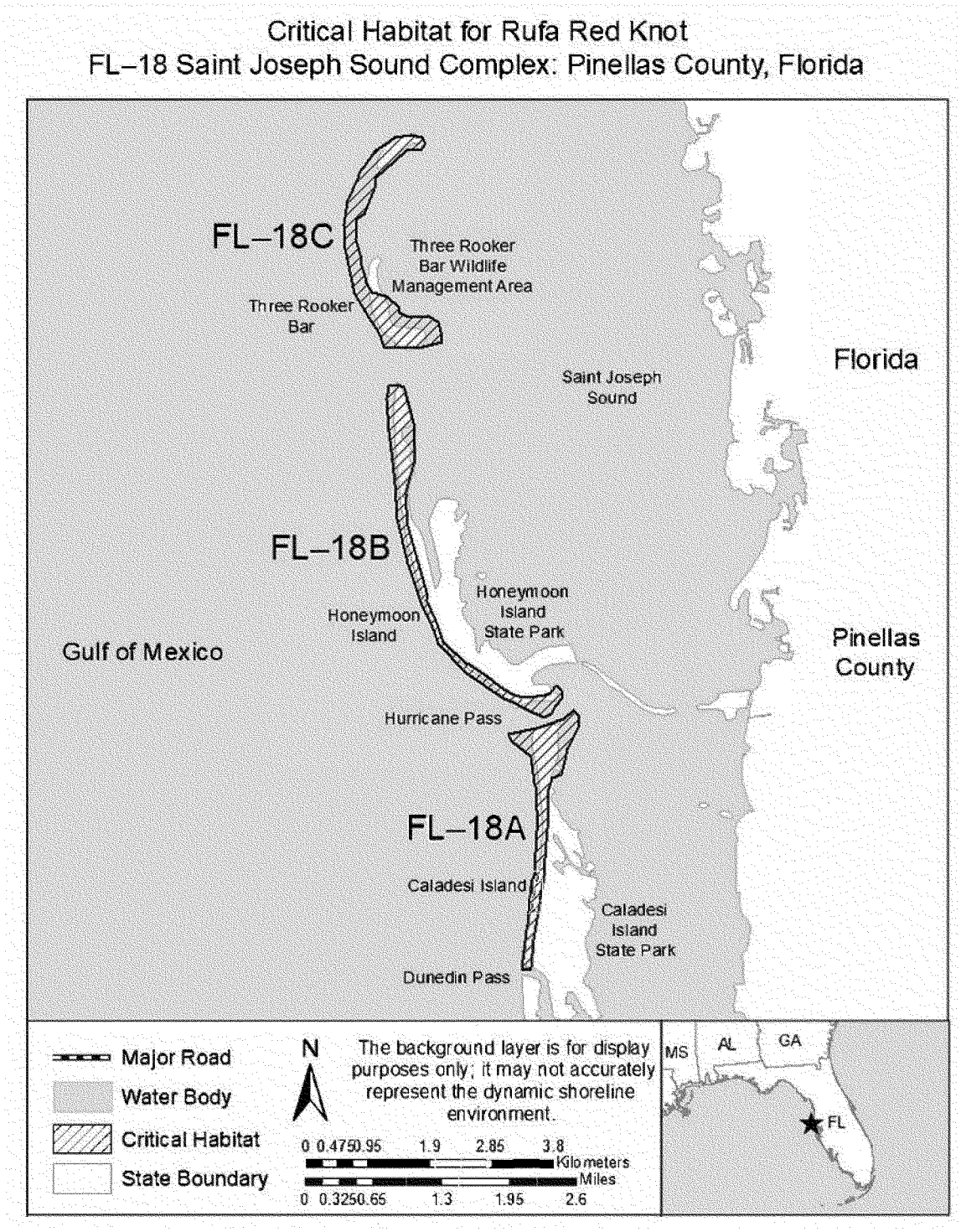
(ii) Map of Unit FL–17 is presented at paragraph (98)(ii) of this entry.

(100) Unit FL–18: Saint Joseph Sound Complex, Florida.

(i) Unit FL–18 consists of three subunits comprising 888 ac (360 ha) of occupied habitat in Pinellas County. This unit consists of State-owned lands.

(ii) Map of Unit FL–18 follows:

Figure 80 to Rufa Red Knot paragraph (100)(ii)



(iii) Subunit FL–18A (Caladesi Island) consists of approximately 259 ac (105 ha) of occupied beach and intertidal sandflats habitat in Pinellas County. This subunit includes shoreline from the southern boundary of Caladesi Island State Park to Dunedin Pass. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely in State ownership (Caladesi Island State Park).

(iv) Map of Subunit FL–18A is presented at paragraph (100)(ii) of this entry.

(v) Subunit FL–18B (Honeymoon Island) consists of approximately 294 ac (119 ha) of occupied beach and intertidal sandflats habitat in Pinellas County. This subunit includes the Gulf of Mexico shoreline in Honeymoon Island State Park from Dunedin Pass to Hurricane Pass. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely in State ownership (Honeymoon Island State Park).

(vi) Map of Subunit FL–18B is presented at paragraph (100)(ii) of this entry.

(vii) Subunit FL–18C (Three Rooker Bar) consists of approximately 335 ac (136 ha) of occupied beach and intertidal sandflats habitat on Three Rooker Island in Pinellas County. Three Rooker Island includes shoreline from Hurricane Pass to the northern tip of Three Rooker Island. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands in this subunit are entirely State ownership (Three Rooker Bar Wildlife Management Area).

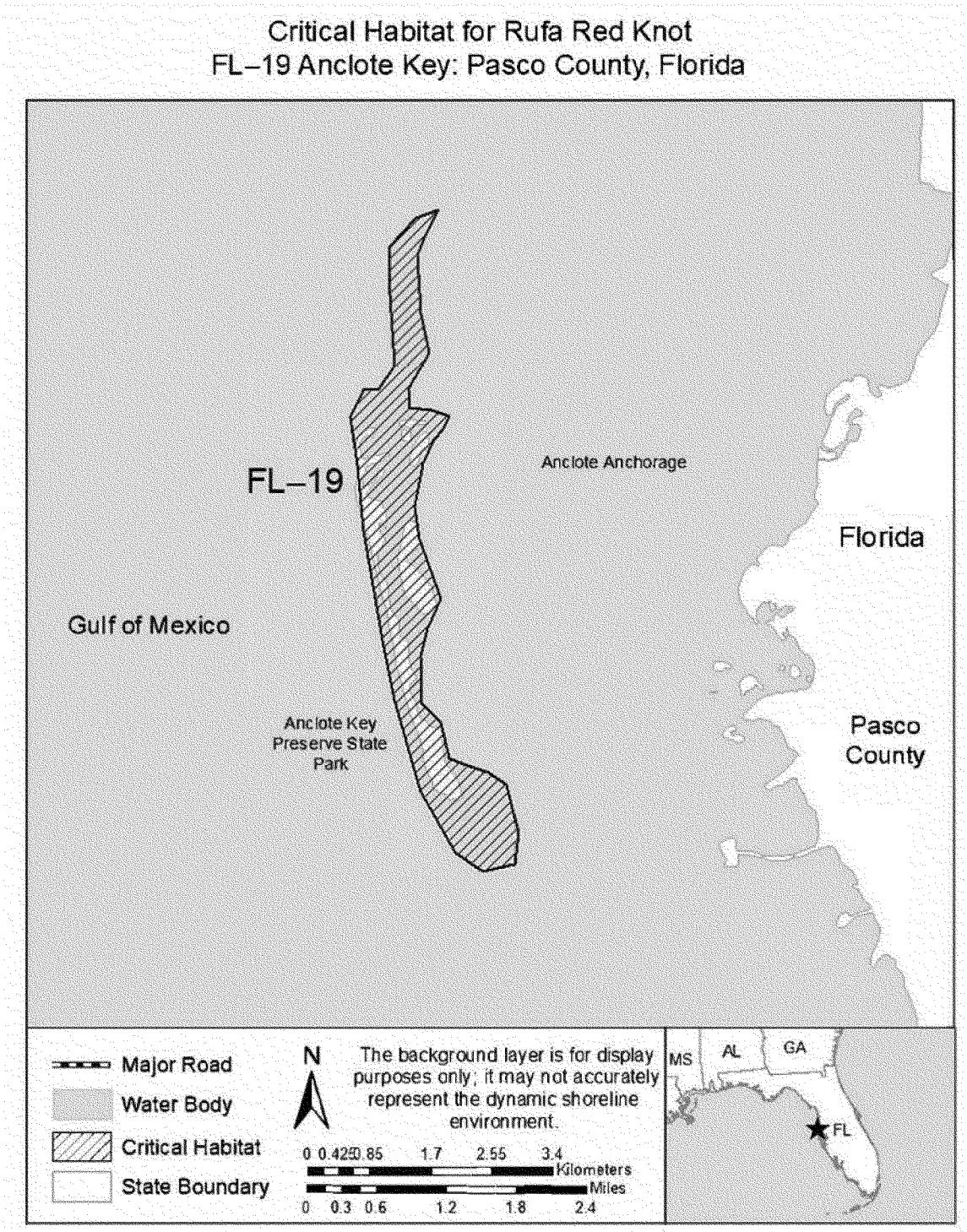
(viii) Map of Subunit FL–18C is presented at paragraph (100)(ii) of this entry.

(101) Unit FL–19: Anclote Key, Florida.

(i) Unit FL–19 consists of approximately 1,547 ac (626 ha) of occupied beach and intertidal sandflats habitat in Pasco County on Anclote Key. The landward boundary is the line indicating the beginning of dense vegetation, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit are entirely in State ownership (Anclote Key Preserve State Park).

(ii) Map of Unit FL–19 follows:

Figure 81 to Rufa Red Knot paragraph (101)(ii)



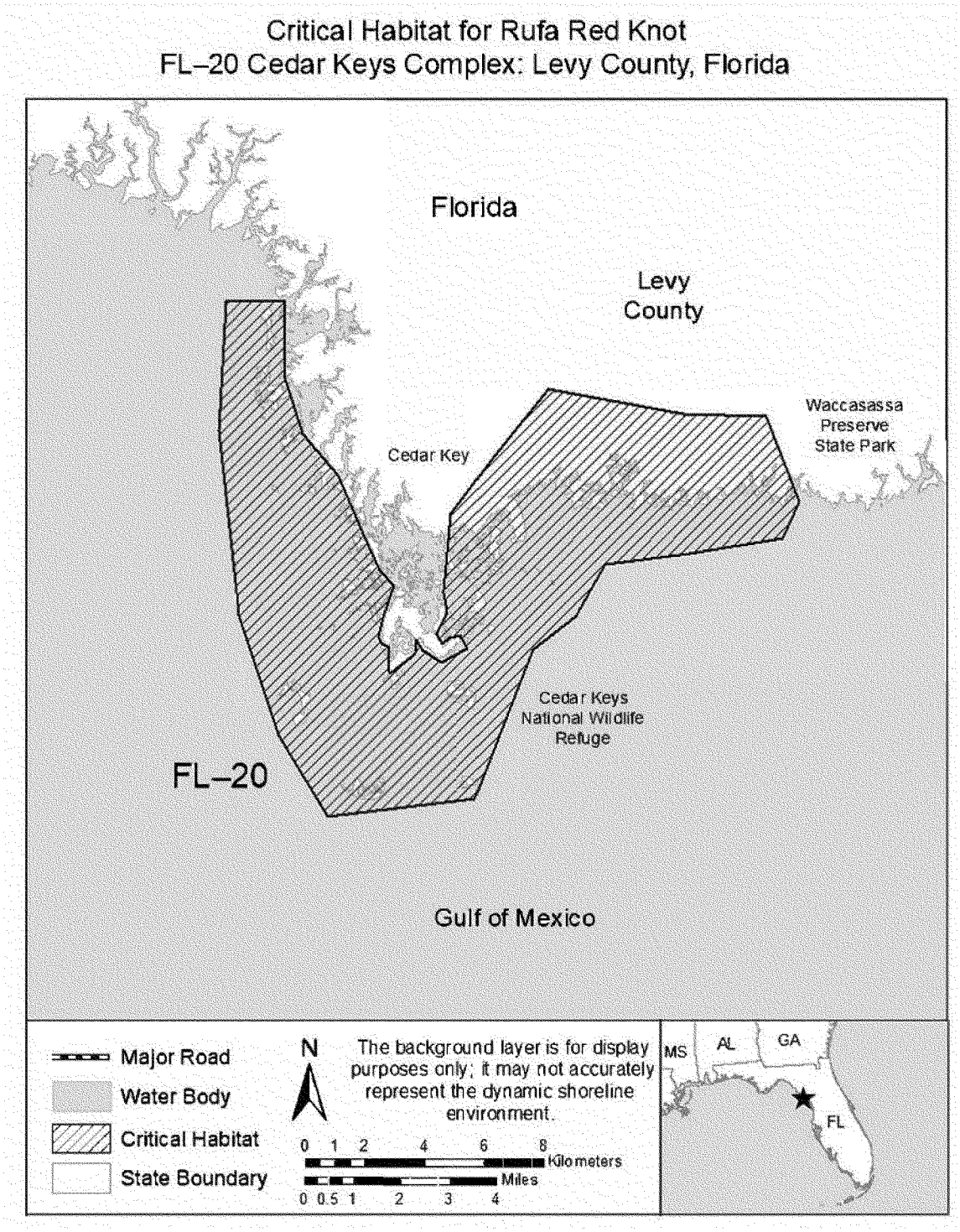

(102) Unit FL–20: Cedar Keys Complex, Florida.

(i) Unit FL–20 consists of approximately 35,626 ac (14,417 ha) of occupied beach and intertidal sandflats habitat in Levy County on Cedar Key, including the complex of sandbars and flats seaward. The landward boundary is the line indicating the beginning of dense vegetation or hardened structures, including emergent, dynamic shoreline to MLLW that is covered at high tide and uncovered at low tide. Lands within this unit include approximately 2,498 ac (1,012 ha) in Federal ownership (Cedar

Keys NWR), 7,792 ac (3,153 ha) in State ownership (Waccasassa Preserve State Park), 5,928 ac (2,293 ha) in private/other ownership, and 19,407 ac (7,959 ha) that are uncategorized.

(ii) Map of Unit FL–20 follows:

Figure 82 to Rufa Red Knot paragraph (102)(ii)



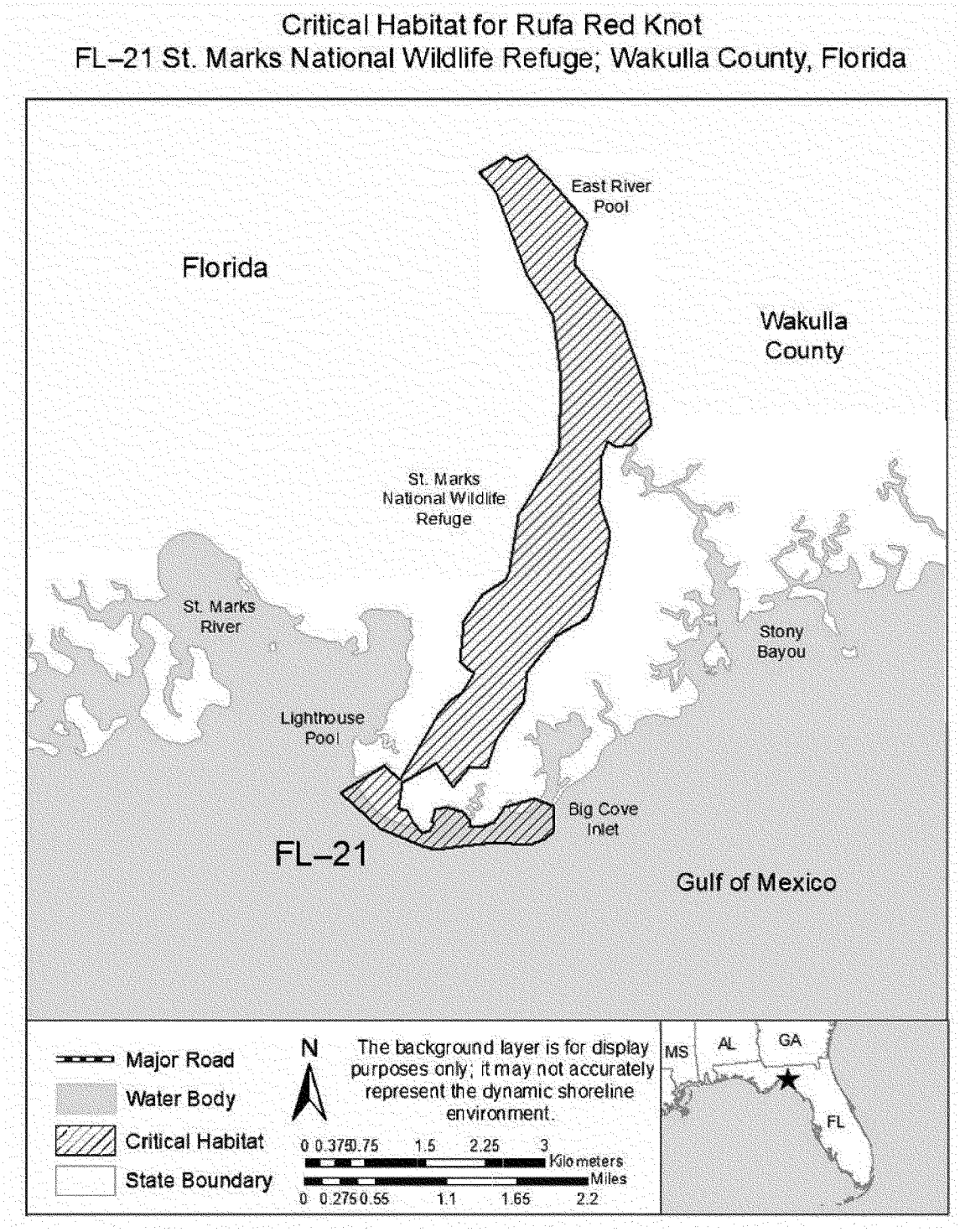

(103) Unit FL–21: St. Marks National Wildlife Refuge, Florida.

(i) Unit FL–21 consists of approximately 2,074 ac (839 ha) of occupied beach, inlets, shoals, intertidal mud, mud flats, and impoundments habitat in Wakulla County. The unit extends from the eastern boundary of

Big Cove inlet west to the inlet west of Lighthouse Pool and includes areas to the north up to 1.25 mi (2 km) into East River Pool. This unit includes from the base of the berm road to the lowest water level and areas up to 4 in (10 cm) of water depth within Lighthouse Pool, Picnic Pond, Tower Pond, Headquarters Pond, Mounds Pools 1 and 2, Stoney Bayou Pool 1, and within the open water and emergent marsh portion of East River Pool and all shoals and shoreline habitats within Sand Cove and Minnie Cove. Areas to the east of Lighthouse Road between Lighthouse Pool and Picnic Pond, and areas to the east of Picnic and Tower Ponds that have the physical or biological features, are also included. This unit includes lands from MLLW to the landward limit of the physical or biological features and any ephemeral pools, or natural brackish ponds and any emergent sand shoals in Apalachee Bay appearing near shore within 3 mi (4.8 km) of the critical habitat boundary found along the southernmost portion of Lighthouse Road and Lighthouse Levee Trail that parallels Apalachee Bay. Lands within this unit are entirely in Federal ownership (St. Marks NWR).

(ii) Map of Unit FL–21 follows:

Figure 83 to Rufa Red Knot paragraph (103)(ii)

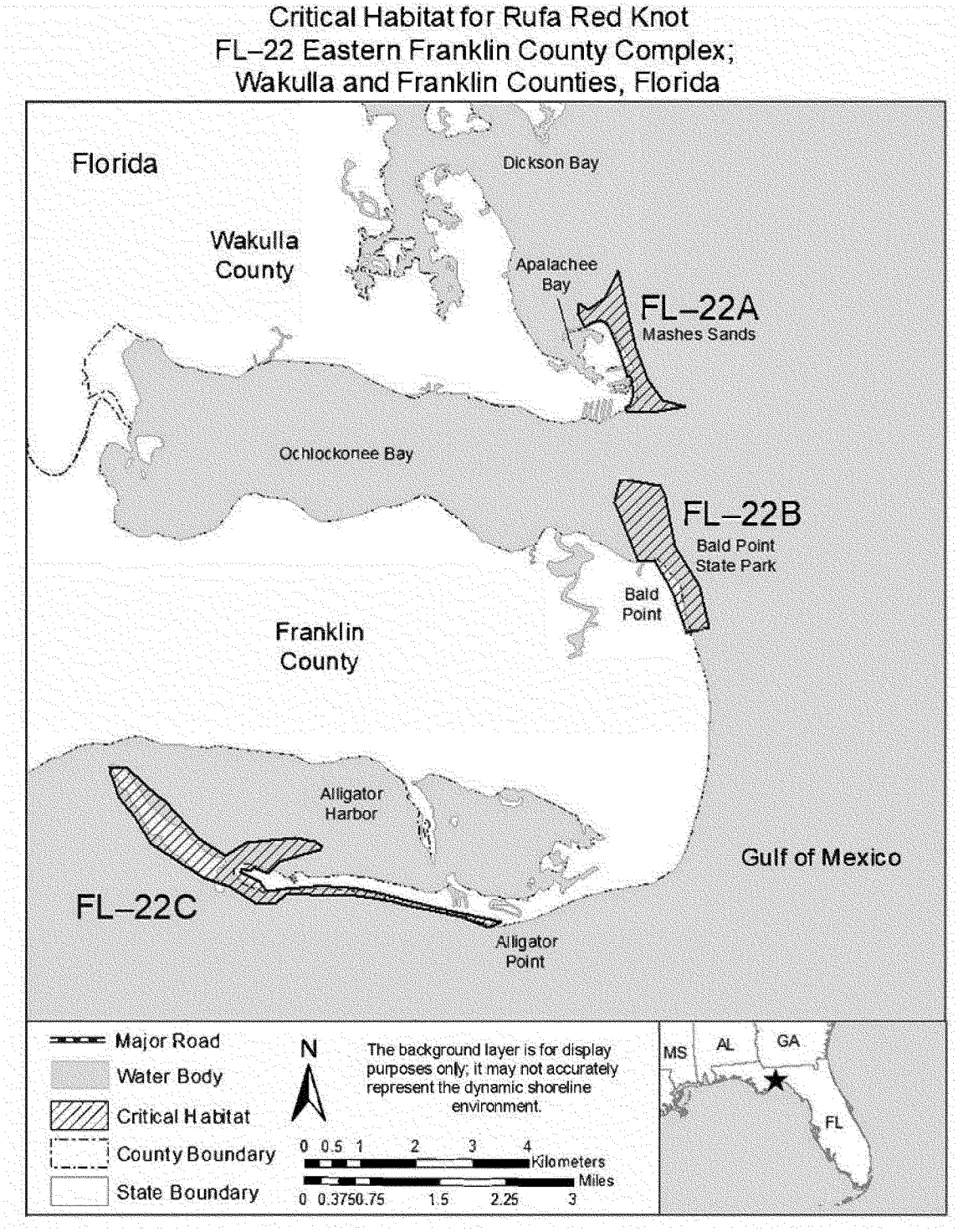



(104) Unit FL–22: Eastern Franklin County Complex, Florida.

(i) Unit FL–22 consists of three subunits comprising 1,429 ac (578 ha) of occupied habitat in Wakulla and Franklin Counties. This unit consists of beaches within the areas of Apalachee Bay, Dickson Bay, Ochlockonee Bay, and Alligator Point.

(ii) Map of Unit FL–22 follows:

Figure 84 to Rufa Red Knot paragraph (104)(ii)




(iii) Subunit FL–22A (Mashes Sands) consists of approximately 262 ac (106 ha) of occupied beach, inlet, shoals, and intertidal sandflats at Mashes Sands Park beach, and the inlet and shoals of Apalachee Bay, Dickson Bay, and Ochlockonee Bay in Wakulla County, from near Ochlockonee Point in Ochlockonee Bay north towards Dickson Bay. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense

vegetation or hardened structures. This area includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit are all in State ownership but leased and managed by Wakulla County.

(iv) Map of Subunit FL–22A is presented at paragraph (104)(ii) of this entry.

(v) Subunit FL–22B (Bald Point State Park) consists of approximately 445 ac (180 ha) of occupied beaches and shoals habitat in Franklin County, from a dirt road 0.35 mi (0.56 km) north of Marlin Street to the north near Bald Point, and including shoals within Ochlockonee Bay approximately 0.9 mi (1.4 km) north of Bald Point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. It includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit include approximately 439 ac (178 ha) in State ownership (Bald Point State Park) and 6 ac (2 ha) in private/other ownership.

(vi) Map of Subunit FL–22B is presented at paragraph (104)(ii) of this entry.

(vii) Subunit FL–22C (Alligator Point) consists of approximately 722 ac (292 ha) of occupied beaches at Alligator Point and John S. Phipps Preserve, and shoals in Franklin County, from 0.07 mi (0.11 km) east of Florida Coastal Range Monument 210 west to the shoals associated with the northwestern end of the point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. It includes any ephemeral pools, lagoons, or natural brackish ponds and any adjacent or near-shore emergent sand shoals. Lands within this subunit are entirely in private/other ownership (John S. Phipps Preserve, managed by the TNC).

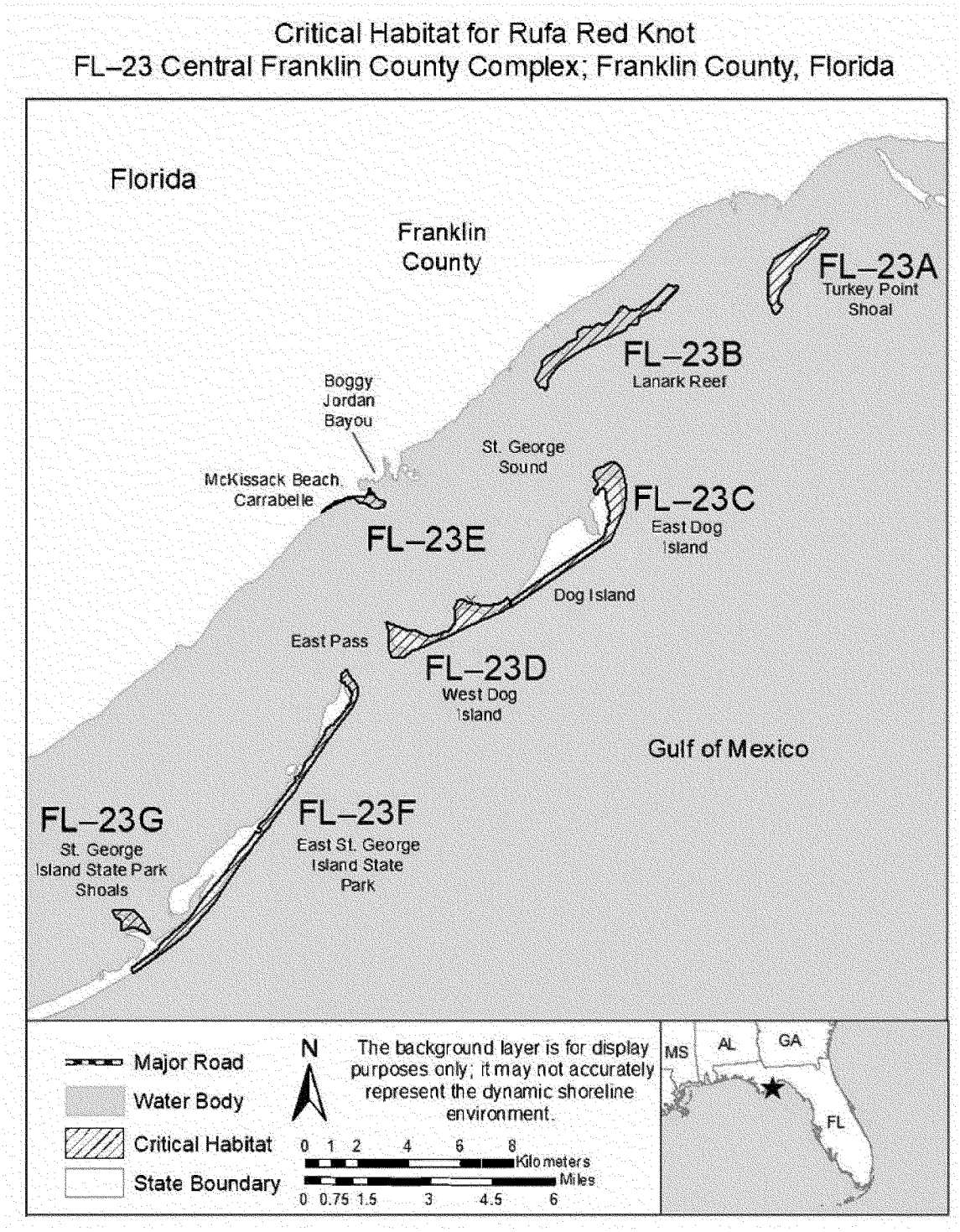
(viii) Map of Subunit FL–22C is presented at paragraph (104)(ii) of this entry.

(105) Unit FL–23: Central Franklin County Complex, Florida.

(i) Unit FL–23 consists of seven subunits comprising 4,175 ac (1,689 ha) of occupied habitat in Franklin County. This unit consists of beaches and barrier island areas of St. George Sound shoreline, the Carrabelle River outlet, Boggy Jordan Bayou outlet, Dog Island, and St. George Island.

(ii) Map of Unit FL–23 follows:

Figure 85 to Rufa Red Knot paragraph (105)(ii)




BILLING CODE 4333–15–C

(iii) Subunit FL–23A (Turkey Point Shoal) consists of approximately 531 ac (215 ha) of occupied habitat, including emergent, isolated shoal habitat within the Gulf of Mexico and St. George Sound, Franklin County. This subunit includes emergent shoals approximately 1 mi (1.5 km) south of Turkey Point. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including any ephemeral pools, lagoons, and emergent sand shoals adjacent to the island or reef. All lands within this subunit are in State ownership.

(iv) Map of Subunit FL–23A is presented at paragraph (105)(ii) of this entry.

(v) Subunit FL–23B (Lanark Reef) consists of approximately 865 ac (350 ha) of occupied beach and intertidal shoreline habitat of Lanark Reef in St. George Island Sound off the coast of Franklin County. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including any ephemeral pools, lagoons, and emergent sand shoals within 3 mi (4.8 km) of the island or reef. Lands within this subunit include 805 ac (326 ha) in State ownership and 61 ac (25 ha) in private/other ownership.

(vi) Map of Subunit FL–23B is presented at paragraph (105)(ii) of this entry.

(vii) Subunit FL–23C (East Dog Island) consists of approximately 771 ac (312 ha) of occupied beach shoreline and shoals on East Dog Island off the coast of Franklin County. The subunit is from midway between Florida Coastal Range Monuments 168 and 169 east to the tip of the island and extending around the tip to include St. George Sound shoreline and shoals approximately horizontal to Florida Coastal Range Monument 190. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, and also includes ephemeral pools, lagoons, natural brackish ponds, and any adjacent or near-shore emergent sand shoals. Lands within this subunit are entirely private/other ownership (including the Jeff Lewis Wilderness Preserve, which is owned/managed by the TNC).

(viii) Map of Subunit FL–23C is presented at paragraph (105)(ii) of this entry.

(ix) Subunit FL–23D (West Dog Island) consists of approximately 751 ac (304 ha) of occupied habitat on West Dog Island in Franklin County. This subunit includes the entirety of this island from the eastern boundary at the Gulf of Mexico shoreline midway between Florida Coastal Range Monuments 168 and 169 and west 3.1 mi (5 km) to East Pass. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, as well as ephemeral and emergent sand shoals appearing in the near shore. Lands within this subunit are entirely in private/other ownership, including the Jeff Lewis Wilderness Preserve that is owned/managed by the TNC.

(x) Map of Subunit FL–23D is presented at paragraph (105)(ii) of this entry.

(xi) Subunit FL–23E (McKissack Beach, Carrabelle) consists of approximately 117 ac (47 ha) of occupied habitat along McKissack Beach and Marsh in Carrabelle and associated shoals in Franklin County, from 0.18 mi (0.30 km) east of the intersection of U.S. Highway 98 and Cape Street east to the cove that forms the outlet of Boggy Jordan Bayou. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, as well as any ephemeral and emergent sand shoals appearing in the near shore. Lands within this subunit include 114 ac (46 ha) in State ownership (the Florida Trustees of the Internal Improvement Fund, although the City of Carrabelle retains a lease on McKissack Beach and Marsh), and 3 ac (1 ha) in private/other ownership.

(xii) Map of Subunit FL–23E is presented at paragraph (105)(ii) of this entry.

(xiii) Subunit FL–23F (East St. George Island State Park) consists of approximately 978 ac (396 ha) of occupied habitat within Dr. Julian G. Bruce St. George Island State Park Beach in Franklin County, from Florida Coastal Range Monument 105 to the eastern tip of the island at East Pass. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures. All lands within this subunit are in State ownership (East St. George Island State Park).

(xiv) Map of Subunit FL–23F is presented at paragraph (105)(ii) of this entry.

(xv) Subunit FL–23G (St. George Island State Park and Bayshore Shoals) consists of approximately 162 ac (65 ha) of occupied habitat on Goose Island and associated shoals in Franklin County. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical and biological features, including ephemeral pools, lagoons, and any emergent sand shoals adjacent to the island. All lands within this subunit are in State ownership (St. George Island State Park).

(xvi) Map of Subunit FL–23G is presented at paragraph (105)(ii) of this entry.

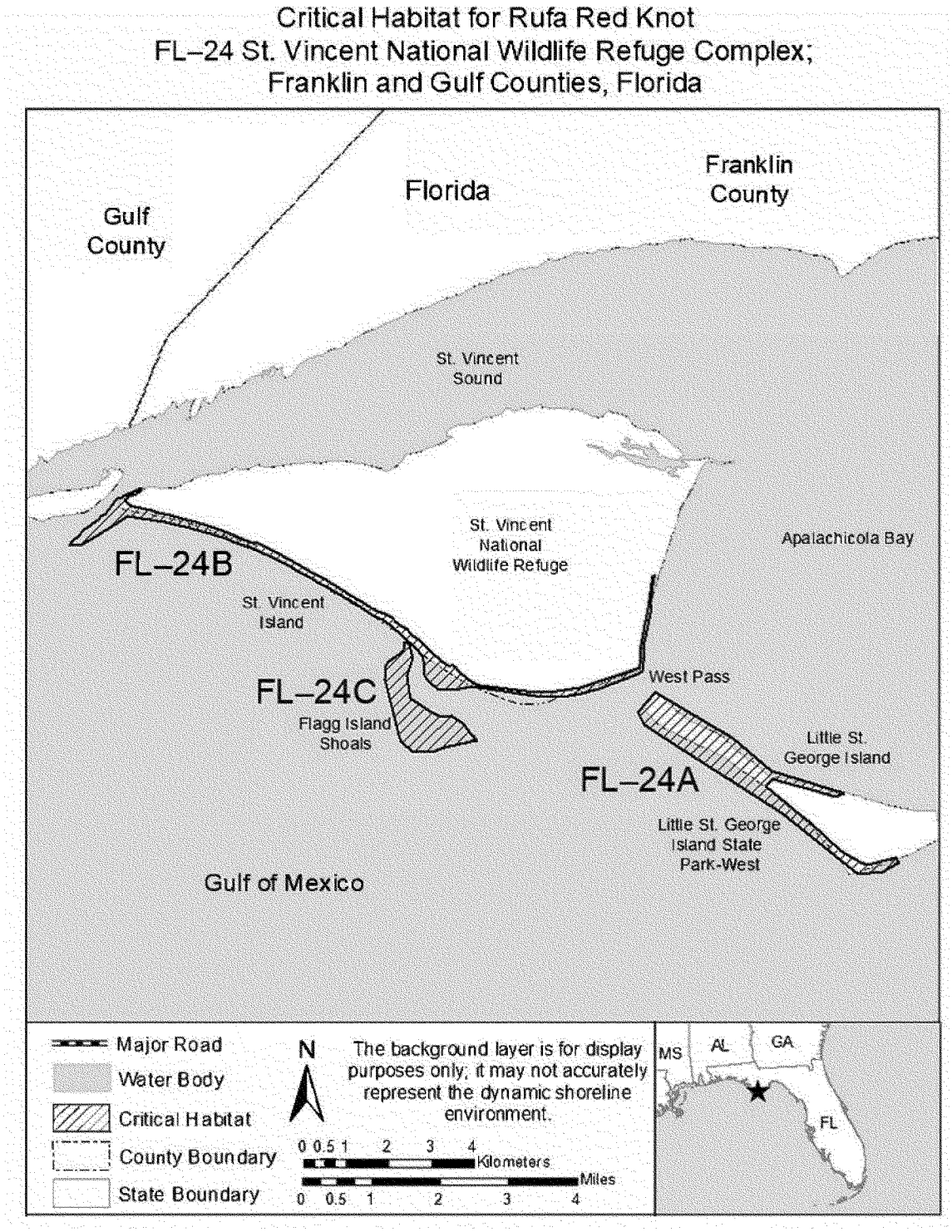
(106) Unit FL–24: St. Vincent National Wildlife Refuge Complex, Florida.

(i) Unit FL–24 consists of three subunits comprising 2,212 ac (895 ha) of occupied habitat in Franklin and Gulf Counties. This unit consists of beaches of Apalachicola Bay, St. Vincent Sound, Indian Pass, St. Vincent Island, and Flagg Island.

(ii) Map of Unit FL–24 follows:

BILLING CODE 4333–15–P

Figure 86 to Rufa Red Knot paragraph (106)(ii)




(iii) Subunit FL–24A (Little St. George Island State Park-West) consists of approximately 953 ac (386 ha) of occupied habitat on Little St. George Island beach and shoals in Franklin County, from West Pass east to Florida Coastal Range Monument 25 and including bayside beach from West Pass east to the point at the Marshall Dock. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, and includes ephemeral pools, natural brackish ponds, and emergent sand shoals appearing in the near shore of the Gulf or Apalachicola Bay. All lands within

this subunit are in State ownership (Little St. George Island State Park).

(iv) Map of Subunit FL–24A is presented at paragraph (106)(ii) of this entry.

(v) Subunit FL–24B (St. Vincent National Wildlife Refuge) consists of approximately 742 ac (300 ha) of occupied beach and shoals habitat on the St. Vincent NWR in Franklin and Gulf Counties, from the Refuge boat house at the confluence of St. Vincent Sound and Indian Pass east to 0.60 mi (0.96 km) north of Shell Road. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward boundary indicated by the beginning of dense vegetation or hardened structures, including ephemeral pools, natural brackish ponds, and emergent sand shoals appearing in the near shore of the Gulf. Lands within this subunit are all in Federal ownership (St. Vincent NWR).

(vi) Map of Subunit FL–24B is presented at paragraph (106)(ii) of this entry.

(vii) Subunit FL–24C (Flagg Island Shoals) consists of approximately 517 ac (209 ha) of occupied habitat that encompasses the entire ebb-tidal delta referred to as Flagg Island off the southernmost tip of St. Vincent Island (near Oyster Pond outfall) in Franklin County. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, and emergent sand shoals. All lands within this subunit (which constantly change in size and shape due to the dynamic nature of the area) are in State ownership.

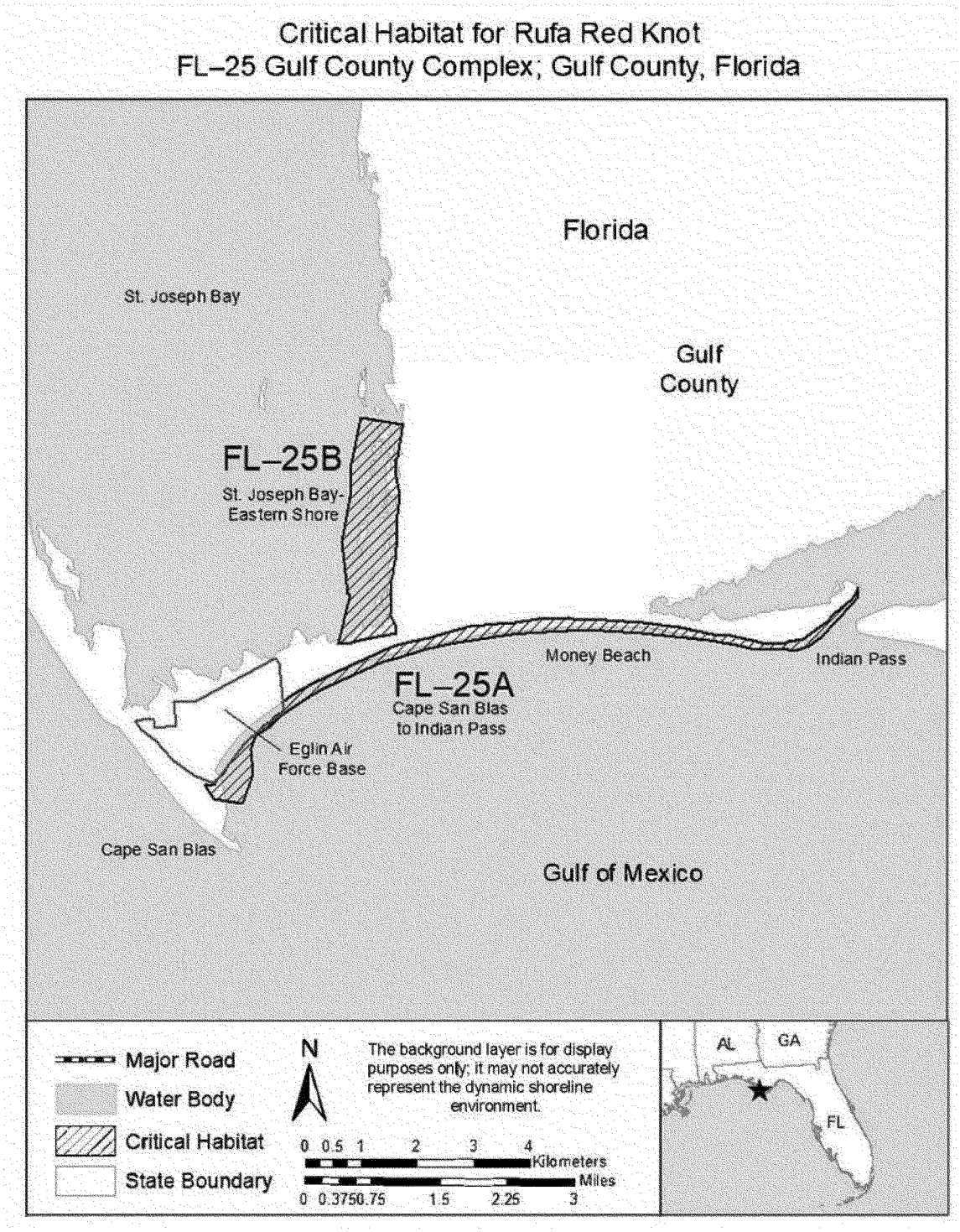
(viii) Map of Subunit FL–24C is presented at paragraph (106)(ii) of this entry.

(107) Unit FL–25: Gulf County Complex, Florida.

(i) Unit FL–25 consists of two subunits comprising 1,520 ac (616 ha) of occupied habitat in Gulf County. This unit consists of beaches of Cape San Blas, Money, and Indian Pass, and the southeastern portion of St. Joseph Bay.

(ii) Map of Unit FL–25 follows:

Figure 87 to Rufa Red Knot paragraph (107)(ii)




(iii) Subunit FL–25A (Cape San Blas to Indian Pass) consists of approximately 620 ac (251 ha) of occupied beach habitat at Cape San Blas, Money Bayou, and Indian Pass beaches in Gulf County, from the southwestern point of Cape San Blas to 0.11 mi (0.18 km) northeast of the Indian Pass Beach Boat Ramp. This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, and emergent sand shoals in the near shore. Lands within this subunit include 133 ac (54 ha) in State ownership and 486 ac (197 ha) in private/other ownership. Adjacent Federal lands under Eglin Air

Force Base jurisdiction are exempt under section 4(a)(3) of the Act, but the shoal and any emergent shoal formations that appear along the shoreline are considered part of this unit, starting from the MLLW south and up 0.5 mi (0.81 km) from Eglin Air Force Base lands on the southern-most side of Cape San Blas.

(iv) Map of Subunit FL–25A is presented at paragraph (107)(ii) of this entry.

(v) Subunit FL–25B (St. Joseph Bay-Eastern Shore) consists of approximately 827 ac (335 ha) of occupied beaches and shoals within the southeastern portion of St. Joseph Bay in Gulf County, from 0.09 mi (0.14 km) east of the intersection of County Road 30A and Cape San Blas Road to the west 0.66 mi (1.1 km) and to the north 2.4 mi (3.8 km). This subunit includes lands from MLLW (*i.e.,* highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide) to the landward limit of the physical or biological features, including ephemeral pools, natural brackish ponds, lagoons, and emergent sand shoals in the near shore. Lands within this subunit include 761 ac (308 ha) in State ownership (St. Joseph Bay State Buffer Preserve) and 66 ac (27 ha) in private/other ownership.

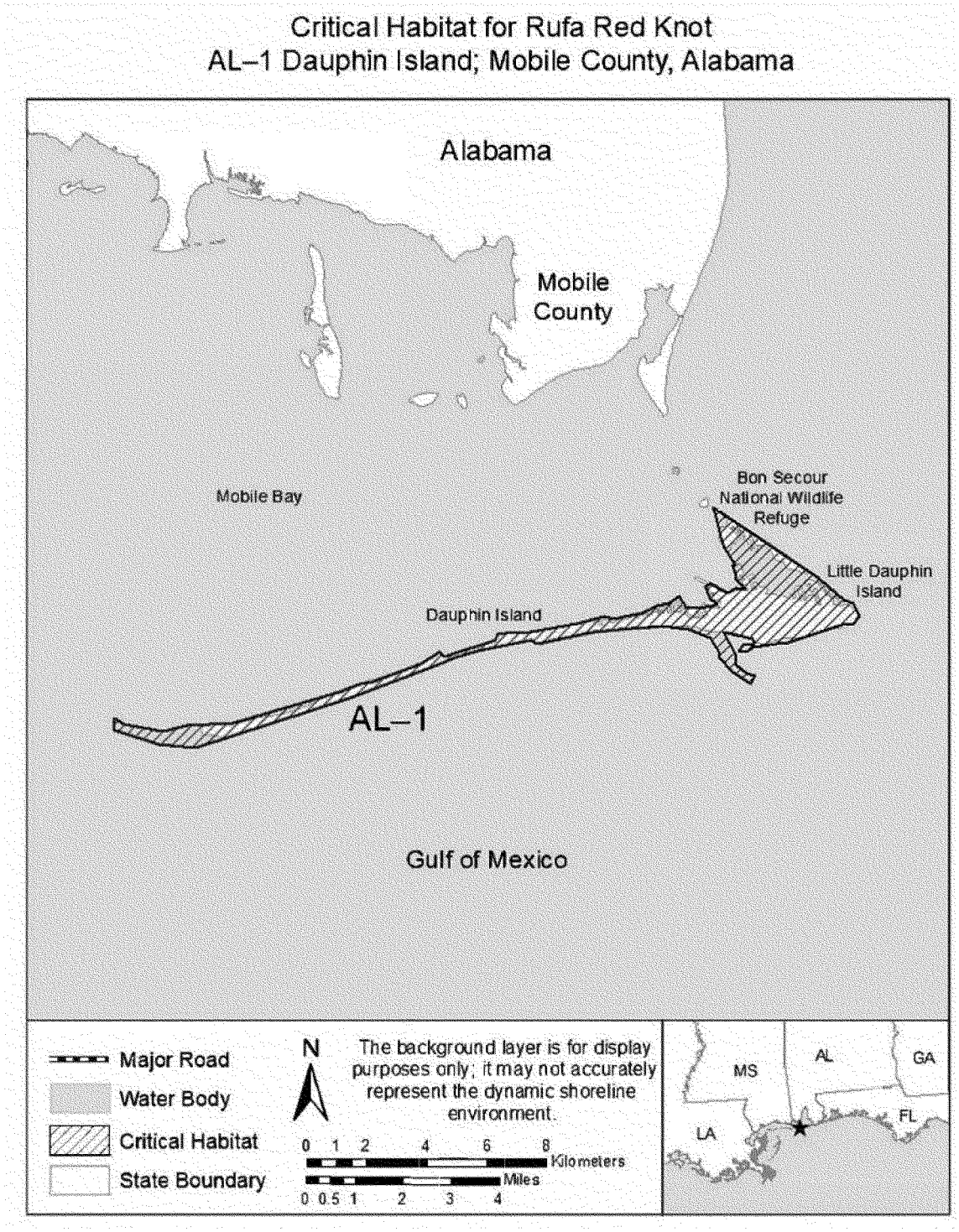
(vi) Map of Subunit FL–25B is presented at paragraph (107)(ii) of this entry.

(108) Unit AL–1: Dauphin Island, Alabama.

(i) Unit AL–1 consists of approximately 5,164 ac (2,091 ha) of occupied habitat on Dauphin Island, a barrier island south of Mobile Bay in Mobile County. The unit includes all of Dauphin Island from the historic 19th Century Fort Gaines site on the eastern side of the island, continuing approximately 16 mi (26 km) west to the MLLW on the western most tip, and all of Little Dauphin Island (which is uninhabited) to MLLW. Lands within this unit include approximately 484 ac (196 ha) in Federal ownership (Bon Secour NWR), 848 ac (343 ha) in State ownership (Shell Mound Park or Indian Mound Park, and a newly acquired habitat conservation area on the west end of the island), and 3,834 ac (1,552 ha) in private/other ownership.

(ii) Map of Unit AL–1 follows:

Figure 88 to Rufa Red Knot paragraph (108)(ii)

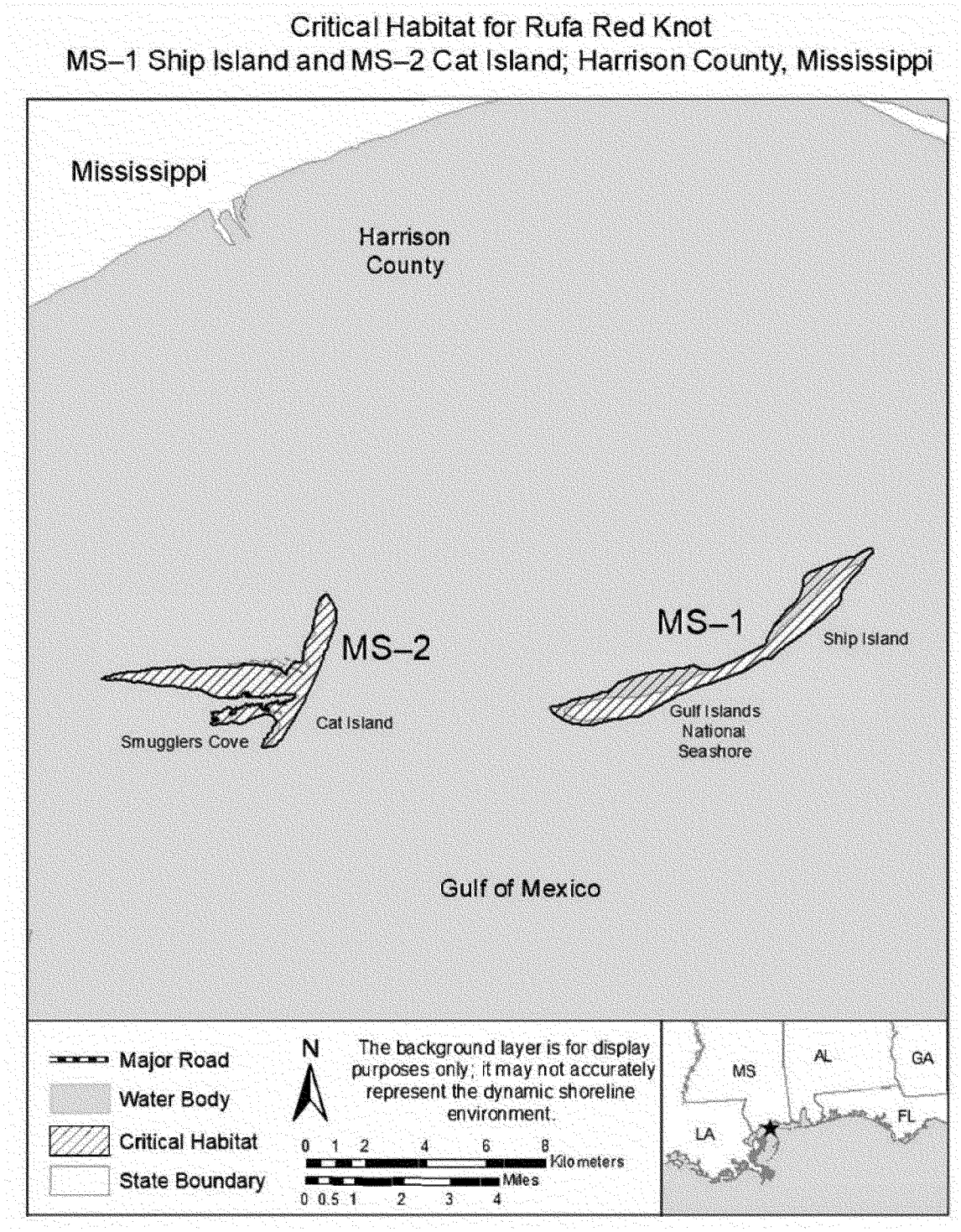



(109) Unit MS–1: Ship Island, Mississippi.

(i) Unit MS–1 consists of approximately 2,452 ac (993 ha) of occupied habitat on Ship Island in Harrison County. The unit consists of emergent lands and intertidal area to MLLW on the island and its adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit is all under Federal ownership (Gulf Islands National Seashore).

(ii) Map of Unit MS–1 follows:

Figure 89 to Rufa Red Knot paragraph (109)(ii)




(110) Unit MS–2: Cat Island, Mississippi.

(i) Unit MS–2 consists of approximately 2,121 ac (858 ha) of occupied habitat on Cat Island in Harrison County. This unit consists of emergent lands and intertidal area to MLLW on Cat Island and its adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). Lands within this unit include approximately 686 ac (278 ha) in Federal ownership (Gulf Islands National Seashore), 1,305 ac (528 ha) in State ownership, and 129 ac (52 ha) in private/other ownership.

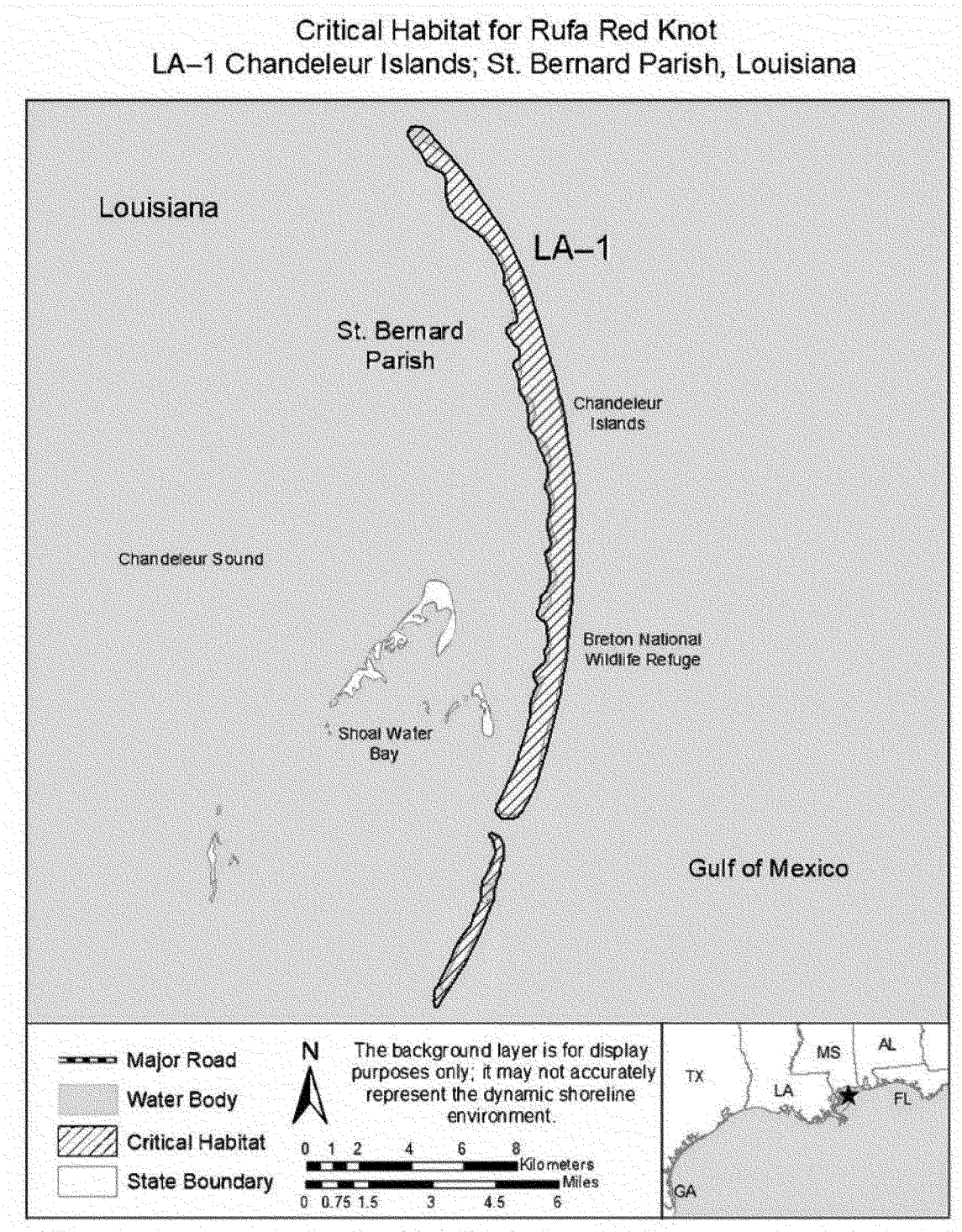
(ii) Map of Unit MS–2 is presented at paragraph (109)(ii) of this entry.

(111) Unit LA–1: Chandeleur Islands, Louisiana.

(i) Unit LA–1 consists of approximately 7,632 ac (3,088 ha) of occupied habitat in St. Bernard Parish. The unit includes all emergent lands to MLLW on the Chandeleur Islands and their adjacent sand shoals (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). All lands in this unit are federally owned (Breton NWR, and designated wilderness area created as a refuge and breeding ground for resident and migratory birds).

(ii) Map of Unit LA–1 follows:

Figure 90 to Rufa Red Knot paragraph (111)(ii)

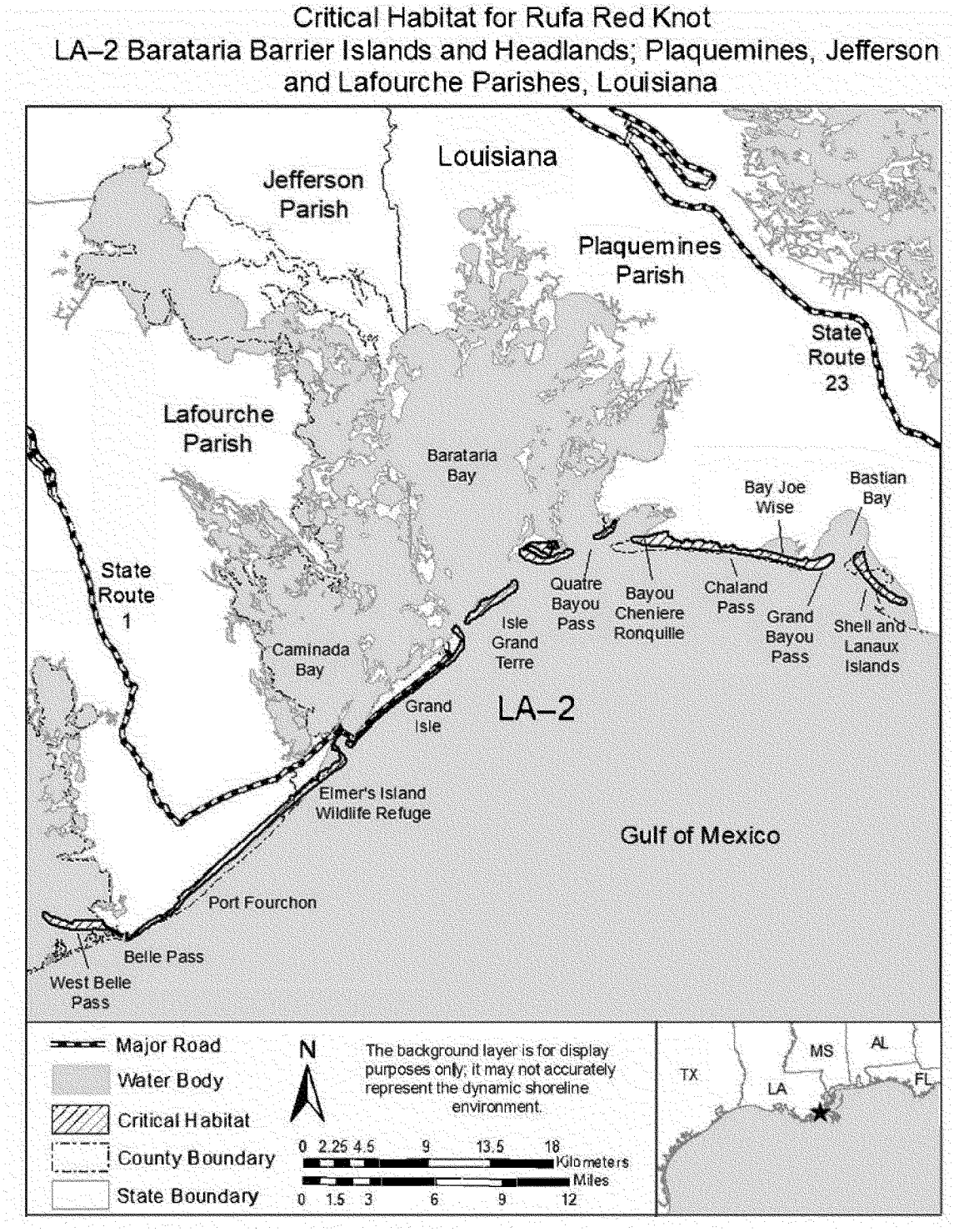


(112) Unit LA–2: Barataria Barrier Islands and Headlands, Louisiana.

(i) Unit LA–2 consists of approximately 7,795 ac (3,155 ha) of occupied habitat within Plaquemines, Jefferson, and Lafourche Parishes, including emergent lands and/or sand shoals to MLLW (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes: Emergent lands of Lanaux and Shell Islands to MLLW in Plaquemines Parish; emergent sand shoals of Grand Bayou Pass in Plaquemines Parish; the Gulf of Mexico shoreline to MLLW between Grand Bayou Pass and Quatre Bayou Pass (known as the Chaland Headland and Chenier Ronquille); emergent sand shoals of Bastian Bay, Bay Joe Wise, Chaland Pass, and Bayou Cheniere Ronquille in Plaquemines Parish; all emergent lands of the Grand Terre Islands and adjacent unnamed island to MLLW between Quatre Bayou Pass and Barataria Pass in Plaquemines and Jefferson Parishes; the Gulf of Mexico shoreline of Grand Isle from the toe of the Gulf-side hurricane protection levee to MLLW in Jefferson Parish; the west side of the Caminada Pass shoreline and the Gulf of Mexico shoreline to MLLW beginning just north of Louisiana Highway 1 in Caminada Pass extending approximately 15 mi (24 km) westward to the east side of Belle Pass (known as the Caminada Headland, which includes the LDWF's Elmer's Island Wildlife Refuge) in Jefferson and Lafourche Parishes; and all emergent lands of the West Belle Pass peninsula to the MLLW. Lands within this unit include approximately 126 ac (51 ha) in State ownership (Grand Isle State Park) and 7,669 ac (3,104 ha) in private/other ownership (including Elmer's Island Wildlife Refuge).

(ii) Map of Unit LA–2 follows:

Figure 91 to Rufa Red Knot paragraph (112)(ii)



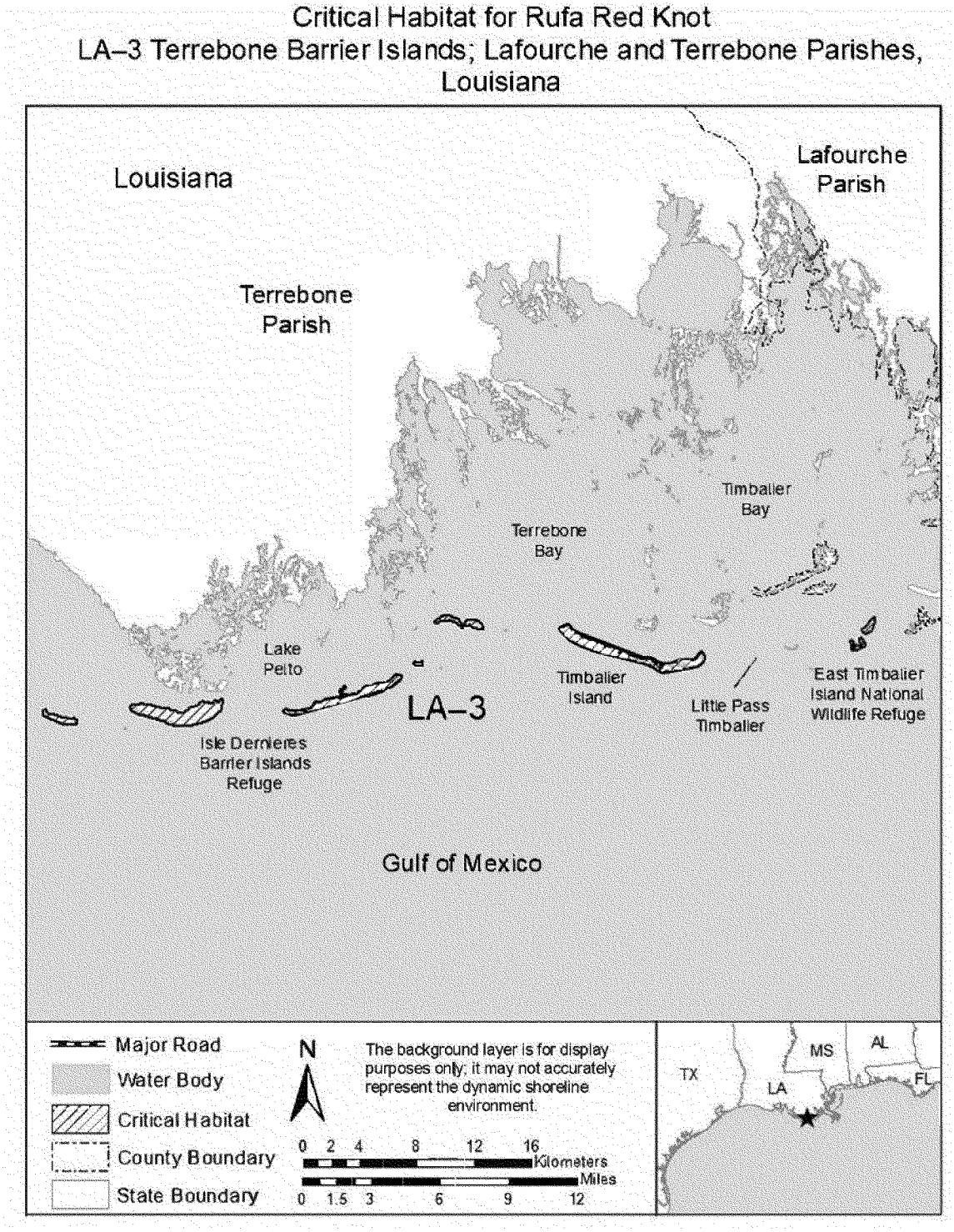

(113) Unit LA–3: Terrebonne Barrier Islands, Louisiana.

(i) Unit LA–3 consists of approximately 5,072 ac (2,052 ha) of occupied habitat within Lafourche and Terrebonne Parishes, including emergent lands and/or sand shoals to MLLW (*i.e.,* highly dynamic beaches and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes: Emergent lands on East Timbalier Island in Lafourche Parish; emergent sand shoals at Little Pass Timbalier in Jefferson Parish; emergent lands of Timbalier Island (also

known as Big or West Timbalier Island) in Terrebonne Parish; and emergent lands and associated sand shoals on East, Trinity, Whiskey, and Raccoon Islands (known as the Louisiana Department of Wildlife and Fisheries Isles Dernieres Barrier Islands Refuge) in Terrebonne Parish. Lands within this unit include approximately 2,890 ac (1,173 ha) in State ownership (Isles Dernieres Barrier Islands Refuge) and 2,172 ac (879 ha) in private/other ownership.

(ii) Map of Unit LA–3 follows:

Figure 92 to Rufa Red Knot paragraph (113)(ii)

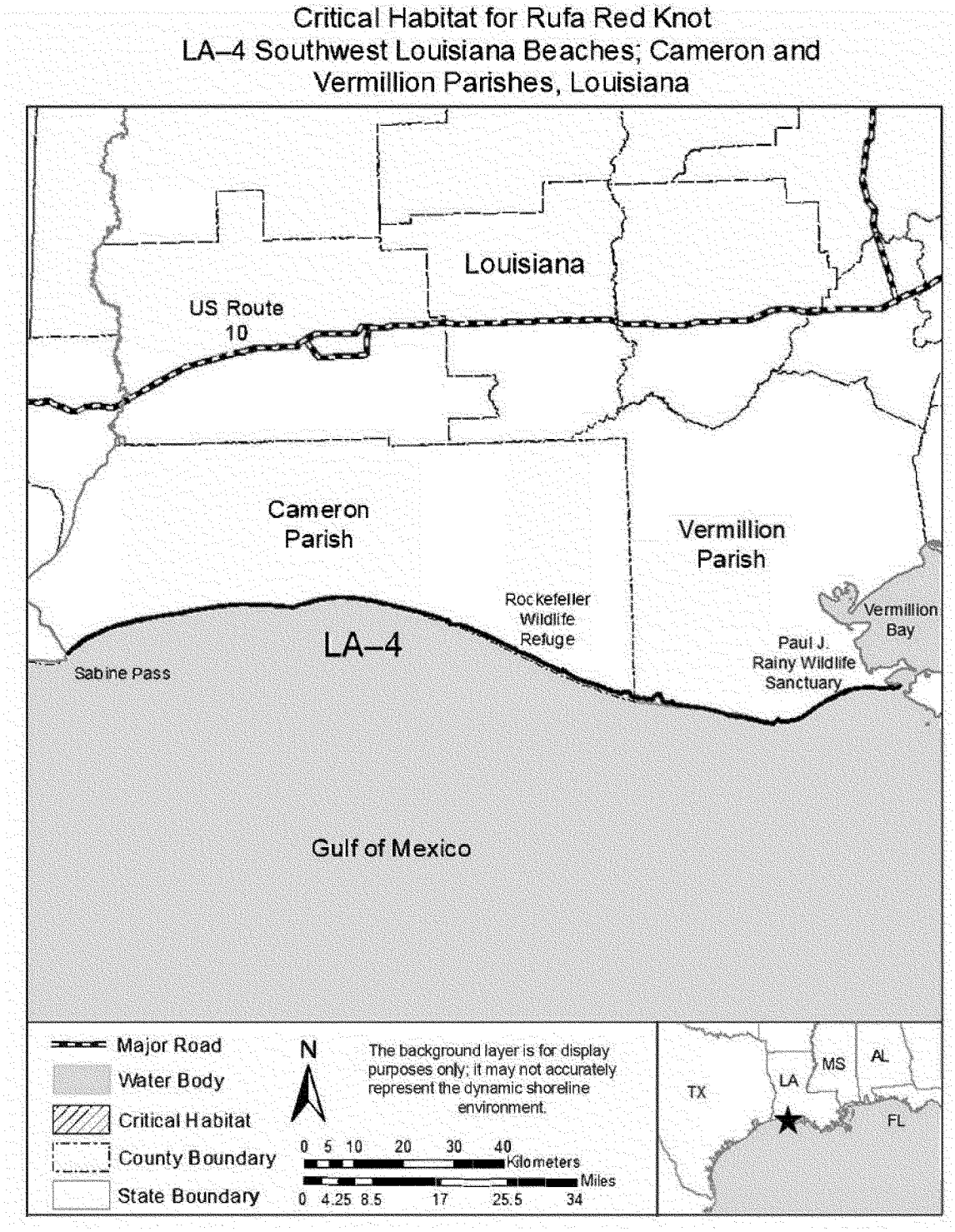


(114) Unit LA–4: Southwest Louisiana Beaches, Louisiana.

(i) Unit LA–4 consists of approximately 6,130 ac (2,481 ha) of occupied habitat within Cameron and Vermillion Parishes. The unit includes land along the Gulf of Mexico shoreline to the MLLW (*i.e.,* highly dynamic intertidal seashore that is covered at high tide and uncovered at low tide) from the eastern Vermilion Parish line starting at the eastern boundary of the Audubon Society's Paul J. Rainey Wildlife Sanctuary, extending approximately 128 mi (206 km) westward and terminating at Louisiana Point, and also including its associated sand/mud shoals on the east side of Sabine Pass in Cameron Parish. Along its entire length, the unit includes the shoreline beach from the MLLW line landward to the edge of where dense vegetation begins. Lands within this unit include approximately 1,497 ac (606 ha) in State ownership (Rockefeller Wildlife Refuge) and 4,633 ac (1,875 ha) in private/other ownership (including the Paul J. Rainey Wildlife Sanctuary, managed by the Audubon Society).

(ii) Map of Unit LA–4 follows:

Figure 93 to Rufa Red Knot paragraph (114)(ii)



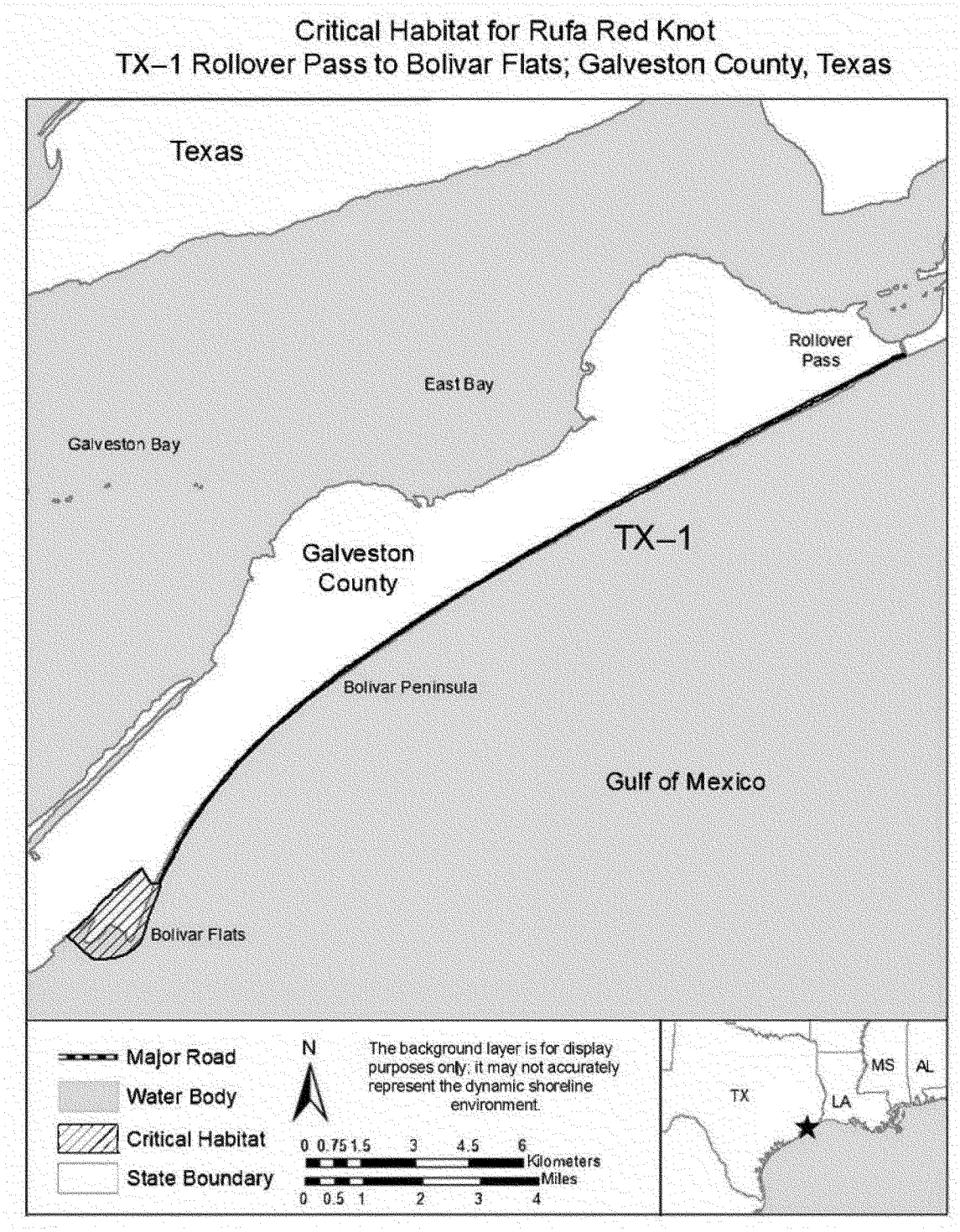

(115) Unit TX–1: Rollover Pass to Bolivar Flats, Texas.

(i) Unit TX–1 consists of approximately 1,264 ac (511 ha) of occupied habitat in Galveston County. This unit begins at the west side of Rollover Pass and extends southwest ending at the north jetty on the Bolivar Peninsula. It includes 17 mi (27 km) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulf-side boundary is the MLLW, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The west end of the unit includes lands known as wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside)

seagrass mud or sand flats that are subtidal, seagrass flats that are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly, depending upon the location, inundated by tides; and marine sandy coastline (beach) irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include approximately 268 ac (108 ha) in State ownership and 996 ac (403 ha) in private/other ownership (includes the Bolivar Flats Bird Sanctuary).

(ii) Map of Unit TX–1 follows:

Figure 94 to Rufa Red Knot paragraph (115)(ii)

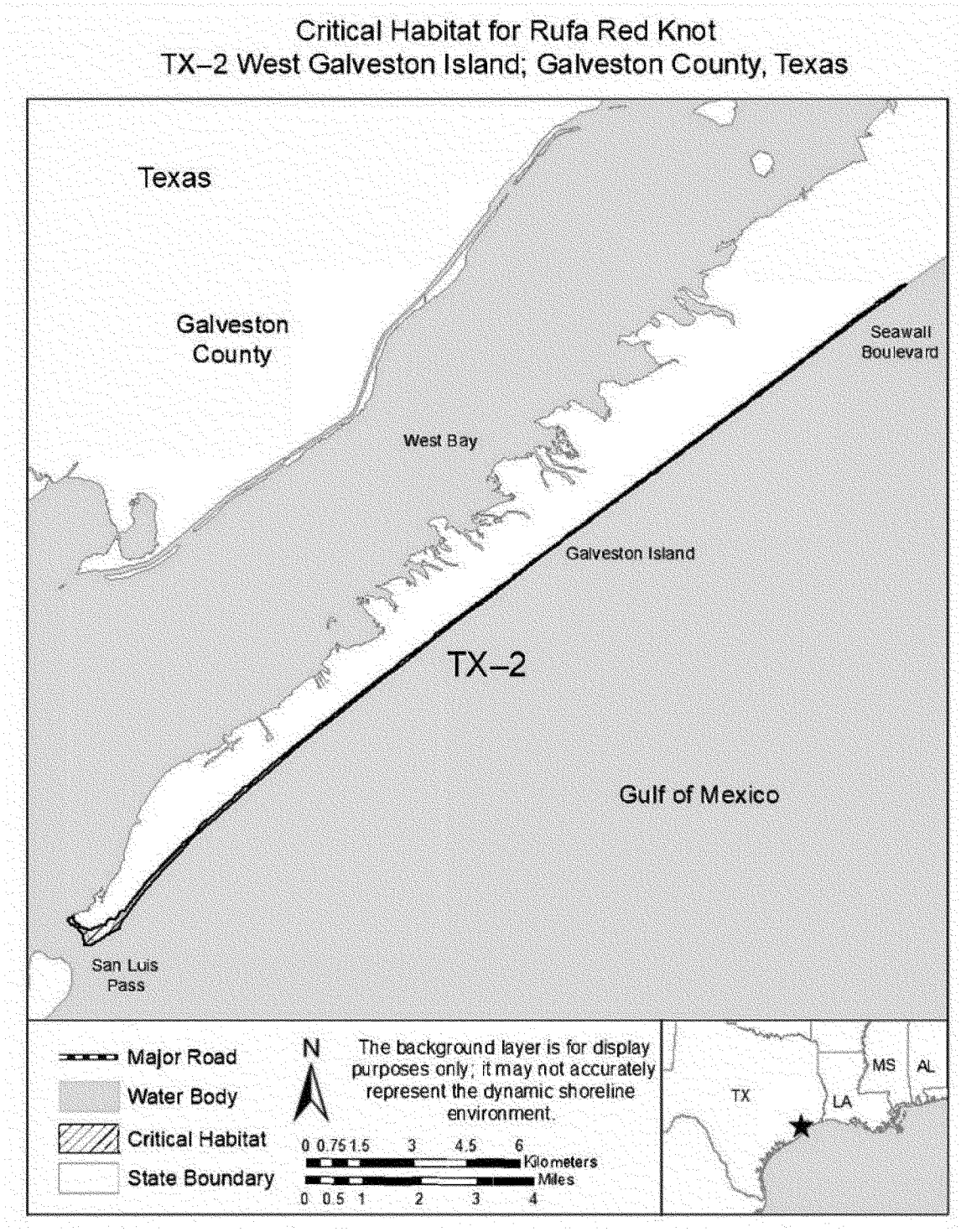


(116) Unit TX–2: West Galveston Island, Texas.

(i) Unit TX–2 consists of approximately 590 ac (238 ha) of occupied habitat in Galveston County. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northeastern boundary is the end of the Seawall Boulevard (end of the seawall), and the southwestern boundary is San Luis Pass. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include approximately 307 ac (124 ha) in State ownership and 283 ac (114 ha) in private/other ownership.

(ii) Map of Unit TX–2 follows:

Figure 95 to Rufa Red Knot paragraph (116)(ii)



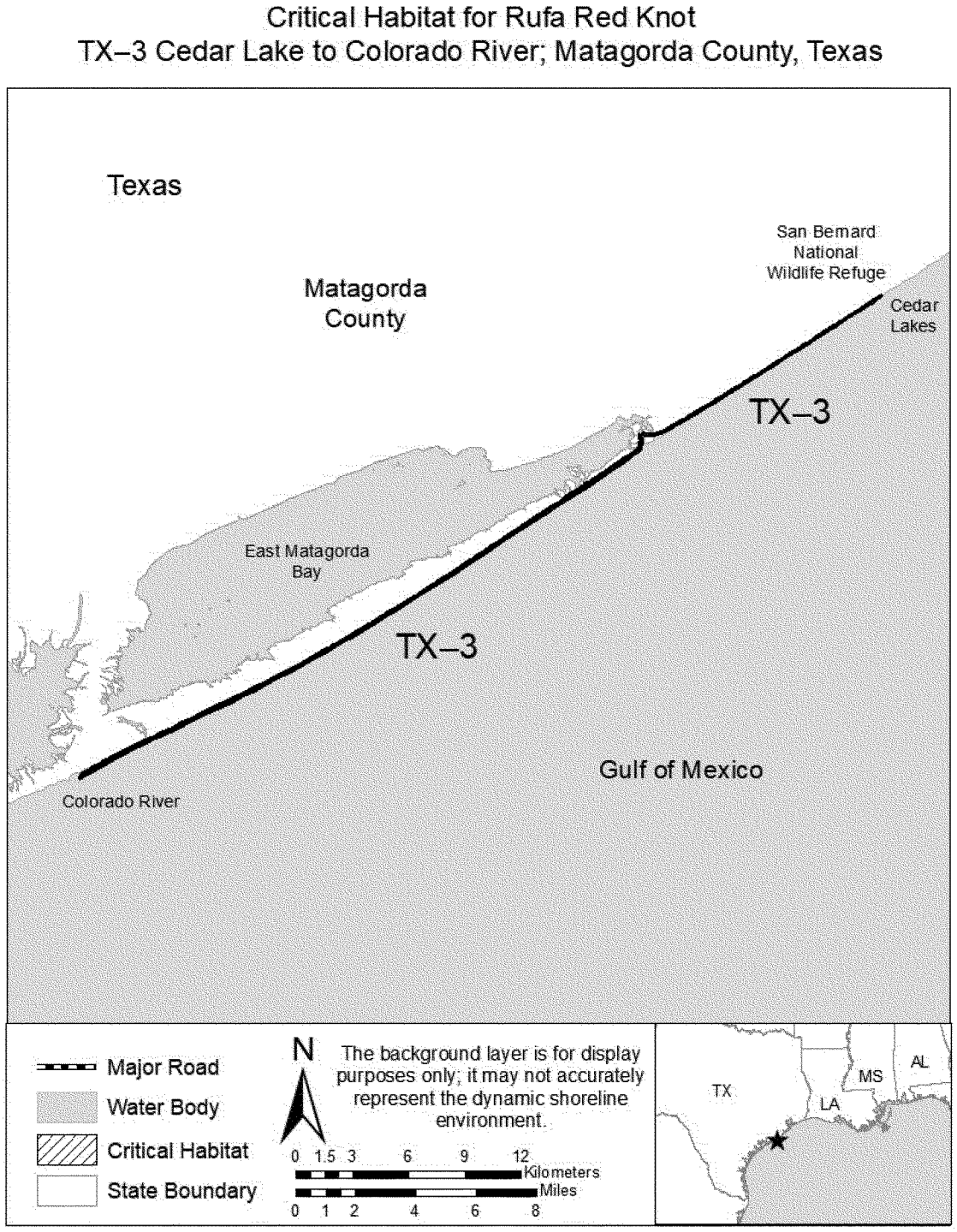

(117) Unit TX–3: Cedar Lake to Colorado River, Texas.

(i) Unit TX–3 consists of approximately 1,203 ac (487 ha) of occupied habitat in Matagorda County. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northeastern boundary is the south side of Cedar Lake Cut, and the southwestern boundary is near the Colorado River. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include 1,075 ac (432 ha) in State

ownership and 128 ac (52 ha) in private/other ownership.

(ii) Map of Unit TX–3 follows:

Figure 96 to Rufa Red Knot paragraph (117)(ii)



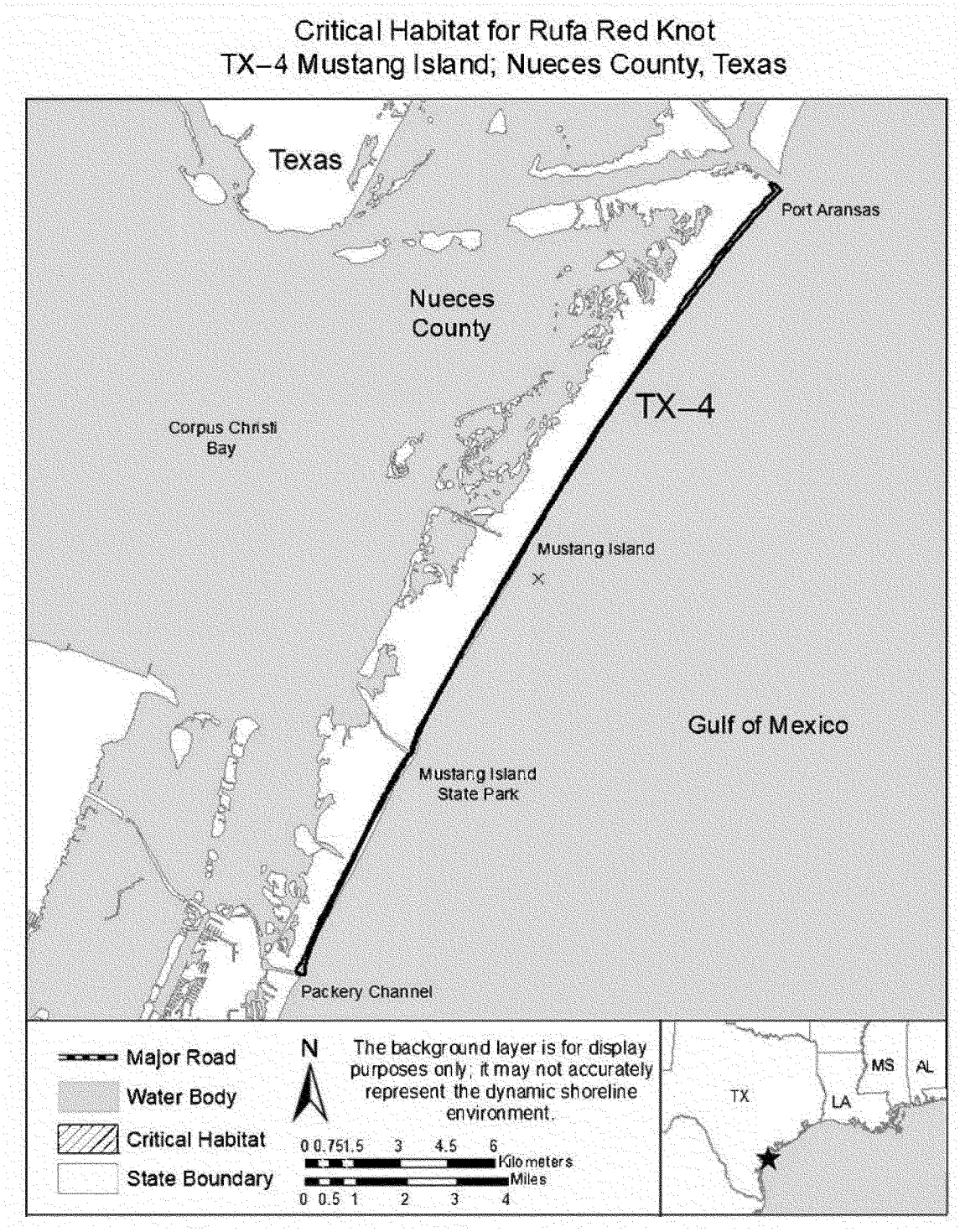

(118) Unit TX–4: Mustang Island, Texas.

(i) Unit TX–4 consists of approximately 648 ac (262 ha) of occupied habitat in Nueces County. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, including emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northern boundary is the south jetty

at Port Aransas, and the southern boundary is the north jetty of Packery Channel. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include approximately 395 ac (160 ha) in State ownership and 253 ac (102 ha) in private/other ownership.

(ii) Map of Unit TX–4 follows:

Figure 97 to Rufa Red Knot paragraph (118)(ii)



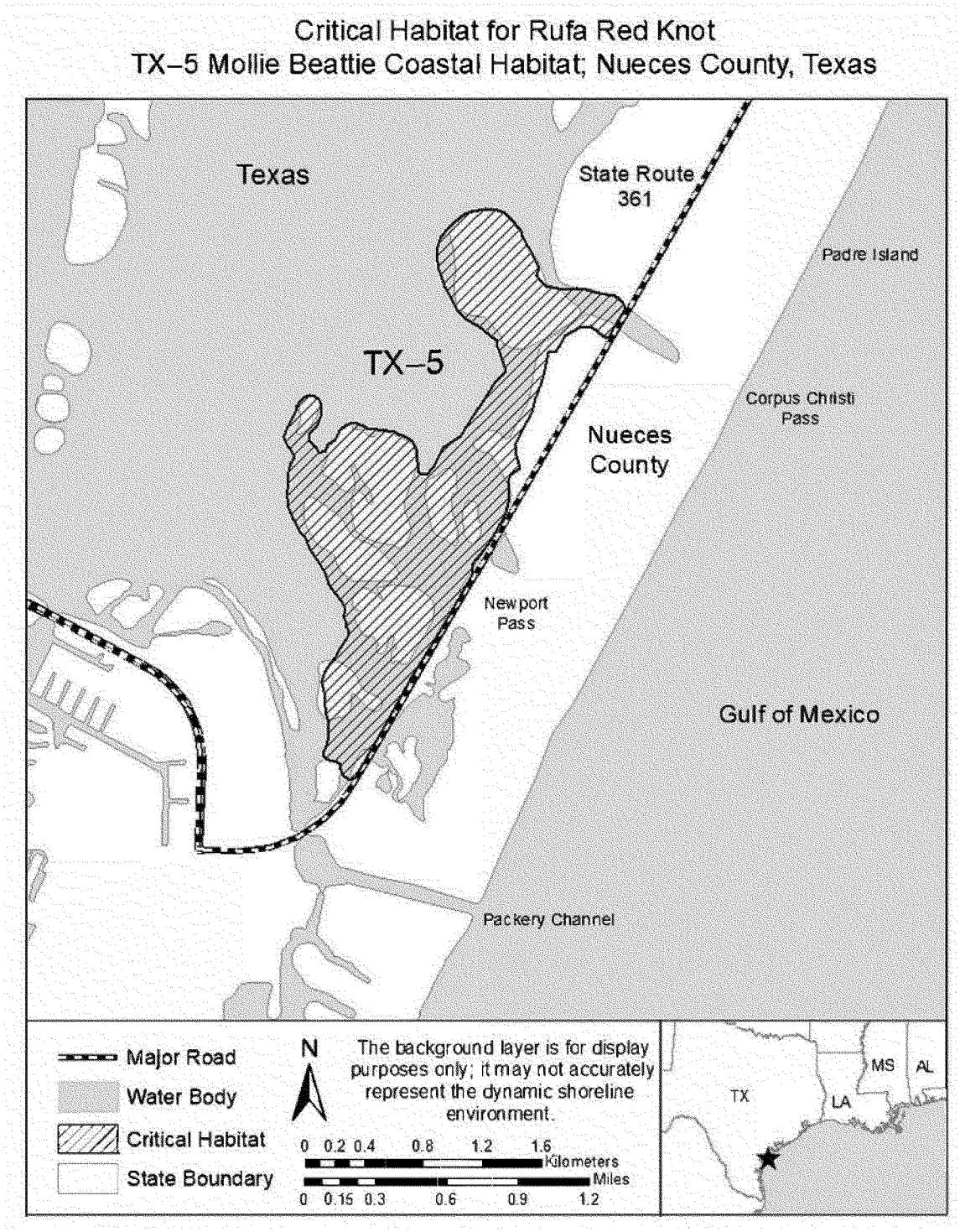

(119) Unit TX–5: Mollie Beattie Coastal Habitat, Texas.

(i) Unit TX–5 consists of approximately 723 ac (293 ha) of occupied habitat in Nueces County. This unit is located north of Packery

Channel and extends along the bayside west of Sylvan Beach Park west of Texas State Highway 361. The northern boundary is the Corpus Christi Pass with the southern boundary approximately 2 mi (3.2 km) south of Corpus Christi Pass. The eastern boundary is where the dense vegetation begins, and the western boundary is the MLLW (*i.e.,* the highly dynamic beach and intertidal seashore that is covered at high tide and uncovered at low tide). This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes in areas where wind tidal flats are infrequently inundated, and bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. The unit does not include densely vegetated habitat within these boundaries, but it includes all seagrass beds exposed at low tides. Specific habitat types within this unit include: Estuarine (bayside) sandy shore/beach/sandbar that is irregularly or regularly, depending upon the location, inundated by tides; and estuarine (bayside) sandy shore (beach/sandbar) and spoils irregularly inundated by tides. Lands within this unit include approximately 505 ac (205 ha) in State ownership and 218 ac (88 ha) in private/other ownership.

(ii) Map of Unit TX–5 follows:

Figure 98 to Rufa Red Knot paragraph (119)(ii)



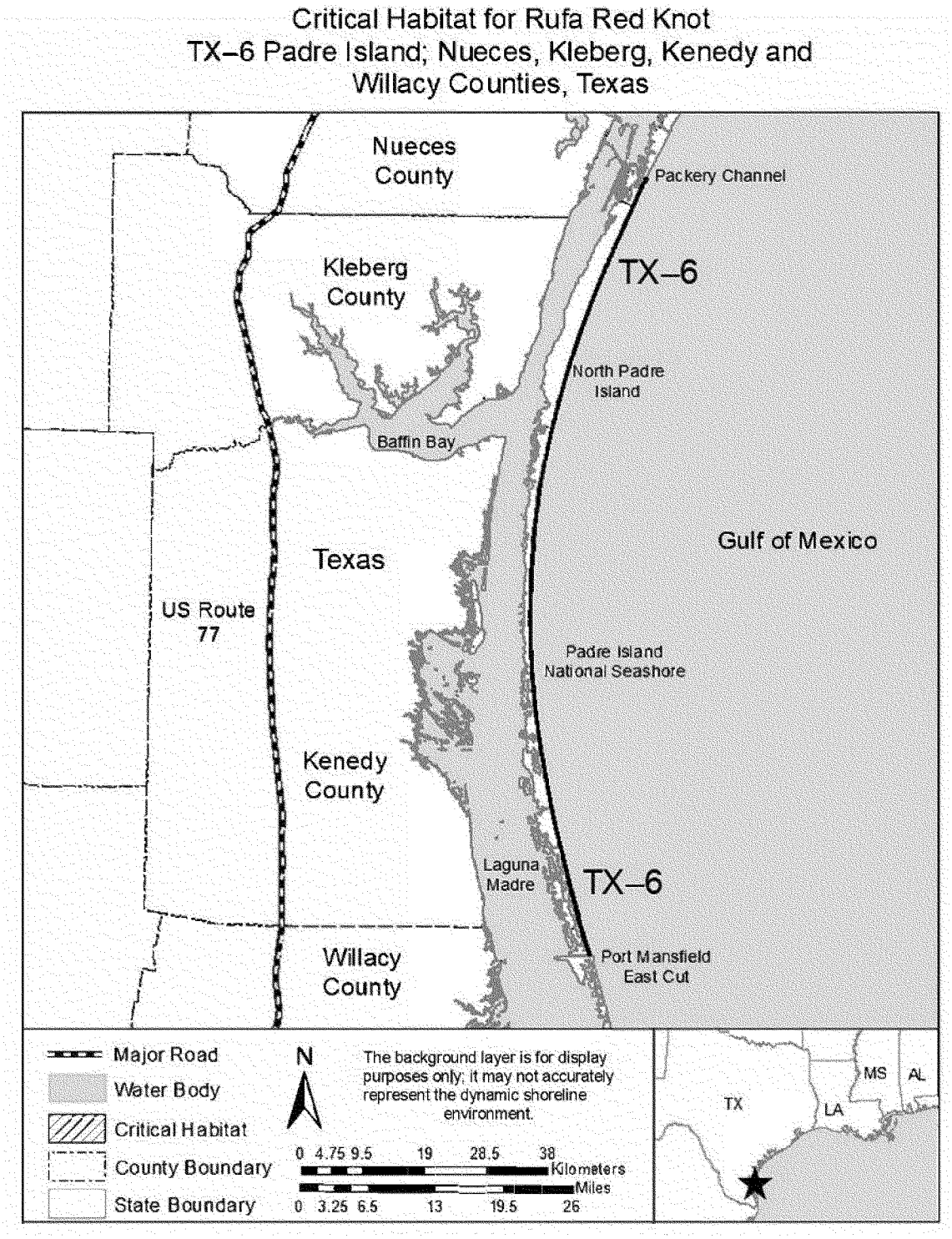

(120) Unit TX–6: North Padre Island, Texas.

(i) Unit TX–6 consists of approximately 2,817 ac (1,140 ha) of occupied habitat in Nueces, Kleberg, Kenedy, and Willacy Counties. The unit is along the gulf with boundaries from the MLLW up to the vegetation line, to include emergent lands and intertidal area characterized as highly dynamic beach/seashore that is covered at high tide and uncovered at low tide. The northern boundary is the south side of Packery Channel extending along the Gulf shoreline to Port Mansfield East Cut. Specific habitat types within this unit include marine sandy coastline beach that is irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include approximately 2,487 ac (1,007 ha) in

Federal ownership (Padre Island National Seashore), 68 ac (27 ha) in State ownership, and 262 ac (106 ha) in private/other ownership.

(ii) Map of Unit TX–6 follows:

Figure 99 to Rufa Red Knot paragraph (120)(ii)



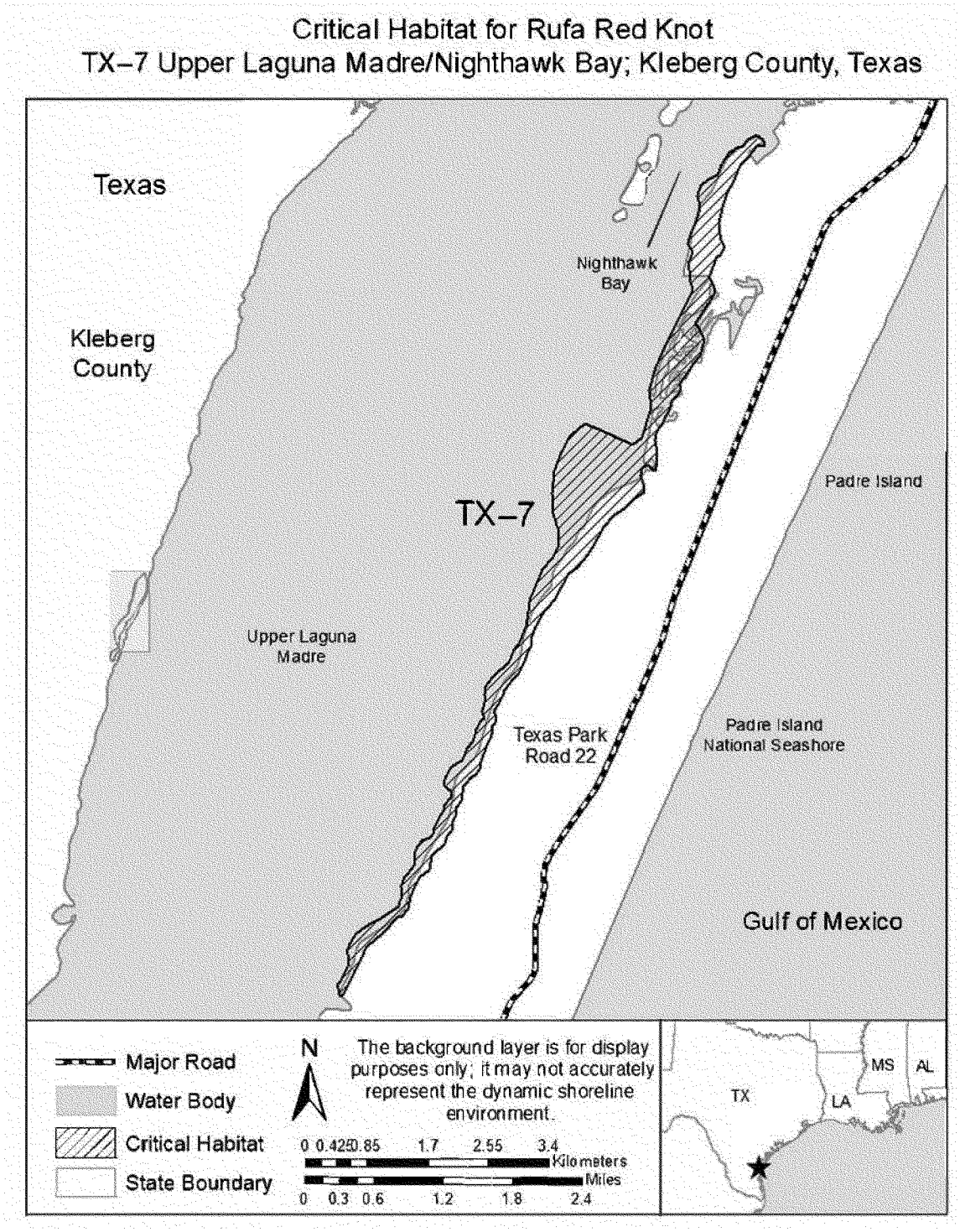

(121) Unit TX–7: Upper Laguna Madre/Nighthawk Bay, Texas.

(i) Unit TX–7 consists of approximately 1,157 ac (469 ha) of occupied habitat in Kleberg County. The unit is along the bayside of Texas Park Road 22. The northeastern boundary is the northern edge of the Kleberg County line in Nighthawk Bay, and the southwestern boundary ends bayside of Bird Island Basin Road. This unit includes a series of small flats along the

bayside of Padre Island in the Upper Laguna Madre. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal, seagrass flats that are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; and estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly inundated by tide, depending upon the location. Lands within this unit include approximately 273 ac (111 ha) in Federal ownership (Padre Island National Seashore), 816 ac (330 ha) in State ownership, and 68 ac (28 ha) in private/other ownership.

(ii) Map of Unit TX–7 follows:

Figure 100 to Rufa Red Knot paragraph (121)(ii)



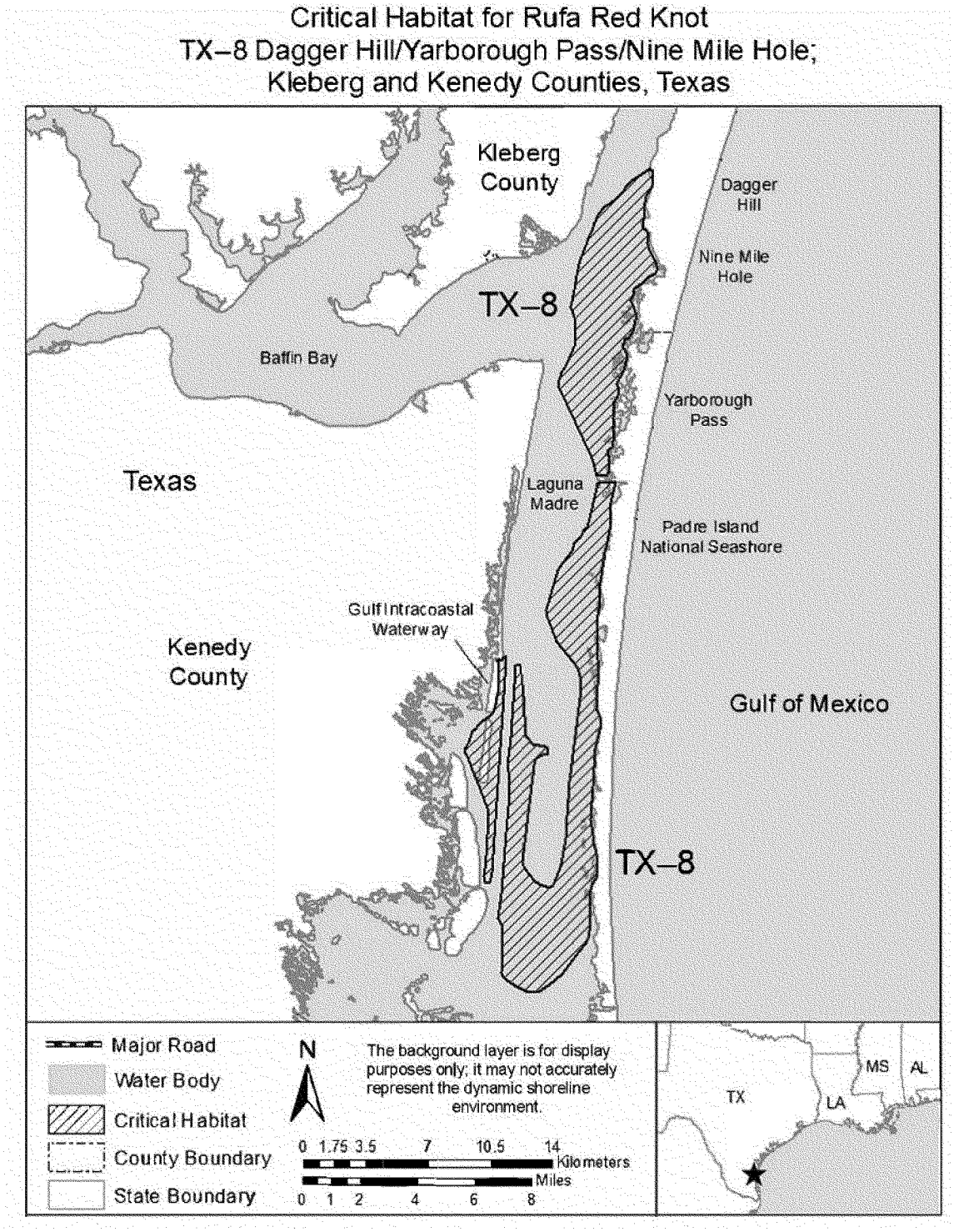

(122) Unit TX–8: Dagger Hill/Yarborough Pass/Nine Mile Hole, Texas.

(i) Unit TX–8 consists of approximately 32,773 ac (13,270 ha) of occupied habitat in Kleberg and Kenedy Counties. The unit is located bayside along and within the Laguna Madre adjacent to the west side of the Padre Island National Seashore. The northern boundary of the unit is Dagger Hill, and the southern boundary is approximately 6 mi (9.7 km) south of the land cut at Nine Mile Hole. The eastern boundary of this unit is the dense vegetation line on the bayside of the Padre Island National Seashore. The western boundary extends toward the Gulf Intracoastal Waterway to the MLLW (*i.e.,* the highly dynamic beach and emergent sand shoals that are covered at high tide and uncovered at low tide).

The southern portion of this unit extends across the Gulf Intracoastal Waterway dredge spoil islands. The unit includes bayside flats and all seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) sandy shore (beach/sandbar) that is irregularly or regularly inundated by tides, depending upon the location; and estuarine (bayside) sandy shore (beach/sandbar) and spoils irregularly inundated by tides. Lands within this unit include approximately 9,731 ac (3,938 ha) in Federal ownership (Padre Island National Seashore) and 23,042 ac (9,332 ha) in State ownership.

(ii) Map of Unit TX–8 follows:

Figure 101 to Rufa Red Knot paragraph (122)(ii)



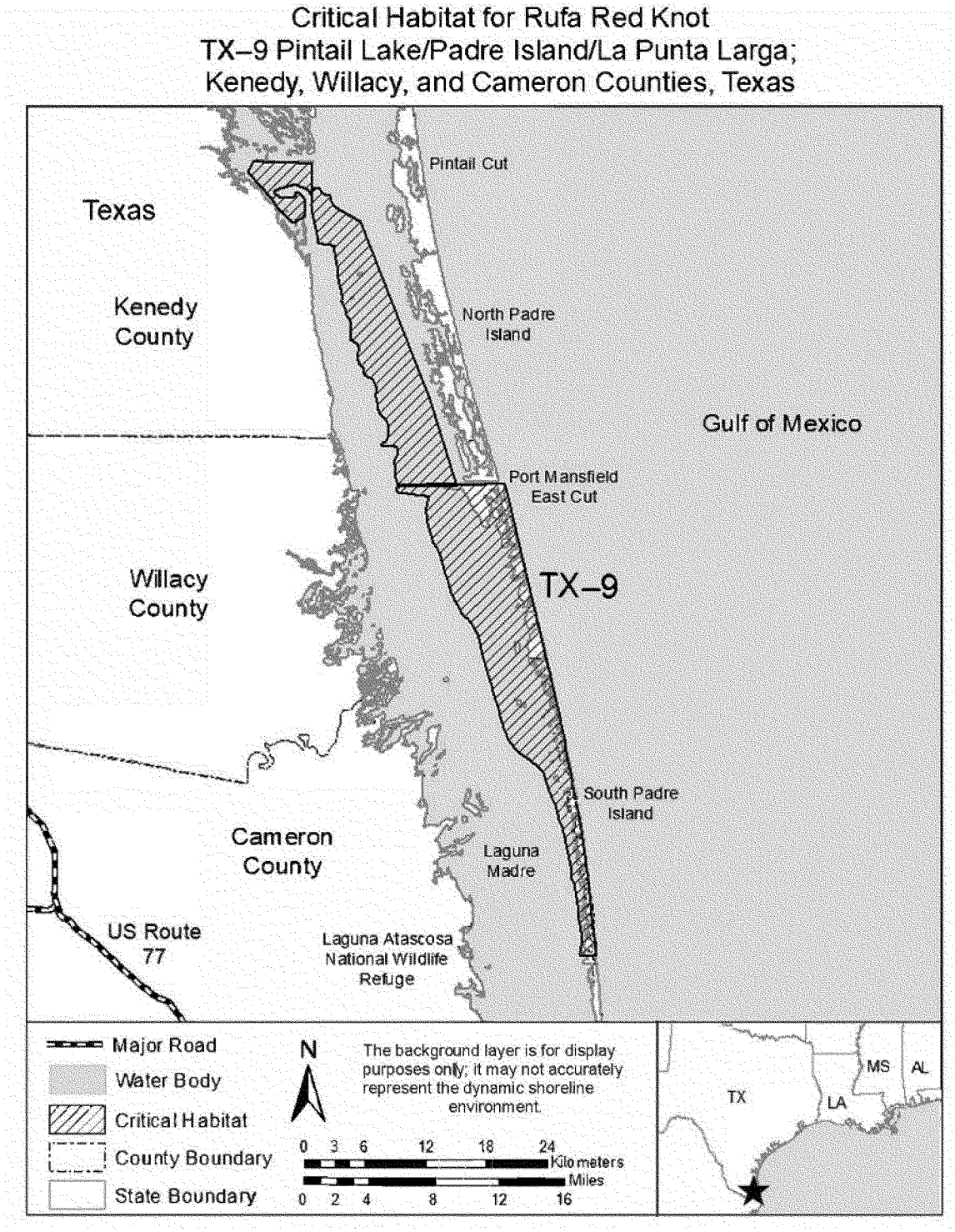

(123) Unit TX–9: Pintail Lake/Padre Island/La Punta Larga, Texas.

(i) Unit TX–9 consists of approximately 94,171 ac (38,110 ha) of occupied habitat in Kenedy, Willacy, and Cameron Counties. The northern boundary is Pintail Cut, extending south along the bay side of North Padre and South Padre Islands, with the southern boundary being Andy Bowie County Park. The center of the unit is approximately at Port Mansfield East Cut. North of the East Cut the western boundary is the MLLW (*i.e.,* the highly dynamic beach and emergent sand

shoals that are covered at high tide and uncovered at low tide), and the eastern boundary is where dense vegetation begins. South of East Cut the western boundary is the MLLW, and the eastern boundary includes the beach side Gulf of Mexico out to the MLLW. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes, and wind tidal flats that are infrequently inundated. Specific habitat types within this unit include: Estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) regularly inundated by tides; and estuarine (bayside) sandy shore (beach/sandbar); and marine sandy coastline beach (irregularly or regularly inundated by tides, depending upon the location). Lands within this unit include approximately 25,881 ac (10,482 ha) in Federal ownership (Laguna Atascosa NWR), 34,165 ac (13,826 ha) in State ownership, and 34,125 ac (13,802 ha; 36 percent) in private/other ownership.

(ii) Map of Unit TX–9 follows:

Figure 102 to Rufa Red Knot paragraph (123)(ii)



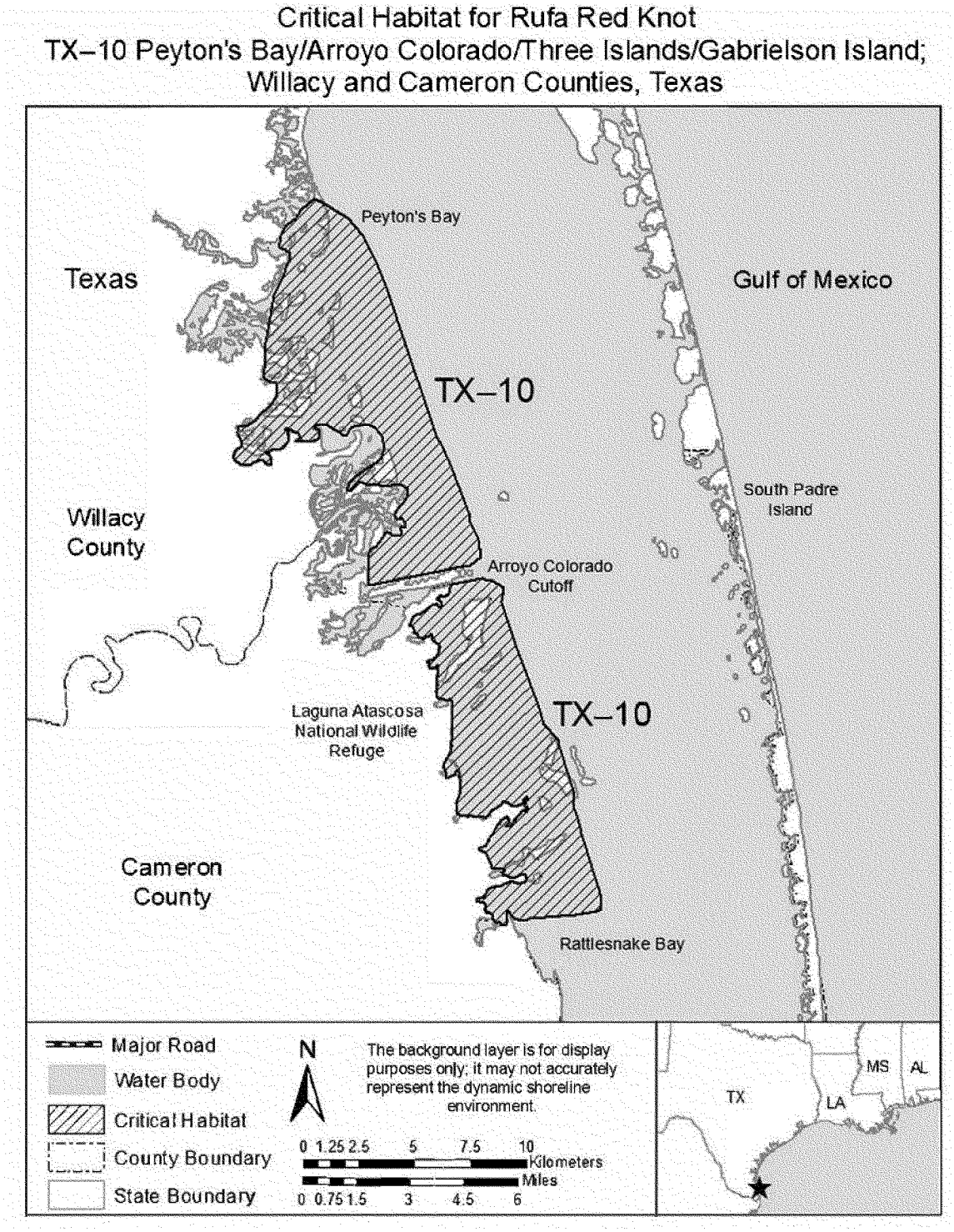

(124) Unit TX–10: Peyton's Bay/Arroyo Colorado/Three Islands/Gabrielson Island, Texas.

(i) Unit TX–10 consists of approximately 35,651 ac (14,427 ha) of occupied habitat in Willacy and Cameron Counties. The northern boundary of this unit is approximately 11 mi (18 km) north of the Arroyo Colorado Cutoff and encompasses Peyton's Bay (north being Chubby Island), and the southern boundary is approximately 9 mi (14 km) south of the Arroyo Colorado Cutoff encompassing Rattlesnake Bay (south edge near

Gabrielson Island). The eastern boundary is the western side of the Gulf Intracoastal Waterway dredge spoil islands, and the western boundary is where dense vegetation begins. The unit includes bayside flats and seagrass beds that are exposed during low tide regimes and wind tidal flats that are infrequently inundated, and does not include densely vegetated habitat within these boundaries. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) algal mud or sand flats regularly inundated by tides and that are nearly flat areas with a layer of algae growing on a moist mud or sand substrate and are otherwise devoid of vegetation; estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) areas that are irregularly or regularly inundated by tides, depending upon the location; and estuarine (bayside) sandy shore (beach/sandbar), to include spoils irregularly inundated by tides. Lands within this unit include approximately 8,145 ac (3,296 ha) in Federal ownership (Laguna Atascosa NWR), 25,316 ac (10,245 ha) in State ownership, and 2,190 ac (886 ha) in private/other ownership.

(ii) Map of Unit TX–10 follows:

Figure 103 to Rufa Red Knot paragraph (124)(ii)



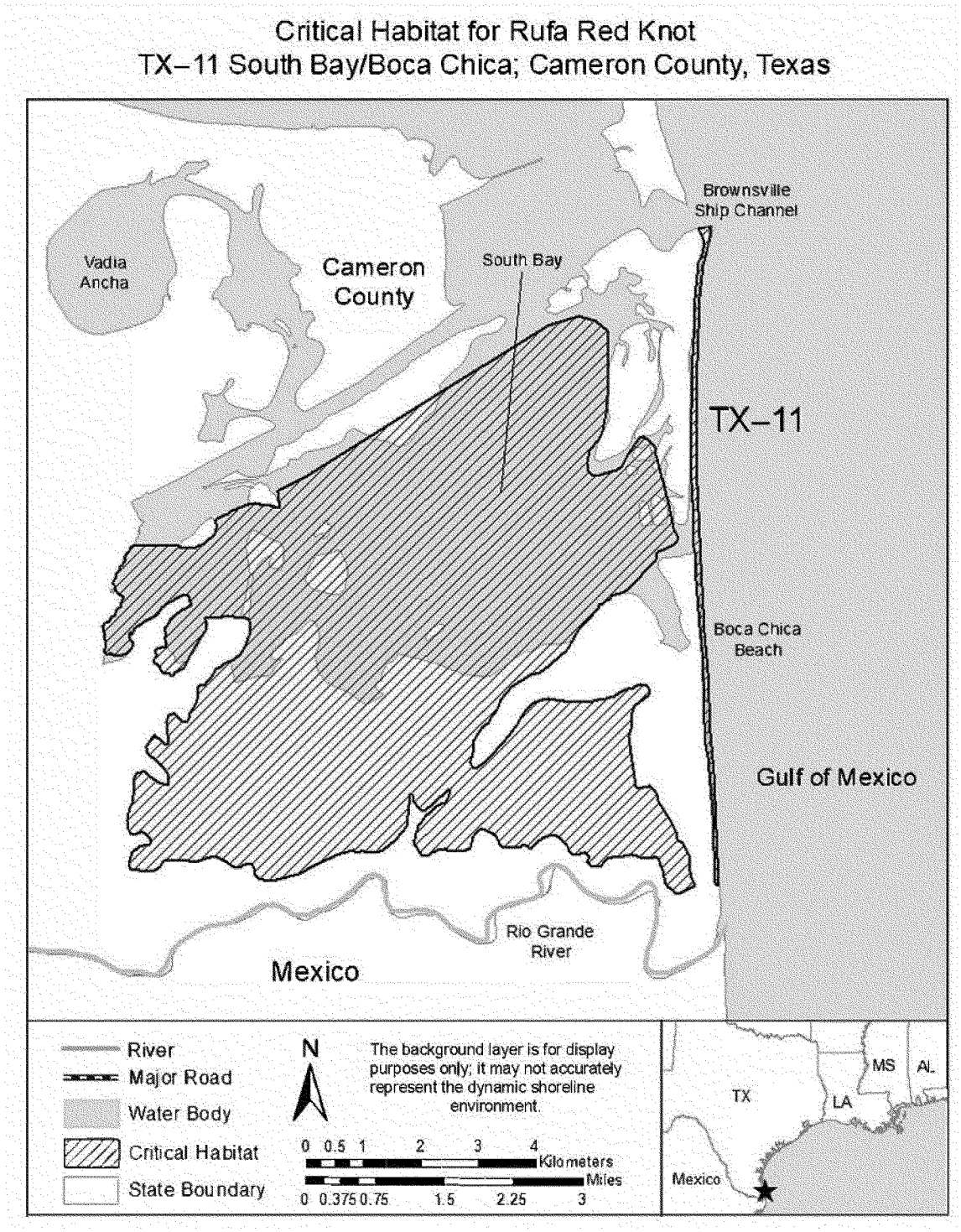

(125) Unit TX–11: South Bay/Boca Chica, Texas.

(i) Unit TX–11 consists of approximately 15,243 ac (6,173 ha) of occupied habitat in Cameron County. The Boca Chica gulf shoreline portion of this unit begins south of the Brownsville Ship Channel and extends approximately 6.5 mi (10 km) to the south. Within the South Bay, the northern boundary is south of Brownsville Ship Channel dredge spoil placement areas, and the southern boundary is north of the Rio Grande River. The eastern boundary is the

bayside of the Boca Chica Beach (Gulf of Mexico) up to where dense vegetation begins, and the western boundary is west of the Loma islands up to where dense vegetation begins along the wind tidal flats. The unit includes wind tidal flats and all seagrass beds that are infrequently inundated and/or exposed as low tides, and the tidal flats within the area known as South Bay. Specific habitat types within this unit include: Estuarine (bayside) seagrass mud or sand flats that are subtidal and are nearly flat areas with rooted vascular plants (seagrass) growing below the water surface in subtidal mud or sand substrate; estuarine (bayside) algal mud or sand flats regularly inundated by tides and that are nearly flat areas with a layer of algae growing on a moist mud or sand substrate and are otherwise devoid of vegetation; estuarine (bayside) algal mud or sand flats irregularly inundated by tides; estuarine (bayside) sandy shore (beach/sandbar) rarely exposed due to tidal fluctuation; estuarine (bayside) sandy shore (beach/sandbar) irregularly or regularly inundated by tides, depending upon the location; estuarine (bayside) sandy shore (beach/sandbar) spoils irregularly inundated by tides; and marine sandy coastline (beach) irregularly or regularly inundated by tides, depending upon the location. Lands within this unit include approximately 5,536 ac (2,242 ha) in Federal ownership (Lower Rio Grande Valley NWR), 3,923 ac (1,589 ha) in State ownership, and 5,784 ac (2,342 ha) in private/other ownership.

(ii) Map of Unit TX–11 follows:

Figure 104 to Rufa Red Knot paragraph (125)(ii)




* * * * *

**Signing Authority**

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this

document on June 30, 2021, for publication.

**Madonna Baucum,**

*Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–14406 Filed 7–14–21; 8:45 am]

**BILLING CODE 4333–15–C**

# Reader Aids

**Federal Register**

Vol. 86, No. 133

Thursday, July 15, 2021

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6050** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, JULY

34905–35216 ..... 1
35217–35382 ..... 2
35383–35594 ..... 6
35595–36060 ..... 7
36061–36192 ..... 8
36193–36482 ..... 9
36483–36632 .....12
36633–36986 .....13
36987–37212 .....14
37213–37668 .....15

## CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
10231 .....35385
**Administrative Orders:**
Memorandums:
Memorandum of June 29, 2021 .....35383
Notices:
Notice of July 7, 2021 .....36479, 36481
**Executive Orders:**
14036 .....36987

**5 CFR**

890 .....36872

**7 CFR**

925 .....37213
1710 .....36193
1714 .....36193
1717 .....36193
1718 .....36193
1721 .....36193
1726 .....36193
1730 .....36193
1767 .....36193
**Proposed Rules:**
986 .....35409

**8 CFR**

**Proposed Rules:**
214 .....35410
248 .....35410
274a.12 .....35410

**9 CFR**

352 .....37216
**Proposed Rules:**
327 .....37251
351 .....37251
354 .....37251
355 .....37251
381 .....37251
500 .....37251
592 .....37251

**10 CFR**

52 .....34905
431 .....37001
**Proposed Rules:**
52 .....34999, 35023
429 .....36018
430 .....35660, 35668
431 .....36018, 37069

**12 CFR**

702 .....34924
1022 .....35595
Ch. XII .....36199

**14 CFR**

25 .....37013, 37015
39 .....34933, 35217, 35387, 35599, 35601, 36061, 36064, 36202, 36205, 36207, 36483, 36485, 36487, 36491, 36633, 36635, 36638, 37017, 37019, 37219, 37221, 37224, 37226, 37229, 37231
61 .....36493
71 .....34937, 35221, 36210, 36212, 37234, 37235, 37238
97 .....34938, 34941, 36641, 36642
141 .....36493
**Proposed Rules:**
39 .....35027, 35410, 35413, 35416, 35690, 35692, 35695, 35697, 36241, 36243, 36516, 37087, 37255, 27258
71 .....35233, 35235, 35237, 35419, 35420, 37090

**15 CFR**

744 .....35389, 36496

**16 CFR**

323 .....37022
**Proposed Rules:**
Ch. I .....35239

**19 CFR**

10 .....35566
102 .....35566
132 .....35566
134 .....35566
163 .....35566
182 .....35566
190 .....35566
**Proposed Rules:**
102 .....35422
177 .....35422

**20 CFR**

200 .....35221
295 .....34942

**21 CFR**

573 .....37035, 37037
1141 .....36509

**24 CFR**

11 .....35391
92 .....34943

**25 CFR**

48 .....34943

**26 CFR**

54 .....36872
**Proposed Rules:**
54 .....36870

**27 CFR**

9 .....34952, 34955

70 ....34957
**Proposed Rules:**
9 ....37260, 37265

**29 CFR**

1910 ....37038
2590 ....36872
4000 ....36598
4262 ....36598
**Proposed Rules:**
1910 ....36073

**30 CFR**

926 ....37039

**31 CFR**

1 ....35396
**Proposed Rules:**
33 ....35156
520 ....35399

**32 CFR**

199 ....36213

**33 CFR**

Ch. I ....37238
100 ....35399, 35604, 37045, 37239
117 ....35402
165 ....34958, 34960, 34961, 34963, 34964, 35224, 35225, 35403, 36066, 36067, 36068, 36070, 36646, 37047, 37049, 37051, 37242, 37244
207 ....37246
210 ....35225
214 ....35226
273 ....37053
274 ....37249
326 ....37246
**Proposed Rules:**
100 ....35240, 37270
165 ....35242

**34 CFR**

Ch. II ....36217, 36220, 36222, 36510, 36648
Ch. III ....36656
686 ....36070

**37 CFR**

1 ....35226, 35229
2 ....35229
**Proposed Rules:**
1 ....35429

**39 CFR**

111 ....35606
**Proposed Rules:**
Ch. III ....36246

**40 CFR**

52 ....35404, 35608, 35610, 36227, 36665, 37053
62 ....35406
180 ....36666, 37055
**Proposed Rules:**
52 ....35030, 35034, 35042, 35244, 35247, 36673
62 ....35044
81 ....35254

**42 CFR**

510 ....36229
600 ....35615
**Proposed Rules:**
409 ....35874
413 ....36322
424 ....35874
484 ....35874
488 ....35874
489 ....35874
498 ....35874
512 ....36322

**45 CFR**

144 ....36872
147 ....36872
149 ....36872
155 ....36071
156 ....36872
**Proposed Rules:**
147 ....35156
155 ....35156
156 ....35156

**46 CFR**

Ch. I ....37238

**47 CFR**

Ch. I ....37061
54 ....37058
64 ....35632
73 ....34965, 35231, 37058
74 ....37060
**Proposed Rules:**
2 ....35700
15 ....35046, 35700
74 ....35046
90 ....35700
95 ....35700

**48 CFR**

204 ....36229
212 ....36229
252 ....36229
501 ....34966
552 ....34966
570 ....34966
**Proposed Rules:**
615 ....35257
652 ....35257

**49 CFR**

381 ....35633
382 ....35633
383 ....35633
384 ....35633
385 ....35633
390 ....35633
391 ....35633
**Proposed Rules:**
385 ....35443
393 ....35449

**50 CFR**

17 ....34979
300 ....35653
635 ....36669
648 ....36671
660 ....36237, 37249
665 ....36239
679 ....36514
**Proposed Rules:**
17 ....35708, 36678, 37091, 37410
648 ....36519

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List July 8, 2021**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

**Note:** This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.